



# Appeal of Historic Landmark Commission Decision

Planning Division  
Community & Economic Development Department

**To:** Historic Landmark Commission

**From:** Robin Zeigler, Senior Planner

**Date:** September 3, 2008

**Re:** Land Use Appeal Board Petition 08-003, Appeal of Historic Landmark Commission decision regarding Petition 470-07-47 (PLNHLC2008-00283), Liberty Park Tennis Bubble

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## Background

On June 30, 2008 the Land Use Appeals Board reviewed an appeal application of the Historic Landmark's decision of February 20, 2008 to allow a tennis bubble at Liberty Park, a Landmark Site, located at approximately 1051 South Constitution West Drive.

The Land Use Appeals Board remanded the case back to the Historic Landmark Commission with a request to make specific findings regarding the evidence and its application of Section 21A.34.020 H. (See Attachment A, Record of Decision.)

In their discussion, members of the Land Use Appeals Board acknowledged that the Historic Landmark Commission had a difficult job in trying to apply the standards of subsection H to the tennis bubble, as required by court. They stated that where the Historic Landmark Commission was successful was with providing written findings, weighing the benefit of the public interest, discussing whether or not the design guidelines for residential districts were applicable to this project, and with applying subsection H in the staff report. However, the Land Use Appeals Board was concerned that the analysis of the Historic Landmark Commission was not complete. **They stated that they did not find that there was sufficient discussion by the Historic Landmark Commission members of the specific standards, which ones were applicable and which ones were not, how the project substantially met the**

**applicable criteria, and which sections of the staff report they agreed with or did not.**

Therefore the Land Use Appeals Board remanded the case back to the Historic Landmark Commission with direction to clarify their findings for each standard.

### **Options**

The Historic Landmark Commission may:

1. clarify its earlier decision, providing evidence and findings of fact on each standard as to its applicability and how the project substantially meets the applicable standards; or
2. reverse its decision, providing information on how the project does not substantially meet the standards.

It is not necessary to open the project up to a public hearing, unless the Commission decides to do so.

### **Historic Landmark Decision, February 20, 2008**

The Historic Landmark Commission spent more than two hours hearing evidence and considering the decision. Public comments were extensive. Six spoke against the project and forty-three spoke in favor of the tennis bubble. (Please see the Attachment C, ratified minutes, for a summary of comments.)

The Historic Landmark Commission visited the subject property prior to the scheduled meeting, reviewed plans, photographs, and written material and made a decision to approve the request. With only one dissenting vote, the commission moved **“that the Historic Landmark Commission accept the staff recommendation to approve the Certificate of Appropriateness with the condition that the height of the bubble be controlled so that it did not exceed the thirty-five foot maximum.”**

Regarding each of the four standards for New Construction, section 21A.34.020.H of the zoning ordinance, the Historic Landmark Commission based their decision on the findings of the staff report. (Please see Attachment B, pages seven through twelve, and the following reiteration.) According to the Ordinance, the Commission “shall determine whether the project substantially complies with all of the following standards that pertain to the application, is visually compatible with surrounding structures and streetscape as illustrated in any design standards adopted by the historic landmark commission and city council and is in the best interest of the city.”

#### **Reiteration of Findings:**

##### **1. Scale And Form:**

**Finding:** Staff reviewed the bubble as new construction within a Landmark Site. The Design Guidelines for new construction assume that

new construction is planned to take place within a traditional residential district with a traditional block face design. A park does not develop in the same way as residential or even commercial neighborhoods but instead evolve with a varying array of uses that require a wide variety of structures such as tents, pavilions and shelters, band shells, athletic fields and courts, public restrooms, playgrounds, swimming pools, etc. In the case of a park setting, matching the design of surrounding park features is not a reasonable action and would impede the applicant from keeping the Park accessible, active, and from providing the variety of uses currently enjoyed. A tennis bubble is not an unusual feature for a park and have been in existence since the 1960s.

A tennis bubble is the least intrusive manner of covering a tennis court because of the mode of installation and because of its temporary nature. The tennis bubble will not require the removal of any historic features. When the bubble is disassembled each spring, the park will remain identical to the pre-bubble state. No site work, in terms of berming, revision of trails, roads, or paths; landscaping; or topographic work is necessary for the installation of the bubble. The character of the park (estimated 110 acres) is transitory in terms of the nature of landscaping materials.

Although it is not reasonable to expect one park structure to be similar to other features it is reasonable to expect a park feature to be compatible in terms of scale with the overall historic site. In this case, the tennis bubble's 27,000 square feet within the 4.8 million square feet of the park renders the bubble subservient in size to the overall park.

**The bubble is compatible with the size, scale and character of the site in that the spaciousness of the park can visually absorb the bubble. In general, the tennis bubble, invented in 1957, has been a typical seasonal park element for those parks that provide tennis courts, since the 1960s.**

## **2. Composition Of Principal Facades:**

**Finding:** As stated in Standard 1, the Design Guidelines are for residential districts and do not take into account the physical needs of different types of park structures. The types of openings and projections required by the Design Guidelines do not translate to park structures. For instance, windows would not be practical in a facility where tennis is played and an opening that might be appropriate for a public restroom would be significantly different in design and size from that of a window designed for a park office or event space.

Compatibility of new structures within historic settings is sometimes partially achieved by simply using historic materials in fresh ways. The tennis bubble is an example of an historic material, canvas, fashioned into an obviously modern structure. The color of the structure is appropriate since white is the most common color used for tennis bubbles, since its invention in 1957.

Staff also considered the temporary nature and use of the bubble in determining the appropriateness of its design. For instance, a permanent structure, with a bubble shaped roof, might not be appropriate in an historic park like Liberty Park and therefore could have an adverse effect on the historic environment. However, temporary structures designed to serve seasonal needs are common in park settings. A large tent, no matter its design, erected for a series of weekly summer concerts would likely be a compatible feature for a large active park; but a large and permanent structure for events, which permanently changes the environment and possibly even the use of the park, may or may not be designed to be compatible with the site and would need to be given more careful consideration in terms of design.

**The proposed bubble meets this standard because of its modern design, use of a historic material, appropriate color and because it is an appropriate design for a temporary park structure.**

### **3. Relationship To Street:**

**Finding:** As stated in Standard 1, the Design Guidelines are for residential districts and do not take into account the physical needs of different types and settings of park structures. Park structures are usually not oriented to the street in the same manner as residential buildings, but instead are oriented based on use and the park's development. In this case, the bubble is placed within the interior of the park over four tennis courts, its only logical location. **The results of this interior orientation diminishes the impact of the bubble on the view shed of property owners surrounding the park.**

**4. Subdivision Of Lots:** The planning director shall review subdivision plats proposed for property within an H historic preservation overlay district or of a landmark site and may require changes to ensure the proposed subdivision will be compatible with the historic character of the district and/or site(s).

**Finding:** This standard is not relevant to this project.

**Attachment A:** Land Use Appeals Board Notice of Decision

**Attachment B:** February 20, 2008 Staff Report (attachments are not included as it would be a duplication of other attachments and materials already presented to the Historic Landmark Commission.)

**Attachment C:** February 20, 2008 Minutes

**Attachment D:** Land Use Appeal Board Staff Report (attachments are not included as it would be a duplication of other attachments and materials already presented to the Historic Landmark Commission.)

**Attachment A: Land Use Appeals Board Notice of Decision**

**NOTICE OF DECISION**

**SALT LAKE CITY  
LAND USE APPEALS BOARD**

Date of Appeal Hearing: June 30, 2008

**LUAB Case #: Petition 08-003: Liberty Park Tennis Bubble New Construction** – A request appealing the Historic Landmark Commission (case #470-07-47) decision to approve the Salt Lake City Public Services Department's request to legalize the construction of the Liberty Park Tennis Bubble at approximately 1051 South Constitution West Drive. Liberty Park is a Landmark Site located in the OS Open Space District. (Staff – Robin Zeigler at 535-7758 or robin.zeigler@slcgov.com)

Appellant's Name: Melissa Barbanell

With a unanimous vote, the Historic Landmark Commission's decision has been:

Overturned

Upheld

XXXX

Remanded with direction that the Historic Landmark Commission make specific findings regarding the evidence and its application of Section 21A.34.020(H).

The Land Use Appeals Board decision is based on the following findings, as more fully detailed in the record:

- There is insufficient evidence in the record of the Historic Landmark Commission's identification and analysis of the application of the subsections of Section 21A.34.020(H) pertinent to the subject legalization; and
- Specific findings by the Historic Landmark Commission are necessary.

