LOWELL J. KUVIN, ESQ.

April 8, 2010

Historic Preservation Board
City of Coral Gables, Florida

Re: April 15, 2010 Hearing; 1044 Coral Way

Dear Sir/Madam,

With this letter are the following documents and exhibits which will be referred to during our presentation to the Board.

- Email Dated November 14, 2006 from Mayor Donald Slesnick Re: 1044 Coral Way.
- Historic Preservation Board Resolution No. HPR22-LHD2003-18; 1044 Coral Way.
- Allocating the Cost of Historic Preservation: Compensation for the Isolated Landmark Owner; 74 Nw. U. L. Rev. 646 1979-1980.
- Preliminary Observation of Existing Structural Systems for Collapsed Residence at 1044 Coral Way; Douglas Wood & Associates, October 19, 2006.
- Visual Observation of 1044 Coral Way September 22, 2006; M. Hajjar & Associates, Inc.
- Letter from Cityof Coral gables dated February 16, 2010 Re: 1044 Coral Way, Report of the City of Coral Gables 1044 Coral Way.
- Agenda Historical Preservation Board June 21, 2007.
- Agenda Historical Preservation Board April 15, 2010.
- Nine(9) pictures of residences which are located next to or near 1044 Coral Way.

Additionally, Dr. Paul George, a well known local historian, will speak.

Please contact my office if any further clarification is needed or any with any questions you may have.

Sincerely Yours,

Lowell J. Kuvin

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Kautz, Kara

From: Slesnick, Donald
Sent: Tuesday, November 14, 2006 9:37 PM
To: Brown, David; Lubin, Dona; Kautz, Kara; Foeman, Walter
Subject: 1044 Coral Way

Walter: I am forwarding you copies (immediately after this e-mail is sent) of e-mail letters I am receiving about the house at 1044 Coral Way – so that you can print them and put them into the record when this cause is heard by the Commission.

David & Dona: I think that the Board should be asked to consider this matter on more time and take into account the feedback of the neighbors and friends. The Board may think that everyone supports its super strong position about the reconstruction, when in fact there is growing opposition to that approach. These persons should be invited to present at the Board. The letters will be forwarded next.

Don

HISTORIC PRESERVATION BOARD
CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. HPR22-LHD2003-18

A RESOLUTION DESIGNATING THEREON AS A LOCAL HISTORIC LANDMARK, THE PROPERTY AT 1044 CORAL WAY, LEGALLY DESCRIBED AS LOT 1 AND THE WEST 32 FEET OF LOT 2, BLOCK 11, CORAL GABLES SECTION "A"; AND REPEALING ALL RESOLUTIONS INCONSISTENT HEREWITH.

WHEREAS, a public hearing of the Coral Gables Historic Preservation Board was advertised and held, as required by law, and all interested parties concerned in the matter were given an opportunity to be heard; and

WHEREAS, Article 31 of the "Coral Gables Zoning Code" states that if after a public hearing the Historic Preservation Board finds that the proposed local historic landmark or proposed local historic landmark district meets the criteria set forth, it shall designate the property as a local historic landmark or local historic landmark district; and

WHEREAS, 1044 Coral Way is among the first residences to be constructed on Coral Way; and

WHEREAS, 1044 Coral Way was constructed prior to 1924, and the home was constructed for Worth and Emma Merrick St. Clair; and

WHEREAS, Emma Merrick St. Clair was the sister of Reverend Solomon G. Merrick, father to George Merrick; and

WHEREAS, 1044 Coral Way remained a family home until 1955 when Worth St. Clair's second wife Lillian Hampton Merrick, Solomon Merrick's cousin, died; and

WHEREAS, 1044 Coral Way is an excellent example of Florida Masonry Vernacular architecture which was based on the Bungalow architectural typology; and

WHEREAS, 1044 Coral Way satisfies the "historic, cultural significance" as stated in Section 31-2.4 of the Coral Gables Zoning Code because it is associated in a significant way with the life or activities of a major historic person important in the past; and

WHEREAS, 1044 Coral Way satisfies the "architectural significance criteria" as stated in Section 31-2.4 of the Coral Gables Zoning Code because it embodies those distinguishing characteristics of an architectural style, or period, or method of construction; it contains elements of design, detail, materials or craftsmanship of outstanding quality or which represent a significant innovation or adaptation to the South Florida environment; and

