

DISTRICT LINES

NEWS AND VIEWS OF THE HISTORIC DISTRICTS COUNCIL SPRING 2005 VOL. XIX NO. 1

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TO MAKE A CASE FOR LANDMARKS HARDSHIP IS NOT SO EASY

The following article deals with a legal issue—hardship caused by the Landmarks Law—which is more talked about than invoked. When it is invoked, however, it frequently attracts much public attention, which is why we are taking a look at it here. Hardship claims can be made against any kind of land-use regulation, but this article will discuss only landmarks issues.



photo: Peter Aaron/Esto Photographics Inc.

Grand Central Terminal, subject of the landmark 1978 U.S. Supreme Court case on “takings.”

THE NEW YORK CITY Landmarks Preservation Law states it well: to protect buildings and landscape features of special character “is a public necessity and is required in the interest of the health, prosperity, safety and welfare of the people.” While no preservationist would disagree with that, the Landmarks Law places the burden of compliance on individual property owners, a burden that continues to raise constitutional issues.

Private property ownership is given special protection under the United States Constitution, in both the Fifth and the Fourteenth Amendments, and the assumption of private property for the public good has given rise to a large body of “takings” law. The Fifth Amendment provides that no person shall “be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” The Fourteenth Amendment extends these restrictions to the individual states. These amendments clearly do not mean that owners can do whatever they want with their property. They do mean that any law, such as the Landmarks Law, must be carefully drawn to avoid infringing on a property owner’s constitutional rights. In a 1922 case, *Pennsylvania Coal Co. v. Mahon*, the United States Supreme Court held that “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.”

How far is too far? That has been the subject of several more recent cases, most famously the 1978 Supreme Court case, *Penn Central Transportation Co. v.*

New York City. Penn Central claimed that the application of the Landmarks Law to its property, Grand Central Terminal, and the resulting denial of both a Certificate of No Exterior Effect and a Certificate of Appropriateness amounted to a taking of Penn Central's property without just compensation and without due process of law. The owners of the landmarked parcel never claimed that the Terminal was incapable of earning a "reasonable return." They even admitted that the Landmarks Law was an "entirely permissible governmental goal" and that the restrictions were "appropriate means of securing the purpose" of the Landmarks Law. They claimed instead that the Landmarks Law had significantly diminished the value of the site.

Finding that the Landmarks Law did not "interfere in any way with the present uses of the Terminal," and that it did not impinge on Penn Central's ability to transfer development rights to adjoining properties, the Court found that the Landmarks Law was not a taking that required compensation nor did it deprive the plaintiff of due process. That there were potentially more remunerative uses for the property did not affect the

Court's analysis. Instead, the Court emphasized that the Landmarks Law did not constitute a taking in this situation because a "reasonable return" was possible and that Penn Central's use of the property for the foregoing 65 years as a train station and office building could continue unabated even with the landmark designation imposed.

While that seminal case established the constitutionality of the Landmarks Law, it also underscored a limit to its applicability that already existed—that of a right to a "reasonable return." Although the benefits of the Landmarks Law are a public good and can justify some incursion of private property rights, a line is drawn where the interests of the public become a hardship for the property owner.

Although the word "hardship" is frequently voiced by property owners, true hardship claims are seldom made, and LPC rarely grants permission to demolish on the basis of it. A New York legal practice guide calls it "the lengthiest, most complex and least frequently used of the processes required by the Landmarks Law."

For the purpose of determining hardship, the Landmarks Law categorizes properties as non-tax-exempt or tax-exempt. Different statutory criteria for hardship apply to each. Owners of non-tax-exempt designated property qualify for special hardship consideration if they can show that the property is "not capable of earning a reasonable return" and that they intend, if permitted, either (1) to demolish the building immediately and build a new one or to terminate the operation of the building at a loss; or (2) to alter it in order to increase the rate of return. A reasonable return is defined as a net annual return of six percent of the valuation of the property "under reasonably efficient and prudent management."

The requirement that the applicant be prepared to demolish or alter immediately is presumably included to prevent applications' being made in anticipation of some possible future investment opportunity. LPC must determine whether a property meets this test within 90 days of the filing for a C of A. If the criteria for hardship are met, LPC can forestall demolition and alteration by seeking

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PRESIDENT'S COLUMN

I COME TO PRESERVATION from a neighborhood civic group. As president of the St. George Civic Association on Staten Island, I worked for the preservation of the character of the community, its low density, its cultural and economic diversity and its architecture. The culmination of the neighborhood association's efforts there was not only a downzoning but also the designation of an historic district in the heart of the community.