  
John Bogart, Land Use Appeals Board Acting Chair

07/03/2008  
Date

Appeals Process: Any person aggrieved by any Land Use Appeals Board decision may appeal that decision to the District Court, provided the appeal is submitted to the District Court within thirty (30) days after the Land Use Appeals Board's decision.

**Attachment B: February 20, 2008 Staff Report for Historic  
Landmark Commission (without attachments)**



HISTORIC LANDMARK COMMISSION  
STAFF REPORT

Petition 470-07-47, Liberty Park Tennis Bubble  
Located at Approximately  
1051 South Constitution West Drive  
Liberty Park Historic Landmark Site  
February 20, 2008



Planning and Zoning  
Division  
Department of Community  
Development

**Applicant:** SLC Department of Public Services, Engineering Division, Steve England

**Staff:** Robin Zeigler, 535-7758, robin.zeigler@slc.gov

**Tax ID:** 16-07-427-001-0000

**Current Zone:** OS, Open Space District

**Master Plan Designation:** Salt Lake City Open Space Plan

**Council District:** District 5; Council Member Love

**Acreage:** 110, estimated

**Current Use:** Public Park

**Applicable Land Use**

**Regulations:**

- 21A.32.100  
21A.34.020 (H)

**Attachments:**

- Photos of existing building
- Site Plan and Building Elevations
- Order of the Court
- Public Comments

**REQUEST**

The applicant requests the Historic Landmark Commission approve a major alteration to the Liberty Park Historic Landmark Site. The alteration is the seasonal installation of a tennis bubble over four tennis courts at approximately 1051 South Constitution West Drive, for six to seven months each year.

**PUBLIC NOTICE**

A notice was mailed to all property owners within 85 feet of the subject property on February 5, 2008 meeting the minimum 14 day notification requirement of the Ordinance. Community Council Chairs, Business Groups and others interested parties were also notified through the Planning Division's listserv.

**STAFF RECOMMENDATION:**

Staff recommends that the Historic Landmark Commission approve the Certificate of Appropriateness for a tennis bubble located at approximately 1051 South Constitution West Drive based on the discussion and findings of fact in the staff report with one condition:

1. The bubble should be erected to no more than 35' at its highest point, which according to Public Services is the height of the bubble currently. It is regulated by forced air.

The tennis bubble meets the criteria of 21A.32.100 and the requirements of 21A.34.020 (H) in terms of design and character.

VICINITY MAP



## COMMENTS

### **PUBLIC COMMENTS**

Comments were received from RW Tennis Group, LLC and Debbie Robb and are included as attachments. The city also received a petition in favor of the tennis bubble, a copy of which is attached. Please see attachment D.

### **BACKGROUND**

The Department of Public Services proposes to each winter season install an approximately 226' x 120', 36 foot high tennis bubble over four of the existing sixteen tennis courts and to remove the bubble each spring. The tennis bubble is currently in place but kept at a height of 35 feet.

Liberty Park was listed in the National Register of Historic Places in 1979. The statement of significance reads,

*Liberty Park is significant as one of the earliest and largest urban parks in Utah. Originally purchased by Salt Lake City in 1881 from the estate of Brigham Young, it is Utah's best example of the 'central park'. It documents the spirit of reform of the second half of the nineteenth century, when parks were seen as important factors in civilizing America's increasingly industrialized cities and improving the moral character of their inhabitants.*

Liberty Park's estimated 110 acres includes the 1852 Isaac Chase Farm and Mill and the Park's original vehicular circulation. It has undergone many alterations over the years including the construction of tennis courts and an aviary.

On January 22, 2003, the Salt Lake City Historic Landmark Commission Architectural Subcommittee discussed the tennis center at Liberty Park.

On June 30, 2004, the Planning Staff, based on the direction of the Historic Landmark Commission Architectural Subcommittee, administratively approved a Certificate of Appropriateness to allow the installation of a tennis bubble at the west end of Liberty Park.

On January 24, 2005, the Board of Adjustment reviewed an administrative appeal to determine whether Staff made an error by administratively approving and issuing a Certificate of Appropriateness for the tennis bubble at Liberty Park. The Board upheld Staff's decision on the issuance of the Certificate of Appropriateness to allow a tennis bubble at Liberty Park based on the following findings:

- Section 21A.34.020(F)(1)(a)(i) has been satisfied in that the tennis bubble as proposed constitutes a minor alteration to Liberty Park as a landmark site, and therefore is authorized to be approved by administrative decision.
- Section 21A.34.020(F)(2)(a)(i) through (vi) has been satisfied in that none of the conditions were present to call for review by the Historic Landmark Commission.

A property owner near Liberty Park, Melissa Barbanell, appealed the Board of Adjustment decision to the Third District Court of Appeals. The case was reviewed by the Court, and it was concluded that the Certificate of Appropriateness that was approved by Planning Staff addressing the subject property to construct the tennis bubble at Liberty Park was not an exhibit in the record when the Board issued their decision on January 24, 2005. Upon discovery of that fact, the court effectively reopened this matter, with instruction that the City start over with the decision making process.

On June 15, 2006 staff approved a Certificate of Appropriateness for a 225' x 120' tennis bubble at Liberty Park. Staff based their decision on the direction of the Historic Landmark Architectural Committee input from their January 22, 2003 meeting. Staff found that the tennis bubble was a minor alteration to Liberty Park based on the following findings:

- Liberty Park is the Landmark site, not the tennis courts.
- The park's principal use offers a variety of activities to the public, including tennis, and these activities and their associated buildings and structures are accessory to the principal use of this particular Landmark Site as a park and therefore is considered a minor alteration to Liberty Park.
- Staff, on the advice of the Architectural Subcommittee, concluded that the availability of four tennis courts under a bubble for up to a half-year is not a principal use within a park of more than 100 acres.
- The tennis bubble covers approximately 27,000 square feet of Liberty Park that comprises approximately 4.8 million square feet of area.
- The tennis bubble is a minor alteration to Liberty Park because it is not a permanent change to the character of the park and is reversible.

At a hearing which took place on July 17, 2006, the Board of Adjustment issued a second decision upholding a staff decision of the Salt Lake City Planning and Zoning Division to issue a Certificate of Appropriateness allowing construction of the tennis bubble in Liberty Park.

Following this decision, Melissa Barbanell, filed for Judicial Review. Judge Fuchs entered an Order of Dismissal, indicating that another hearing would be conducted. The case was reviewed by the Court on October 16, 2007. The Court determined that:

*the Board of Adjustment erred in its interpretation of the term "minor alteration" and in its legal conclusion that the construction of the tennis bubble constitutes a "minor alteration". As a corollary, the Board of Adjustment erred when it determined that the decision of whether the tennis bubble should be constructed could be made administratively by Staff, as opposed to review and approval by the Historic Landmark Commission.*

The Court continued to say that the size of the tennis bubble compared to Liberty Park as a whole and the seasonal nature of the structure were not appropriate criteria in evaluating whether or not the tennis bubble should be considered a "minor alteration". See Attachment C, Order of the Court.

The Court remanded the matter back to the Historic Landmark Commission, "without reaching the issue of whether the standards of Subsection 21A.34.020 H are met." The Court denied the Petitioner's request that the Court order the permanent removal of the tennis bubble.

## ZONING CONSIDERATIONS

The property is located in an OS, Open Space District.

### 21A.32.100

**D. Maximum Building Height:** Building height shall be limited to thirty five feet (35'); provided that for each foot of height in excess of twenty feet (20'), each required yard and landscaped yard shall be increased one foot (1'). The Open Space district allows for buildings to be constructed at a height of 35 feet; therefore, in the future, new buildings that are 35 feet in height could be allowed in the park when the design of the structure is found to be compliant with the historic nature of the park.

### E. Minimum Yard Requirements:

1. **Front Yard:** Thirty feet (30'). *(45' minimum with 15 feet of height above 20 feet.)*
2. **Corner Side Yard:** Thirty feet (30'). *(45' minimum with 15 feet of height above 20 feet.)*
3. **Interior Side Yard:** Twenty feet (20'). *(35' minimum with 15 feet of height above 20 feet.)*
4. **Rear Yard:** Thirty feet (30'). *(45' minimum with 15 feet of height above 20 feet.)*

**F. Landscape Yard Requirements:** Landscape yards shall be required for each use in the OS open space district and shall be improved in conformance with the requirements of part IV, chapter 21A.48, "Landscaping And Buffers", of this title.

1. **Front Yard:** Thirty feet (30').
2. **Corner Side Yard:** Thirty feet (30').
3. **Interior Side Yard:** Ten feet (10').
4. **Rear Yard:** Ten feet (10').

