

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

In the Matter of the Appeal of

SUPER SATELLITE SERVICES, SEATTLE

FILE NO. M-86-003

from a decision by the Market
Historical Commission

Introduction

Appellant appeals the decision of the Market Historical Commission to deny a certificate of approval to locate two flags and two flower boxes on the west facade of the John Paul Jones Building at 1908 Post Alley.

The appellant exercised the right to appeal pursuant to Chapter 25.04, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on October 1, 1986.

Parties to the proceedings were: appellant, Super Satellite Services, Inc., by James W. Ford, and the Market Historical Commission by the City Attorney, James E. Fearn, Jr., assistant.

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

Findings of Fact

1. Super Satellite Services, Seattle, applied to the Pike Place Market Historical Commission (Commission) for a certificate of approval for establishment of a use and design of space. The Commission denied a certificate of approval for two planter boxes and two flags to be placed on the west facade of the John Paul Jones Building at 1908 Post Alley. This appeal followed.

2. The Commission determined that the proposal does not conform to the intent of the Market Historical District Ordinance and the Commission Guideline C.3. which states "(t)he main architectural elements of buildings must not be altered or disguised."

3. No evidence was presented as to the architectural elements of the John Paul Jones Building.

4. A draft of the minutes of the Commission meeting where this application was considered was prepared by a staff member for approval by the Commission. Changes were made prior to approval.

5. A letter giving notice of the Commissions' decision was drafted and mailed based on the draft minutes. A revised letter was then sent reflecting official minutes and position of the Commission. The letter included the following statements:

In regard to flying the United States and Washington State flags, the Commission judges that it is inappropriate to display these flags on the alley over driveway lanes on a permanent basis;

and

The design committee expressed that it is not its intent to prevent the spontaneous flying of flags on personal or public anniversaries or festivals.

Exhibit 2. The latter statement is not included in the minutes of the Commission meeting, Exhibit 4.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter and these parties pursuant to Section 25.24.080, Seattle Municipal Code.

2. Appellant's representative has two contentions: 1) that the Commission made certain procedural errors and 2) that there is an overriding congressional intent and constitutional requirement that there be few restrictions on the flying of the United States flag.

3. The practices which appellant contends constitute procedural errors are the Commission's alteration of the draft of the minutes and the inclusion of statements in the letter notifying the applicant of the denial of the certificate of approval that are not reflected in the minutes. The Hearing Examiner may reverse only if:

B. Such action of the Commission is based upon a recommendation made in violation of the procedures set forth in this chapter or procedures established by rules, regulations or guidelines adopted pursuant to the authority of this chapter and such procedural violation operates unfairly against the applicant.

Section 25.24.080, Seattle Municipal Code. Appellant adduced no evidence of any violation of procedures. Moreover, no prejudice to appellant from the procedures followed was shown.

4. Appellant's second, and chief, contention is that the Commission does not have the authority to prohibit the flying of the flag of the United States of America when Congress has indicated its intent that the laws should make full allowance for the flying of the flag. The Commission relied on Section 25.24.060.-C., Seattle Municipal Code, which provides that

(t)he Commission shall have sole responsibility for determining the appropriate location, design and use of signs and structures to be located on or above the surface of public places in the Historical District....

It contends that "signs and structures" should be read to encompass flags because the definitions of signs in the Land Use Code includes banners, pennants, fabric signs and clusters of flags. Section 23.84.036, Seattle Municipal Code.

5. Even if appellant had cited specific constitutional or statutory provisions prohibiting the regulation of the flying of the flag of the United States, the Hearing Examiner's authority to reverse is strictly limited to the case where

A. Such action of the Commission violates the terms of this chapter or rules, regulations or guidelines pursuant to the authority of this chapter....

Section 25.24.080, Seattle Municipal Code. Since appellant did not show the denial to be in conflict with Chapter 25.24, Seattle Municipal Code, or the Pike Place Historical District Guidelines, the Hearing Examiner must affirm the decision.

Decision

The decision to deny a certificate of approval is affirmed.

Entered this 15th day of October, 1986.

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Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City, and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. Should such request be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.