

FINDINGS AND RECOMMENDATION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Recommendation of
the Landmarks Preservation Board for

BENTON'S, INC., STREET CLOCK

FILE NO. LP-81-001

Introduction

The Landmarks Preservation Board filed its Recommendation on Controls and Incentives with the Hearing Examiner pursuant to Chapter 25.12, Seattle Municipal Code, for the Seattle Street Clock Thematic Landmark Group. An objection was filed by Benton's, Inc., with regard to the clock at 4333 University Way N.E.

A hearing was held June 11, 1981. Benton's, Inc., was represented by C.M. McCune, attorney at law. The Landmarks Preservation Board was represented by James E. Fearn, Jr., Assistant City Attorney.

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 recommendation.

Findings of Facts

1. The Landmarks Preservation Board (Board) designated the Seattle Street Clocks Thematic Group consisting of nine clocks as landmarks. The street clock at 4333 University Way N.E., owned by Benton's, Inc., is one of that group.

2. On March 24, 1981, the Board filed the "Agreement on Controls and Incentives for the Seattle Street Clock Thematic Group". Benton's, Inc. had not signed the agreement.

3. On April 6, 1981, Benton's, Inc., filed its objection to the agreement.

4. The "Street Clock Thematic Group's" designation was based on its satisfaction of criteria in Section 25.12.350(D) and (F), viz:

(D) It embodies the distinctive visible characteristics of an architectural style, or period, or method of construction;

(F) Because of its prominence of spatial location, contrasts of siting, age, or scale, it is an easily identifiable visual feature of its neighborhood or the city and contributes to the distinctive quality or identity of such neighborhood or the city.

5. The Board specifically determined, among other things, that the street clock makes a substantial contribution to the character and identity of the street and a significant contribution to the pedestrian charm and personality of the street and sidewalks.

6. The controls proposed by the Board would require that:

a Certificate of Approval, issued by the Landmarks Preservation Board, must be obtained, or the time for denying a Certificate of Approval must have expired, before the owner or other parties may relocate, remove, or destroy any of the above clocks, or make alterations or significant changes which would affect:

1. the external appearance of the clock,
2. the retention of original mechanisms (where extant and complete),

provided that all in-kind maintenance and repair of the above noted features shall be excluded from the Certificate of Approval requirement.

7. Economic incentives noted as available are:

1. the availability of Historic Preservation Grants-in-Aid funds, on an application basis, should the property be entered in the National Register of Historic Places;
2. upon the request of the owners, the Landmarks Board staff hereby agrees to work with the Board of Public Works in an effort to repeal the annual street use permit fees currently levied upon the owners of Landmark street clocks;
3. support from the Landmarks Preservation Board should any of the above listed street clocks be imminently threatened by public actions.

8. The subject clock was purchased circa 1916. It has been moved to different locations, all within the same block, three times. Except for one month, following a truck-clock collision, the clock has run continually since it was purchased. Repairs in the last five years have amounted to \$11-12,000.

9. The clock is believed by Ben Benton to be worth more than \$15,000.

10. The intentional damaging of the clock by its present owner is improbable.

11. There is a possibility that the clock could be moved should the owner go out of business or choose to sell it for other reasons, thus destroying the relationship of the clock to University Avenue.

12. No facts showing that the recommended controls would deprive the owner of reasonable economic use were adduced.

13. The owner objects to the requirement of obtaining a Certificate of Approval before moving the clock as a matter of principle.

14. The owner urges that the controls constitute a "taking" under Article 9, Washington State Constitution, and the Fifth and Fourteenth Amendments of the United States Constitution.

15. Section 25.12.750 provides for consideration of reasonable economic return at the time of an application for a Certificate of Approval.

Conclusions

1. The Board has established that the controls proposed are reasonably necessary to preserve the street clock as an architectural element of University Avenue.

2. The owner has not proven that the controls proposed would prevent Benton's, Inc., from realizing a reasonable return. The Code provides an opportunity to present evidence that a

Certificate of Approval for change is necessary to achieve a reasonable return on the site at such time as the owner desires to make that change.

3. The Supreme Court focused on the character of the action taken by the City and the nature and extent of the interference and determined that there had been no taking in the Penn Central case finding that the restrictions imposed were substantially related to the promotion of the general welfare and permitted reasonable use of the landmark. Penn Central v. New York, 438 U.S. 104, 57 L. Ed.2d 631, 98 S. Ct. 2646, reh.den., 58 L. Ed.2d 198, 99 S. Ct. 226 (1978). Here the controls proposed do not restrict the use of the street clock and are substantially related to the promotion of the general welfare so no "taking" within the meaning of the 5th Amendment would occur were they imposed.

Recommendation

The Hearing Examiner recommends that to avert the destruction or removal of the subject street clock the following controls should be imposed:

A Certificate of Approval issued by the Landmarks Preservation Board must be obtained or time for denying a Certificate of Approval must have expired before the owner or other persons may relocate, remove or destroy the clock or make alterations or significant changes which would affect the external appearance of the clock or the retention of original mechanisms if extant or complete, provided that all in-kind maintenance and repair of those features shall be excluded from the Certificate of Approval requirement.

The economic incentives noted by the Board as available follow and are appropriate:

- (1) the availability of Historic Preservation Grants-in-Aid funds, on an application basis, should the property be entered in the National Register of Historic Places;
- (2) upon request of the owners, the Landmarks Board staff should work with the Board of Public Works in an effort to repeal the annual street use permit fees currently levied upon the owners of landmark street clocks;
- (3) support from the Landmarks Preservation Board should the above named street clock be imminently threatened by public action.

Entered this 23rd day of June, 1981.

M. Margaret Klockars
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Deputy Hearing Examiner

NOTICE OF RIGHT TO PETITION
FOR FURTHER CONSIDERATION

Pursuant to Section 27.51 of the Zoning Ordinance (86300, as amended), any party affected by a recommendation of the Hearing Examiner may submit a petition in writing to the City Council requesting further consideration. The petition must be submitted within fourteen days after the date of mailing the recommendation of the Hearing Examiner and must be addressed to: City Council, Urban Development and Housing Committee, Municipal Building, Seattle, Washington 98104.

The petition should state clearly and concisely the reason(s) why further consideration is necessary, and should refer specifically to any errors alleged to exist in the Hearing Examiner's Findings and Conclusions. The City Council's consideration of the petition will be based upon the record of the Hearing Examiner's hearing, and new exhibits or other evidence in support of the petition should not be submitted. The Council, in its discretion, may allow oral or written arguments based on the record when it considers the petition.