**Discussion:** The tallest point of the bubble is 36 feet. The bubble's height requires additional yard requirements so that the front, rear, and corner yard minimums of 30 feet each should be increased by 15 feet each to 45 feet each. The interior side yard minimum of 20 feet should be increased by 15 feet to a minimum of 35 feet. Within an historic district the height and size of a new structure would be compared to the height and size of other structures in the district to determine compatibility. Although there are multiple buildings and structures in the park, it is not considered an historic district, rather the park as whole is a Landmark Site. Therefore, staff did not consider the compatibility of the tennis bubble's height with other structures but instead with the overall park. However, in the interest of answering potential questions, follows is a chart with the height and square footages of structures in the park.

Structure	Date	Area (s.f.)	Height
Liberty Park Concession Building	2006	2700	28'-5"
Tennis Clubhouse	2003	3015	19'-6"
Old Tennis Building	c. 1980	1040	18'
Chase House	c. 1854	4816	28' (ridge)/ 30'-6" (chimney)
Chase Flour Mill	c. 1848	6000	Varies 28' to 40', average 32'
Wilson Pavilion	1960's ?	7200	33'-6"
Maintenance Building	1980's	600	19'-4"
Bathhouse (now aviary restroom & lorikeets)	1920's?	1092	19'
Picnic Pavilion	1970	1521	Estimated 24'
New north restrooms & Rotary playground restrooms	2000	675	30'-6"
Office/Shop	c. 1950	2028	18' 1"
Greenhouse	c. 1900	1364	18'
Area lighting poles	2001	N/A	50'
Street Lighting			12'
Flag Pole			60'

**Finding:** The bubble, as shown in the plans, is one foot taller than allowed by Open Space (OS) District; however, presently the bubble is kept at 35 feet, which meets the maximum building height standards. Staff understands that the bubble can be lowered in height with an adjustment of interior air pressure; therefore staff recommends that the Historic Landmark Commission require that the Department of Public Services keep the structure at 35 feet each year that it is installed, which is the current practice of Public Services.

The bubble meets the standards for height and yard minimums.

## ZONING STANDARDS AND DESIGN GUIDELINES

### 21A.34.020 H Historic Preservation Overlay District

#### H. Standards For Certificate Of Appropriateness Involving New Construction Or Alteration Of A

**Noncontributing Structure:** In considering an application for a certificate of appropriateness involving new construction, or alterations of noncontributing structures, the historic landmark commission, or planning director when the application involves the alteration of a noncontributing structure, shall determine whether the project substantially complies with all of the following standards that pertain to the application, is visually compatible with surrounding structures and streetscape as illustrated in any design standards adopted by the historic landmark commission and city council and is in the best interest of the city:

## 1. Scale And Form:

- a. **Height And Width:** The proposed height and width shall be visually compatible with surrounding structures and streetscape;
- b. **Proportion Of Principal Facades:** The relationship of the width to the height of the principal elevations shall be in scale with surrounding structures and streetscape;
- c. **Roof Shape:** The roof shape of a structure shall be visually compatible with the surrounding structures and streetscape; and
- d. **Scale Of A Structure:** The size and mass of the structures shall be visually compatible with the size and mass of surrounding structure and streetscape.

### **Design Guidelines for New Construction in Historic Districts**

**11.4 Construct a new building to reinforce a sense of human scale.** A new building may convey a sense of human scale by employing techniques such as these:

- Using building materials that are of traditional dimensions.
- Providing a one-story porch that is similar to that seen traditionally.
- Using a building mass that is similar in size to those seen traditionally.
- Using a solid-to-void that is similar to that seen traditionally, and using window openings that are similar in size to those seen traditionally.

**11.5 Construct a new building to appear similar in scale to the scale that is established in the block.** Subdivide larger masses into smaller “modules” that are similar in size to buildings seen traditionally.

**11.6 Design a front elevation to be similar in scale to those seen traditionally in the block.** The front shall include a one-story element, such as a porch. The primary plane of the front should not appear taller than those of typical historic structures in the block. A single wall plane should not exceed the typical maximum façade width in the district.

**11.7 Build to heights that appear similar to those found historically in the district.** This is an important standard which should be met in all projects.

**11.8 The back side of a building may be taller than the established norm if the change in scale will not be perceived from public ways.**

**11.9 Design a new building to appear similar in width to that of nearby historic buildings.** If a building would be wider overall than structures seen historically, the façade should be divided into subordinate planes that are similar in width to those of the context.

**11.11 Use building forms that are similar to those seen traditionally on the block.** Simple rectangular solids are typically appropriate.

### **11.12 Use roof forms that are similar to those seen traditionally on the block.**

Visually, the roof is the single most important element in an overall building form. Gable and hip roofs are appropriate for primary roof forms in most residential areas. Shed roofs are appropriate for some additions. Roof pitches should be 6:12 or greater. Flat roofs should be used only in area where it is appropriate to the context. They are appropriate for multiple apartment buildings, duplexes, and fourplexes. In commercial areas, a wider variety of roof forms may occur.

**Discussion:** As its name implies, the bubble has a rounded roof that is not distinguished from its sides. It is approximately, 226 feet x 120 feet and covers four of sixteen tennis courts. The tallest point of the bubble, as shown in the plans, is 36 feet; however the bubble is currently 35 feet tall at its highest point. The tennis bubble is located within a Landmark Site as opposed to a Historic District.

**Finding:** As previously stated, staff reviewed the bubble as new construction within a Landmark Site. The Design Guidelines for new construction assume that new construction is planned to take place within a traditional residential district with a traditional block face design. A park does not develop in the same way as residential or even commercial neighborhoods but instead evolve with a varying array of uses that require a wide variety of structures such as tents, pavilions and shelters, band shells, athletic fields and courts, public restrooms, playgrounds, swimming pools, etc. In the case of a park setting, matching the design of surrounding park features is not a reasonable action and would impede the applicant from keeping the Park accessible, active, and from providing the variety of uses currently enjoyed. A tennis bubble is not an unusual feature for a park and have been in existence since the 1960s.

A tennis bubble is the least intrusive manner of covering a tennis court because of the mode of installation and because of its temporary nature. The tennis bubble will not require the removal of any historic features. When the bubble is disassembled each spring, the park will remain identical to the pre-bubble state. No site work, in terms of berming, revision of trails, roads, or paths; landscaping; or topographic work is necessary for the installation of the bubble. The character of the park (estimated 110 acres) is transitory in terms of the nature of landscaping materials.

Although it is not reasonable to expect one park structure to be similar to other features it is reasonable to expect a park feature to be compatible in terms of scale with the overall historic site. In this case, the tennis bubble's 27,000 square feet within the 4.8 million square feet of the park renders the bubble subservient in size to the overall park.

The bubble is compatible with the size, scale and character of the site in that the spaciousness of the park can visually absorb the bubble. In general, the tennis bubble, invented in 1957, has been a typical seasonal park element for those parks that provide tennis courts, since the 1960s.



## 2. Composition Of Principal Facades:

- a. **Proportion Of Openings:** The relationship of the width to the height of windows and doors of the structure shall be visually compatible with surrounding structures and streetscape;
- b. **Rhythm Of Solids To Voids In Facades:** The relationship of solids to voids in the facade of the structure shall be visually compatible with surrounding structures and streetscape;
- c. **Rhythm Of Entrance Porch And Other Projections:** The relationship of entrances and other projections to sidewalks shall be visually compatible with surrounding structures and streetscape; and
- d. **Relationship Of Materials:** The relationship of the color and texture of materials (other than paint color) of the facade shall be visually compatible with the predominant materials used in surrounding structures and streetscape.

### Design Guidelines for New Construction in Historic Districts

- 11.10 Use a ratio of wall-to-window (solid to void) that is similar to that found on historic structures in the district.** Large surfaces of glass are inappropriate in residential structures. Divide large glass surfaces into smaller windows.
- 11.13 Design overall façade proportions to be similar to those of historic buildings in the neighborhood.** The “overall proportion” is the ratio of the width to height of the building, especially the front façade. See the discussions of individual districts and of typical historic building styles for more details about façade proportions.
- 11.14 Keep the proportions of window and door openings similar to those of historic buildings in the area.** This is an important design standard because these details strongly influence the compatibility of a building within its context. Large expanses of glass, either vertical or horizontal, are generally inappropriate on new buildings in the historic districts.
- 11.15 Use building materials that contribute to the traditional sense of scale of the block.** This will reinforce the sense of visual continuity in the district.
- 11.16 New materials that are similar in character to traditional materials may be acceptable with appropriate detailing.** Alternative materials should appear similar in scale, proportion, texture and finish to those used historically. They also must have a proven durability in similar locations in this climate. Metal products are allowed for soffits and eaves only.
- 11.17 Use building components that are similar in size and shape to those found historically along the street.** These include windows, doors, and porches.

