

**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**

Hearing Examiner File:
R-16-003

From a certificate of approval decision by the Pike
Place Market Historical Commission

Introduction

The Pike Place Market Historical Commission issued a decision conditionally granting a certificate of approval to the Appellant Pike Place Market Preservation and Development Authority (PDA), and the PDA appealed pursuant to Chapter 25.24 of the Seattle Municipal Code.

The appeal was heard before the Deputy Hearing Examiner on August 26, 2016. Represented at the hearing were the Appellant PDA, by Holly Golden, attorney at law; and the Pike Place Market Historical Commission, by Elizabeth Anderson, Assistant City Attorney.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated. Having considered the evidence in the record, and having viewed the site, the Examiner enters the following findings of fact, conclusions and decision on the appeal.

Findings of Fact

1. On June 15, 2016, the Pike Place Market Preservation and Development Authority (PDA) applied for a certificate of approval from the Pike Place Market Historical Commission (Commission) to install metal fence sections along the western edge of the outdoor slabs utilized by crafts vendors at the Pike Place Market.
2. The grids were designed to fit into the brackets that were installed along the outer lip of the slab. The brackets were approved by the Commission in February of 2015. The approval noted that the application was "to install brackets along wall next to outside slabs to hold display fixtures for Daystall tenants." Ex. 19.
3. The grid sections are currently installed and are shown in the exhibits in the record. The grids measure approximately two feet tall, with a width of six feet or more (to match the width of the slab). The grids provide the vendors with a place to display goods, and have been well-received by vendors.

Findings and Decision of the Hearing Examiner

R-16-003

Page 2 of 5

4. Prior to the installation of the grids, there were no vertical display spaces for vendors, unless the vendors created their own. The improvised displays lacked a barrier to keep goods from falling to the street below; Ex. 4. There is a 20-foot drop from the slabs to the street level.
5. The slabs are also used as seating areas by visitors to the Market; Ex. 6, Ex, 20. Sometimes, visitors, including children, will stand on the slabs.
6. The PDA sought approval to leave the grids in place in order to provide a visual separation between the vendor slab areas and the drop-off to the street below. The PDA's application was for approval to *"leave in place display grids along the back of each slab at all times. These grids were designed to fit into the brackets recently installed along the outer lip to provide vendors with a vertical selling/display space and provide vendors and visitors with a physical barrier between the edge of the slabs and drop to the sidewalk below. While the slabs are in use, the grids were designed to conform with standard displays already in use by vendors. While the slabs are not in use, the grids minimally obstruct views while greatly increasing safety."* Ex. 10.
7. The Commission's Design Review Committee (DRC) reviewed the application. The DRC recommended that the full Commission discuss the application in light of guidelines 3.1.1, 3.2.1, 3.2.6, 3.4.3a and 3.4.3b, 3.8.7 and 3.9.2. Staff also recommended that the Commission not vote on the application until all members had viewed the fence without craft sellers in front of it, and from multiple views.
8. At its meeting on July 13, 2016, the Commission considered the application after taking comments from the PDA and the public. Five Commissioners were present. On that date, three positions on the 12-member Commission were vacant, so that the Commission had nine active members.
9. At the meeting, the Commission discussed the proposal's impacts on views from and through the Market, and the impacts on the Market's historic character. Some Commissioners also commented on the false sense of safety that they believed could be conveyed by the fence grids. The Commission voted 5-0 to approve the application with the condition that the fence sections were to be installed only on slabs where there were vendors selling for the day, and between the hours of 8:00 a.m. to 7:00 p.m. only, and that all fence sections were to be removed by 7:00 p.m. and stored out of sight.
10. SMC 25.24.070.A provides:

The Commission shall consider and approve or disapprove or approve with conditions applications for a certificate of approval as contemplated in this Chapter 25.24 not later than 30 days after any such application is determined to be complete, and a public meeting shall be held on each such application. If after such meeting and upon review of the Commission it determines that the proposed changes are consistent with the criteria for historic preservation as set forth in Section 25.24.040, the Commission shall issue the certificate of approval within 45 days of the determination that the application is complete, and shall provide notice of its decision to the applicant, the Seattle Department of Construction and Inspections, and to any

