

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

In the Matter of the Appeal of

CONNIE AND FELIX TAJON
d/b/a MANILA BBQ

File No. M-80-002

from a decision of the Pike Place
Market Historical Commission

Introduction

The appellants, Connie and Felix Tajon, filed an appeal from the May 14, 1980 decision by the Pike Place Market Historical Commission denying its Certificate of Use for nonbarbequed meat dishes and on-premises preparation of food items and on-premises seating, in connection with their food stand, the Manila BBQ, Space 18, Soames-Dunn Building.

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

Parties to the proceeding were: the appellants, represented by Rod Cameron, and the Pike place Market Historical Commission represented by Assistant City Attorney, James Fearn.

Prior to this hearing the motion to permit intervenors, Mr. and Mrs. Nguyen, d/b/a Saigon-Over-the-Counter Foods, the adjoining food stand, was presented by counsel, Henry M. Aronson. The only objection to intervention was as to timeliness and since the request for intervention was timely it was permitted.

This matter was heard before the Hearing Examiner on July 15, 1980.

The matter was before the Hearing Examiner on April 1, 1980, and remanded to the Commission to determine:

- (1) Whether there is a change of use;
- (2) If so, whether a minor or major change;
- (3) Which guidelines are applicable; and
- (4) Upon which of these guidelines is the Commission grounding its decision.

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 decision rendered April 15, 1980 includes Findings as to the Commission actions prior to the May 14, 1980 meeting, which findings are made a part hereof by this reference.

2. At its regular meeting, May 14, 1980, upon the Hearing Examiner remand, the commission considered the use at 1916 Pike Place, #18 and concluded:

"1. A change in the style of preparing the barbequed meat items listed on the existing use approval does not

constitute a change of use as the existing use approval does not specify a national, ethnic, or other form of food preparation other than barbeque.

"2. The addition of non-meat items to the menu, the addition of sit-down dining facilities and the addition of on-premise cooking facilities constitute a change of use as such items are not permitted within the terms of the existing use approval.

"3. The change of use constituted by the addition of supplemental menu items is a minor change under the Guidelines because the business continues to operate as a food retailing establishment selling prepared barbequed meats. However, these additions would detract from the defined specialty characteristics of this business as one limited to the sale of barbequed meats on a take-out basis.

"4. The additional menu items requested for this business would closely duplicate those sold by a nearby business.

"5. Section I.D.3.6.(5) of the Commission Guidelines specify that the Commission shall not 'permit new, significant changes or additions to a use approval that would detract from the specialty nature of the business should such additional goods or services be currently approved for a nearby existing business.'"

The Commission decided:

"1. The sale of Filipino barbequed meats at Manila Grill does not constitute a change of use.

"2. The sale of non-barbequed meat dishes does constitute a change of use. Consent to sell these items is hereby denied pursuant to Section I.D.3.6.(5) of the Market Guidelines.

"3. The on-premises preparation of food items and the use of on-premises seating constitute a change in the character of the business which requires a change of use approval."

3. The Tajons appealed that decision.

4. Intervenor Saigon-Over-the-Counter sought to appeal as well the Commission's decision that the sale of barbequed Filipino foods is not a change of use, citing Ordinance 100228, Section 8.

5. The Hearing Examiner limited the appeal hearing to the decision as appealed by appellants.

6. The Hearing Examiner scope of review is limited by Ordinance 100475, as amended, to reversal or modifications of a Commission action only if:

(1) such action of the Commission violates the terms of this ordinance or rules, regulations or guidelines adopted pursuant to the authority of this ordinance; or

(2) there is a procedural violation.

7. The Commission found the style change to Filipino barbeque no change of use from the controlling Dolfredo use permitting "...a continuation of the previous use involving the preparation and sale of barbequed ribs, beef, pork, hot-links and chicken." (Dolfredo, March 13, 1978, Certificate of approval. City's Exhibit #2) The "continuation" was from the

original approval to Mrs. Horton "for a fast-food counter featuring Bar-B-Que Food." (Horton 6/17/76. Certificate of Approval. City's Exhibit #1)

8. The Commission found the addition of rice and vegetables was a Minor Change of use controlled by its Guidelines I.B.3. section, in particular b.5 thereunder, in that the addition of these items detract from the specialty nature of the Manila, and such items are offered by the adjoining Saigon-Over-the-Counter.

9. The menus of these small side-by-side food counters are presently very similar in looks, with a meat main item served with rice and vegetables. The Filipino barbeque flavoring does differ from the Saigon in seasoning. However, it is clear there is direct competition here and the Saigon's intervention unofficially at the first hearing and officially at this hearing amply demonstrated its interest in minimizing the impact of this competition by limiting the food served at the Manila.

10. The economic survival of these two very small food stands is in some jeopardy.

11. The Commission is charged with the responsibility of maintaining a viable market both in structures and in uses. Its Guidelines control the governing of this unique area of the City.

12. The enforcement of the ordinance is delegated to the Superintendent of Buildings, now Director of the Department of Construction and Land Use. The Pike Place Market Preservation and Development Authority (PDA) as landlord, has power through its leases, to spell out permitted uses and enforce them.

13. Many issues were raised beyond the scope of review of the Hearing Examiner which indicate a need for revision of the handling of the Market use problems.

Conclusions

1. The Commission has found a minor change of use by the addition of non-barbequed items to the Manila menu. It denies a use permit for this use pursuant to its Guidelines, specifically Section I.D.3.b.(5). This decision does not violate the terms of the Ordinance or Guidelines promulgated thereunder.

2. The evolution of use of this space from take-out "southern" barbecue to full meal Filipino demonstrates the need for some modification in enforcement practices and procedures for the Market. Contingency language to permit prior approval to any successor lessee to avoid damage both to the newcomer and the existing market merchants might prevent some difficulties. The small business owners encouraged to enter the market need adequate information on which to make reasoned judgment as to whether their proposed business has a chance of economic success. However, the foregoing suggestion does not permit the Hearing Examiner to reverse the Commission's decision unless there has been a violation of the ordinance or rules, regulations or guidelines thereunder. The review is of an appeal of specific action by the Commission.

3. The on-premises preparation of food items and the use of on-premises seating were issues not raised in the initial appeal, and are not reviewed here.

Decision

Based on the foregoing the appeal is DENIED and the decision of the Commission of May 14, 1980, permitting the sale of barbequed Filipino meats, but denying the minor change of use to permit rice and vegetables to be served as well is upheld.

Entered this 20th day of August, 1980.


Joan B. Allison
Hearing Examiner Pro Tempore

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).