WHEREAS, it is the policy of the City of Coral Gables to preserve its architectural heritage by designating certain properties as local historic landmarks/districts; and

WHEREAS, upon due and proper consideration having been given to the matter it is the opinion of this board that the subject property meets the criteria set forth in Article 31 or the "Zoning Code of the City of Coral Gables, " and approved that it be designated as a "Local Historic Landmark"; and

WHEREAS, the planning Director and or the Director's designee has determined that there is no effect on the City's Comprehensive Plan or any other adopted planning and zoning policies; and

WHEREAS, the legal description of the property is as follows: 1044 Coral Way, Lot 1 and the west 32 feet of Lot 2, Block 11, Coral Gables Section "A"; and

WHEREAS, a Designation Report, Case File LHD2003-18, prepared by the Historical Resources Director containing information on the historic, cultural and architectural significance of the property and which incorporates a Review Guide for use as a reference in determining the impact of future building permits, shall by reference be made part of this resolution; and

WHEREAS, a motion to approve the application was offered by Kendell Turner, and seconded by Ernesto Santos, and upon a poll of the members present the vote was as follows:

Board Member	Vote
Lisa Bennett	Aye
Michael Beeman	Absent from vote
Gay Bondurant	Aye
John Fullerton	Absent from vote
Shirley Maroon	Aye
Joyce Meyers	Absent from vote
Edmund Parnes, DMD	Excused
Ernesto Santos	Aye
Kendell S. Turner	Aye

NOW THEREFORE BE IT RESOLVED, by the Historic Preservation Board of the City of Coral Gables that the Historic Preservation Board on April 15, 2004, has designated 1044 Coral Way, Coral Gables, Miami-Dade County as a Local Historic Landmark pursuant to the City of Coral Gables Historic Preservation Ordinance – Article 31 or the Coral Gables Zoning Code and the property is subject to all rights and privileges and requirements of that ordinance.

BE IT FURTHER RESOLVED, that this designation is predicated on all the above recitations being true and correct and incorporated herein, but if any section, part of section, paragraph, clause, phrase or word of this Resolution is declared invalid, the remaining provisions of this Resolution shall not be affected.

Any aggrieved party desiring to appeal a decision of the Historic Preservation Board shall, not less than five (5) days and within fourteen (14) days from the date of such decision, file a written Notice of Appeal with the City Clerk.

PASSED AND ADOPTED THIS FIFTEENTH DAY OF APRIL, A.D., 2004.

EDMUND PARNES, DMD
CHAIRMAN, HISTORIC PRESERVATION BOARD

ATTEST:

DONA M. LUBIN
HISTORIC LANDMARK OFFICER

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

ELIZABETH M. HERNANDEZ, CITY ATTORNEY

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Allocating the Cost of Historic Preservation: Compensation for the Isolated Landmark Owner

In many cities, the pace of speculative land development has destroyed many fine historical and architectural structures.[1] These landmarks represent a significant part of our historical tradition, involving aesthetic, cultural, and educational values.[2] The movement to preserve these cultural treasures—generally termed "landmark" or "historic" preservation—may be viewed as just one response to the much larger environmental problem of enhancing and developing the quality of life for all.[3]

The legislative response to the challenge of landmark preservation has been swift and favorable. In enacting the National Historic Preservation Act of 1966,[4] Congress declared that "the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people."[5] The Act provides for an expanded National Register of Historic Places;[6] state grants-in-aid;[7] grants-in-aid for the National Trust for Historic Preservation;[8] and the establishment of the Advisory Council on Historic Preservation[9] whose members exercise advisory powers regarding the protection of National Register proper-

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[1] Over one-half of the buildings listed in the Historic American Buildings Survey begun by the federal government in 1933 have been destroyed. *See* Costonis, *The Chicago Plan: Incentive Zoning and the Preservation of Urban Landmarks*, 85 HARV. L. REV. 574 (1972). The sad story of destroyed architectural monuments is told graphically in C. GREIFF, LOST AMERICA: FROM THE ATLANTIC TO THE MISSISSIPPI (1971).

[2] 3 N. WILLIAMS, AMERICAN LAND PLANNING LAW 256 (1975).