Preservationists need to focus on neighborhood development, especially in diverse and underserved communities. While the Landmarks Preservation Com-

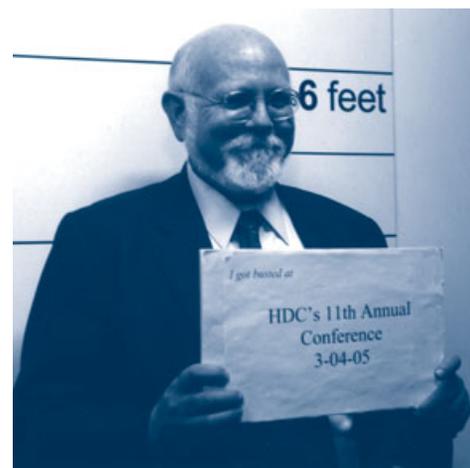


photo: P. Decker

David Goldfarb poses for a mug shot at the Police Museum party, which inaugurated the HDC conference weekend (page 4).

mission has committed itself to increasing its efforts in the outer boroughs, its resources are constantly diverted to issues like an addition to the Whitney Museum or the loss of the Oak Room in the Plaza Hotel. Both these are noble causes, but the destruction of many Victorian and older homes in Queens and Staten Island goes on unchecked. Diverse and mixed-income communities such as Richmond Hill in Queens and Snug Harbor East on Staten Island seem to get little attention.

The battles for our historic neighborhoods still exist and should not be ignored. There are culturally and economically diverse areas of the city that maintain a sense of place, and their residents

**DISTRICT
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MERITING PRESERVATION. THE COUNCIL IS
DEDICATED TO PRESERVING THE INTEGRITY OF
NEW YORK CITY'S LANDMARKS LAW AND TO
FURTHERING THE PRESERVATION ETHIC.

yearn to have the character and architecture of them preserved. It will require an educational process for government officials and preservationists. LPC has traditionally had no problem designating townhouse neighborhoods with stoops removed and converted storefronts dotted around, but the same commission is appalled by Victorian houses with enclosed porches and replaced windows. There is a double standard applied to rows of brownstones and detached urban/suburban frame houses. And there are no expensive campaigns for these lower density and lower income neighborhoods. Likewise, the Grand Concourse in The Bronx: rich in Art Deco buildings, it nevertheless lacks the constituency and the clout of the six historic districts and 125 individual landmarks on the Upper East Side of Manhattan.

Preservation is smart growth—while allowing for existing low density neighborhoods, it provides for higher density housing, including housing for low and moderate income residents. Preservation is environmental protection, providing for more open space around dwellings and in neighborhoods and also recycling existing buildings rather than tearing them down.

Our built environment dictates our way of life. Only through preservation can we maintain housing where people gather on their front stoops, where neighbors wave from their front porches, where children race through backyards and ride their bicycles down residential streets. We don't need to re-create these neighborhoods in distant suburbs where working parents need two hours to commute to work. We have them right now within the five boroughs, but we are letting them gradually decay and be destroyed. Without landmark designation the houses become targets for developers who would put more massive structures on the same lots. Gradually all sense of neighborhood pride is lost and the driving force becomes the value of the vacant lot.

Historic preservation needs to refocus on the diverse neighborhoods of New York City. The Landmarks Preservation Commission needs to rethink its criteria for both individual landmarks and for historic districts. And it needs to move quickly. The city that is constantly renewed and reborn needs also to protect its diversity and its heritage from the bull-

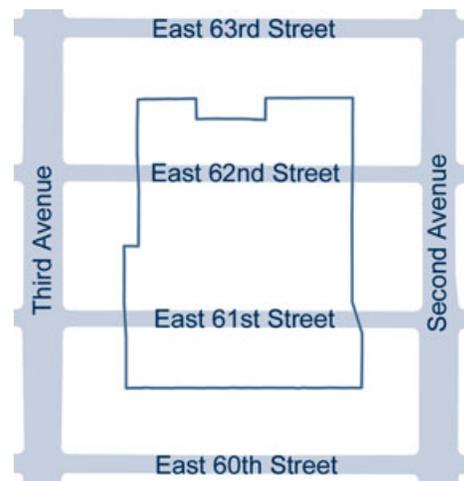
dozer. The other boroughs are not Manhattan Lite. They have their own character and their own needs, which are not being met by the current city government's myopic view of preservation.

—David Goldfarb

DISTRICT PROFILES

TREADWELL FARM HISTORIC DISTRICT, MANHATTAN

AT THE TIME THE TREADWELL FARM Historic District was proposed for designation in 1967, east midtown Manhattan was undergoing rapid commercial and residential high-rise development. These blocks—the district is on 61st and 62nd Streets between Second and Third Avenues—boasted hundred-year-old houses of uniform height and quality which had been well maintained through-



Treadwell Farm is a small district lying between Second and Third Avenues on East 61st and 62nd Streets in Manhattan.

out the years. They were threatened; and they had a strong neighborhood constituency of residents, many of them prominent, to argue for designation. These elements have always helped.

