

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:

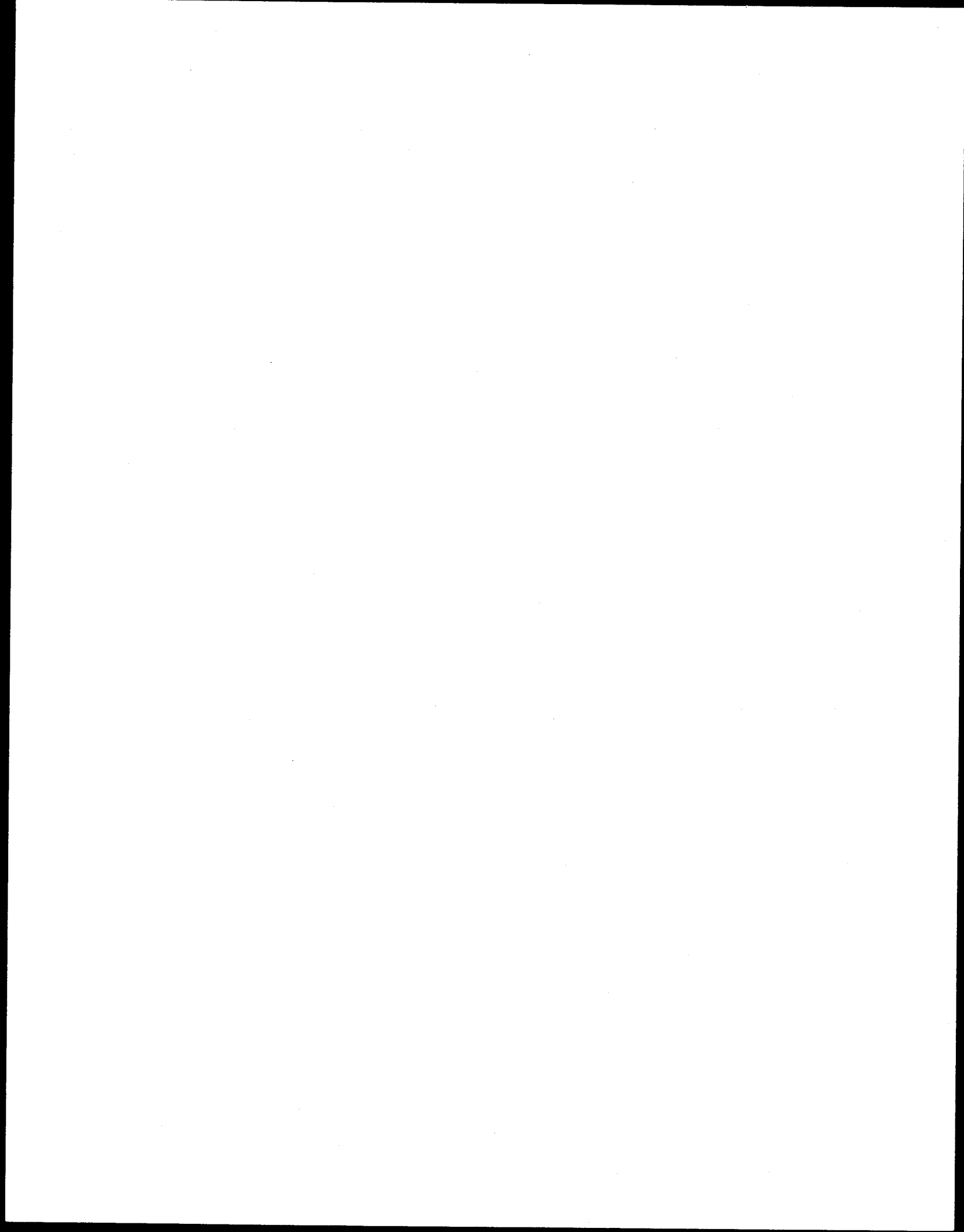
- A. Hear and decide appeals from decisions made by the Historic Landmark Commission pursuant to the procedures and standards set forth in subsection 21A.34.020F2h of this code;
- B. Hear and decide appeals from decisions made by the Planning Commission concerning subdivisions or subdivision amendments 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.

