

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

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

THE MUSIC HALL THEATRE

FILE NO. LP-85-001

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 Music Hall Theatre at 702 Olive Way.

A hearing was held on the recommendation on November 20, 21 and 22, 1985. Parties to the proceeding were the Landmarks Preservation Board represented by James E. Fearn, Jr., assistant City Attorney, and the Music Hall Theatre, Inc., the owner, represented by Walter S. Tabler, Smith, Smart, Hancock and Tabler.

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

Findings of Fact

1. In November, 1974, the Landmarks Preservation Board (hereafter "Board") voted to approve and recommend the designation of the 7th Avenue Theatre Building as a Seattle landmark pursuant to Ordinance 102229. In June, 1985, the Board approved Controls and Incentives for Recommendation to City Council for the Music Hall Theatre (hereafter "Theatre"), a successor name of the 7th Avenue Theatre.

2. The Music Hall Theatre, Inc., (hereafter "Owner") filed its objection to the controls and incentives recommended by the Board on the grounds that the controls would deny a reasonable economic use of the site, are unreasonable, exceed the authority of the Board and are in violation of Ordinance 106348, state and federal statutes and the constitution and offer insufficient incentives.

3. In September, 1983, the Owner had formally requested that the Board revoke the designation of the Theatre as a landmark.

4. The Board's decision to approve designation of the site was based on Section 6(1) and (5), Ordinance 102229, according to Ellen Miller-Wolfe, Board coordinator. Those standards were:

- (1) has significant character, interest or value, as part of the development, heritage or cultural characteristics of the City, State or Nation; or is associated with the life of a person significant in the past; or...
- (5) embodies those distinguishing characteristics of an architectural-type or engineering specimen....

5. Testimony at the hearing, November 6, 1974, to consider designation of five theatres and discussion among Board members following public testimony reported in the minutes of the hearing, Exhibit 68, consisted of the following statements about the 7th Avenue Theatre:

- ...the architectural design of this structure was a complete disaster.
- ...a fine expression of a theatre movie facade.
- ...a fantasy but is in good proportion and works well with the interior design.
- ...designed as a legitimate theatre as well as a concert hall.

- ...contains a legitimate stage together with an elevated orchestra lift, still operational.
- ...inconsistency between the interior and exterior.
- ...interior in relation to its size and comfortable building space was especially noteworthy.
- ...each theatre is presenting a different architectural concept, use and era in its time.

6. The Controls and Incentives for Recommendation to City Council provides:

To assure the preservation of the specified feature and characteristics of the Landmark, the following controls shall be imposed:

A Certificate of Approval, issued by the City of Seattle's Landmarks Preservation Board pursuant to City Ordinance 106348, must be obtained or the time for denying a Certificate of Approval application must have expired, before the owner may make alterations or significant changes to:

A. The south and west facades including the cast stone elements and windows; the roof;

B. The lobby, the decorative elements of the proscenium, the ceiling, and the ship hull motif projecting from the east wall of the auditorium.

A Certificate of Approval is not required for any in-kind maintenance or repairs of the above noted features.

The following economic incentives are hereby noted as potentially available to the owner:

The incentives to all Seattle Landmarks on an application basis, under the Zoning Code, or others as may be available (sic).

Exhibit 36.

7. The Board's coordinator explained, from her reading of the records of the meeting, that the two facades proposed to be controlled are representations of opulence and fantasy Moorish or Spanish-Hollywood kind of motifs of movie palaces of the '20's. The control of the roof is important to allow the extensions of the piers and other ornamental detail to stand out against the sky, according to the coordinator. The lobby, proscenium, ship hull balcony and ceiling are important as expressions of extravagance and opulence of a movie palace.

8. A Board member, Linda Larson, remembers that the Board considered the impact the controls would have on the developability of the property.