One resident in particular was outspoken, Grayson M. P. Murphy, whom the designation report quotes as saying, "We have no fear of what the Commission may do, as far as restricting us in the future. What we do fear is the possible effect in the future of unrestrained economic forces on the neighborhood which has been a pleasant, attractive, charming residential oasis in this city for approximately 100 years."

Mr. Murphy was chairman of the legal committee of the East Sixties Property Owners Association, a group founded in 1920 with only three members, 65 by the time of designation and about 100 today. It was a vigorous organization, born of protective covenants written in 1868 for development of the streets and spelling out height, width and construction materials for the buildings and banning any "nuisance or objectionable business." The association was formed to keep things as they were and "to promote the community welfare of all its members." And it did. In 1931 the organization stopped the crosstown subway from being routed along 61st Street; and in 1941, exercising some financial muscle, the group bought land on which a 12-story building was planned and built a six-story apartment building there instead. In 1942, zoning that restricted the heights of buildings was passed by the City Planning Commis-



photo: Penelope Bateau

Post-Civil War facade of 222 East 62nd Street by architect James W. Pirrson, built in 1868, showing original moldings and stonework well maintained over the years.

sion in line with what the organization had already approved.

Don't say you can't fight City Hall.

The land was originally part of a Dutch colonial farm owned by Peter Pra Van Zandt and was auctioned to Adam Treadwell (also spelled Tredwell) and a partner of his in 1815. Treadwell bought out his partner's heirs in 1830 and became the sole owner of a 24-acre farm there until his death in 1852. He did not live there, though. He was a fur merchant who lived in Brooklyn until 1835 and in other



photos: Penelope Bateau

Nos. 207 and 209 East 62nd Street, built 1872-3, designed by architect M.C. Merritt with three stories and a basement. No. 209 is painted, 207 is brownstone.

parts of Manhattan after that. An Establishment man, Treadwell was descended from 17th century English settlers and was a civic-minded and socially prominent senior warden of Trinity Church with a fortune estimated in a contemporary biography at \$400,000—about \$10 million in today's money. He owned other property in Manhattan as well and was the older brother of Seabury Treadwell, who bought in 1836 what is now the Merchant's House Museum on East 4th Street in Manhattan. Adam already owned a house nearby at 7 Cottage Place, now East 3rd Street between Avenues A and B, as

well as properties on Beekman Street and on Water Street in addition to the farm.

After Adam's death, his heirs divided the uptown property into lots and began to sell them off. By 1867, according to the designation report, land was being cleared for development; and between 1868 and 1872 the houses that are there now were built. They were built by developers on speculation, as many houses were at the time, but they conformed to the provisions of the covenant in terms of height, width and materials.

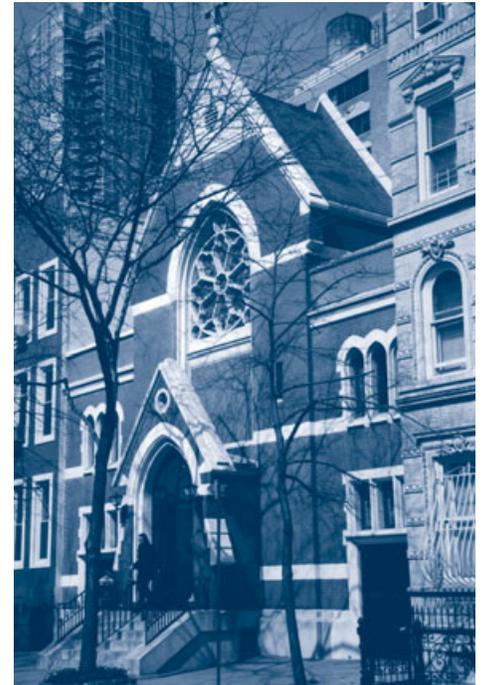
Indeed, in the designation report the Landmarks Preservation Commission calls out the "consistently residential character [of the district], its uniform construction height...the style of its buildings and care with which the buildings are preserved." In more than one place, the report cites the high level of maintenance these buildings have enjoyed, and it continues, "Most of the houses were constructed in groups as speculative real-estate ventures and have had their facades altered since their construction but, generally, they have retained a uniform character."

Dominant styles of architecture are the late Anglo-Italianate and French Second Empire with motifs of pedimented arched doorways and framed windows. Richard Morris Hunt was the most illustrious architect there—he designed Nos. 219-225 East 62nd Street, and also mansions for the Vanderbilts and Astors, the Metropolitan Museum of Art, the Tribune newspaper building and many more. Some other architects there were Samuel A. Warner, who designed the Roman Catholic church at 239-41 East 62nd Street, Our Lady of Peace, and a number of cast-iron buildings in SoHo; George F. Pelham and James W. Pirsson.