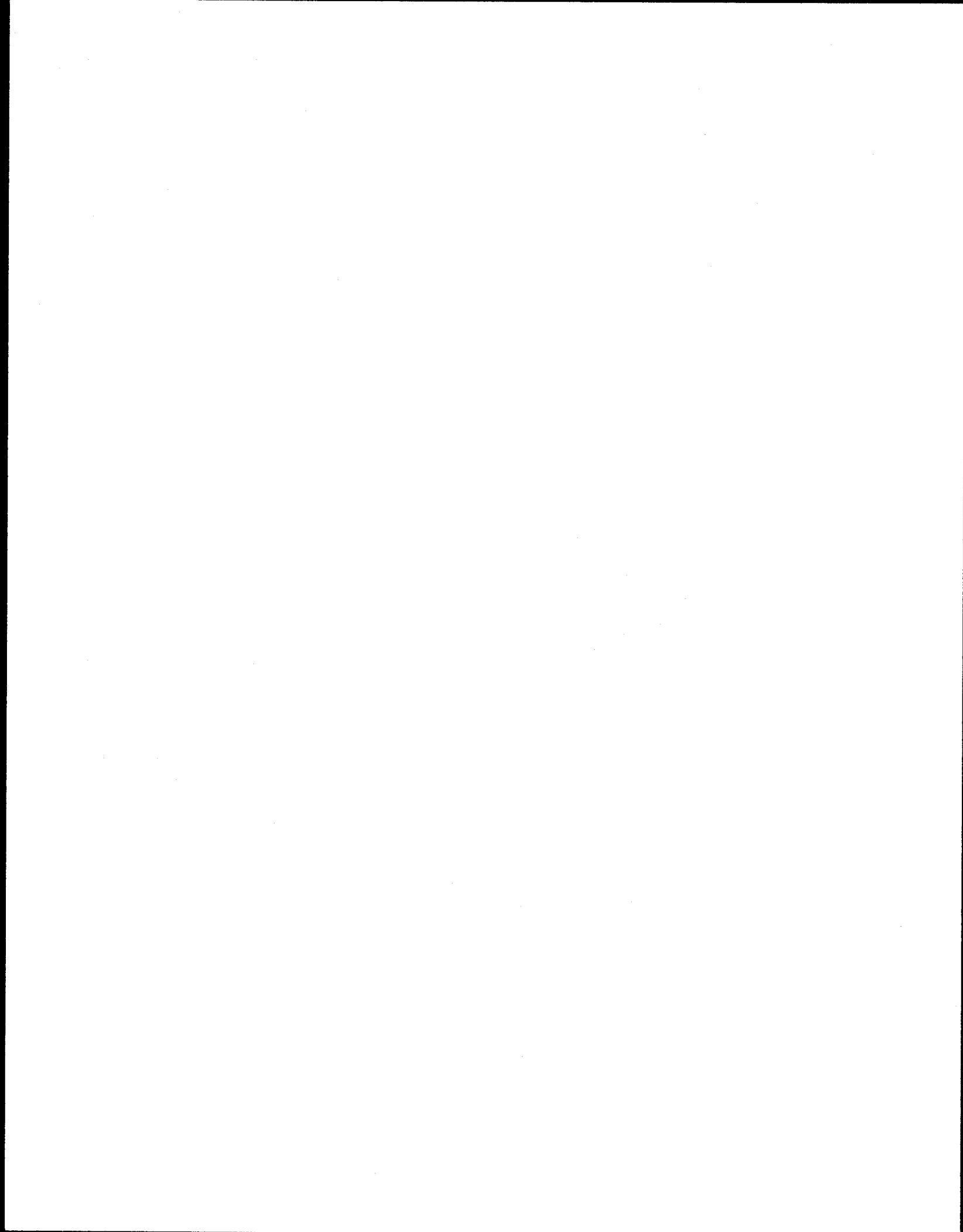
On January 24, 2005, the Board of Adjustment reviewed an administrative appeal to determine whether Staff made an error by administratively approving and issuing a Certificate of Appropriateness for the tennis bubble at Liberty Park. The Board upheld Staff's decision on the issuance of the Certificate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

