

## 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

FILE NO. M-79-006

from a decision of the Pike Place  
Market Historical Commission

#### Introduction

The appellant, Pike Place Market Preservation and Development Authority (PDA), filed an appeal from the denial of the application of Keith Dearborn for a certificate of approval for a housing relocation service in the Soames Building.

The appellant exercised its right to appeal pursuant to Section 6 of Ordinance 100475, as amended. All references to section numbers will be to Ordinance 100475 unless otherwise indicated.

Parties to the proceeding were the appellant, represented by William H. Block and the Pike Place Market Historical Commission (Commission) represented by James Fearn.

This matter was heard before the Hearing Examiner on November 7, 1979.

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

#### Findings of Fact

1. The Pike Place Market Historical Commission is established and governed by Seattle City Ordinance 100475, as amended by Ordinances 104658 and 106309 (Exhibit A).

2. In January 1974, the Commission adopted Guidelines and Procedures for obtaining Certificates of Approval for renovation and use of buildings in the Market (Exhibit B).

3. On January 22, 1975, PDA, owner of the Soames Building in the Pike Place Market, presented to the Commission a proposal for renovation and restoration of the Soames Building. The proposal included proposed uses of the second floor "for offices and maybe a restaurant" (Exhibit D).

4. On February 26, 1975, the Commission adopted Procedures for Obtaining a Certificate of Approval for Major Projects (Exhibit F). The concept review section contains the following provisions: "After thorough review and discussion the Commission will approve or disapprove the general concept and proposed uses based on the Market Historic District Ordinance and the Commission's Guidelines".

5. On February 26, 1975, the Commission gave concept approval for the Soames Building (Exhibit G).

6. On March 19, 1975, the Commission, by letter from Earl D. Layman to George Rolfe, issued a Certificate of Approval of the concept for the restoration of the Soames Building and specified the use of the second floor for offices and/or a restaurant (Exhibit H).

7. On March 26, 1975, the Commission approved and issued a Certificate of Approval covering the Schematic Design Review of the Soames Building renovation (Exhibits J and K).

8. On April 9, 1975, the Commission granted the Soames Building First Design Development Review Approval (Exhibit N). The Guidelines (Exhibit F) provide that once this approval is given "...neither the whole nor the parts of the approval can be withdrawn by the Commission of its own volition."

9. On May 28, 1975, the Commission adopted revised Recommended Procedures for Obtaining a Certificate of Approval for Major Projects (Exhibit P). The revised procedures provide for only one Certificate of Approval (the final approval) instead of the four certificates issued under the procedures adopted February 26, 1975.

10. On June 11, 1975, the Commission, by a vote of 6 to 0 with one abstention, issued a Certificate of Approval for the entire Soames Building renovation project. This Certificate of Approval incorporated the Concept, Schematic, and First Design approvals together with any revisions (Exhibits Q and R).

11. The PDA commenced renovation of the Soames Building in the fall of 1975, and renovation was completed in the summer of 1976.

12. Upon completion of the renovation, PDA has unsuccessfully sought restaurant tenants for the second floor.

13. On November 30, 1977, the Commission adopted revised Guidelines of the Market Historical Commission (Exhibit U).

14. On May 9, 1979, Keith Dearborn applied for a use permit for the second floor of the Soames Building. The contemplated use was offices for the County Farmlands Initiative Campaign through the summer of 1979, and thereafter offices for a non-profit housing relocation project serving the elderly and small spaces for beginning professional writers and designers sharing administrative expenses. The use of the space for the Initiative Campaign was approved, with an informal denial and decision postponed with regard to use of the space by the non-profit housing project.

15. On August 12, 1979, Keith Dearborn reapplied for a use permit for the second floor of the Soames Building for a housing relocation service for low income residents and senior citizens displaced by condominium conversion (Exhibit X).

16. On August 15, 1979, the Commission disapproved the use permit application for use of the second floor of the Soames Building for a non-profit housing relocation service for low income residents and senior citizens (Exhibit Y).

17. By letter of September 11, 1979, the Commission informed the Superintendent of Buildings of the denial of the application stating that office use is a third priority use and a nonconforming use in zone 2 of the Market.

#### Conclusions

1. The Certificate of Approval of March 19, 1975, the action of the Commission on April 9, 1975 and the Guidelines (Exhibit F) show that approval was given by the Commission for the general categories of restaurant and office uses for the second floor of the Soames Building. The Certificate of Approval for the concept review specifically states that restaurant and office uses are permitted on the second floor (Exhibit H). The Guidelines (Exhibit F) state that one of the purposes of the review is to approve general uses based on the ordinance and

guidelines. The plain meaning of the language in Exhibits F and H supports a conclusion that the Commission approved general categories of uses for the second floor. After the First Design Development Review Approval was granted on April 9, 1975, the Commission could not withdraw the approval action on its own volition.

2. The intent of the Guidelines (Exhibit F) are quite clear. A developer can be given a concept approval at an early stage in order to determine whether or not a project is feasible. However, only at a later stage (First Design Development Review Approval) is there assurance that approval cannot be withdrawn solely by the Commission.

3. The Guidelines (Exhibit F) which were in effect when the Commission issued the Certificate of Approval on March 19, 1975, for the Soames Building contain very explicit language about the approval of uses. The Guidelines (Exhibit P) which were adopted on May 28, 1975 changed significantly the language regarding uses and the nature of approval at the concept stage. In order to avoid any future misunderstanding language could be inserted in the Guidelines to state that no use approval is given under the Guidelines (Exhibit P).

4. The action of the Commission in denying the Certificate of Approval by comparing it with retail uses violated its own Guidelines. The application of Keith Dearborn must be evaluated in comparison to other potential office and restaurant uses. This applies only to uses on the second floor of the Soames Building. This matter is remanded to the Commission for reconsideration in accordance with the terms set forth in the decision.

#### Decision

This matter is REMANDED to the Commission and the application of Keith Dearborn must be reconsidered in accordance with the terms of this decision.

Entered this 27th day of November 1979.

  
William N. Snell  
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).