

Salt Lake City Land Use Appeals Hearing Officer
Appeals Decision
PLNAPP2021-00063
(Appealing Petition No. PLNPCM2020-00727)
April 21, 2021

This is an appeal by Lance Howell, of a decision by the Salt Lake City Planning Commission to deny a planned development to modify front yard setback and parking buffer landscape requirements on property located at 1966 S. Windsor Street in Salt Lake City.

Ruling. The decision here is to uphold the Planning Commission’s denial of the planned development and deny the Appellant’s petition.

A hearing on this matter was held before the Appeals Hearing Officer on April 8, 2021. Mr. Howell, the appellant, appeared, along with Mike Spainhower. Appearing on behalf of the City were Katia Pace, Planner, and Paul Nielsen, Senior City Attorney.

The application for planned development was reviewed and a public hearing held by the Planning Commission on January 13, 2021. The appeal was timely filed on January 21, 2021. The Appellant’s appeal brief identified two grounds for reversal. An extended discussion, including the identification and review of some of the evidence in the record from the Planning Commission, was conducted at the Appeals hearing.

Standard of Review

The standard of review for a planning commission decision under Utah law, found at *Utah Code Annotated* §10-9a-801, is the same for all administrative decisions. The decision is reviewed to determine if it conflicts with any applicable law, and whether it is supported by substantial evidence in the record. In discussing an administrative decision by a board of adjustment, the Utah Court of Appeals stated:

The Board will be found to have exercised its discretion within the proper boundaries unless its decision is arbitrary, capricious, or illegal. Further, “[t]he court shall affirm the decision of the board . . . if the decision is supported by substantial evidence in the record.” *Utah Code Ann.* Sec. 17-27-708(6) (1991). Together, these concepts mean that the Board’s decision can only be considered arbitrary or capricious if not supported by substantial evidence. In determining whether substantial evidence supports the Board’s decision we will consider all the evidence in the record, both favorable and contrary to the Board’s decision. See *First Nat’l Bank of Boston v. County Board of Equalization of Salt Lake County*, 799 P.2d 1163, 1165 (Utah 1990); *Grace Drilling Co. V. Board of Review*, 776 P.2d 63, 68 (Utah App. 1989). Nevertheless, our review, like the district court’s review, “is limited to the record provided by the board of adjustment.... The court may not accept or consider any evidence outside the board[‘s] record....” *Utah*

Code Ann. Sec. 17-27-708(5)(a) (1991). We must simply determine, in light of the evidence before the Board, whether a reasonable mind could reach the same conclusion as the Board. It is not our prerogative to weigh the evidence anew. See *Xanthos*, 685 P.2d at 1035.

Patterson v. Utah County Bd. Of Adj. 893 P.2d 602, 604 (UT App. 1995). The footnote cited in this citation is as follows:

“‘Substantial evidence’ is that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion.” *First Nat’l Bank of Boston v. County Bd. Of Equalization of Salt Lake County*, 799 P.2d 1163, 1165 (Utah 1990). It is “more than a mere ‘scintilla’ of evidence. . . though ‘something less than the weight of the evidence.’” *Grace Drilling Co. v. Board of Review*, 776 P.2d 63, 68 (Utah App. 1989) (quoting *Idaho State Ins. Fund v. Hunnicutt*, 110 Idaho 257, 715 P.2d 927, 930 (1985)).

Id at f.6. With regard to legality, the burden of proof is also on the Appellants here. *Utah Code Ann.* §10-9a-705. In order to successfully raise a legal issue, Appellant must specifically cite the applicable code, statute or case law and then show how the decision is inconsistent with that law.

City Code further confirms that “the appeals 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” (*Salt Lake City Code* Section 21A.16.030.E2). Finally, the Appellant has the burden to produce and identify the evidence and prove that the decision made was wrong (*Ibid.*, Section 21A.16.030.F).

The Utah Supreme Court has made it clear that planning commissions “acting within the boundaries established by applicable statutes and ordinances” are entitled to a “broad latitude of discretion.” *Carrier v. Salt Lake County*, 2004 UT 98, ¶ 28, 104 P.3d 1208 (quoting *Patterson v. Utah County Board of Adjustment*, 893 P.2d 602, 604 (Utah 1995)).

Discussion

The Appellant failed to identify either in its appeal brief, nor in the appeals hearing, that the Planning Commission decision violated any law, statute or ordinance when the decision was made, and failed to show that the decision was not supported by substantial evidence. On the contrary, the Appellant’s appeal brief as well as the Appellant’s testimony during the appeals hearing was simply focused on his own opinions contrary to those upon which the Planning Commission relied in making its decision. In the Appeals Hearing the Appellant raised the concern that the Planning Commission had a “wrong perception” of the building frontage and that the Planning Commission thus based its decision upon “faulty” or “erroneous” understanding of the Appellant’s proposal. The City persuasively argued that the Planning Commission was not basing its decision on anything faulty nor erroneous, but simply disagreed with the Appellant’s views. The Planning Commission spent time discussing and hearing

testimony regarding the standards set forth in the planned development process and how those affected the proposed project. The Planning Commission debated and relied upon the discretion granted it under *Salt Lake City Code* Section 21A.55.050 to approve or deny a planned development based on the standards. The Planning Commission clearly based its decision on Section 21A.55.050 standard C.3. Just because the Appellant had a differing view on how the standards were applied does not constitute grounds for reversal.

The Appellant, whose burden it was, failed to show that there was not substantial evidence in the record for the Planning Commission to make its decision. The Appellant, whose burden it was, also failed to show that the decision violated any law. Rather, the record of the Planning Commission was full of substantial evidence upon which the Planning Commission based its decision to deny the planned development. Any other decision or issue is outside the scope of this appeals hearing or the authority of this appeals hearing officer.

Conclusion

The decision of the Planning Commission is upheld because its decision was based on substantial evidence in the record and did not violate any law. Thus, the decision to deny the planned development stands.



Matthew T. Wirthlin,
Appeals Hearing Officer