

Salt Lake City Land Use Appeals Hearing Officer
PLNAPP2019-01035
Appeal from Decision of Historic Landmark Commission
171 West 300 North – Preserve Partners Inc.
February 18, 2020

This is an appeal from a decision by the Historic Landmark Commission denying a Certificate of Appropriateness for changes made to a building on property located at 171 West 300 North, Salt Lake City. The applicant/appellant is Preserve Partners Inc. The appeal is denied.

RECORD

The record includes the Staff Report and other materials, a document of 90 pages, dated February 13, 2020. The record also includes an audio recording of a hearing conducted on February 13, 2020. Appearing at the hearing was Michael Anderson and James Tate on behalf of Preserve Partners. Paul C. Nielson, City Attorney, appeared on behalf of Salt Lake City. As this was not a public hearing, there were no comments by any member of the public.

BACKGROUND

At some time in the spring of 2019, as part of a more extended upgrade project, Preserve Partners (“Preserve”) covered three exterior walls of a masonry building at 171 West 300 North with paint. The walls had not been painted since the construction of the building about 1950. The building is listed as a contributory structure within a local historic preservation overlay district. The City Civil Enforcement Building Department notified Preserve that the application of the paint was a violation of the City Code, Title 21A.

In an attempt to resolve the Department’s concern, Preserve applied to the City for a Certificate of Appropriateness. In considering the application, the Historic Landmark Commission conducted an extended review of the matter and, on October 3, 2019, denied the Certificate. From that decision Preserve filed this appeal. The issue here is a narrow one: Was the decision by the Commission legal and supported by substantial evidence in the record?

ANALYSIS

In making its decision, the Commission referred to the Staff Report prepared for its consideration by the City’s Planning Division. Within that report, at pages 56-58 in the Record of this matter, is an analysis of standards for minor alterations in a historic district with findings supporting the staff’s recommended denial of the Certificate. The analysis restates the Standards for Certificate of Appropriateness found at Section 21A.34.020.G of the City Code, which provides that in considering an application for a Certificate, the entity making a decision to grant or deny the application *shall* find that the project substantially complies with *all* of the general standards that pertain to the application. The Commission concluded that Preserve’s application failed to meet required standards 2, 5, 7, and 9.

In Chapter 21A.16 of the City Code the process of appealing administrative decisions is provided for. Under Section 21A.16.030.E.2.c the Standard of Review for such appeals is that the Hearing Officer shall uphold the decision unless it is not supported by substantial evidence in the record or it violates a law, statute, or ordinance in effect when the decision was made. Under Section 21A.16.030.F the burden to establish that the decision is to be overturned on this standard rests on the applicant/appellant Preserve. It is thus Preserve's duty to marshal the evidence and demonstrate how the Commission erred in its determination that painting the structure did not comply with four specific standards found in the relevant ordinance. The Commission's decision must be upheld if there is substantial evidence to support any one of its four findings related to standards in the ordinance, since all the standards must be substantially complied with.

Preserve has not met that burden here. It has not shown how the opinions of professionals on the City's planning staff do not qualify as substantial evidence to support the key findings, how the determinations by the staff and the Commission are inconsistent with past decisions made with regard to certificates of appropriateness, or how the decision here violates a law, ordinance, or statute. Instead, Preserve's argument has been that the Commission should have decided in favor of Preserve because there are good arguments to support such a decision.

While that may be true (it is noted that the Commission's decision to deny the Certificate was not unanimous) that is not the issue here. The issue is not whether the Commission could have or even should have decided in Preserve's favor. The issue is whether the Commission could only approve the application and could not legally deny it. If there is evidence and argument on both sides of a decision on appeal, the Hearing Officer must sustain the original decision of the Commission. It is only when there is no evidence to support the Commission's decision or the decision is otherwise illegal that it can be overturned. The Commission's decision stands if there is evidence to support any one of the four findings that the application does not comply with the standards in the ordinance. Preserve has not demonstrated how the record of the Commission's review fails to include any substantial evidence supporting any one of the findings by the Commission or that the decision was otherwise illegal.

Preserve instead makes four arguments: 1) That the decision is inconsistent with the general intent of the land use regulations to promote the general welfare because painting the structure promotes the general welfare. 2) That since the Code may be interpreted to allow exterior paint it must do so. 3) That the design guidelines applied in making the Commission's decision are not mandatory, and 4) that removing the paint would be costly, expensive, and may damage the building.

As to the first argument, under Utah case law, pertinent, substantive provisions of an ordinance are deemed consistent with the general purpose language of an ordinance absent specific findings to the contrary. Here the staff report cites the plain language of the ordinance in its determination that the application does not comply with four of the required standards. "When we interpret a statute, we look first to its plain language; only if the statute's language is ambiguous do we rely on other methods of statutory interpretation." *Toone v. Weber County*, 2002 UT 103, ¶12. And also:

To resolve conflicts in interpretation of statutes or ordinances, we look to well-settled rules of statutory construction. First, "in cases of apparent conflict between provisions of the same statute, it is the Court's duty to harmonize and reconcile statutory provisions,

since the Court cannot presume that the legislature intended to create a conflict." *Madsen v. Brown*, 701 P.2d 1086, 1089-90 (Utah 1985). Further, "a provision treating a matter specifically prevails over an incidental reference made thereto in a provision treating another issue, not because one provision has more force than another, but because the legislative mind is presumed to have stated its intent when it focused on that particular issue." *Id.* at 1090.

Bennion v. Sundance Development, 897 P.2d 1232 (Utah 1995). As to the second argument, and whether a land use authority such as the Commission must decide one way or the other simply because it may do so:

It is well established that when courts review the actions of an administrative body, that body's actions are endowed with a presumption of correctness and validity which the courts should not interfere with unless it is shown that there is no reasonable basis to justify the action taken.

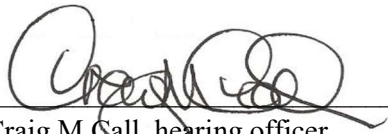
Dairy Products v. Wellsville, 2000 UT 81, ¶ 42 (citations omitted). This is also consistent with the Salt Lake City Code related to land use appeals. The Appeals Hearing Officer is to uphold the Commission decision "unless it is not supported by substantial evidence in the record or violates a law, statute, or ordinance". City Code Section 21A.16.010.E.2.c.

Preserve's third argument is that the design guidelines are not mandatory, but that argument misses the point. The guidelines here are used to provide a framework for the Commission to determine which changes to structures are appropriate and which changes are not. The non-mandatory guidelines provide a foundation for the expert advice of the professional staff which advises the Commission, thus making that advice more substantial as evidence.

The fourth argument is that to remove the paint would be expensive and perhaps even damage the structure. This argument does not cite to or seem to address a relevant standard of review. The Commission and staff had this argument and evidence before it as well as other credible evidence in the record that the removal of the paint would not unduly damage the structure (see record, pp. 65-66). The Commission made a decision that was consistent with the relevant evidence and guidelines and within its discretion.

The decision of the Historic Landmarks Commission is upheld. The appeal is denied.

Dated this 18th day of February, 2020.



Craig M Call, hearing officer