9. Walt Greissinger, a practicing architect with an advanced degree in historic preservation and member of the Board, offered his view of the historical significance of the features proposed to be controlled. He considers the facades to be a primary example of theatre architecture in 1929. The architect created a fantastic, theatrical, dreamlike building in the architectural style of Revival Moorish-Spanish Renaissance of the 14th and 15th centuries. Mr. Greissinger sees the roof's significance in the way it helps carry out the theatrical, three-dimensional quality of what the building is in its entirety, a theatrical expression. The lobby is part of the entire theatrical experience. The grand scale and grand space of the entryway is sequential and leads one into the main space of the

auditorium. The proscenium and ceiling are more ornamental details making up the whole theatre experience, carrying out the whole theme. The features with the most historic significance, according to Mr. Greissinger, are the facades and roof.

10. The Theatre is located at the intersection of 7th Avenue and Olive Way. The lot on which the theatre building is located is slightly irregular in shape and contains 22,380 sq. ft. of area before sidewalk widening. The figure of 21,745 sq. ft. was also used and may represent the area after sidewalk widening. The lot abuts an alley on its easterly side. Across the alley is a 19 story office building.

11. The structure is about 170-180 ft. long, along 7th Avenue, and 26-28 ft. high. The upper portion of the west facade is set back about 25-30 ft. and rises to some 60 ft. above street grade. Ornamentation extends some 10 ft. above the roof line. Five false windows and four ornamental columns line the upper facade on the west side. The south elevation is approximately 120 ft. long and rises some 60 ft. plus ornamentation, above the street except for the westerly 25-30 ft. which is 26-28 ft. high. Again, five false windows and four vertical columns decorate the facade above the first story. The structure has some 37,000 sq. ft. of floor area plus a basement.

12. The auditorium measures about 6 stories or 60 ft. in height and 140 ft. from the front of the stage to the rear of the auditorium. It is 90 ft. wide at the widest point.

13. The ceiling identified in the proposed controls is some 90 by 130 ft. The hexagonal-shaped details are some 8 ft. across.

14. The outside dimensions of the proscenium are 58 ft. wide and 48 ft. high. The opening is about 45 ft. wide and 38 ft., almost four stories, high.

15. The south and west facades are reinforced concrete walls, some 8 in. thick with cast stone ornamentation applied to the wall with mortar and wires or straps. The plainer sections are plaster or stucco over the solid wall. Pillars on the facades are ornamental only.

16. The lobby is constructed of cast-in-place concrete with plaster ornamentation.

17. The Board and Owner, prior to the hearing in this matter, stipulated as follows:

1) No reasonable economic use can be made of the Music Hall site solely as a theatre facility, including its use for live performance, a single cinema, or other single auditorium purpose; and

2) The only means by which a reasonable economic use can be made of the Music Hall site is through its redevelopment or through sale of the property to a third party for such development.

18. The Owner commissioned its architect to ascertain what uses of the property would conform to the zoning of the site. The alternatives with the proposed controls were a multiplex cinema and a mixed use or shopping mall with retail and cinema. An office building without the proposed controls was considered. Schematic plans for the alternatives were developed by the architect. An estimator, Bill Jensen of Hoffman Construction Co., prepared cost of construction estimates for each. A developer, Richard Clotfelter, and Fred A. Danz, chairman and president of Sterling Recreation Organization (SRO), a motion picture retailer, subjected the alternatives to economic feasibility analyses.

19. None of the estimator's cost projections included the cost of retaining existing features proposed for control.

20. "Soft" costs are usually estimated to add 40 percent of the hard costs to the project.

21. One alternative considered was using the building as a multiplex cinema by dividing it into five auditoriums, two on the first floor and creating a full second floor for three more. "Hard" construction costs for the renovation of the interior only would be \$1,643,000. The exterior would have to be cleaned up, according to Mr. Danz, at a cost of at least \$315,000, according to the estimator, and considerably greater, according to Mr. Danz. With items not included by the estimator and "soft" costs the total would be around \$2.5 million plus another \$1.25 million for equipment.