[3] Gilbert, *Precedents for the Future*, 36 LAW & CONTEMP. PROB. 311, 312 (1971) (quoting an address by Robert Stipe, 1971 Conference on Preservation Law, Washington, D.C., May 1, 1971 (unpublished text at 6-7)).

[4] 16 U.S.C. §§ 470-470t (1976), which furthers the policy objectives of the National Historic Sites Act of 1935, *id.* §§ 461-467. *See generally* Gray, *The Response of Federal Legislation to Historic Preservation*, 36 LAW & CONTEMP. PROB. 314 (1971).

[5] 16 U.S.C. § 470(b) (1976).

[6] *Id.* § 470a(a)(1).

[7] *Id.* §§ 470a(a)(2), 470b-470e.

[8] *Id.* §§ 470a(a)(3), 470b-470e. Congress created the National Trust for Historic Preservation in 1949:

> The purpose of the National Trust shall be to receive donations of sites, buildings, and objects significant in American history and culture, to preserve and administer them for public benefit, to accept, hold, and administer gifts of money, securities, or other property of whatsoever character for the purpose of carrying out the preservation program . . . .

Id. § 468.

[9] *Id.* §§ 470i-470n.

ties from undertakings involving federal participation.[10] Congress has also incorporated the goal of historic preservation into environmental,[11] housing,[12] and transportation legislation.[13]

Encouraged in part by these federal programs, there has been an extraordinary growth of state and local legislation for the preservation of landmarks and historic districts since the 1950s.[14] By 1965, fifty-one cities and every state had enacted some form of historic preservation law;[15] by 1976 there were nearly five hundred landmark and historic district commissions throughout the United States.[16] Under the general scheme of most state and local preservation ordinances, the local preservation commission is empowered to designate a geographic area or an individual building as an historic site. Demolition or extensive renovation of these buildings, especially the facade, is then denied the

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[10] *Id.* § 470f. *See* Brief for Appellee at 9, Penn Cent. Transp. Co. v. New York City, 438 U.S. 104 (1978) [hereinafter cited as Brief for Appellee].

[11] The National Environmental Policy Act of 1969 (NEPA) makes historic preservation an integral part of our national environmental goals and provides elaborate procedural machinery for assuring that federal agencies incorporate these goals in their planning. 42 U.S.C. §§ 4321, 4331(b)(4) (1976). *See* Brief for Appellee, *supra* note 10, at 9.

[12] The Department of Housing and Urban Development (HUD) has been authorized to provide grant assistance for historic preservation purposes, and the Emergency Home Assistance Act provides mortgage loan guarantees where the loans are made "for the purpose of financing the preservation of historic [residential] structures." 12 U.S.C. § 1703 (1976); 16 U.S.C. § 470b-1 (1976); 42 U.S.C. § 1500a (1976). *See also* Historical and Archeological Preservation Act, 16 U.S.C. § 469 (1976). HUD grants-in-aid are discussed at notes 140-43 and accompanying text *infra*.

[13] The Secretary of Transportation is required to disapprove any project that requires the use of any federal, state, or local historic sites or parkland unless there is no feasible and prudent alternative and such project includes "all possible planning to minimize harm" to the site. 49 U.S.C. § 1653(f) (1976). *See* Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 412-13 (1971), construing this section as indicating that "protection of parkland was to be given paramount importance." The Urban Transportation Act of 1970 requires that planning for mass transportation projects include consideration of their effects on "historical and cultural assets." 49 U.S.C. § 1610(a) (1976). The Amtrak Improvement Act of 1974 seeks to encourage the preservation of passenger railroad terminals of historic significance and architectural quality. It authorizes the Secretary of Transportation to provide financial and other assistance for purposes of promoting the conversion of terminals to "inter-modal" transportation centers and civic and cultural activity centers where the terminal is listed on the National Register and its architectural integrity will be preserved in such a conversion. In addition, it provides that funds for such purposes be expended in the manner most likely to maximize the preservation of terminals of historic significance. 49 U.S.C. § 1653(i)(1)-(4) (1976). It also directs that the "National Railroad Passenger Corporation shall give preference to using station facilities that would preserve buildings of historical and architectural significance." *Id.* § 1653(i)(7). *See* Brief for Appellee, *supra* note 10, at 9-10.

