

BEFORE THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

FILE NO. M-86-005

GOLDMAN'S JEWELERS

ORDER, FINDINGS,  
CONCLUSION & DECISION

from a decision of the Pike  
Place Market Historical Commission

I

This matter came on for public hearing before the undersigned on January 21, 1987.

Appellant Jack Goldberg appeared pro se and the Market Historical Commission was represented by Thomas Fawthrop, Pike Place Market Coordinator.

The preliminary issue concerns the Commission's challenge to the timeliness of the appeal. Relative thereto, the Hearing Examiner finds as follows:

1. On some unspecified date, appellant received a letter from the Pike Place Market Historical Commission dated October 13, 1986. The letter's second page advises the reader of a 17-day appeal period and bears the signature of Thomas Fawthrop, Market Coordinator.
2. The Commission has no affidavit, return receipt or other tangible evidence showing the act or date of mailing of the October 13 letter to appellant. The Commission representative did state under oath that the item would have been mailed on October 13, 1986.
3. The October 13, 1986 letter bears the appellant's correct business address. Appellant did not retain the postmarked envelope in which the October 13, 1986 letter would have been mailed.
4. Also of record is an October 20, 1986 Request for Action directed to the Department of Construction and Land Use from Thomas A. Fawthrop, Pike Place Market Coordinator. The action requested is the removal of the sandwich board sign which is the subject of this appeal.
5. There is no evidence on the October 20 Request that any copy was sent to appellant. However, appellant recalls receiving the document.
6. Appellant, upon receiving either the October 13 or October 20 document, telephoned Fawthrop to inquire of appeal rights. Fawthrop advised appellant to count 17 days from the date of the document. Fawthrop did not ascertain whether the caller was referring to the October 13 letter, to the October 20 Request for Action, or to some other item.
7. Appellant's appeal was received in the Office of Hearing Examiner on November 7, 1986, within 17 days of the October 20 document, and within the time period suggested in the teleconversation with Fawthrop.

Conclusion, Order

The Hearing Examiner concludes that under the circumstances, appellant's reliance on the appeal information given by the Commission's representative was not unreasonable. The motion to dismiss is therefore denied.

II

Having disposed of the preliminary matter, and having considered the substantive evidence of record in this case, the Hearing Examiner enters the following findings, conclusions and decision on this appeal.

1. Appellant has been in business at 1521 First Avenue S. for more than 5 years. Directly adjacent to his business, above the sidewalk, is the sandwich board advertising sign in issue. According to appellant, (a) the sign in no way impedes traffic (b) this segment of First Avenue has wide sidewalks, and (c) this segment of First Avenue has a low pedestrian traffic count. These are, continued appellant, special factors which should justify approval of the sign.

2. The appellant's site fronts directly on First Avenue.

3. The nearby On Target sidewalk sign is temporary.

4. The Commission representative testified that while no printed definition exists to explain which properties have "special location or access problems," it is generally understood that a property which is directly viewable from a public right-of-way does not qualify.

Conclusions of Law

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 25.24, Seattle Municipal Code.

2. The parameters of Hearing Examiner review are specified at Seattle Municipal Code Chapter 25.24.080.

The Hearing Examiner may reverse or modify an action of the Commission only if he finds that:

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

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.

3. The Market Historical Commission has adopted regulations "for its own government." Seattle Municipal Code Section 25.24.050. The Commission Guidelines specify that exterior signs be "flat against the building...or hung from marquees." Guidelines, Section III.G.2, as amended (p.10). Off-premise signs, such as proposed by appellant, are generally prohibited. The amended Guidelines define off-premise signs to include "permanent signs...located external of the business's normal operating lease line..." Guidelines, Section III.G.5. The appellant's sign, suspended over the sidewalk, is an off-premise sign.

4. The amended Guidelines also provide that:

Exceptions involving businesses with special location, or access problems...may be eligible for a street level sign approval.

Section III.G.5.

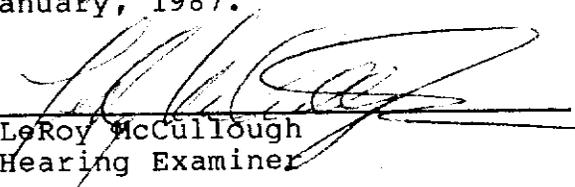
5. Per the Commission representative, there is no written definition of the term "special location;" however, he concluded, a property viewable from a public right-of-way is not one with "special location or access problems."

6. The verbalized definition is consistent in this case with the plain and ordinary meaning of the term. There is inadequate proof that appellant's location, directly fronting a sidewalk and public right-of-way, has any special location or access problem. Therefore, appellant has failed to show that the Commission's denial of sign approval violates relevant chapter guidelines, rules or regulations or procedures.

Decision

The Commission decision is AFFIRMED.

Entered this 28th day of January, 1987.

  
Leroy McCullough  
Hearing Examiner

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.