

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeal of

DARIGOLD, INC.

FILE NO. S-86-008

from an interpretation of the  
Director, Department of Con-  
struction and Land Use

ORDER OF SUMMARY JUDGMENT

1. Except as modified by the stipulations and other items of this record, including the provisions of this order, the Hearing Examiner Findings of Fact from S-83-008 (DCLU Number 82-013) are incorporated herein by reference.

2. In S-83-008, truck trailer use of the north half of Block 7, Squire's Lakeside Addition, was in issue. This property was separated from the main plant to the west by 36th Avenue South. Since the Hearing Examiner decision on S-83-008, 36th Avenue South has been vacated.

3. In the present case the use of the southerly portion of Block 7, Lots 20-30, is in issue.

4. Darigold Inc., has replaced employee parking use of Lots 20-30 with parking space for 64 trucks, 32 spaces per row. Trucks parked in these spaces are proximate to vertical power sources which assist in keeping truck contents refrigerated.

5. In general, the subject trucks are used daily. On weekends the trucks may remain unused on site for a period, per DCLU's stipulation, of up to 48 hours.

6. DCLU's position is that when these trucks are in non-use and located on Lots 20-30 the trucks are "in storage." That department's Interpretation of July 17, 1986, accordingly concluded that "any truck parking on lots 20-30 should be viewed as principal use storage and therefore subject to the restrictions" of Seattle Municipal Code Section 24.52.050. See paragraph 2, Interpretation "Decision".

7. Darigold appealed the July 17, 1986 interpretation to the Hearing Examiner. The matter was set for public hearing and came on for a prehearing conference on Tuesday, August 26, 1986. The parties stipulated that appellant's motion to dismiss should be treated as a summary judgment motion and that the same could be argued and disposed of at the prehearing conference.

8. By stipulation and order of the prehearing conference on this matter, paragraph 3 of the Interpretation "Decision" is stricken.

9. Darigold argues that since 36th Avenue has been vacated, the Hearing Examiner decision in S-83-008 indicates that the complained-of truck use is "accessory" to the principal use of the plant and that therefore no setback from the (east) zone line is required.

10. DCLU agrees that if the use is accessory, there is no Code requirement for a setback. However, DCLU argues, there can be and in fact are two principal uses of this site notwithstanding the street vacation: (a) storage of the subject trucks and (b) "the operation of the creamery itself."

CONCLUSIONS

1. By stipulation of record and order from the prehearing conference on this cause, Decision paragraph 3 of the July 17, 1986, DCLU interpretation is stricken.

2. Both parties stipulated that the appellant's motion to dismiss should be treated as one for summary judgment. The Hearing Examiner issues the following conclusions and this Order pursuant to that stipulation.

3. In Seven Gables v. MGM/UA Entertainment, 106 Wn. 2d 1, 13 (1986) the Washington State Supreme Court state that the summary judgment process is..."to avoid a useless trial when there is no genuine issue of any material fact..." The Court continued:

Therefore, the adverse party must set forth specific facts showing that there is a genuine issue for trial or have the summary judgment, if appropriate, entered against them.

4. There is no genuine issue of material fact in this case. Both parties agree that the company trucks are generally used daily and are left unutilized on Lots 20-30 for periods of less than 48 hours. Both parties also agree that if the use is accessory, no setback is required pursuant to Title 24.

5. Therefore, the issue for Hearing Examiner resolution is whether under the provisions of Title 24 the trucks' usage of Lots 20-30 constitutes ~~is~~ a principal/storage use and whether a setback is required.

6. DCLU cites Seattle Municipal Code Section 24.52.050 as the operative section in this dispute. Applicable to the present M zoned site, the Section is entitled "Principal uses permitted fifty feet (50') from R Zone" and provides as follows:

Uses permitted when fifty feet (50') or more from any lot in an R Zone are... A. Storage or sales yard for building material, contractor equipment, delivery vehicles, retail lumber, feed and/or fuel...

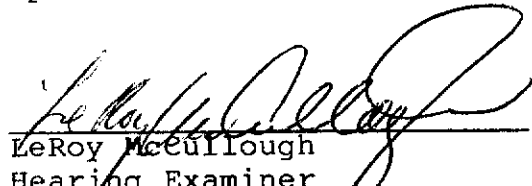
7. In order for DCLU to prevail it must be concluded that the truck usage of Lots 20-30 is a principal use and secondarily that the truck use constitutes "storage or sales yard for...delivery vehicles."

8. There is no support in the code or common law for the position that the subject trucks' nonuse and siting on Lots 20-30 constitutes "storage... for delivery vehicles." Cf. State ex rel. Standard Mining and Development Corporation v. the City of Auburn, 82 Wn. 2d 321, 510 P.2d 647 (1973); State v. Larson Transfer and Storage, 246 NW 2d 176 (1976); Mergenthaler v. State, 293 A. 2d 287 (1972). The trucks are ordinarily in daily use. They are left at the subject location neither for "later" use, nor for "safekeeping." (Cf. Websters New Collegiate Dictionary, 1973). A County Ordinance permitted parking but no storage of vehicles. After a review of cases from other jurisdictions the Court deduced that "parking connotes transience, while storage denotes a certain degree of permanency." To the particular case, the Court stated that "parking has in it the element of an automobile at least ready for use." St. Louis County v. Pfitzner, 657 S.W. 2d 262, 264 (1983).

9. Further, the Hearing Examiner concludes as a matter of law that the subject truck usage of Lots 20-30 does not constitute a principal use. That use is accessory, i.e. "incidental" to the main plant operation. See Conclusion 5 and remainder of Hearing Examiner decision, S-83-009, and citations therein.

10. Summary judgment for the appellant is therefore appropriate. The hearing date of September 5, 1986 in this matter is hereby stricken.

Entered this 2nd day of September, 1986.

  
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