

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

In the Matter of the Appeal of

MADE IN WASHINGTON

FILE NO. M-86-004

from a decision by the Market  
Historical Commission

Introduction

Appellant appeals the decision of the Market Historical Commission to deny a certificate of approval for an off-premises sign.

The appellant exercised the right to appeal pursuant to Chapter 25.24, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on November 10, 1986.

Parties to the proceedings were: appellant by Jack and Gillian Mathews and the Pike Place Market Historical Commission by Thomas A. Fawthrop, Pike Place Market coordinator.

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. Made in Washington applied for a certificate of approval to locate an off-premises sandwich board sign at the corner of Post Alley and Pine Street. The Pike Place Market Historical Commission (Commission) voted to deny the certificate of approval because it determined that exceptions from the off-premise sign prohibition detailed in the Commission Guidelines, i.e., "exceptions involving businesses with special location or access problems, daily changeable message, and temporary or special informational needs may be eligible for a street level sign approval," did not apply.

2. Made in Washington is a shop at 1530 Post Alley in the Pike Place Public Market. The building space occupied by Made in Washington is set back approximately 20-25 ft. from the alley and is not visible to passers-by looking down the alley from Pine Street or Pike Place.

3. The proposed sign is designed to allow a changeable message.

4. By the nature of the business, a sizable proportion of the shop's customer base is first time visitors who do not know to search for the shop.

5. Above the sidewalk where the sandwich board is displayed is a small sign attached to, and flush with, the wall of the building indicating that Made in Washington is in the building.

6. The Commission has approved a series of directory signs for the building which would include Made in Washington for three locations: one at the entrance to the building off the courtyard; one at the entrance to the building on Pine Street which is one level above the Post Alley location of the shop; and one inside the building at the foot of the stairs.

7. The pedestrian traffic on Pike Place is substantially greater than that on Post Alley.

8. One shop off the alley has had an off-premise sign approved.

9. Spaces on Post Alley have shown a high turnover of tenants.

10. The Design Committee of the Commission, which recommends to the Commission, visited the site prior to making its recommendation to deny the application.

#### Conclusion

1. On review the Hearing Examiner may reverse or modify an action of the Commission only if the Hearing Examiner finds that:

A. Such action of the Commission violates the terms of this chapter or rules, regulations or guidelines adopted pursuant 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. Section 25.24.080, Seattle Municipal Code.

2. Appellant contends that the Commission did violate the terms of the guidelines by failing to recognize and grant an exception for Made in Washington from the prohibition against sandwich board signs. The evidence shows that the Commission was aware of the location of the shop and the type of patronage experienced. The record before the Hearing Examiner, however, reflects only the summary rejection of the application. Since appellant has shown that the location, without frontage on the alley, creates special problems the Commission decision cannot be reviewed for compliance with the Commission Guidelines without further explanation of the decision. Therefore, the matter should be remanded to the Commission for a finding or other explanation as to the Commission's consideration of the relationship of the location to the exception under Guideline G.5.

#### Decision

The decision of the Commission is remanded for a written finding or other written explanation as to the relationship of the location of the Made in Washington shop to the exception under Guideline G.5. The Hearing Examiner retains jurisdiction over this matter to review compliance with the guideline.

Entered this 24th of November, 1986.

*M. Margaret Klockars*  
M. Margaret Klockars  
Deputy Hearing Examiner

BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

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DECISION FOLLOWING REMAND

A decision was issued by the Hearing Examiner remanding the matter to the Market Historical Commission for written explanation of its evaluation of the relationship of the facts in this case to the guidelines. The Market Historical Commission complied with the requirement of the remand on December 12, 1986. Appellant filed a response. The Hearing Examiner makes the following additional:

Findings of Fact

1. The reasons given by the Commission for not approving the application are:

The retail space has no special location or access problems. The business fronts on the public right-of-way of Post Alley.

An existing sign is located at the corner of Post Alley and Pine Street indicating the business is located in the building.

The Commission has approved a series of directory signs for the building which indicates the business is located in the building. The property owner will install the signs in early 1987.

2. The Commission found that the business is a street level retail business as defined in the guidelines.

Conclusions

1. Appellant contends that the Commission erred in its conclusion that there is no location problem because the business is a street level business. "Street Level Space" is "(a)ny space adjacent to, with frontage on or with direct access to public rights-of-way or the pedestrian paths of the Main Arcade." Guideline D, p.5. Appellant urges that the correct reading of that definition would be to have "of the Main Arcade" modify both "rights-of-way" and "pedestrian paths." The Hearing Examiner is to pay deference to the interpretation by the Commission since it both adopted the language and is charged with enforcing it. See Morin v. Johnson, 49 Wn.2d 275 (1956). Further, the consequence of appellant's reading would be to exclude businesses with frontage on the east side of Pike Place from the definition of street level businesses. The language must be read to avoid absurd consequences. It must be concluded that the definition applies to appellant's space in that the place has direct access to a public right-of-way, Post Alley.

2. The record reflects consideration of the actual location of appellant's business and a decision that the location is not one warranting exception from the off-premise sign prohibition. The examiner's role is only to determine if the Commission violated the terms of the guidelines. Its determination in this case did not violate the terms of the guidelines.

Decision

The decision of the Commission to deny the certificate of approval is affirmed.

Entered this 20th day of January, 1987.

M. Margaret Klockars  
M. Margaret Klockars  
Deputy 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.