**11.18 If they are to be used, design ornamental elements, such as brackets and porches to be in scale with similar historic features.** Thin, fake brackets and strap work applied to the surface of a building are inappropriate uses of these traditional details.

**11.19 Contemporary interpretations of traditional details are encouraged.** New designs for window moldings and door surrounds, for example, can provide visual interest while helping to convey the fact that the building is new. Contemporary details for porch railings and columns are other examples. New soffit details and dormer designs also could be used to create interest while expressing a new, compatible style.

**11.20 The imitation of older historic styles is discouraged.** One should not replicate historic styles, because this blurs the distinction between old and new buildings, as well as making it more difficult to visually interpret the architectural evolution of the district. Interpretations of historic styles may be considered if they are subtly distinguishable as new.

**11.21 Windows with vertical emphasis are encouraged.** A general rule is that the height of the window should be twice the dimension of the width in most residential contexts. See also the discussions of the character of the relevant district and architectural styles.

**11.22 Frame windows and doors in materials that appear similar in scale, proportion and character to those used traditionally in the neighborhood.** Double-hung windows with traditional depth and trim are preferred in most districts. (See also the rehabilitation section on windows as well as the discussions of specific historic districts and relevant architectural styles.)

**11.23 Windows shall be simple in shape.** Odd window shapes such as octagons, circles, diamonds, etc, are discouraged.

**Discussion:** The design of the structure is a contemporary white canvas bubble. The only openings are aluminum entries. Canvas, the main material of the structure, was used historically for tents, temporary structures, and awnings. The white color is typical of this type of structure.

**Finding:** As stated in Standard 1, the Design Guidelines are for residential districts and do not take into account the physical needs of different types of park structures. The types of openings and projections required by the Design Guidelines do not translate to park structures. For instance, windows would not be practical in a facility where tennis is played and an opening that might be appropriate for a public restroom would be significantly different in design and size from that of a window designed for a park office or event space.

Compatibility of new structures within historic settings is sometimes partially achieved by simply using historic materials in fresh ways. The tennis bubble is an example of an historic material, canvas, fashioned into an obviously modern structure. The color of the structure is appropriate since white is the most common color used for tennis bubbles, since its invention in 1957.

Staff also considered the temporary nature and use of the bubble in determining the appropriateness of its design. For instance, a permanent structure, with a bubble shaped roof, might not be appropriate in an historic park like Liberty Park and therefore could have an adverse effect on the historic environment. However, temporary structures designed to serve seasonal needs are common in park settings. A large tent, no matter its design, erected for a series of weekly summer concerts would likely be a compatible feature for a large active park; but a large and permanent structure for events, which permanently changes the environment and possibly even the use of the park, may or may not be designed to be compatible with the site and would need to be given more careful consideration in terms of design.

The proposed bubble meets this standard because of its modern design, use of a historic material, appropriate color and because it is an appropriate design for a temporary park structure.

### 3. Relationship To Street:

- a. **Walls Of Continuity:** Facades and site structures, such as walls, fences and landscape masses, shall, when it is characteristic of the area, form continuity along a street to ensure visual compatibility with the structures, public ways and places to which such elements are visually related;
- b. **Rhythm Of Spacing And Structures On Streets:** The relationship of a structure or object to the open space between it and adjoining structures or objects shall be visually compatible with the structures, objects, public ways and places to which it is visually related;
- c. **Directional Expression Of Principal Elevation:** A structure shall be visually compatible with the structures, public ways and places to which it is visually related in its orientation toward the street; and
- d. **Streetscape Pedestrian Improvements:** Streetscape and pedestrian improvements and any change in its appearance shall be compatible to the historic character of the landmark site or H historic preservation overlay district.

### Design Guidelines for New Construction in Historic Districts

**11.1 Respect historic settlement patterns.** Site new buildings such that they are arranged on their sites in ways similar to historic buildings in the area. This includes consideration of building setbacks, orientation and open space, all of which are addressed in more detail in the individual district standards.

**11.2 Preserve the historic district's street plan.** Most historic parts of the city developed in traditional grid patterns, with the exception of Capitol Hill. In this neighborhood the street system initially followed the steep topography and later a grid system was overlaid with little regard for the slope. Historic street patterns should be maintained. See specific district standards for more detail.

The overall shape of a building can influence one's ability to interpret the town grid. Oddly shaped structures, as opposed to linear forms, would diminish one's perception of the grid, for example. In a similar manner, buildings that are sited at eccentric angles could also weaken the perception of the grid, even if the building itself is rectilinear in shape. Closing streets or alleys and aggregating lots into larger properties would also diminish the perception of the grid.

**11.3 Orient the front of a primary structure to the street.** The building should be oriented parallel to the lot lines, maintaining the traditional grid pattern of the block. An exception is where early developments have introduced curvilinear streets, like Capitol Hill.

**Discussion:** The tennis bubble is located towards the interior of the park, directly behind the one-story brick Tennis Center building.

**Finding:** As stated in Standard 1, the Design Guidelines are for residential districts and do not take into account the physical needs of different types and settings of park structures. Park structures are usually not oriented to the street in the same manner as residential buildings, but instead are oriented based on use and the park's development. In this case, the bubble is placed within the interior of the park over four tennis courts, its only logical location. The results of this interior orientation diminishes the impact of the bubble on the view shed of property owners surrounding the park.

**4. Subdivision Of Lots:** The planning director shall review subdivision plats proposed for property within an H historic preservation overlay district or of a landmark site and may require changes to ensure the proposed subdivision will be compatible with the historic character of the district and/or site(s).

**Discussion:** The installation of the bubble does not require subdivision of property.

**Finding:** This standard is not relevant to this project.

**Attachment C: February 20, 2008 Minutes for Historic  
Landmark Commission**

BEFORE THE SALT LAKE CITY HISTORIC LANDMARK COMMISSION FINDINGS AND ORDER, CASE NO. 470-07-47.

IT IS THEREFORE ORDERED that the request by the Salt Lake City Public Services represented by Dell Cook, is granted as set forth in the motion.

Salt Lake City Historic Landmark Commission Minutes of February 20, 2008:

As the following petitions were similar and had been initiated by the same applicant, the Chair instructed staff to present them together.

**Petition 470-07-47 Liberty Park Tennis Bubble New Construction** – A request by the Salt Lake City Public Services Department to legalize the construction of the Liberty Park Tennis Bubble at approximately 1051 South Constitution West Drive. Liberty Park is a Landmark Site located in the OS Open Space District.

Mr. Paterson gave a brief history of the legal proceedings regarding the Liberty Park Tennis Bubble.

January 22, 2003:	Architectural Committee met and discussed the Tennis Bubble
June 30, 2004:	Staff administratively approved and issued a Certificate of Appropriateness for the construction of the Tennis Bubble based on the discussion with the Architectural Committee.
January 24, 2005:	The Certificate of Appropriateness was appealed to the Board of Adjustment. The BOA upheld the Certificate of Appropriateness.
May 26, 2006	The Certificate of Appropriateness was challenged in Third District Court. The Court found that the Certificate of Appropriateness was not included in the packet that went to the Board of Adjustment and therefore, was not part of their record. The Third District Court remanded the case back to the City to reconsider.
June 15, 2006:	A new Certificate of Appropriateness was issued by staff.
July 17, 2006:	The Certificate of Appropriateness was appealed again to the Board of Adjustment. The Board upheld the new Certificate of Appropriateness.
June 15, 2006:	A new Certificate of Appropriateness was

	issued by staff using Standards, subsection G.
July 17, 2006:	Certificate of Appropriateness was appealed again to the Board of Adjustment. The Board upheld the new Certificate of Appropriateness.
October 16, 2007:	The decision was appealed to Third District Court. The Third District Court found that the standards used to determine whether the tennis bubble was new construction or a minor alteration to a landmark site were the incorrect standards to apply. The Court instructed the City to review the case using the standards for new construction to a landmark site.
February 20, 2008:	The petition would be heard as a request for new construction by the Historic Landmark Commission as instructed by the Third District Court, using Standards, subsection H.

