

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

W.J. WAGSTAFF AND DENNIS SOLARI

FILE NO. S-84-003

from an interpretation of the
Director, Department of
Construction and Land Use

Introduction

Appellants challenged the DCLU Director's classification of a proposed use of a site addressed as 6205 Corson Avenue South.

Appellants exercised the right to appeal pursuant to the procedures of Chapter 23.88, Seattle Municipal Code.

The matter was heard before the Hearing Examiner on February 7 and February 13, 1985, in conjunction with appellants' challenge to an environmental decision relating to the same property, Hearing Examiner File No. MUP-84-073.

Parties to the proceedings were: appellant Dennis Solari, pro se; and project applicant Fraternal Order of the Eagles, Seattle Aerie #1 by attorney Martin Silver. Guy Fletcher appeared on behalf of the Department of Construction and Land use Director. Because W.J. Wagstaff entered no appearance, further references herein will generally be to appellant Solari.

For purposes of this decision, all section numbers refer to Title 24, Seattle Municipal Code, as amended unless otherwise indicated.

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

Findings of Fact

1. The subject property is addressed as 6205 Corson Avenue South. The property, located in the Georgetown area of Seattle, was in former use as a 24-lane bowling alley. The property's legal description is of record and is incorporated herein by reference.

2. The site is zoned General Industrial (IG).

3. The project applicant is the Fraternal Order of the Eagles, Seattle Aerie #1. The Eagles purchased the subject property in 1984, after occupying facilities in downtown Seattle and then in the Riverton Heights area of King County.

4. The subject site has 73 parking spaces. In Interpretation Number IN6/84-005.4, the DCLU Director concluded that the Eagles use met City parking requirements. This conclusion was based on DCLU's classification of the use as a private club and on the requirement of one less parking space than was required for the alley. Appellants filed this appeal from that interpretation, principally urging that DCLU's improper classification of the use lead to the error in the number of parking spaces required.

5. The current plan is to convert the bowling alley facility into an Eagles club facility. Applicant in the

submittals of record provides that the square footage is 23,837; appellant indicates that King County records show the area to be 24,252 sq. ft. Based on the more particular floor plans and designs of record from the applicant, the Examiner accepts the square footage as 23,837.

6. Generally applicant proposes that the southernmost of three proposed multi-purpose rooms be used for intermittent bingo. According to Appellant Exhibit 3, the floor plan, this multi-purpose room number 1 offers as a feature a condiment bar. This bar is to be a holding area for bingo players' "light refreshments", according to the project architect.

7. The record is not consistent regarding the frequency of the proposed bingo games. One witness for applicant indicated that at one time the Eagles facility hosted bingo three times per week and that the attendance had dwindled to 75 people per night. A DCLU witness, however, indicated his understanding that bingo had occurred two times per week; that a maximum attendance per session had been up to 200; and that the most recent attendance was 75. Appellant expressed grave apprehensions that the bingo frequency and attendance would be major but offered no direct evidence on this point. The proposed Eagles facility will house a variety of other activities such as ping pong, band practice, dances and banquets.

8. Multi-use room number 2 would offer a wood dance floor and a podium which would be located along the west wall. Northernmost room number 3 would join room number 2 in connecting with the food-lounge area which is located along the east end of the building.

9. Proposed is an expanded food storage, kitchen, dining and lounge area. Based on a review of applicant's floor plan, Exhibit 3, DCLU estimated the combined food storage, kitchen, dining and lounge area as 4,500-5,000 sq. ft. in area. Applicant submits 5,000 sq. ft. Specifically excluded in the DCLU count was the area of the condiment bar, which is functionally separate from the referenced kitchen-dining area. Based on prior restaurant capacity use (100), however, appellant estimates that 50 percent of the floor area will be in food service and related uses.

10. The bingo games will be open to the public and the Eagles will sell food and beverage to participants. Otherwise, there will generally be no food sales to the public. No professional kitchen staff is proposed for the facility.

11. A Ballard Elks facility, cited by appellant to show an inconsistency in the DCLU position, had approximately 60 percent of its floor area dedicated to food service and consumption. See Exhibit 14. According to DCLU, however, the higher parking was applied to the Elks because the Elks had as its principal use the operation of an actual restaurant.

Conclusions

1. Concerning appeals from DCLU Interpretations, Seattle Municipal Code Section 23.88.20 provides that the decision of the Hearing Examiner is to be made upon the same basis "as was required of the Director." The Director's interpretation "shall be given substantial weight." Section 23.88.20(E)(4). Since appellant has not overcome the weight given the subject interpretation the same is affirmed.

2. By appellant's analysis, Eagles should be required to provide 152 parking spaces by proper categorization as an establishment for the sale and consumption on the premises of

food and beverages. (See Director's Interpretation Conclusion Number 1 for computation). The 152 parking space calculation assumes a floor area of 23,837 sq. ft.

3. Chapter 24.64, Seattle Municipal Code, addresses off-street parking requirements for the subject zone. At Section 24.64.120 is a table of uses and their required parking spaces. Some that could be relevant to the subject case include dance halls (1 space for each 75 sq. ft. of floor area used for dancing); bowling alleys (5 for each bowling alley, in this case a total of $5 \times 24 = 120$); private clubs (1 for each 200 sq. ft. of gross floor area); and the category urged by appellant as applying to the subject use—"establishments for the sale and consumption on the premises of food and beverages, including fraternal and social clubs." For establishments with more than 4,000 gross sq. ft. of area the numerical parking requirement is 20 plus 1 space for each 150 sq. ft. of gross floor area in excess of 4,000 sq. ft.

4. Title 24 definitions are at Chapter 24.08, Seattle Municipal Code. The DCLU interpretation at issue categorized the proposed use as a private club. The term "private club" is not defined at Chapter 24.08. Neither is an "establishment for the sale and consumption on the premises of food and beverages..." Chapter 24.08 includes no definition of a fraternal or social club. One relevant definition that is included in Chapter 24.08 is that of a fast food restaurant, Section 24.08.190:


...An establishment whose principal business is the sale of foods, frozen desserts or beverages served in or on disposable containers (emphasis added)...

5. Since Chapter 24.08 defines a fast food restaurant as one whose principal business is the sale of foods, but in or on disposable containers, the principal use of an establishment, e.g., the sale of foods, is inferentially critical to the analysis of proper categorization for purposes of establishing a parking requirement. It has not been demonstrated that the bingo events and related food sales will constitute a principal function of the Eagles facility. Further, the evidence of record shows that while bingo games will be open to the public and bingo players will be sold food and beverages, the food service and other capabilities of the establishment are incidental and principally for use of the private membership. The floor plan shows that the food area will approximate 4 to 5,000 sq. ft. of some 24,000 sq. ft. of floor area. Exclusion of the condiment area was not inappropriate since the area is contemplated by project applicant to service the bingo area's food needs. There is no evidence in the record of major dining events that are to be open to the general public. And, the proposed use is distinguishable from the Ballard Elks facility where some 60 percent of the floor area was proposed for dining-related use. Under the circumstances, the burden of showing that the Eagles use should have been classified as one specifically "for the sale and consumption...of food and beverages..." has not been met.

Decision

The Director's interpretation is affirmed.

Entered this 27th day of February, 1985.


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. Akada v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73. 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.