

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

RICHARD LO PRIORE

FILE NO. M-79-001

from a decision of the Pike Place
Market Historical Commission

Introduction

The appellants, Richard Lo Priore and Rita Lo Priore, doing business as Deluxe Barbeque, Inc., filed an appeal from a Certificate of Approval issued by the Pike Place Market Historical Commission (hereinafter "Commission").

The appellants exercised their right to appeal pursuant to Section 6 of Ordinance 100475, as amended.

This matter was heard before the Hearing Examiner on April 10, 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. On February 14, 1979, a certificate of approval was granted to Ralph Murphy(hereinafter "applicant") to operate a "black" ethnic deli(hereinafter "Deli") in the Economy Market allowing the sale of cold smoked meats. The foods are not permitted to be warmed or heated in any fashion.

2. The appellants, who own and operate the Deluxe Barbeque, Inc. and whose business is located approximately 50 feet from the applicant's Deli filed this appeal. The appellants offer for sale barbequed and teriyaki ribs and chicken, corn on the cob and several other prepared food products to accompany chicken and ribs.

3. According to a menu submitted to the Commission the Deli would sell a variety of smoked meats including chicken and ribs. The Certificate of Approval placed restrictions upon the type of meats to be sold and the method of operation. No barbequed meats are to be sold by the Deli nor may any of its products be offered for sale in a warmed or heated state.

4. The record indicates that these restrictions were actually the result of negotiations between the applicant and the Pike Place Market Preservation and Development Authority (hereinafter "PDA") which is the leasing agent for space within the market. Testimony at the hearing indicated that PDA is for purposes of negotiating leases a private body and lease arrangements are private between the applicant/tenant and PDA.

5. The minutes of the Commission meeting at which the certificate of approval was voted upon is part of the record. Testimony indicated that there were some inconsistencies and inaccuracies in those minutes. The minutes are rather brief. Approximately 20 to 25 minutes of discussion was reduced to three paragraphs.

The minutes indicate John Clise of the PDA noted the limitation in the applicant's operation and parenthetically adds "as there were already two such businesses in the Market - Deluxe and Pit Barbeque."

6. The agenda of the Commission's Public Hearing was submitted. The agenda is available to the public and market tenants on request. It is also distributed to the Pike Place Merchant's Association and the applicant for a certificate of approval.

The agenda states the time, place and date and under separate headings the types of Certificates of Approval and the separate pending applications of each type.

The application in question appeared as follows:

III. Applications for Certificate of Approval for USES
c. Ethnic Deli/Economy 204/Ralph Murphy
j. Additional Fast Food items/Deluxe Barbeque/Richard La Priare (sic) Line "C" gives the type of operation - Deli' the location in the market - Economy 204; and the applicant - Ralph Murphy.

7. Rita Lo Priore, one of the appellants, was present at the Commission hearing. The appellant was attending the meeting in reference to a change in use of her business; item "j" in the agenda. At the Commission hearing she gave some short testimony on the possible effects which the applicant's Deli would have on her business.

8. There was testimony from other merchants of the market about limitations and restrictions on various aspects of their respective businesses. These restrictions in some cases prohibit the sale of certain lines of products. They also testified as to the lack of adequate notice about hearings on matters which may in fact concern them.

PDA testimony indicated that competitive or anti-competitive restrictions were a part of the lease arrangements and are generally brought to the attention of the Commission, but the Commission has no effect on lease arrangements between applicants and the PDA.

9. The appellants contend that the notice was inadequate and that the inadequate notice did not afford the appellants a reasonable opportunity to prepare for the Commission's public hearing on the applicant's Deli operation.

10. The appellants further contend that the Commission failed to appropriately consider the economic consequences of approving the applicant's Deli upon the appellant's business as required by Pike Place Market Historical District Ordinance 100475, as amended (hereinafter "Ordinance") and the Guidelines of the Market Historical Commission (hereinafter, "Guidelines").