Ms. Zeigler gave a detailed outline of the tennis bubble and the request for new construction. She noted following the July 17, 2006 Board of Adjustment decision to uphold the Certificate of Appropriateness, Melissa Barbanell, filed for Judicial Review. Judge Fuchs entered an Order of Dismissal, indicating that another hearing would be conducted. The case was reviewed by the Court on October 16, 2007. The Court determined that:

*The Board of Adjustment erred in its interpretation of the term "minor alteration" and in its legal conclusion that the construction of the tennis bubble constitutes a "minor alteration". As a corollary, the Board of Adjustment erred when it determined that the decision of whether the tennis bubble should be constructed could be made administratively by Staff, as opposed to review and approval by the Historic Landmark Commission.*

The Court continued to say that the size of the tennis bubble compared to Liberty Park as a whole and the seasonal nature of the structures were not appropriate criteria in evaluating whether or not the tennis bubble should be considered as a "minor alteration". Ms. Zeigler directed the Commission to See Attachment C, Order of the Court.

The Court remanded the matter back to the Historic Landmark Commission, "Without reaching the issue of whether the standards of Subsection 21A.34.020 H are met." The Court denied the Petitioner's request that the Court order the permanent removal of the tennis bubble.

Ms. Zeigler stated that the tennis structure could not be evaluated according to the guidelines for residential historic districts as the park clearly was not a residential district. She explained that within a residential historic district the height and size of a new structure would be compared to the height and size of other structures in the district to determine compatibility. Although there are multiple buildings and structures in the park, it was not considered an historic district, rather the park as whole was a Landmark Site. Therefore, staff did not consider the compatibility of the tennis bubble's height with other structures within the park.

The staff report had been written according to the Zoning Ordinance, subsection 21A.34.020. H for New Construction. Stating that the bubble met the standards for height and yard minimums in section 21A.32.100 OS for the Open Space Zone, she explained that the tallest point of the bubble was proposed at thirty-six (36) feet. Ms. Zeigler stated that the bubble, as shown in the plans, was one foot taller than allowed by the Open Space (OS) Standards; however, presently the bubble was kept at thirty-five (35) feet, which met the maximum building height standards. She stated that staff understood that the bubble could be lowered in height with an adjustment of interior air pressure.

Staff evaluated the scale and form of the structure in comparison to the ordinance for New Construction. Ms. Zeigler explained that park structures are rarely considered compatible with each other in the manner that residential structures within a Historic District are because they have varied uses.

Staff recommended that the Historic Landmark Commission approve the Certificate of Appropriateness for a tennis bubble located at approximately 1051 South Constitution West Drive based on the discussion and findings of fact in the staff report with one condition:

1. The bubble should be erected to no more than thirty-five (35) feet at it's highest point, which according to Public Services is the height of the bubble currently. It is regulated by forced air.

Ms. Zeigler also recommended that the Commission consider guidelines for Open Space or Urban parks, but to not postpone the decision for the project until those guidelines had been finalized. The applicant has the right to have a decision made based upon the rules and guidelines in place at the time of the application.

The tennis bubble met the criteria of 21A.32.100 and the requirements of 21A.34.020 (H) in terms of design and character.

In response to a request from the Chair for clarification, Ms. Zeigler stated that the Court determined that the size and temporary nature of the structures were not relevant factors to determine whether the project was a minor alteration or new construction. The court did not make any decision in regards to whether or not the standards had been met.

In response to a question posed by Commissioner Oliver, who wondered if the Certificate of Appropriateness application specified that the structure was temporary, Ms. Zeigler explained that the application did specify that the structure was to be temporary (seasonal) in nature.

### Public Comment

The Chair invited the applicant to approach the Commission.

Rick Graham, Director of Public Services for Salt Lake City, addressed the Commission. He stated that he administered the City's parks and open space as well as the development and construction programs.

He stated that the City philosophy was that the public had a right to participate in the design and use of parks, and public spaces should meet individual and community needs. Millions of dollars were spent on Liberty Park design and renovation to meet the public needs. The 110 acre Liberty Park was typical of parks found within many large cities. It is regional in nature and the largest developed park within City ownership.



Historically, Liberty Park complied with the ordinance while meeting the needs of the community. Activity spaces are large and have grown to meet public demand. An example would be Tracey Aviary, which was not originally within the confines of the park, but was added to meet the needs of the community. Prior to the Aviary's incorporation into the park, it was the first Salt Lake City Zoo. The running and biking trails are new, along with restrooms and playgrounds.

Over the years, additional changes had taken place in the park. The tennis bubble covered four of sixteen tennis courts. The bubble introduced a new shape into the park, but the scale was not out of line.

Mr. Graham asked the Commission to consider that many of the features of the park were donated from private funds in response to needs that the Community perceived.

Seeing as the Commission had no questions for the applicant, the hearing was opened for comment from other members of the public.

Melissa Barbanell stated that she was in opposition of the bubble. Noting that the Third District Court remanded the case back to the City because it found the City did not apply the correct standards when the case was considered as a minor alteration rather than new construction of a principle structure. Therefore, the Commission had been instructed by the court to decide if the zoning standards as outlined in 21.A.34.020 H Historic Preservation Overlay District guidelines had been met.

She said the staff report was confusing and misleading. Stating that the staff report said the Design Guidelines did not apply because Liberty Park is a Landmark site, not a historic district. Her study of the typical staff report presented to the Commission in regards to Liberty Park did not include a discussion of the Design Guidelines. They contained a simple discussion of standards, scale and form, principle façade, roof shape and whether the criteria were met. The staff report indicates that the standards should be ignored because the design guidelines did not apply to the project.

In response to Mr. Graham's comment regarding scale, Ms. Barbanell noted that the bubble was 27,000 square feet and three times larger than any other structure in the park and stated that it would be a mistake to consider the project inline with the scale of the park.

She argued that the staff report stated that the park as a whole should be considered when looking at the tennis bubble. The court said specifically in regards to this that the bubble could not be compared to the entire park, but to its immediate environment and own standards based upon what was contained in the ordinance as a whole.

Cindy Cromer stated that while she was not in opposition to improving Liberty Park, she did not believe a decision should be made on the project until guidelines had been developed to address the treatment of properties such as Liberty Park. Referencing her memo to the Commission which was and included in the packet, she reiterated three concerns:

- 1) The project was not about tennis it was about public process on public property.
- 2) It was not the first time the City had dismissed the Master Plan.
- 3) Appropriate standards are not in place to deal with projects such as this one.

She urged staff to approach the Planning Commission, City Council, or Mayor to amend the Ordinance to address these types of projects.

In the course of the hearing, two handouts were passed to the Commission. Copies of these documents were filed with the minutes.

The following members of the public spoke in opposition to the project: Tom Mutter, John Erickson, Paul Wharton, and Shane Carlson.

The objections were:

- The City needed to come up with standards for recreational structures in Open Space and on Landmark sites.
- The bubble was supposed to be of a temporary nature and the structure was not allowed to remain for more than six months each year. The bubble actually remained erected in excess of six months.

The following members of the public spoke in favor of the project:

Jim Fisher, Bob Jahnke, Rick Cohen, Azat Hankuliyev, Debbie Robb, Stephen T. Hard, Lani Wilcox, Kevin Smith, Eddie Fung, Jeff Apperson, Joseph Newton, Chris Haas, Dwight Marchant, Debra Lund, Alec Daublia, Derry Quintana, Victoria Lara, Pamela K. Hardin, Vanessa Martinez, Allyson Iwasaki, Don Clark, Krista Airam, Kathy Roberts, Don Adolphson, Ki Mickelsen, Doug Macdonall, Karen Nickolaisen, Janet Kaufman, Denise Apperson, Matt Bell, James McIntyre, Hiro Iwasaki, Fumiko Iwasaki, Jaqi Pok, Gaylen S. Young, Jr., Cal Nelson, Nancy Futrell, M.D., Brent Goates, and Linda Vincent. Danny Quintana, Monica Wheaton Alison Hartman, and Kai Nickolsen.

The supporting comments were:

- The West facing part of Liberty Park was traditionally designated as a recreational area with the tennis courts in existence since 1915.
- Tennis should be encouraged as a healthy, low impact exercise alternative.
- The installation of the tennis bubble over four courts allows access to the amenities through the winter.
- The bubble encouraged groups who otherwise might not be able to access the tennis facilities to participate year round.
- The tennis bubble provided social benefits by allowing year round access to the public, specifically the elderly and disabled.
- Park safety had improved since the installation of the bubble.
- SLC statistics: fifty percent (50 %) decrease in crime after the bubble went up and continues to decrease by thirty percent (30%) yearly.
- The tennis bubble protected the tennis court surface.
- Argument against the bubble should have been made prior to construction, not after.
- The hearing was a bureaucratic technicality.
- Removal of the tennis bubble would result in the loss of jobs.