22. Mr. Danz prepared a pro forma for the 5-plex theatre option, based on his experience with some 100 theatres SRO currently operates, which projects an annual loss of \$470,680. Certain costs of operation of the renovated building, like labor and energy, would be higher than for a new one designed specifically for the use. Security costs at this location would be higher than for suburban location. Mr. Danz also considered certain negative aspects of the location, little night time activity, distant parking, and the theatre's competition. In Mr. Danz' expert opinion, multiplex use of the property is not a viable economic use. The Board admits the correctness of that conclusion.

23. Schematics were prepared for the alternative of renovating the building for use as a retail mall with cinema, the mixed use option. The design provides for street level retail, second level retail and cinema and basement retail with an atrium to provide visibility of the off street level floors.

24. Mr. Callison, who has had considerable experience with shopping mall design, determined that the economic success of this alternative is very unlikely because it is outside the traffic pattern for retail use in downtown Seattle, involves too much unrentable area, contains nothing to draw the shopper to lower and upper levels, which is traditionally extremely difficult, and the controlled design elements are overpowering for a retail environment where the merchandise must be featured.

25. The "hard" costs of construction for the interior for the mixed use option were estimated by Mr. Jensen to be \$2,454,470. The exterior would also need renovating at \$315,000.

26. Mr. Clotfelter, after analyzing the costs of development, potential revenues and cash flow and marketing problems of the site, concluded that it is unlikely that a loan for the rehabilitation of the property could be obtained. He estimates that potential rental revenues would justify a loan of around \$1.4 million compared to the \$9 million needed, given hard costs, soft costs, tenant allowances and land value. He projects a return on cost of approximately 5%, a .5% return on equity and a 100% risk factor.

27. An office building without controls was chosen by Callison, Clotfelter and Clise as the only alternative use which would be economically feasible after rejecting housing, multiplex theatre, retail use and hotel use. Housing was rejected because the site is not residentially oriented and the market in Seattle is currently weak. Hotel use was rejected because the market is currently saturated.

28. The schematic proposal for an office building maximizing the amount of space allowed by the code was prepared by the architect. The building would provide 4 floors of below grade parking, retail space and office entrance at street level and 14 floors of office building above. This is based on a base floor to lot area ratio of 8:1 raised to 11:1 with bonuses.

29. Mr. Jensen's estimate for hard costs to construct the office building alternative is \$15,169,000 plus demolition costs of \$550,000 and parking facility construction costs of \$2,628,000.

30. At just over \$55 per square foot or \$65-70 per square foot with the garage both Mr. Callison and Mr. Clotfelter found the office building without controls option to be economically feasible. Mr. Clotfelter projected the rate of return on cost to be 11.4% and on equity to be 9.4%.

31. To attract capital for investment the rate of return on equity must be more than 9% short term and over 18% for the longer term considering tax benefits and inflation, according to the uncontroverted testimony of Mr. Clotfelter. An 11% return on cost and 9% return on equity may be acceptable if the investment is fairly risk free.

32. The return on costs projected for the office building option is so near the lower end of acceptability that \$860,000 to \$1,000,000 in additional costs would make the project not feasible.

33. An office building developed to an FAR of 8:1 would not be feasible because the core size is fixed and reduces the proportion of rentable space. Further, the cost of underground parking cannot be spread over as much rentable area.

34. The critical considerations in the design of an office building are two: the amount of usable space per floor and the distance from the core area to the glass line.

35. In Mr. Greissenger's opinion it is possible to incorporate the facades into an office building by raising the tower only over the setback portion of the old building. He suggests using the lobby space as an atrium with the core located in the vestibule just north of the lobby, a corridor behind the existing shops and a glass roof to add light to the interior spaces. He acknowledges that the ceiling could not be saved if the building was converted to office use, little of the proscenium could be saved and the plaster decorative elements should be replicated rather than preserved, if desired. Mr. Greissinger did not examine the economic feasibility of his proposal.

36. To achieve the maximum FAR with the setback proposed by Mr. Greissinger, an additional three stories would be added. The extra height would add some \$130,000 in hard costs to the structural components to handle lateral forces, \$40-50,000 in hard costs for more structural steel in each floor plate because of the cantilevering necessary and some additional \$350,000 in the cost of the elevator.