In 1961 John Gunther, foreign correspondent and author of the "Inside" series ("Inside Europe," "Inside Asia," etc.), wrote a foreword to a report to the East Sixties Property Owners Association in which he named many of the prominent people who had lived in the neighborhood or still did then, including (apart from himself) Eleanor Roosevelt; writer, critic and "What's My Line?" TV panelist Clifton Fadiman; Allen Dulles, head of the CIA from 1953-61; political essayist and editor (The New Republic, The New York World) Walter Lippmann; actor Montgomery Clift; and actresses Tallulah Bankhead, Kim Novak, Barbara Bel Geddes and

Gertrude Lawrence; in addition to other distinguished but lower-profile people.

Famous names make everything more fun, including the designation process.



Roman Catholic church, Our Lady of Peace on East 62nd Street by Samuel A. Warner, is late Victorian Gothic. In the gable is a rose window with a pointed arch.

11TH ANNUAL HDC PRESERVATION CONFAB

"PRESERVING PUBLIC PLACES: Caring for Our Shared Heritage" was the theme of speakers and panelists at the Historic Districts Council's 11th Annual Preservation Conference, March 4-6, 2005. The conference itself took place on Saturday at Manhattan's New-York Historical Society; a party opened the weekend on Friday evening at the Police Museum; and tours of public places all over the city closed it on Sunday. All together about 300 people attended.

Speakers and panelists on Saturday agreed that public funds and city staff are insufficient to maintain and run public places by themselves; they need the partnership of private enterprise. How to man-

age that partnership is the most difficult issue faced by caretakers of designated public parks, schools, libraries and the like.

While caring for designated public spaces was dealt with by panel discussions, planning of new spaces was discussed by the keynote speaker, Fred Kent of Project for Public Spaces. A report on his speech appears at right.

At the conference itself, Alexandra Wolfe, preservation consultant to the Society for the Preservation of Long Island Antiquities, talked about historic properties she has surveyed in Nassau and Suffolk Counties. Municipalities, she said, do not have enough staff or money to maintain antiquities adequately, so mansions decay to the point where they require restoration, which is much more expensive than routine maintenance. Both the private and public sectors need to improve—public managers typically do not take advantage of the programs and cooperative arrangements available to them; and private owners sometimes transfer their buildings to the county or state government in derelict condition, so that the burden of restoration falls to the state. Better planning and cooperation between the two sectors would help, she said.

Open space was dealt with by Dorothy Guzzo, administrator and deputy state historic preservation officer, New Jersey State Historic Preservation Office, who agreed with Ms. Wolfe. Public bodies, she said, tend to be inert until they are jolted into action, but preserving the resources that come with donated structures, such as open space, is a problem that can be difficult without a public/private partnership. In itself, that partnership presents prob-

KEYNOTE: HOW TO PLAN PUBLIC SPACES

“WHAT IF WE BUILT our cities around well-being instead of traffic?” Fred Kent asked. Then he went on to show that traffic is indeed what dominates most city planning.

Mr. Kent, founder and president of Project for Public Spaces, a city-planning consultancy based in Manhattan, was the keynote speaker at the Historic Districts Council’s recent Preservation Conference, and provocation is his modus operandi. A native New Yorker and Brooklyn resident, Mr. Kent has consulted with civic groups in 48 states and many countries and says he always likes to come back to New York. That gives him special credence when he starts to talk about his favorite and least favorite New York City places, and as he elucidated them, it became clear that some of his ideas are as simple and obvious as Jane Jacobs’s—so simple and obvious that other people have overlooked them.

One of his main theses is that places should be built around people and should offer accessibility, comfort, attractive surroundings and sociability. By accessibility he means you don’t have to dodge trucks to get to it, it is visible from a distance, and transit stops are nearby. Attractive surroundings could include plantings and come-hither benches. Sociability would mean that people of all ages are there all day long and seem relaxed. Comfort means the area projects a feeling of safety, that it is clean and there are places to sit down.

“People go where other people are,” Mr. Kent said, and he illustrated the statement with slides that made clear that people not only go where other people are; they want to sit down when they get there.

At one point, asked by planners what kind of spikes should be put around the plantings in Rockefeller Center, Mr. Kent’s group responded that benches, not spikes, should surround the plantings. The idea was adopted and completely changed the mood and public use of that area, he said.

Other favorite places were Central Park and Union Square because they combine mixed uses; and, of course, there are places for people to sit down, often in groups of twos or threes.

Mr. Kent detailed at some length his group’s techniques for planning with community groups and described the step-by-step approach his consultancy takes with clients, an approach he calls the Great Cities Initiative.



Fred Kent, founder and president of Project for Public Spaces, gave the keynote speech.

