

Salt Lake City Land Use Appeals Hearing Officer
Appeals Decision
PLNAPP2022-00796
(Appealing Petition No. PLNHLC2021-01283)
October 4, 2022

This is an appeal by Kari Gardner (“Appellant”) of a decision by the Salt Lake City Historic Landmark Commission (“HLC”) to deny a Minor Alteration application for a vinyl fence and trellis in the front yard of Appellant’s property located at 665 South 600 East, Salt Lake City, UT (the “Project”).

Ruling. The decision here is to uphold the Historic Landmark Commission’s denial of the minor alteration application and deny the Appellant’s petition.

A hearing on this matter was held before the Salt Lake City Appeals Hearing Officer on September 22, 2022. The Appellant appeared on her own behalf. Appearing on behalf of the City was Paul Nielson, from the Salt Lake City Attorney’s office.

The application for the minor alteration was reviewed and a public hearing held by the HLC on July 14, 2022. The appeal was timely filed on August 8, 2022. The Appellant’s appeal application included arguments in favor of the minor alteration, but did not identify any specific errors potentially made by the HLC in its hearing on the matter. A discussion, including the identification and review of some of the evidence in the record from the HLC, was conducted at the Appeals Hearing, with input from the Appellant and City staff.

Standard of Review

The standard of review for a historic landmark 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 [7]

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 Appellant 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. Under *Utah Code Ann. §10-9a-509*, if an application complies with the law, it must be approved. The Appellant must show that the HLC decision does not comply with a specific law, and cannot succeed by making policy arguments or general claims about what the law should be. The Appeals Hearing Officer cannot change the law, but only interpret it and apply specific sections of the codes or statutes to these particular decisions.

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).

Discussion

At the Appeals Hearing, the Appellant failed to raise any issues that would suggest that the HLC decision was arbitrary, capricious or illegal. She did dispute and challenge the correctness of the HLC decision with the same or similar arguments presented at the HLC hearing, but did not show that the HLC decision was not supported by substantial evidence, as required by city and state statute. In fact, the Appellant only challenged the HLC interpretations, attempting to show that vinyl fencing is in fact allowed and appropriate under city law. The Appellant ignored the reality that the HLC relied upon its adoption of staff's findings and conclusions from the statutory relevant standards set forth in Subsection 21A.34.020.G of the *Salt Lake City Code*. Simply put, the Appellant was unable to show anything in the HLC hearing that would rise to the

level of being arbitrary, capricious or illegal and that was not based on substantial evidence. I specifically find that based on the testimony of the Appellant and the materials and evidence presented by the City and the record of the HLC hearing that the HLC decision was based on substantial evidence.

The Appellant, whose burden it was, failed to show that the decision violated any law.

Conclusion

The decision of the HLC is upheld because its decision was based on substantial evidence in the record, and did not violate any law. Thus, the HLC decision on the Project to deny a minor alteration on fencing for the Project is confirmed.



Matthew T. Wirthlin, Appeals Hearing Officer