For a detailed review of federal legislation involving preservation see generally Gray, note 4 *supra*.

[14] *See generally* J. MORRISON, HISTORIC PRESERVATION LAW (1965); Wilson & Winkler, *The Response of State Legislation to Historic Preservation*, 36 LAW & CONTEMP. PROB. 329 (1971).

[15] J.H. MORRISON, note 14 *supra*; Wilson & Winkler, note 14 *supra*.

[16] National Trust for Historic Preservation, Directory of Landmark and Historic District Commissions (1976).

owner.[17] Whereas most ordinances permit the owner to apply to the landmark agency for a permit to demolish or alter the building,[18] such permission is usually denied as inconsistent with the agency's preservation function.

The use of design and demolition controls may have a substantial impact on the value of the landmark property.[19] In low-density urban areas, landmark designation by a select committee of architects, historians, and city planners is often welcomed by the building's owner, who may enjoy increased property values from the attendant prestige. In high-density urban areas, however, every square foot of real estate possesses extraordinarily high income potential. Most landmarks are antiquated, small structures that operate at a loss or yield a fraction of the income that could be derived from a modern office building erected on the same site. Renovation of the existing structure within the parameters of design and demolition controls may not guarantee sufficient space and flexibility for the owner's purpose or an adequate return on investment in rental income. In addition, maintaining the historic landmark and its antiquated fixtures will usually require substantial annual investments.

Therefore, design and demolition controls utilized by preservation statutes often impose significant economic burdens on the landmark owner, in the form of maintenance costs and foregone income potential from the sale or development of the property. Yet, most landmark preservation ordinances do not even provide for adequate compensation to the owners of structures designated as landmarks.[20] In the rush to enact legislation to preserve our national heritage and maintain an aesthetic environment, the impact of architectural controls on the landmark owner's present enjoyment of his property rights has been overlooked. The cost of landmark preservation is being borne by landmark owners, not by society as a whole.

The economic consequences of design and development controls undermine the purpose of landmark preservation ordinances and call

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[17] *See, e.g.*, NEW YORK CITY, N.Y., CHARTER & ADMIN. CODE ch. 8A, § 207-5.0 (1973) (hereinafter cited as N.Y.C. CODE, discussed in detail at notes 57-88 and accompanying text *infra*); TEX. REV. CIV. STAT. ANN. art. 6145-4 (Vernon Supp. 1978).

[18] *See, e.g.*, N.Y.C. CODE § 207-4.0(a)(1) (1973) (cannot alter, demolish, or reconstruct landmark without obtaining a certificate of appropriateness, certificate of no exterior effect, or notice to proceed from the commission); TEX. REV. CIV. STAT. ANN. art. 6145-4 (Vernon Supp. 1978) (prohibits altering or demolishing structures within Old Galveston Quarter without obtaining permit of no exterior effect). *Cf.* N.C. GEN. STAT. §§ 160A-399.1–.13 (Supp. 1977) (no requirement of approval to alter or demolish landmarks, but owner must give commission 90-day notice of material alteration or demolition during which the city may negotiate to acquire building).

[19] Gerstell, *Needed: A Landmark Decision*, 8 URB. LAW. 213, 213-14 (1976).

[20] *See, e.g.*, IND. CODE ANN. §§ 18-4-22-1 to -12 (Burns Supp. 1978) (alteration permit denied if proposed reconstruction or demolition not appropriate, with no provision for economic hardship). Most statutes permit alteration only upon a showing of "undue financial hardship."

into question their constitutionality. The fifth and fourteenth amendments to the Constitution do not mandate "just compensation" for the majority of hardships imposed on the landmark owner. Nevertheless, the fact that preservation statutes have survived constitutional challenges does not mean that these statutes are effective in achieving the goal of preservation. By placing the costs of architectural preservation squarely on the landmark owner, design and demolition controls may actually discourage private citizens from purchasing and maintaining landmark property. Failure to offset the economic burdens of landmark designation will "create a class of buildings which will be shunned like lepers."[21]

Legislation establishing the policy and procedure for historic preservation does not go far enough. To implement preservation goals effectively, local statutes must address the central problem of financing the costs of preservation. As a matter of policy, if not of constitutional mandate, legislation must provide economic incentives that will encourage the private landowner to purchase and maintain historically and architecturally significant structures. This comment evaluates the application of various statutory devices—government acquisition, tax incentives, and transferrable development rights—as means to offset the decrease in property value caused by the imposition of design and development controls. An appropriate mixture of these various incentives, tailored to the requirements of the particular locality, will shift the costs of preservation from the isolated landmark owner to the public at large, and thereby balance the public benefit derived from preservation with the economic interests of the owner. Until such a balance is struck, the policy of preservation articulated at both national and local levels will not be achieved.