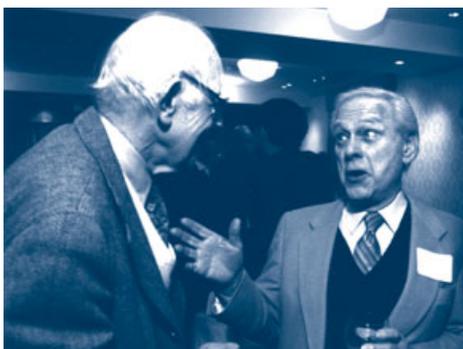


photo: P. Decker

Jack Taylor, right, HDC director and Landmarks Lion (1992), with architect Minor Bishop, Murray Hill Neighborhood Association, both from Manhattan.



photo: P. Decker

Adrienne and Joseph Bresnan were honored opening night for preservation of Prospect and Central Parks, City Hall and the Surrogate’s Court Building.



photo: Penelope Bareau

Paul Graziano, right, Queens planner, preservationist and HDC board member, led the tour on Sunday to the Civil War ruins at Fort Totten, Queens.

lems—each side worries about the other taking over. For example, she mentioned the seaside community of Sandy Hook, which was using a private developer to enhance its facilities when the dilemma arose—will there be buildings or beach? Still, she was optimistic that the pattern of partnering will get more useful, and she cited as a successful example the Princeton Nurseries site, a 53-acre parcel of open space and buildings that will be preserved with a \$300,000 endowment from the nursery and Princeton University.

Speaking also on open space, Tupper Thomas, Prospect Park administrator and president of the Prospect Park Alliance, talked about the redevelopment and preservation of the park, emphasizing the many ways public and private sectors have cooperated with educational activities and such programs as the “Heart of Brooklyn” project, which markets Prospect Park together with nearby cultural destinations. Of all the speakers, she was the most sanguine about public/private cooperation and suggested that two reasons for its success in Prospect Park are that they set clear goals and that all departments meet on a regular basis and plan actively for use, maintenance and restoration of the park.

Architect Misia Leonard spoke about public buildings she oversaw when she was director of the Historic Preservation Office at the New York City Department of Design and Construction. Many of her buildings were schools, and she reiterated other speakers’ point that maintenance is preferable to capital-project spending not only because it costs less but also because properly maintained buildings are more useful.

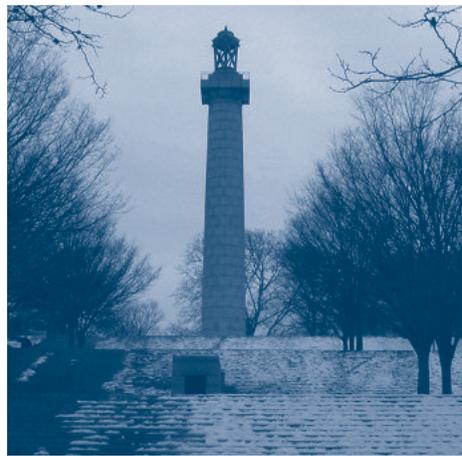


photo: Michael Hirsch

Prison Ship Martyrs’ Monument by Stanford White in Fort Greene Park, site of a Sunday tour and subject of a pre-conference lecture by John Krawchuk of the Parks & Recreation Department.

Alex Herrera, former director of preservation of the New York City Landmarks Preservation Commission and now director of technical services for the private New York Landmarks Conservancy, also discussed schools and told some horror stories. In a Bronx school, a maintenance crew saw that some beams were compromised and decided to remove and replace all of them, which resulted in an eventual collapse. The crew had not felt that repairing would be cost-effective but that a new building was called for, an attitude not even thought of when the building was planned and built to last.

Talking about libraries, Elisabeth Martin, AIA, of MDA designgroup international, said she never saw a library that

couldn’t be restored, illustrating that statement with slides of her own work. Close cooperation with the community to see what the needs and wishes for libraries are contributed to successful outcomes, she said.

Page Cowley, principal of Page Ayres Cowley Architects, added to that by saying that the private and public sectors have different timing, priorities and approval processes. She suggested that having a full contingency plan when dealing with the many layers of public agencies facilitates progress.

Representing the Greater Jamaica Development Corporation in Queens, Peter Englebrecht agreed with other panelists and said some projects have taken years because “government money always comes with strings.” Consequently, his team has tried to use older buildings so they could use private money; thus they were able to save the Dutch Reform Church of 1859; La Casina, a 1930’s Art Deco nightclub; and the Borough Office Building.

The Opening Night Reception was held this year at the New York City Police Museum at 100 Old Slip in Manhattan, home of the Landmarks Preservation Commission from 1993 to 2001. The party honored Adrienne and Joseph Bresnan, a married couple who worked under four mayors for more than 25 years to preserve publicly owned buildings.

Sunday’s tours took participants to Flushing in Queens; Fort Totten, a Civil War fort in Queens; historic subway stations; around Manhattan on a ferry tour; Fort Greene and Prospect Parks in Brooklyn; and Roosevelt Island.



photo: Sybil Young

Tour of Roosevelt Island included the ruin of the 1854-56 Smallpox Hospital by James Renwick. Tour was led by Judy Berdy, historian and president of the Roosevelt Island Historical Society.



photo: P. Decker

Guest at the Opening Night Reception at the Police Museum, former home of the Landmarks Commission, examines a display of pistols from many eras of crime-fighting in New York City.