37. The footings for the tower would reduce the width of the parking to some 85-90 feet which would be 25 per cent less efficient requiring a seven story excavation instead of four story excavation for parking. This would add some \$850,000 in hard costs.

38. Bracing of the roof line ornamental elements would cost some \$110,000 in hard costs.

39. The smaller tower would create marketing problems because the width of the office floor plate would be less than necessary to provide the minimum distance between the central core and outside walls.

40. Dean Ratti, structural engineer, has studied the structure and testified as to the method and cost of preserving the controlled elements. His opinions are given great weight by the hearing examiner because of his expertise.

41. To preserve the walls while constructing a building within, above and below, a gargantuan truss system would have to be constructed on the outside of the wall to provide support before demolition could begin. The trusses would have to be 20 ft. wide and 60 ft. high and be founded in the ground. A foundation would have to be drilled in below the depth of the future garage with a new underpinning wall under the sidewalk for all existing and new columns. The barrier and excavation required to support the wall would add somewhere around 2 to 4 months to the project.

42. Connecting the preserved facade walls to a new building wall would present engineering problems since the old wall is "stiff" and the new building must be able to deflect up to 8 to 10 inches. One possible solution would be to cut up the facades and hang the pieces on the new walls.

43. The cost to preserve the facades, alone, during construction, without attachment to the new building, would exceed \$1,000,000, making the project economically infeasible.

44. To put new windows in the old facade would require sawing through the 8 inch thickness and then providing new support on the back of the wall since its structural integrity would have been disrupted. Unless new windows were created the first five floors of the building would have none on the south and west.

45. Without windows the first five floors of the 14 story office building would be unrentable unless a tenant was found with special needs suited to windowless floors.

46. Because the lobby is all one piece and weighs some one million pounds it would have to be cut in pieces to be moved. To leave in place while the building is demolished and a new one constructed would require a similar process of support as used for the facades and additional cost.

47. The ceiling is plaster on wire mesh suspended from the roof trusses and slab by wires. It is probably 3/4 - 1-1/2 in. thick and very fragile. The structural engineer would expect substantial loss if removal was attempted.

48. The ornamental brackets between the ceiling and walls in the auditorium are built-up plaster on wire mesh backed by form steel. Each is approximately 18 ft. high. The risk of loss would be huge but if removal was attempted, bracing inside should be added or a cradle built on the outside and a crane used to pick it up.

49. The decorative trusses on the ceiling would have to be removed in pieces and treated the same as the brackets.

50. The ship hull motif is also constructed of built-up plaster on wire mesh though there may be structural steel inside the ship. The motif is some 30 ft. high. If it was to be kept in the building during demolition it would require underpinning, undershoring, braces, etc. The better approach would be to remove it for storage during construction but it would have to be cut into pieces.

51. In the cases of the facades, ceiling and ship hull motif, Mr. Ratti finds the risk of loss is so high that preparations should be made to recreate the pieces such as castings, drawings, etc.

52. One of the Owner's architects, Michael Whalen, who is knowledgeable about cost implications of construction, looked at the effect of preserving and incorporating each of the elements in a new building and concluded that the only meaningful part that could be preserved and incorporated economically would be the central portion of the south facade.

53. A room the size necessary to display a 90 by 130 ft. ceiling, 60 ft. high, could not be economically incorporated into an office building.

54. The multiplex theatre use of the building would have an effect on the features proposed for control if designed as suggested in the architect's schematic plans for those uses. The ship hull motif would be divided by a floor of the theatres which would intersect the motif above the bow. The connection would have to be sealed for acoustic purposes. Dividing the auditorium vertically into different rooms would require penetrating the ceiling for fire safety and acoustical requirements. The decorative beams running east and west on the ceiling would not be parallel to new partitions needed. Movie screens in the multi-auditorium theatre could completely cover the proscenium. Further, the scale of the ornamental elements that would show would be overwhelming in the smaller rooms with low ceilings.