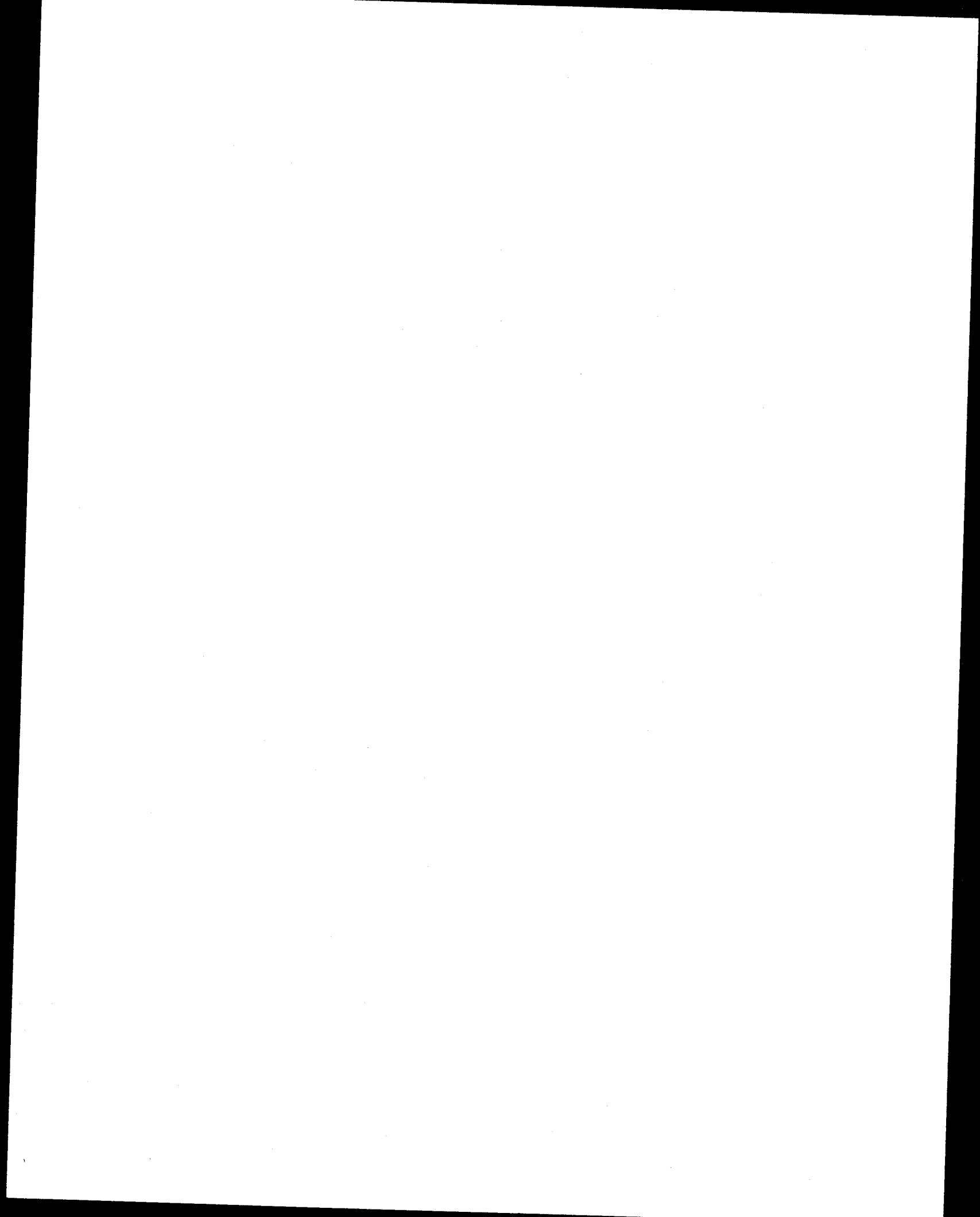
The Court continued to say that the size of the tennis bubble compared to Liberty Park as a whole and the seasonal nature of the structure were not appropriate criteria in evaluating whether or not the tennis bubble should be considered a "minor alteration".