HISTORIC PRESERVATION: THE MAYOR'S REPORT CARD

MICHAEL R. BLOOMBERG became mayor of New York at a time of unique challenges for the built environment. First and foremost was the terrorist attack on the World Trade Center, still smoldering in the distance as he took his oath of office. Second was the simple fact that much of New York's public-works infrastructure was quite old—Central Park and the subway system, for instance, have both recently celebrated centennial anniversaries. At the same time, this is an era of extraordinary private development, from the construction of the new Cesar Pelli-designed headquarters for Bloomberg LLP on East 58th-59th Street in Manhattan to the construction of hundreds of new row houses in East New York. Old and new, design and construction issues clearly have demanded much of this administration's attention.

As both a successful business person and a well known supporter of the arts, Mayor Bloomberg not surprisingly views the built environment as a resource of the city that contributes to its vitality and competitive edge. In this context, it would appear that although preservation of good architecture is something the mayor supports in general as part of an overall commitment to design excellence and asset management, historic preservation as such may not be any higher on his public policy hierarchy than it was on his recent predecessors'.

The recent "Gates" exhibition in Central Park illustrates the point. The mayor viewed the exhibition as an opportunity to tout the city's capacity as an arts and tourism magnet and to publicize the restoration of the park at the same time. Some preservationists, however, objected to the installation for conflicting with the park's historic design.

A recent marketing contract between the city and the History Channel is another example. The city is getting \$15 million worth of free advertising on the History

Kenneth K. Fisber, author of this article, is a former City Councilmember from Brooklyn and chair of the Council's Land Use Subcommittee on Landmarks, Public Siting, & Maritime Uses. He is now a partner at the Manhattan law firm of Wolf Block Schorr & Solis-Cohen LLP, also an HDC adviser and was HDC's Landmarks Lion in 2002.



photo: Brigitte Hammond

The mayor intended the "Gates" exhibition to attract tourists and New Yorkers to Central Park and to show that the arts are a major draw for residents and for visitors worldwide.

Channel to attract history lovers as tourists; complimentary development by the History Channel of New York City tours; and \$3.5 million for preservation of ten or so landmarked sites, mostly monuments and architectural elements. In return, the city is making a \$1 million payment to underwrite History Channel programming about New York City and will provide signage opportunities for the History Channel on bus shelters and similar public fixtures.

"Tourism is one of our top industries, but we don't spend anywhere near what

our competitors do on national advertising," said Mayor Bloomberg when the deal was announced. "This agreement is an exceptionally innovative way to help showcase New York City's rich history and diverse cultural heritage, which are among our most valuable assets, and marks a new chapter in our ongoing efforts to promote New York City as the world's premier tourist destination and assist in our extensive historic preservation activities."

Given this perspective, it will be interesting to see the degree of commit-

ment the mayor gives to the redevelopment of Governors Island, not only in terms of city dollars but in his willingness to engage the state and Congress to support their fair share for the preservation of historic buildings there and for making these resources available to the public for educational and recreational purposes.

The mayor has a well justified reputation for being pro-development and for tackling land use issues on a large scale. Thus, plans for the 2012 Olympics cite not only the construction of new facilities but the restoration of existing athletic facilities as part of an Olympic legacy [see District Lines, Spring 2003]. He has initiated large scale rezonings of the Far West Side, downtown Brooklyn, downtown Flushing and Greenpoint-Williamsburg, all with the overt sentiment of using development as an economic tool to recruit and retain talented workers. His planners are recognized for their commitment to waterfront parks and lively streetscapes and for their encouragement of high quality new architectural design.

How does this play out when historic resources are at issue? During the rezoning of downtown Brooklyn last year, local preservationists and civic organizations expressed concern that important buildings had been overlooked in the planning process and would be at risk once the plan was approved. In response, the administration committed itself to evaluating opportunities for designation, even while dismissing some activists' concerns about locations that might have been stops on the Underground Railroad bringing fugitive slaves from the South. In June 2004 the former New York and New Jersey Telephone & Telegraph building at 81 Willoughby Street was designated an individual landmark, followed by the Long Island Headquarters of the New York Telephone Company (now Verizon) three months later, just after the rezoning was approved. In March two additional downtown Brooklyn buildings received individual designations, the A.I. Namm Department Store and the Offerman Building. Others remain under consideration but are not yet calendared.

Designations in the first year of the Bloomberg administration tended to be in Manhattan, possibly reflecting work in progress when the mayor took office. His

appointed Landmarks Preservation Commission Chair Robert B. Tierney, a lawyer by training and a self-proclaimed historic-architecture buff, has publicly expressed the view that the commission should be more active in the other boroughs, and designations since 2002 reflect this agenda.