Ms. Barbanell was allowed an opportunity for rebuttal. She argued that she was concerned about the tennis bubble prior to construction. She looked into the ordinances and found that the City was attempting to bypass the Historic Landmark Commission and thereby, avoid public process. The City constructed the bubble without consulting the Historic Landmark Commission, which was a violation of the ordinance. Following the ordinance was not a

technicality. The City used public and private funds and constructed the structure without the public's approval. Had the City followed the Ordinance and held a public hearing, there would not be an issue. Had the City been allowed to keep the bubble without public process, then the City could construct anything there without public input. Liberty Park was at risk; ignoring the ordinance puts all historic sites at risk.

Mr. Graham was given an opportunity for rebuttal. He stated that accusation that the City did not allow public discussion was incorrect. The City followed the process and approached Planning Staff, submitted the required documentation, had a drawing and review with the Architectural Committee and received a Certificate of Appropriateness before installation. The steps taken by Mr. Graham had been detailed in the staff report.

Mr. Graham concluded that the City built parks for the people and that testimony during the meeting emphasized how important parks were for the public. The needs of the public have changed over time and the City tried to modernize the park while complying with the criteria for improvement, and the criteria had been met. Park facilities must be sustainable, maintainable, and meet the standards. The project had already gone through the process and he asked that the Commission approve the Certificate of Appropriateness.

The Chair closed the public hearing and moved to Executive Session.

#### Executive Session

##### Motion

**Commissioner Hammond-Heid moved in regards to Petition 470-07-47 that the Historic Landmark Commission accepted the staff recommendation to approve the Certificate of Appropriateness with the condition that the height of the bubble be controlled so that it did not exceed the thirty-five foot maximum.**

**Commissioner Carl seconded the motion.**

##### Discussion

Commissioner Carl referred to page six of the staff report acknowledging that there were no established standards for a tennis bubble in a Historic District. She stated that she was not sure how else a tennis court could be covered, and did not know what other standard would be appropriate to apply. The question was whether to allow a covered tennis court or to not allow a covered tennis court. Part of the ordinance does state that the Commission was allowed to consider what was in the best interest of the City. There was overwhelming support for the bubble.

Commissioner Oliver wondered, as Liberty Park was a Landmark site, and the Commission was being asked to consider the bubble using Residential Historic District guidelines, were there default standards in place that the Commission could fall back on, such as the Secretary of the Interior Standards rather than the Residential Historic District guidelines.

Ms. Zeigler stated that the ordinance was based upon the Secretary of the Interior Standards. Staff did not recommend that the Ordinance be discarded in this case simply that the Commission kept in mind that the Design Guidelines were specifically written for Historic Districts. One of the reasons a public process was established was because there was no way for the ordinance and Design Guidelines to conceive every situation. Each project should be viewed as a unique situation. Staff reviewed the tennis bubble with the ordinance; however,

there were situations where the standards in 21A.34.020.H did not apply, such as the rhythm of front porches which did not typically exist on structures within a park.

Commissioner Oliver stated that a year round tennis facility was a fine thing and served many useful functions such as health, safety, and improved services in the park; however, the Commission was required to base their decision on written ordinance standards and guidelines. If the Commission did revert to the Secretary of the Interior's Standards, then she agreed with the staff report and would like to add that one of the basic tenants of historic preservation and the Secretary of the Interior standards was to use a structure for its intended purpose. Furthering the use of the tennis courts throughout the winter would be in support of that. Another major tenant of the Secretary of the Interior Standards were that any additions to a historic site were to be reversible, and the project was reversible. It did meet two of the twelve Standards. The other standards did not apply to the case.

She also stated that she did not believe that sufficient tools existed for evaluating the proposed changes at these types of sites. It is assumed that the Commission reverted to the Secretary of the Interior Standards, but the Commission was using the Historic District Guidelines without written documentation to show that the Commission did use those Standards as a default. The City ordinance needs to be written to demonstrate that the City did use those Standards in cases such as these.

Finally, she asked the Commission if they felt they needed further clarification of the ordinance to continue the case or deny the certificate. If this action was taken the new Guidelines should support structures such as the tennis bubble because it did meet the Secretary of the Interior standards. In the meantime, the Commission needed a predictable process and clear guidelines for the public to avoid situations such as this one, which has been a lengthy process.

The Chair asked if the bubble should be considered as similar to the improvements on the playground, swimming pool, and other improvements, because there was a precedent for improvements.

Commissioner Oliver responded that the tennis bubble was much larger and more visible than those improvements. The tennis bubble was such an obvious modern intrusion on the park that differed from a structurally open space playground. She was inclined to go against the motion and continue or deny the petition to seek clarification of the City ordinance. In general she supported staff findings, but believed that the issue needed to be addressed before it came up again.

**Commissioner Carl, Hammond-Heid, and Haymond voted, "Aye." Commissioner Oliver voted, "Nay."**

**The motion passed by majority vote.**

**THE FAILURE OF THE APPLICANT TO ABIDE BY THE CONDITION OF THIS APPROVAL SHALL CAUSE IT TO BECOME NULL AND VOID, WHICH IN EFFECT IS THE SAME AS THE REQUEST HAVING BEEN DENIED.**

Dated in Salt Lake City, Utah, on this 11th day of March, 2008.

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Kathryn Weiler, Historic Landmark Commission Secretary

**Attachment D: June 30, 2008 Staff Report for Land Use Appeals Board (without attachments)**

**LAND USE APPEALS BOARD**

**#08-003**

**(CASE NO. 470-07-47)**

**June 30, 2008**

**Petitioner:** Melissa Barbanell, adjacent property owner

**Address:** 1051 South Constitution West Drive

**Request:** **Appealing** the Historic Landmark Commission decision to approve a request to install a tennis bubble at approximately 1051 South Constitution West Drive, within Liberty Park, a Landmark Site.

**Note:** In addition to the attachments of this document, the Land Use Appeals Board has received a complete copy of the entire record.

**Land Use Appeals Board Jurisdiction and Authority:**

The Land Use Appeals Board shall have the following powers and duties in connection with the implementation of title 21A of this code:

- A. Hear and decide appeals from decisions made by the Historic Landmark Commission pursuant to the procedures and standards set forth in subsection 21A.34.020F2h of this code;
- B. Hear and decide appeals from decisions made by the Planning Commission concerning subdivisions or subdivision amendments pursuant to the procedures and standards set forth in title 20 of this code; and
- C. Hear and decide appeals from decisions made by the Planning Commission regarding conditional uses, conditional site plan reviews, or planned developments pursuant to the procedures and standards set forth in section 21A.54.160 of this code.  
(Ord. 17-04 § 11, 2004; Ord. 77-03 § 5, 2003)

**Background**

The Department of Public Services proposed to install each winter season an approximately 226' long x 120' wide, 36 foot (36') high tennis bubble over four of the existing sixteen (16) tennis courts and to remove the bubble each spring. Liberty Park is zoned as Open Space.

Liberty Park was listed in the National Register of Historic Places in 1979. The statement of significance reads,

*Liberty Park is significant as one of the earliest and largest urban parks in Utah. Originally purchased by Salt Lake City in 1881 from the estate of Brigham Young, it is Utah's best example of the 'central park'. It documents the spirit of reform of the*

*second half of the nineteenth century, when parks were seen as important factors in civilizing America's increasingly industrialized cities and improving the moral character of their inhabitants.*

Liberty Park's estimated 110 acres includes the 1852 Isaac Chase Farm and Mill and the Park's original vehicular circulation. It has undergone many alterations over the years including the construction of tennis courts and an aviary.

On January 22, 2003, the Salt Lake City Historic Landmark Commission Architectural Subcommittee discussed the tennis center at Liberty Park.

On June 30, 2004, the Planning Staff, based on the direction of the Historic Landmark Commission Architectural Subcommittee, administratively approved a Certificate of Appropriateness to allow the installation of a tennis bubble at the west end of Liberty Park.

On January 24, 2005, the Board of Adjustment reviewed an administrative appeal to determine whether Staff made an error by administratively approving and issuing a Certificate of Appropriateness for the tennis bubble at Liberty Park. The Board upheld Staff's decision on the issuance of the Certificate of Appropriateness to allow a tennis bubble at Liberty Park based on the following findings:

- Section 21A.34.020(F)(1)(a)(i) has been satisfied in that the tennis bubble as proposed constitutes a minor alteration to Liberty Park as a landmark site, and therefore is authorized to be approved by administrative decision.
- Section 21A.34.020(F)(2)(a)(i) through (vi) has been satisfied in that none of the conditions were present to call for review by the Historic Landmark Commission.

