

**BOARD OF ADJUSTMENT SUPPLEMENTAL STAFF REPORT
CASE #2767-B
JULY 17, 2006**

Petitioner: Melissa Barbanell

Address: 1062 South 500 East

Request: Remand from the Third District Court of the Board's prior decision on an appeal of an Administrative decision issuing a Certificate of Appropriateness to construct a tennis bubble in Liberty Park.

BACKGROUND

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.

The Petitioner, Melissa Barbanell, appealed Case # 2767-B 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 as an exhibit in the record when the Board issued their decision on January 24, 2005 (Exhibit A). Upon discovery of that fact, the court effectively reopened this matter, with instructions that the city would need to start over with the decision making process.

Accordingly, Staff has reviewed the application to construct the tennis bubble and has made written administrative findings (Exhibit C). Based upon those findings, Staff has issued a new Certificate of Appropriateness for the construction of the tennis bubble (Exhibit C).

The full record of the Board's prior decision on this matter is attached (Exhibit E), including the appeal filed by Melissa Barbanell to the Third District Court (Exhibit F).

Based upon the administrative findings, Staff is requesting that the Board of Adjustment make a finding(s) that supports the new Certificate of Appropriateness and conclude that the tennis bubble is not a principle structure, but an accessory use that is a component of many uses that occur within Liberty Park. The tennis bubble is a temporary alteration and is not erected no longer than six months out of the year.

The administrative findings (Exhibit C) set forth the basis for the issuance of the Certificate of Appropriateness (Exhibit C).

HISTORY PRIOR TO JANUARY 24, 2005 BOA

On January 22, 2003, the Salt Lake City Historic Landmark Commission Architectural Subcommittee discussed the tennis center at Liberty Park (Exhibit B). Staff presented to the Subcommittee a proposal to construct a seasonal “bubble” to allow the use of a portion of the tennis complex during winter months. Staff discussed with the Subcommittee the size of the proposed bubble, location, fencing and duration of a seasonal tennis bubble. Of the six member subcommittee, concerns that were raised were on fencing, noise and screening of mechanical equipment. The Architectural Subcommittee did not object to a seasonal tennis bubble.

The Planning Staff, based on the direction of the Historic Landmark Commission Architectural Subcommittee, administratively approved a Certificate of Appropriateness on June 30, 2004, to allow the installation of a tennis bubble at the west end of Liberty Park. The site plan approval included a 225' X 120' inflatable cover that would cover four tennis courts, the installation of mechanical equipment that would be screened by a fence along the east side of the proposed bubble.

On October 19, 2004, Staff issued a letter (Exhibit D) which was the basis for the January 24, 2005 appeal. Staff's letter addresses the two main points:

- (1) Standards for alterations of Landmark Sites.**
- (2) New construction in historic Landmark Sites.**

Staff, after the advice of the Historic Landmark Commission Architectural Subcommittee made the determination that the tennis bubble was a minor alteration to a landmark site and is not either a substantial alteration to a landmark site or new construction of a principal building in a landmark site, either of which would require the decision to be made by the Historic Landmark Commission. A substantial alteration would be considered a permanent change to the character of the park. The Planning Division considered the proposed bubble within the context of the entire park. Liberty Park is the Landmark site, not the tennis clubhouse or 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. Staff's position based on the advice of the Architectural Subcommittee was 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 110 acres. The city was within their purview to consider the tennis bubble not as a principal

building, requiring HLC review and the associated public notice requirement, but as a minor alteration, and the administrative review was appropriate.

Under Section 21A.34.020(F) Staff is required to follow procedure for issuance of Certificate of Appropriateness:

1. **Administrative Decision:** Certain types of construction or demolition may be approved administratively subject to the following procedure:
 - a. Types of construction allowed which may be approved by administrative decision:
 - i. Minor alteration of or addition to a landmark site or contributing site;
 - ii. Substantial alteration of or addition to a noncontributing site;
 - iii. Partial demolition of either a landmark site or a contributing structure;
 - iv. Demolition of an accessory structure; and
 - v. Demolition of a noncontributing structure.

Section 21A.34.020(F) further states:

2. **Historic Landmark Commission:** Certain types of construction, demolition and relocation shall only be allowed to be approved by the Historic Landmark Commission subject to the following procedure:
 - a. Types of construction to be reviewed by the Historic Landmark Commission:
 - i. Substantial alteration or addition to a landmark site or contributing site;
 - ii. New construction of principal building in historic preservation overlay district;
 - iii. Relocation of landmark site or contributing site;
 - iv. Demolition of landmark site or contributing site;
 - v. Applications for administrative approval referred by the Planning Director; and
 - vi. Appeal of administrative decisions by the applicant.

Staff concluded that Liberty Park is the principal use not the tennis center/courts that would be considered an accessory use to the principal use, Liberty Park. Staff determined that the tennis bubble was a minor alteration to the park's principal use which 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.

Board of Adjustment Input

Does the lack of the Certificate of Appropriateness not being presented at the Board of Adjustment meeting of January 24, 2005 effect the decision for upholding Staff's issuance of a Certificate of Appropriateness? Do the amended findings that support the standards for a Certificate of Appropriateness assist the Board in their finding(s) to uphold Staff's decision that the tennis bubble is a minor alteration to Liberty Park?

Potential Motions

Affirm:

From the evidence and testimony presented, I move to uphold the administrative decision made by Salt Lake City Staff during the review and approval to grant a Certificate of Appropriateness to allow a tennis bubble at Liberty Park.

Reverse:

From the evidence and testimony presented, I move to reverse the following administrative decision made by Salt Lake City Staff to grant a Certificate of Appropriateness to allow the tennis bubble at Liberty Park. Staff incorrectly applied, Section 21A.34.020(G) Standards for Certificate of Appropriateness for alterations of a Landmark Site and did not follow the general standards that pertain to the application.

Exhibits

Exhibit A – June 30, 2004 Certificate of Appropriateness

Exhibit B – Architectural Subcommittee Agenda and Certificate of Appropriateness

Exhibit C – New Certificate of Appropriateness/Administrative findings

Exhibit D – October 19, 2004 Letter from Staff to Petitioner

Exhibit E – January 24, 2005 Staff Report for Board Case 2767-B

Exhibit F – Third District Court, Melissa Barbanell

Exhibit G – January 24, 2005 Board of Adjustment Minutes

Kevin LoPiccolo
Zoning Administrator

Exhibit A
June 30, 2004 Certificate of Appropriateness

Exhibit B
Architectural Subcommittee Agenda and Certificate of Appropriateness

Exhibit C
New Certificate of Appropriateness/Administrative Findings

Exhibit D
October 19, 2004 Letter from Staff to Petitioner

Exhibit E
January 24, 2005 Staff Report for Board Case 2767-B

Exhibit F
Third District Court, Melissa Barbanell

Exhibit G
January 24, 2005 Board of Adjustment Minutes