In addition to the chair, the mayor has appointed four of the commission's other eleven members. A significant number of members serve as holdovers from the Giuliani administration, which in effect converts them from having independent

are now two violations officers instead of one, and as a result of hirings last year the preservation department is the largest in the commission's history. Some of these increases have been justified as a result of the imposition of filing fees in July 2004, a step resisted by preservation activists and neighborhood groups. Commission staff reports that since fees were adopted, complaints about them can be counted on one hand and relate primarily to the process under particular circumstances, and not to their amount or the imposition of fees in the first place.



photo: Penelope Bateau

Restored Tweed Courthouse behind City Hall, where the mayor decided the Department of Education should be located so he could keep an eye on it. Banners on the east side of the building identify it as "City Hall Academy." The moving figures in the digital light sculptures on the staircase walls are by Julian Opie.

terms to serving at the mayor's pleasure. It is fair to say therefore that the commission as a whole reflects the mayor's perspective, although his announced management style leaves considerably more discretion to his appointees than was the case under previous mayors. This hands-off reputation cuts both ways politically, isolating him from unpopular decisions the agency makes, but generating less credit for the popular ones.

Allocation of resources to the commission as a measure of the administration's commitment to the commission shows some improvement, although it is still not at the level that the preservation community considers satisfactory. There

Perhaps the mayor's strongest act in support of preservation was his approval of the City Council's Intro 403-B, the Demolition by Neglect or "Failure to Maintain" law introduced by Queens Councilmember Tony Avella. This legislation authorizes the Landmarks Preservation Commission to assess civil penalties for the failure to maintain in good repair a landmarked property or a property within an historic district and imposes civil penalties for willful violations of the Landmarks Law. Long sought by preservationists, the authorization was omitted from the Landmarks Protection Act of 1998 because of opposition from the religious community. In signing the bill, the

mayor stated, "Landmarked properties and properties within historic districts serve as a vital resource to this city, and my administration is committed to protecting these cherished assets."

Putting action to words, in April the mayor struck a tentative deal with the owner of the Plaza Hotel and its union that may ease landmarking some of that designated hotel's interiors.

While the mayor has chosen to continue to reside in his personal town house in the Upper East Side Historic District near Central Park, at the same time he has been a principal benefactor for the restoration of Gracie Mansion, the official residence of New York's chief magistrate, which has been used principally in his tenure for public functions such as the celebration of the 40th anniversary of the New York City Landmarks Law in April. Gracie Mansion is administered by the Gracie Mansion Conservancy and is part of the Historic House Trust, which has also been permitted to hold fundraising functions there and which has in other ways received strong support from the mayor.

School capacity, transportation infrastructure and affordable housing, important in Mayor Bloomberg's first term, are likely to be dominant themes in the upcoming municipal races as well. Whether he or one of his challengers succeeds in the November election, success in managing dynamic change, using tools of planning and preservation, must be a major objective for any mayor, for the ramifications of decisions made today will echo far longer than the limited terms of the decision makers. —Ken Fisher

TO PLEAD HARDSHIP . . .

continued from page 2

ways to alleviate the hardship so that the building can be saved and earn a reasonable return. Granting a tax exemption is one way. If the granting of a tax exemption by itself brings the net annual return up to six percent, the application for a C of A would be denied. Alternatively, LPC may authorize alterations to enable the building to earn a reasonable return, though the LPC's suggestions may differ from what the owner proposed; and the owner may accept or reject LPC's plan. If that happens, or if LPC is unable to formulate a plan, the commission may recommend

to the mayor that the city acquire a protective interest in the property, which could include the acquisition by eminent domain. If LPC does not choose to make the recommendation or the city turns it down, a Notice to Proceed must be issued, and the owner may go ahead with demolition or alteration as initially proposed.

A charitable institution, such as a church or school, is treated differently. If it has been exempt from real estate taxation for three years, its owners must show (1) that they have a contract to sell or lease their property for at least 20 years and that the contract is contingent on a C of A or a Notice to Proceed; (2) that the property would not, if it were not tax-exempt, be

the city acquire an appropriate protective interest in the property, which could include an acquisition by eminent domain. If the city demurs, a Notice to Proceed must be issued and the owner may demolish or alter.

Tax-exempt charitable institutions may appeal LPC rulings either through judicial action or by presenting their case to the Hardship Appeals Panel formed under the 1989 New York City Charter.

The first qualifying criterion for a charitable institution to make a hardship claim is that the charity must have agreed to sell or enter into a long-term lease for the property. Consequently, those who want to keep their property cannot adapt



photo: Snug Harbor Cultural Center

Former Administration Building of Sailors' Snug Harbor by Minard Lafever (1831-32). The Landmarks Law was deemed unenforceable in its hardship case because the cost of maintaining the buildings would have seriously hampered charitable work.

capable of earning a reasonable return; (3) that the property has ceased to be adequate, suitable or appropriate for its purpose now and was so when it was acquired; and (4) that the prospective owner or tenant intends, if permitted, to demolish the building and build a new one, or just to alter its structure, with reasonable promptness.

