

FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

PIKE PLACE MARKET PRESERVATION
AND DEVELOPMENT AUTHORITY

File No. M-80-004

from a decision of the Pike Place
Market Historical Commission

Introduction

Pike Place Market Preservation and Development Authority (PDA), appellant, appeals the decision of the Pike Place Market Historical Commission (Commission) to deny a certificate of approval for a museum and museum store for space at 1501 Pike Place.

The appellant exercised its right to appeal pursuant to Section 6 of Ordinance 100475, as amended. All reference to section numbers will be to Ordinance 100475 unless otherwise indicated.

Parties to the proceeding were: appellant, represented by Gary Stein, Assistant Property Manager, and John Turnbull, Commission Coordinator.

The matter was heard before the Hearing Examiner on July 24, 1980.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Howard Hirshman, applicant, applied for a certificate of approval for use of space #326-8, 1501 Pike Place, as a museum and museum store.
2. The Commission considered the application at its May 14, 1980, meeting and tabled it until the next meeting.
3. On May 28, 1980, the Commission resumed its consideration of the application. After discussion and questioning of the applicant, a motion to approve the application resulted in a vote of 5 members in favor, 5 opposing and 1 abstaining.
4. Some members voting against the motion to approve the application indicated that they were not satisfied that they had sufficient information to approve the use. Similar concerns were voiced at the initial consideration of the application on May 14.
5. The Commission's letter to William Justen, Superintendent of Buildings, dated May 30, 1980, reported the Commission's action and indicated that the denial of the certificate of approval was without prejudice to allow the applicant to provide additional information.
6. The applicant provided a prospectus for the museum and museum store to the Commission. The applicant was present at both hearings. Appellant proposed to John Turnbull, after the

first hearing, that written questions from the members be provided to the applicant for response at the next hearing. No questions were prepared.

7. The proposed use would be prioritized under the Guidelines of the Market Historical Commission (October 10, 1979) as an informational service, Non-Food Use, 3rd Priority. Many 4th and 5th Priority uses exist on this level of the market.

8. Appellant requests reversal of the decision for lack of reasons based on the guidelines and instructions to the Commission to prepare procedures to assure that the applicant knows what information is required for decision-making.

Conclusions

1. Section 5, Commission Procedure, requires a majority vote of the Commission to decide to grant a certificate of approval.

2. Section 6 provides that if after public hearing and upon review by the Commission, the Commission determines that the proposed changes are consistent with the ordinance criteria, it shall issue a certificate of approval.

3. Section 6 allows the Hearing Examiner, on review, to reverse or modify a decision of the Commission only if the action violates the ordinance or guidelines or if the decision is based on a recommendation made in violation of the ordinance or guidelines and operates unfairly against the applicant.

4. Under the ordinance, the Commission is not permitted to issue a certificate of approval on a tied vote.

5. While lack of information as a basis for votes against a motion to approve a use could be used as a subterfuge for a denial of an application which otherwise should be granted, the record in this case does not show that to be the case. Tapes were not presented for review but the minutes of the meetings showed questions raised were unanswered by the prospectus and applicant's responses. Therefore, Commissioners' votes in opposition were consistent with ordinance requirements.

6. Instructions to the Commission to improve procedures are not compelled by this case. The indications were strong at the first meeting that the applicant needed to present more information about his proposal to satisfy the Commission's needs to make informed decisions. Even after the second hearing opportunity was, and is, available to provide that information by the denial "without prejudice". No error being shown, the Hearing Examiner is without authority to fashion any remedies.

Decision

The appeal is DENIED and the decision of the Commission is AFFIRMED.

Entered this 8th day of August, 1980.

M. Margaret Klockars
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Deputy Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).