A property owner near Liberty Park, Melissa Barbanell, appealed the Board of Adjustment decision to the Third District Court of Appeals. The case was reviewed by the Court, and it was concluded that the Certificate of Appropriateness that was approved by Planning Staff addressing the subject property to construct the tennis bubble at Liberty Park was not an exhibit in the record when the Board issued their decision on January 24, 2005. Upon discovery of that fact, the court effectively remanded this matter, with instruction that the City start over with the decision making process.

On June 15, 2006 staff approved a Certificate of Appropriateness for a 225' x 120' tennis bubble at Liberty Park. Staff based its decision on the direction of the Historic Landmark Architectural Committee input from their January 22, 2003 meeting. Staff found that the tennis bubble was a minor alteration to Liberty Park based on the following findings:

- Liberty Park is the Landmark site, not the tennis courts.
- The park's principal use offers a variety of activities to the public, including tennis, and these activities and their associated buildings and structures are accessory to the principal use of this particular Landmark Site as a park and therefore is considered a minor alteration to Liberty Park.

- Staff, on the advice of the Architectural Subcommittee, concluded that the availability of four tennis courts under a bubble for up to a half-year is not a principal use within a park of more than 100 acres.
- The tennis bubble covers approximately 27,000 square feet of Liberty Park that comprises approximately 4.8 million square feet of area.
- The tennis bubble is a minor alteration to Liberty Park because it is not a permanent change to the character of the park and is reversible.

At a hearing which took place on July 17, 2006, the Board of Adjustment issued a second decision upholding a staff decision of the Salt Lake City Planning and Zoning Division to issue a Certificate of Appropriateness allowing construction of the tennis bubble in Liberty Park.

Following this decision, Melissa Barbanell, again filed for Judicial Review. Judge Fuchs reversed the decision of the Board of Adjustment on October 16, 2007. Judge Fuchs entered an Order of Dismissal, indicating that another hearing would be conducted. The Court determined that:

*the Board of Adjustment erred in its interpretation of the term "minor alteration" and in its legal conclusion that the construction of the tennis bubble constitutes a "minor alteration". As a corollary, the Board of Adjustment erred when it determined that the decision of whether the tennis bubble should be constructed could be made administratively by Staff, as opposed to review and approval by the Historic Landmark Commission. (See Exhibit 3.)*

The Court continued to say that the size of the tennis bubble compared to Liberty Park as a whole and the seasonal nature of the structure were not appropriate criteria in evaluating whether or not the tennis bubble should be considered a "minor alteration".

*As the City's counsel correctly observed during oral argument, having made the threshold determination that the decision concerning the tennis bubble cannot be made administratively, the court must remand the matter back to the Historic Landmark Commission, without reaching the issue of whether the standards of Subsection (H) are met. Accordingly, the Court remands this matter to the Historic Landmark Commission for appropriate review, public notice and hearing. (See Exhibit 3.)*

The Court denied the Petitioner's request that the Court order the permanent removal of the tennis bubble.

### **February 20, 2008 HLC Meeting**

The Historic Landmark Commission reviews Certificate of Appropriateness requests on the individual merits of a project and bases its decisions on the standards set forth in Chapter 21A.34 in the zoning ordinance. The Historic Landmark Commission has



adopted specific criteria involving new construction (Section 21A.34.020(H)) and design standards (*Design Guidelines for Residential Historic Districts*) to help evaluate an applicant's proposal for visual compatibility either with surrounding structures and the streetscape or within a Landmark Site. The standards relating to new construction provide the means to determine whether a proposed project is appropriate for a particular location.

During the February 20, 2008 meeting, the Historic Landmark Commission took input from Planning Staff, the applicant, and the public regarding the proposal. (See Exhibits 1 and 2.) The Court indicated in its decision that the seasonal nature of the bubble and its size compared to the entire park were not relevant factors to consider in determining whether the proposed alteration was major or minor. However, the Court also stated that it was not attempting to apply the ordinance to the action, stating that "without reaching the issue of whether the standards of Subsection 21A.34.020 H are met" and "remands the matter to the Historic Landmark Commission". (See Exhibit 3.) Thus instructing the Historic Landmark Commission to review all details of the proposal, which included the issues of seasonality and the whole of Liberty Park as a Landmark site, against the standards of the ordinance and the design guidelines, even though these were not adequate reasons for determining whether or not the issue was minor or major.

Staff further noted that the design guidelines, titled "Design Guidelines for Residential Historic Districts in Salt Lake City" were not applicable in this case since the Landmark Site of Liberty Park was not residential nor a district.

After discussing the proposed project, the Historic Landmark Commission passed a motion approving the installation of a tennis bubble in Liberty Park with the condition that the height of the bubble be controlled so that it did not exceed the thirty-five foot height maximum. The Commission found the proposed structure met the criteria of 21A.32.100(Open Space) and the requirements of 21A.34.020 (New Construction in a Landmark Site) in terms of design and character, specifically that the bubble substantially met the four standards of the ordinance for new construction in a Landmark site. Following is a summary of the discussion and findings for each standard.

### **1. Scale And Form:**

The tennis bubble's 27,000 square feet within the 4.8 million square feet of the park renders the bubble subservient in size to the overall park. The bubble is compatible with the size, scale and character of the site in that the spaciousness of the park can visually absorb the bubble.

### **2. Composition Of Principal Facades:**

**a. Proportion Of Openings:** The relationship of the width to the height of windows and doors of the structure shall be visually compatible with surrounding structures and streetscape;

**b. Rhythm Of Solids To Voids In Facades:** The relationship of solids to voids in the facade of the structure shall be visually compatible with surrounding structures and streetscape;

**c. Rhythm Of Entrance Porch And Other Projections:** The relationship of entrances and other projections to sidewalks shall be visually compatible with surrounding structures and streetscape; and

**d. Relationship Of Materials:** The relationship of the color and texture of materials (other than paint color) of the facade shall be visually compatible with the predominant materials used in surrounding structures and streetscape.

The types of openings and projections required by the standards assume a typical residential development and are not relevant to a park setting. Canvas is an historic material and appropriate in an historic park. Staff also considered the temporary nature and use of the bubble in determining the appropriateness of its design. For instance, a permanent structure, with a bubble shaped roof, might not be appropriate in an historic park like Liberty Park and therefore could have an adverse effect on the historic environment. However, temporary structures designed to serve seasonal needs are common in park settings.

The proposed bubble meets this standard because of its modern design, use of a historic material, appropriate color and because it is an appropriate design for a temporary or seasonal park structure.

### **3. Relationship To Street:**

**a. Walls Of Continuity:** Facades and site structures, such as walls, fences and landscape masses, shall, when it is characteristic of the area, form continuity along a street to ensure visual compatibility with the structures, public ways and places to which such elements are visually related;

**b. Rhythm Of Spacing And Structures On Streets:** The relationship of a structure or object to the open space between it and adjoining structures or objects shall be visually compatible with the structures, objects, public ways and places to which it is visually related;

**c. Directional Expression Of Principal Elevation:** A structure shall be visually compatible with the structures, public ways and places to which it is visually related in its orientation toward the street; and

**d. Streetscape Pedestrian Improvements:** Streetscape and pedestrian improvements and any change in its appearance shall be compatible to the historic character of the landmark site or H historic preservation overlay district.

Again, portions of these standards assume a traditional residential neighborhood. Park structures are usually not oriented to the street in the same manner as residential buildings, but instead are oriented based on use and the park's development. In this case, the bubble is placed within the interior of the park over four tennis courts, its only logical location. The results of this interior orientation diminish the impact of the bubble on the view shed of property owners surrounding the park.

**4. Subdivision Of Lots:** The planning director shall review subdivision plats proposed for property within an H historic preservation overlay district or of a landmark site and may require changes to ensure the proposed subdivision will be compatible with the historic character of the district and/or site(s).

No portion of this standard applied.

The Ordinance states that the "project substantially complies" with all of the above standards that pertain to the application, "is visually compatible with surrounding structures and streetscape as illustrated in any design standards adopted by the historic landmark commission and city council and is in the best interest of the city." The Historic Landmark Commission found that some standards did not apply and that those that did were substantially met. They approved the tennis bubble with the condition that the height of the bubble be controlled so that it did not exceed the thirty-five foot maximum.