The second phase of investigation authorizes LPC to find a purchaser or tenant who agrees to the terms of the existing offer but will use the property without demolishing or altering it. If within 180 days none is found or if an agreement fails, LPC may recommend to the mayor that

or develop it themselves and still meet the Landmarks Law's criteria for hardship. As a result, several charitable and religious organizations have litigated their claims, giving rise to a judicial test for undue hardship usually invoking the Fifth and Fourteenth Amendments' prohibition on takings. These cases are frequently fact-specific and may leave some questions about how they would be interpreted in other cases, but it might be useful to look at a couple of notable ones anyway.

The leading case in this area concerned the Staten Island landmark, Sailors' Snug Harbor. In that 1968 case,

the Appellate Court held that the Landmarks Law was a taking and thus unenforceable if “maintenance of the landmark either physically or financially prevents or seriously interferes with carrying out the charitable purpose.” Ultimately, the city bought the six landmarked buildings at issue as well as two more buildings and some land and made the complex into the Snug Harbor Cultural Center. Four years later, Sailors’ Snug Harbor moved its operation to Sea Level, North Carolina, for other, unrelated financial reasons; but the decision of the 1968 Appellate Court established a test that has been adopted, with some differing interpretation and different results, in all subsequent judicial opinions.

Another significant, highly publicized case was that of St. Bartholomew’s Church in Manhattan. That 1990 case concerned a seven-story building adjacent to the main church building on the east side of Park Avenue between East 50th and 51st Streets. Known as Community House, the building was used for a preschool, a theater, athletic programs,

meeting rooms, counseling and a homeless shelter. St. Bartholomew’s proposed replacing it with a 59-story office tower and then, when that proposal was turned down, with a 47-story tower. That, too, was rejected, and the church applied for a hardship exception on the grounds that Community House was inadequate for church purposes and that the church could not afford to repair and rehabilitate it. LPC rejected the plea and St. Bartholomew’s sued. On appeal, the Second Circuit Court found that, although LPC’s ruling deprived the church of commercial value, the church had not shown that the building was inadequate for its existing uses. The court also found that the church did not adequately show either that altering the existing building would fail to remedy its inadequacies or that it could not afford the cost of improvements. Today, Community House is used in the way it was before the suit.

These are just two of the legal cases over the past 40 years that have clarified the scope of the Landmarks Law’s applicability

to property owners. The body of law that has been developed in these cases is referred to as the “judicial test” for hardship and has filled in gaps left by the Landmarks Law’s hardship determination process.

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photo: Alice Rich

St. Bartholomew’s Church, Manhattan, designed by Bertram Goodhue 1914-1919, was denied permission to demolish its companion Community House and terrace in order to build a 47-story office tower in a groundbreaking 1990 case.

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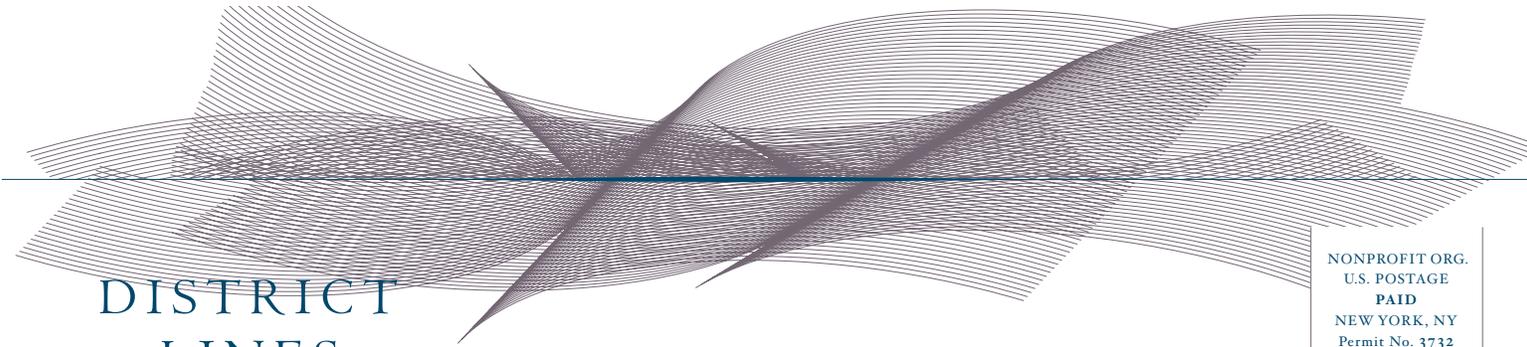
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