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.

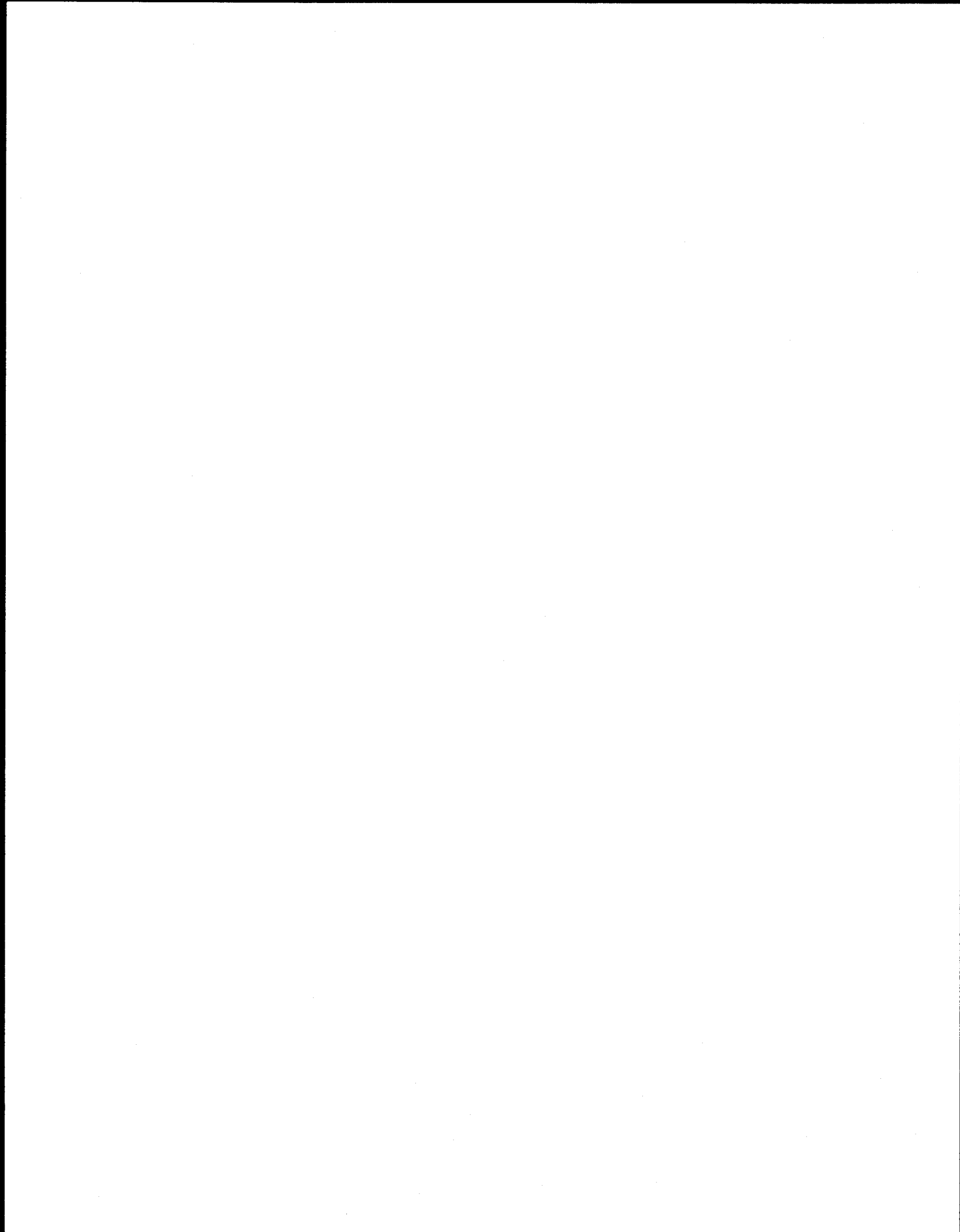
After discussing the proposed project, the Historic Landmark Commission passed a motion approving the installation of a tennis bubble in Liberty Park with the condition that the height of the bubble be controlled so that it did not exceed the thirty-five foot height maximum. The Commission found the 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.