55. The mixed use schematic plans would also require interrupting the ship hull motif with a floor. Dividing the second level shops by the necessary "neutral strips" would impact the ceiling detail. The proscenium would have to be interrupted and the ceiling penetrated for the theatre. The lobby would have to be opened up to make usable for retail.

56. Testimony was uncontroverted that the area the theatre property is located in is on the fringe of a "desirable" area. A number of sites in this area are available for development without the constraints of landmark controls.

57. According to an appraiser, Keith Riely, who has extensive experience with downtown Seattle properties, the highest and best use of the Music Hall Theatre site is high rise office use. He found no other uses to be economically feasible at this time.

58. The value of the Music Hall Theatre site is \$175 per sq. ft. or \$3,825,000 according to Mr. Riely's appraisal. The improvements on the site neither add to nor detract from its value.

59. Mr. Riely testified that the proposed controls would devastate the value of this site since its sole value is in redevelopment. The hearing examiner finds in accord with Mr. Riely's un rebutted testimony.

60. The possibility of getting certificates of approval to demolish controlled features does not reduce the impact of the controls since there are other sites available to developers in the area without controls. Because the entire economic worth of this property is in redevelopment the designation of, and controls on, this property affect it differently than other landmark properties.

61. The only income from the Theatre property in the past year has been rental of the north facade for a sign. In 1985, to November 22, the corporation has a net operating loss of \$28,360. Net operating income in years prior has been as follows: 1984-\$18,956; 1983-\$60,002 (including a \$10,000 addition of furniture and fixtures in lieu of back rent); 1982-\$39,512; 1981-\$9,165; and 1980-a \$97,624 loss.

62. Alfred Clise, president of Music Hall Theatre, Inc., and all other Clise family organizations, places a value of \$3.9 million on the property without designation and controls and with the controls, no value.

63. A tax break would not benefit the corporation since if it was rehabilitated to take advantage of the investment credit the property would still have no economic use and no income against which to use the credit.

64. The investment tax credits which are now available for designated landmarks would not be sufficient to make rehabilitation of the Music Hall Theatre feasible and may be reduced or eliminated in a new tax package.

65. Mr. Clotfelter believes the market to be flooded with development rights for transfer (TDRs) from low income housing and landmarks. This testimony was unrefuted. The certainty associated with the housing TDRs makes them more attractive to prospective purchasers than those from landmarks. The value of TDRs is going down.

66. The Owner does not have specific development plans for the property because it cannot obtain financing without a major tenant and cannot secure a tenant since the Owner cannot offer any date for occupancy with the pendency of the designation process.

67. The Mann Building is a designated landmark with a theatre in the building. It is similar to the Theatre in that the two facades of the building are subject to landmark controls. There are material differences however. The facades are 24 ft. high instead of 60 ft. and are to be incorporated into redevelopment of the entire block, instead of a 23,000 sq. ft. lot. The costs then can be spread over the full block. The Mann Building is designed for retail on the ground floor and office on the second floor with normal window openings. Those uses will be continued. That building is located in the desirable retail and office core of downtown Seattle where rents are high.

68. The experts' opinions split as to whether the architectural style is compatible with office use. All agree the purpose of the style is to create a fantasy which Callison and Clotfelter feel would make marketing of the building difficult. Greissinger sees it as an advantage. If the ability to market is affected, the rate of return may be even more depressed.

Conclusions

1. The Hearing Examiner's task, pursuant to Chapter 25.12, Seattle Municipal Code, is to prepare a recommendation to the City Council as to what controls and incentives should apply to the landmark. Section 25.12.610. The Hearing Examiner is to decide whether to recommend all or any of the controls and incentives proposed by the Board or whether to recommend modified controls. Section 25.12.570. Section 25.12.570 provides specifically that:

The Hearing Examiner shall not recommend any control which is not set forth with adequate specificity, or which is inconsistent with any provision of this chapter, or for which the reason and need is not established with respect to the specific feature and characteristics of the site, improvement or object to be preserved, or which requires that the site, improvement or object be devoted to any particular use, or which imposes any use restrictions, or any control if the effect of such control...would be to prevent the owner from realizing a reasonable return on the site, improvement, or object.

