

SALT LAKE CITY LAND USE APPEALS HEARING DECISION
Case No. PLNAPP2021-00988
Property Address 140 East, 1st Avenue, Salt Lake City, Utah
APPEAL FROM A DECISION BY THE HISTORIC LANDMARK COMMISSION
APPELLANT: The Church of Jesus Crist of Latter-Day Saints
November 30, 2021

On November 18, 2021, this matter came before the Salt Lake City Land Use Appeals Authority. A hearing was held, over WebEx, a video conferencing platform which allowed for the participation of all parties. Members of the public were present and able to conference in to view and listen to the proceedings.

The appeal arises out of a decision by the Landmark Commission (“Landmarks”) to reject a certificate of appropriateness and special exception for a proposal to raise and modify the fence at the Brigham Young Cemetery. Landmarks found that neither the exception nor the alteration complied with the standards set forth in Salt Lake City’s ordinance. The appellant, the Church of Jesus Christ of Latter Day Saints (“the Church”), was represented by Emily Utt, a historic preservation specialist with the Church. Salt Lake City was represented by Hannah Vickery from the office of the Salt Lake City Attorney.

The Brigham Young Cemetery on the edge of Salt Lake City’s Avenues neighborhood is marked in part by a fence which the parties agree is an important historic feature. The rock wall, which sits at its base was built around the cemetery in 1877 and the iron fencing and gates were added to the rock wall in the 1880s. Brigham Young is buried among the historic and significant graves housed in the cemetery. The proposal is to add an additional 2 feet of height to the existing fence by welding new decorative material consistent with and connected to the original. The parties to this appeal do not dispute that the fence is governed by Salt Lake City’s historic preservation ordinance and the jurisdiction of the City’s Landmark Commission.

On appeal, the Church carries the burden of proving, based on the record below, that the decision of Landmarks is not supported by substantial evidence in the record or that it violates a law, statute or ordinance in effect when the decision is made. Because the record supports Landmarks process and findings; the decision below is affirmed.

Most significantly, the Church fails to address the finding by the Landmarks Commission that the proposal failed to meet the majority of the standards set forth in the Salt Lake City ordinance governing special exceptions and minor alterations. While the parties were in agreement that the Cemetery has reason to bolster its security, this only meets one element of the test. Without arguments relating to the others, there is no basis for overturning the Landmarks decision to adopt the findings set forth in the staff report, and vote to deny the petition.

The Church makes three arguments in its appeal. First, it argues that the fence can be constructed in a manner which preserves the original historic fence and would allow for eventual removal of the new construction. Second, it argues that Landmarks gave more leeway to other

projects demonstrating inconsistent application of the standards and third, the Church argues that one member of the Commission should have recused himself from the process due to conflicts.

While the Church did present some evidence that the fence could be restored, the Landmarks Commission addressed and rejected this testimony, finding instead that undoing the welds necessary to create the higher fence would likely cause irreparable damage to this 1880s structure. The Church has not presented evidence that the Commission finding was erroneous; and even more important, that finding would not have been sufficient to overcome the failure to meet the other standards.

Among the standards not met, and not disputed in this appeal are compatibility with the surrounding development, impact on the affected neighborhood and streetscape, impact on the historic character of the property, preservation of distinctive features and construction, and the requirement that alterations be consistent with preserving the historic integrity of the original construction. These standards are set forth in the City's ordinances governing Minor Alterations of a Landmark site, 21A-34-020-G and Special Exceptions, 21A-06-050(c).

The Church also argues that during the hearing, the Commission allowed more leeway for alterations, major and minor, to other projects on its agenda. This does not address the fundamental issue of whether Landmarks committed an error in its findings regarding this fence. Nor does this support a finding that the Commission's determination was a violation of law, statute or ordinance. And the Church acknowledges that possibly erroneous decisions in other cases do not form a basis for a deviation from the standards in this case.

Finally, the Church argues that Commissioner John Ewanowski should have recused himself because his employer, an architectural firm, has ongoing work with the LDS Church. This issue of conflict was not raised at the time of the hearing although the Church had knowledge of Commissioner Ewanowski's employment prior to the hearing.

The policies and procedures of the Historic Landmarks Commission provide that "There may be a conflict of interest if there are personal, familial relationships, or financial ties between a Commission member and proponent/opponent of any item of business." Historic Landmarks Commission Policies and Procedures B(12)(a). However, recusal is only required "where the decision will have an individualized material effect" on the financial interest of the voting member of Landmarks. In this case, the Church has made no argument or offered any evidence to suggest that Commissioner Ewanowski would benefit from approving or not approving the changes to the fence. As a result, this argument cannot be a basis for reversing the Commission's decision.

Because the Church has failed to show that the Historic Landmarks Commission decision was not supported by substantial evidence or violated a law, statute or ordinance, the Appeal is denied and the decision of Landmarks is affirmed.

DATED this 30th day of November, 2021.

/Mary J. Woodhead/
MARY J. WOODHEAD
Appeals Hearing Officer