person who, prior to the rendering of the decision, made a written request to receive notice of the decision or commented in writing on the application. After such a decision, the Director of the Seattle Department of Construction and Inspections is then authorized to issue a permit.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to SMC 25.24.080. SMC 25.24.080.D provides that the Hearing Examiner may reverse or modify the Commission's action only if the action violates the terms of Ch. 25.24, or the rules, regulations or guidelines adopted pursuant to Ch. 25.24, or if the Commission's action is based on a recommendation made in violation of the procedures of Ch. 25.24 or procedures established by rules, regulations or guidelines adopted pursuant to the authority of this chapter and the procedural violation operates unfairly against the applicant.
2. The PDA's appeal argues that the decision violated certain guidelines related to space and physical appearance (Guideline 4), encouraging the use of public amenities (Guideline 2.3.1); functional features that may impact public views (Guideline 3.2.7); and enhancement of pedestrian movement and accessibility (Guideline 3.8.6).
3. The evidence shows that the Commission's decision did not violate SMC 25.24 or any rules, regulations or guidelines adopted pursuant to the Code. The Commission determined that the fence grids would diminish views into and through the Market, as well as views from the Market, contrary to 3.8.7; that the grids interrupted the rhythm of the Market contrary to 3.2.1; that the grids did not enhance pedestrian accessibility and movement consistent with 3.8.6, and that the fence grids detracted from the historic appearance and character of the slabs, contrary to 3.9.2. But the Commission also took into account that the grids, when in active use to display goods, would be consistent with 3.4.3. The evidence supports the Commission's application of the above guidelines.
4. The PDA argues that if views are a concern, the fence allow for views, and requiring the grids to be removed during the evenings serves little purpose when views are not available and there are few visitors. But this overlooks the fact that the Commission determined that, while the grids were in many ways not consistent with the guidelines (not just those concerning views) their use as part of a vendor's active display made them consistent with the guidelines. This factor does not apply when a vendor is not using the grid, and the Commission could reasonably decide that the grids could only be allowed when the vendors were using them.
5. The PDA cited safety concerns in support of its application; safety is not directly expressed as a factor in the guidelines. The Commission was aware that the grids would keep vendors' objects from falling onto the street below, and the Commission also expressed concern over whether a grid could create a false sense of security because of how much weight the fence would support. The Commission's decision did not violate the Code or any guidelines that might implicate safety factors.

Findings and Decision of the Hearing Examiner

R-16-003

Page 4 of 5

6. The Commission approved the fence grids, but not for 24 hours a day, 7 days a week as requested by the PDA. The PDA argues that the Commission improperly created a new application by limiting when the fence grids could be installed. Under SMC 25.24.070, the Commission shall "approve or disapprove or approve with conditions" an application for a certificate of approval. The Commission has authority to attach conditions to its approval. The condition limiting the times during which the grids may be in place does not require a different kind of grid to be installed or change the location of the grids, or make other changes to the proposal such that it could be considered a different "application."

7. The PDA argues that the Commission acted without a quorum. Rule A.4 of the Commission's Rules and Procedures provide that a quorum for the conduct of any meetings shall be a majority of current members. At the time of the decision, three seats on the 12-position Commission were vacant, so that there were nine active members. The PDA argues that the vacant seats still "counted" for purposes of determining a quorum, so that seven Commissioners, not five, were required for a quorum. SMC 25.24.030.B allows a member whose term has ended to continue on until a successor has been appointed, but there is nothing in the Code or rules that suggests the quorum must always be seven members. Rule A.4 clearly allows for a simple majority of "current members" to be a quorum, and the five Commissioners at the July 13, 2016 meeting were a majority of the current members of the Commission. No procedural irregularity occurred on account of the number of members voting on the application.

8. The Commission's decision did not violate Chapter 25.24 SMC or any of the rules, regulations or guidelines adopted pursuant to that Chapter, and was not based on a recommendation that violated any applicable procedures. The decision should therefore be affirmed.

Decision

The decision of the Commission conditionally granting the Certificate of Approval is **AFFIRMED**.

Entered this 8th day of September, 2016.



Anne Watanabe
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

NOTE: It is the responsibility of the person seeking further review to consult appropriate Code sections to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. Any request for judicial review of the decision must be commenced within twenty-one (21) days of issuance of this decision in accordance with RCW 36.70C.040.

The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner.

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Findings and Decision** to each person listed below, or on the attached mailing list, in the matter of **Pike Place Market PDA**. Hearing Examiner File: **R-16-003**, in the manner indicated.

Party	Method of Service
Heather McAuliffe Pike Place Market Historical Commission PO Box 94649 Seattle, WA 98124 Heather.McAuliffe@seattle.gov Liza Anderson Assistant City Attorney Liza.Anderson@seattle.gov Alicia Reise Alicia.Reise@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Pike Place Market PDA c/o Holly Golden Hillis Clark Martin & Peterson, PS 999 Third Ave, Suite 4600 Seattle, WA 98104 holly.golden@hcmp.com Debbie Chewning debbie.chewning@hcmp.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Sarah Sodt DON Sarah.Sodt@seattle.gov Erin Doherty Erin.Doherty@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

Dated: September 8, 2016

TK

Tiffany Ku
Legal Assistant