Section 25.12.580 provides:

In no event shall the recommendation of the Hearing Examiner or any proceedings under or application of this chapter deprive any owner of a site, improvement or object of a reasonable economic use of such site, improvement or object.

2. The owner attempted to prove that the proposed controls effectively dictate the use of the site by requiring the preservation of the specified elements and would deny a reasonable return. The Board takes the position that its proposed controls merely require that the owner gets its approval, through the certificate of approval process, prior to any alteration or destruction of the controlled features. Therefore, it urges, only the effect, if any, on economic return from the requirement that a certificate of approval be obtained can be considered at this step in the landmarks preservation process. The evidence of the effect on return from required preservation of the features should only be considered, it argues, at the time of application for a certificate of approval to change or demolish those features.

3. Whether the proposed controls merely impose one additional step in the process or actually are intended "(t)o assure the preservation" of the features, as stated in the Board's document recommending the controls, Exhibit 36, the owner has produced substantial evidence to show that the existence of controls, whichever the intent, would prevent the owner from realizing a reasonable return on the site and should not be imposed. The record reflects that the market value of the property without controls, see Finding No. 59, would be "devastated" by the existence of the controls because of the uncertainty accompanying any discretionary approval. Market value is one factor that may be considered. Section 25.12.590.A.

4. The Board's concern that controls could not be imposed on any landmark if the effect of the existence of the controls on value is considered is unfounded. This property is unusual in that it currently has no use because the only use for which it is designed is uneconomic and redevelopment currently holds the only prospect for a reasonable return. In most landmark cases, the design allows some economic use to be made of the site. Here, the owner cannot sell the property or obtain funding for redevelopment because of the uncertainty created by the controls.

5. If the controls require the preservation of the features, as suspected by the Owner, the overwhelming weight of the evidence is that a reasonable economic return could not be achieved, based on the factors in Section 25.12.590A, B, C and D. The expert testimony clearly showed that: no present profitable use of the Theatre property exists; a profitable use requires redevelopment; incorporation of the features proposed for control in new development is not economically feasible, with the possible exception of the central portion of the south facade. The Board's expert did not have the advantage of the analysis of the structural engineer or estimator in making his assessment of the potential for incorporation of the features so his opinions cannot be given the weight given to others. The record clearly shows that the cost of preservation precludes economic feasibility.

6. The owner contends that the Board's record of the designation process and the testimony of the Board's architect witness support the preservation of the theatre as a whole, if at all, because it is the theatre which was determined to have historical or cultural significance. That contention has support in the record, except as to the facades. Therefore, the need for control of the specific features, except for the building facades, has not been clearly established.

7. The owner contends, in the alternative, that so many of the features are to be controlled that the practical result is preservation of the theatre use, contrary to Section 25.12.570. As no controls can be recommended that argument need not be addressed.

8. Since any controls would have the effect of preventing the owner from realizing a reasonable return on the property, none may be recommended. Section 25.12.570. If the Council should decide to adopt the controls recommended by the Board, Exhibit 36, the Board suggests a semi-colon should be substituted for the comma following "lobby" in paragraph B to more clearly specify the Board's intent that it is the decorative elements of the ceiling that are to be preserved, not the entire ceiling.

9. The Owner urges that the Council use its discretion pursuant to Section 25.12.640 not to pass the ordinance designating the property as a landmark since the designation would be a meaningless gesture. The Hearing Examiner's authority is limited to recommending appropriate controls and incentives so the Hearing Examiner can only acknowledge the Owner's request.

Recommendation

The Hearing Examiner cannot recommend that any controls be imposed because the effect of imposing controls would be to prevent the owner from realizing a reasonable return on the site.

Entered this 20th day of December, 1985.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner

NOTICE OF RIGHT TO PETITION
FOR FURTHER CONSIDERATION

Pursuant to 25.12.620, Seattle Municipal Code, any party of record may file a written notice of appeal with the City Council within 30 days after the date of mailing the recommendation of the Hearing Examiner. Copies must be served on all parties of record.