In addition to these standards, the Ordinance states in section 21A.34.020.A.6 that one of the purposes of an historic overlay is to "protect and enhance the attraction of the city's historic landmarks and districts for tourists and visitors". In section 21A.34.020.H, the Ordinance further states that the Historic Landmark Commission should not only determine if the applicable standards are met but also consider what is "in the best interest of the city". One public comment at the February 2008 hearing made note of these sections of the ordinance and other comments further clarified them by stating:

- The installation of the tennis bubble over four courts allows access to the amenities through the winter.
- The bubble encouraged groups who otherwise might not be able to access the tennis facilities to participate year round.
- The tennis bubble provided social benefits by allowing year round access to the public, specifically the elderly and disabled.

#### **Staff Review of Appellant's Arguments:**

The appellant argues in her appeal that the Historic Landmark Commission's decision was in error based on five points. Following are staff's comments regarding these points.

*Appellants Argument #1: The HLC failed to make written findings of fact that the standards laid out in SLC Ordinance 21A. 34.020 H (H) were met. The Record of Decision letter issued on this matter contains no written finding of fact.*

**Discussion:** The Ordinance requires that the public hearing be noticed, the Historic Landmark Commission hold a public hearing, and it be reviewed according to the standards set forth in subsections G through L. The hearing was properly noticed. The Commission approved the application based on subsection H of the Ordinance, as required by Court Order. (See Exhibit 3.) The Record of Decision letter was sent February 21, 2008, well within the ten day limitation required by ordinance but did not include findings. The Findings and Order letter, along with a relevant copy of the minutes, was sent on March 6, 2008, after the minutes of the meeting were ratified by the Historic Landmark Commission. The appellant was present at the public hearing and aware of the findings. The appellant received the Record of Decision and the Findings and Order letters after requesting copies and once they were available. Since the appellant was aware of the decision and findings and able to appeal the decision within the thirty days, she was not prejudiced by the fact that the findings were not published until after the ten day limit required by Ordinance.

*Appellants Argument #2: The Staff Report effectively asked the HLC to ignore the standards by stating "the Design Guidelines are for residential districts and do not take into account the physical needs of different types of park structures".*

**Discussion:** At no time did Staff recommend that the Commission ignore the Ordinance. (See Exhibits 1 and 2.) Subsection H of ordinance states that the Historic Landmark Commission "shall determine whether the project substantially complies with all of the following standards that pertain to the application, is visually compatible with surrounding structures and streetscape as illustrated in the design standards adopted by the historic landmark commission and city council and is in the best interest of the city".

Staff determined which standards of the ordinance "pertained to the application" and applied those standards to the proposed project. The design guidelines adopted by the Commission and City Council are for residential historic districts and were therefore not considered relevant to a park or open space. The Historic Landmark Commission agreed with these findings of staff in their motion.

*Appellants Argument #3: The Staff Report compares the size of the tennis bubble to the size of Liberty Park as a whole despite the fact that the Third District court decision explicitly held that this was inappropriate.*

**Discussion:** The Court stated that the size of the tennis bubble compared to Liberty Park as a whole was not an appropriate criteria in evaluating whether or not the tennis bubble should be considered a "minor alteration". (See Exhibit 3.) The Court remanded the matter back to the Historic Landmark Commission, "without reaching the issue of whether the standards of Subsection 21A.34.020 H are met." It was the duty of the Historic Landmark Commission to determine if the standards of subsection H were met. In order to do so, they

were required to consider all aspects of the bubble's design, including size and height, in relationship to the Landmark Site. The definition of a Landmark Site is: *any site included on the Salt Lake City register of cultural resources that meets the criteria outlined in subsection C2 of this section. Such sites are of exceptional importance to the city, state, region or nation and impart high artistic, historic or cultural values. A landmark site clearly conveys a sense of time and place and enables the public to interpret the historic character of the site.*

The ordinance defines a Landmark as a site, not a district. To clarify, appropriate changes to a site within a district are considered in relationship to the entire district. In terms of a Landmark Site, alterations are considered in relationship to the overall site itself.

*Appellants Argument #4: The Staff Report finds that the color and material are appropriate despite finding in the Certificate of Appropriateness that the City issued administratively that they are not appropriate.*

**Discussion:** The appellant notes that the Certificate of Appropriateness issued by staff on June 16 2006 states that the color "may not be conducive with the park, but the Historic Landmark Commission does not review color". In addition, the report states that the "plastic material" may not be in keeping with the character of the park. When the bubble was reviewed by the Historic Landmark Commission in 2008, staff had the opportunity to conduct additional research and found that the bubble was not plastic, but actually a vinyl-coated polyester canvas. Plastic coated canvas is an appropriate material for an historic district and is often used for awnings. Canvas is an historic material and has long been used for temporary structures. The Historic Landmark Commission does not review color; however, white is a traditional color for tennis bubbles.

*Appellants Argument #5: The Staff Report urges that because the bubble is temporary, the standards should not apply despite the Third District Court's holding that this is not an appropriate consideration.*

**Discussion:** As stated in point #3, the Court stated that the size of the tennis bubble compared to Liberty Park as a whole was not an appropriate criteria in evaluating whether or not the tennis bubble should be considered a "minor alteration". The Court remanded the matter back to the Historic Landmark Commission, "**without reaching the issue of whether the standards of Subsection 21A.34.020 H are met.**" The Historic Landmark Commission addressed the Court's decision by reviewing the project as New Construction (H) rather than as a Minor Alteration (G). In doing so, it was the duty of the Historic Landmark Commission to determine if the standards of subsection H were met. To accomplish this, they were required to consider all aspects of the bubble's design, including size and height, in relationship to the Landmark Site. The definition of a Landmark Site is:

*any site included on the Salt Lake City register of cultural resources that meets the criteria outlined in subsection C2 of this section. Such sites are of exceptional importance to the city, state, region or nation and impart high artistic, historic or cultural values. A landmark site clearly conveys a sense of time and place and enables the public to interpret the historic character of the site.*

The ordinance defines a Landmark as a site, not a district. To clarify, appropriate changes to a site within a district are considered in relationship to the entire district. In terms of a Landmark Site, alterations are considered in relationship to the overall site itself.

In addition to these points, the appellant states that her submissions, which included two letters with attachments, were not included online with the staff report. These letters were not received in time to be posted on the web but were included in the packets sent to the Historic Landmark Commission and are therefore a part of the official record.

### **Applicable Land Use Regulations**

#### **Section 21A.32.100: Open Space**

**Purpose Statement:** The purpose of the OS open space district is to preserve and protect areas of public and private open space and exert a greater level of control over any potential redevelopment of existing open space areas.

#### **Section 21A.34.020H Standards for Certificate of Appropriateness Involving New Construction or Alteration of a Non-contributing Structure**

**Purpose Statement:** In considering an application for a certificate of appropriateness involving new construction, or alterations of non-contributing structures, the historic landmark commission, or planning director when the application involves the alteration of a non-contributing structure, shall determine whether the project substantially complies with all of the standards that pertain to the application, is visually compatible with surrounding structures and streetscape as illustrated in any design standards adopted by the historic landmark commission and city council and is in the best interest of the city.

### **Conclusion**

Pursuant to Salt Lake City Zoning Ordinance, Section 21A.34.020, H Historic Preservation Overlay District Use, the Historic Landmark Commission applied the standards of section H. The Commission determined that the proposed project was compatible with the Landmark Site. The motion to approve the proposed project passed with one dissenting vote.

### **Potential Motions**

#### **Affirm:**

If the Land Use Appeals Board finds that the Historic Landmark Commission followed the established procedural requirements and that the decision being appealed was supported by findings of fact based upon the applicable standards of approval, the Land Use Appeals Board should uphold the Commission's February 20, 2008 decision to approve Petition 470-07-47, subject to the Commission's findings.

#### **Reverse:**

If the Land Use Appeals Board finds that the Historic Landmark Commission failed to articulate a satisfactory explanation for its action or offered an explanation for its decision that was contrary to the evidence before it, the Land Use Appeals Board should reverse the Historic Landmark Commission's February 20, 2008 decision to approve Petition 470-07-47.

#### **Decision to Remand the Case:**

If the Land Use Appeals Board finds that the Historic Landmark Commission did not adequately address the standards in their deliberations at their February 20, 2008 public hearing, the Land Use Appeals Board should remand the case back to the Historic Landmark Commission to apply the correct legal standards and impose appropriate conditions for the proposed project.

Robin Zeigler  
Planning Division  
April 23, 2008

#### **Attachments:**

- Exhibit 1 – February 20, 2008 Staff Report
- Exhibit 2 – February 20, 2008 Minutes
- Exhibit 3 – Judicial Decision, November 2, 2007
- Exhibit 4 – Prior Approval
- Exhibit 5 – Public Comment, Meeting Role and Comment Cards from the Meeting of February 20<sup>th</sup>, 2008