

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeal of

DAVID K. BROMEL

FILE NO. R-80-001

from a Certificate of Approval
issued by the Department of
Community Development

FINDINGS OF FACT
CONCLUSIONS
ORDER DISMISSING APPEAL

Introduction

A Motion to Dismiss Appeal in the above-entitled matter was filed by the Department of Community Development by and through its attorneys, Douglas N. Jewett, City Attorney, and Elizabeth A. Huneke, Assistant. Because proof of service on appellant was not available, oral argument was heard June 26, 1980, after the hearing on the merits, to allow appellant time to prepare.

After considering the motion, memoranda of law, and the file herein, the following findings of fact and conclusions and order are entered:

Findings of Fact

1. Bill and Bonnie J. Flieder applied for a Certificate of Approval to change the use of 202 First Avenue South in the Buttnick Building from antique store to Trick and Puzzle Store, a trick, puzzle and gift store.

2. The Pioneer Square Special Review District Board (Board) considered the application and testimony against the application by David K. Bromel April 16, 1980, and voted to recommend approval subject to an on-site inspection of the existing trick and puzzle store at another location by two Board members.

3. The Director of the Department of Community Development (Director) issued the Certificate of Approval for the change of use on April 21, 1980.

4. David K. Bromel filed a notice of appeal of the action May 5, 1980. As clarified at a prehearing conference held in the matter, Bromel alleges that (1) the Board has the authority and duty to preserve and protect the economic stability of the Pioneer Square Special Review District and that (2) it erred in approving the requested change of use by failing to take into account the impact the use, in conjunction with the adjoining tattoo parlor, would have on the economic stability and viability of the District.

Conclusions

1. Section 24.8, Ordinance 105338, which amended Ordinance 86300, includes in the general purpose, inter alia, "to encourage beneficial economic development" and "to promote stability of land values and investments." Development regulations to effect those purposes were to be included in the ordinances establishing the various special review districts or, if not, to be recommended by the special review board or Director of Department of Community Development to the Planning Commission and be adopted by the City Council by ordinance.

2. Section 24.83(b) provides that "(u)nless specifically modified by the development regulations, all provisions of the Zoning Ordinance shall apply in the special review district. If uses, structures or designs are limited, the development regulations must specify the standards by which

said uses, structures or designs will be evaluated."

3. Section 24.91 establishes the Pioneer Special Review District and sets forth the purpose. Sections 24.912 - .919 contain the adopted development regulations. Section 24.913 modifies the provisions of the Zoning Ordinance by prohibiting certain uses and groups those prohibited principal uses into vehicle-oriented uses in general, specific uses and uses similar to them which are permitted in zones more intensive than Manufacturing (M), and specified uses plus similar ones at street level within a certain area to encourage pedestrian orientation and economic stability.

4. A retail store selling the trick and puzzle merchandise is not within any of the above categories of prohibited uses nor is it prohibited by the unmodified Zoning Ordinance provisions.

5. Section 24.91(3)(i) deals directly with the economics of the area, "(i) in order to encourage pedestrian orientation and to encourage economic stability...", by prohibiting specified uses at street level. Section 24.913(3)(ii), following, also modifies the provisions of the Zoning Ordinance to give the Board and Director authority to prefer certain uses over others where such use would be highly visible from the street or would have merchandise displayed in a manner that contributes to the character and activity of the area. Appellant's contention that this provision creates an obligation to consider the potential economic impact of a use and deny approval if it were shown to have a deleterious effect on the economic stability or viability of the District, is not well-founded since the separation of that provision from (i) must be presumed to be for a purpose, most logically to deal more specifically with the effect of display and visibility on the character of the area and to favor those which contribute to it.

6. Where language of a provision is ambiguous the ordinance should be read as a whole to ascertain the intent and purpose of the legislative body in enacting it and to understand the context of the particular section. Alderwood Water District v. Pope and Talbot, Inc., 62 Wn.2d 319 (1963), Hatzenbuler v. Harrison, 49 Wn.2d 691 (1957). Unless the intent is clear, a construction cannot be adopted which has the effect of destroying property rights. Public Utility District No. 1 of Pend Oreille County v. Seattle, 382 F.2d 666 (9th cir. 1967). The Courts, while liberally construing zoning ordinances to accomplish their clear purpose, avoid extending provisions by implication to cases not clearly within the intent manifested by the language used, in recognition of the common-law right to use property which the Zoning Ordinance has derogated. State ex rel. Standard Mining and Development Corp. v. Auburn, 82 Wn.2d 321 (1973), Morin v. Johnson, 49 Wn.2d 275 (1956).

7. The special review district provisions are in further derogation of common law rights as they overlay the regular zoning of the area and those provisions state unequivocally that zoning ordinance provisions shall apply unless specifically modified.

8. While the general purpose of the special review district legislation includes encouraging economic stability and Section 24.913(3)(ii) grants some authority to the Board and Director to favor one use over another, the language does not specifically include consideration of economic impact. To have made the consideration which appellant asks, the Board and Director would have violated the general rule recognized in Standard Mining, supra, by extending that provision beyond the scope of the control authorized.

Order

The Motion to Dismiss is GRANTED and the appeal is hereby DISMISSED.

Entered this 17th day of July 1980.

M. Margaret Klockars
M. Margaret Klockars
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).