11. The appellants testified that they have spent approximately \$40,000 on the recent remodeling of their business and still owe approximately \$20,000 on the purchase price. They employ about 8 people; four of these full time.

12. The applicant believed that developing his Deli facility would require an expenditure of approximately \$50,000.

Conclusions

1. The Ordinance and the Guidelines implementing the Ordinance both provide for the consideration of the effects of uses on both location and approval of new uses.

Section 6 of the Ordinance says in part:

"The Commission in considering the appropriateness of any alteration...shall consider among other things the...occupancy and use...the relationship of such features to other buildings within the Historic District."

Similarly 1-B of the Guidelines provide for a flexibility in permitting certain uses:

"In order to achieve distribution, quality and mix of uses, and to provide the variety of shopping opportunities essential to the character and economic success of the Market, the Commission may depart from the priorities or deny applications for uses listed.

2. The Commission is also directed both in the Ordinance and in the Guidelines to consider economic issues. The Guidelines cited above specifically mention "economic success" and Section 1 of the Ordinance states in part:

"(I)t is deemed essential by the people of the City of Seattle that the cultural, economic and historical qualities relating to the Pike Place Market and the surrounding area, and an harmonious outward appearance and market use which preserve property values...be preserved and encouraged."

3. Therefore both the Ordinance and the Guidelines direct adequate consideration of economic factors and specific use in locating uses which are possibly of such a nature as to be similar to or competing with already existing uses. The appellants main line of products are chicken and ribs. There is another similar chicken outlet not far from the appellants and now the applicant also proposes selling a similar though expanded line of food products. This new Deli will be located between the appellant's stand and the other chicken outlet and be approximately 50 feet from the appellant's operation. This is definitely something the Commission should have considered before granting a Certificate of Approval for the applicant's Deli.

4. The minutes are an inadequate record of the events discussed. They do not give a fair reading of the matters considered, nor the reasons and conclusions for the issuance of the appealed from Certificate of Approval. More is required by Section 5 of the Ordinance which provides that:

"All official meetings of the Commission shall keep minutes of its proceedings, showing the action of the Commission upon each question, and shall keep records of its proceedings and other official actions taken by it, all of which shall be immediately filed in the Office of Community Development and shall be a public resolution which shall include the reason for each decision." (Emphasis supplied).

If Section 5 was complied with evidence at the hearing was not introduced to show it. The record did show that PDA places restriction in leases but that these restrictions are private agreements and not subject to open public discussion or scrutiny at the Commission's public hearing. There is no evidence that the Commission independently reviewed the "anti-competitive" restrictions or actually used them as reasons for its Certificate of Approval.

Therefore under terms of Sections 6-1&2 this case is remanded to the Commission.

5. The above conclusions do not disregard the criteria of Section 4.B nor should the Commission.

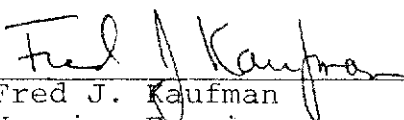
["The Historical District"] is an outstanding example of small independent business operating in the best tradition of American enterprise," which under a fair reading would imply that competition, a definite mainstay of "American enterprise", is to be encouraged. The Commission should therefore consider both the positive and negative effects of free competition but consider also that the Market is not a true "Free Market" in the economic sense as special Ordinances, Guidelines and PDA leasing provisions are all superimposed on the market structure.

6. Because this case is remanded on the basis of the above reasoning it is not necessary to reach a decision on the allegations of the inadequacy of the notice and hearing procedures of the Commission. Although it should be noted that the decisions of the Commission are far reaching and affect persons other than just the applicant for a certificate of approval and therefore the Commission may want to consult with the City Attorney on matters of notice as they involve due process.

Decision

This case is remanded to the Commission for further consideration of the economic and locational issues presented by the appellants.

Entered this 20th day of April 1979.


Fred J. Kaufman
Hearing Examiner
Pro Tempore