THE CONSTITUTIONAL DUTY TO COMPENSATE THE LANDMARK OWNER

Even the social and cultural desirability of preserving historic landmarks through government regulation does not override the constitutional requirement that just compensation be paid for private property taken for public use. The taking of property without just compensation is prohibited by the fifth and fourteenth amendments.[22]

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21 J. PYKE, LANDMARK PRESERVATION 28 (1968).

22 The fifth amendment provides: "[N]or shall private property be taken for public use, without just compensation." U.S. CONST. amend. V. The fourteenth amendment provides: "[N]or shall any State deprive any person of life, liberty or property, without due process of law . . . ." U.S. CONST. amend. XIV. Although the fourteenth amendment does not contain the express language of the fifth amendment, the constitutional protections are the same. " '[S]ince the adoption of the Fourteenth Amendment compensation for private property taken for public use constitutes an essential element in "due process of law" . . . .' " Chicago, B. & Q. R.R. v. Chicago, 166 U.S.

This constitutional limitation upon police power was articulated by Justice Holmes in *Pennsylvania Coal Co. v. Mahon*:[23] "[W]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking."[24] This limitation presents a significant challenge to the use of police power regulations for historic preservation.

Judicial Approach to the "Taking" Issue

From the confusing array of case law[25] and scholarly commentary,[26] it is impossible to discern one single test for determining when "justice and fairness" require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons. To the extent that a general principle emerges, it is that the question of constitutionality in a given situation depends upon the interaction of two variables: the *purpose* of the regulation and the economic *impact* that it has upon property values.[27]

Early decisions focused on the impact of the regulation on the property owner. In *Pennsylvania Coal Co. v. Mahon*,[28] the coal company claimed that a statute proscribing coal mining under certain cir-

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226, 239 (1897) (quoting Justice Jackson's opinion as Circuit Judge in Scott v. Toledo, 36 F. 385, 395-96 (C.C.N.D. Ohio 1888)). To the same effect, see Olson v. United States, 292 U.S. 246, 254 (1934); Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415 (1922); McCoy v. Union Elevated R.R., 247 U.S. 354, 363 (1918). The same result is reached through use of the "incorporation doctrine." Gideon v. Wainwright, 372 U.S. 335, 341-42 (1963).

23 260 U.S. 393 (1922).

24 *Id.* at 415.

25 *Compare* Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922) *with* Goldblatt v. Town of Hempstead, 369 U.S. 590 (1962). *Compare* Morris County Land Improvement Co. v. Parsippany-Troy Hills Township, 40 N.J. 539, 193 A.2d 232 (1963) *and* State v. Johnson, 265 A.2d 711 (Me. 1970) *with* Just v. Marinette County, 56 Wis. 2d 7, 201 N.W.2d 761 (1972). *Compare* Lutheran Church in America v. City of New York, 35 N.Y.2d 121, 316 N.E.2d 305, 359 N.Y.S.2d 7 (1974) *with* Maher v. City of New Orleans, 516 F.2d 1051 (5th Cir. 1975). *See also* Comment, *Grand Central Terminal and the New York Court of Appeals: "Pure" Due Process, Reasonable Return, and Betterment of Recovery*, 78 COLUM. L. REV. 134, 148 (1978) [hereinafter cited as COLUMBIA Comment].

26 *See, e.g.*, Berger, *The Accommodation Power in Land Use Controversies: A Reply to Professor Costonis*, 76 COLUM. L. REV. 799 (1976); Costonis, *"Fair" Compensation and the Accommodation Power: Antidotes for the Taking Impasse in Land Use Controversies*, 75 COLUM. L. REV. 1021 (1975); Michelman, *Property, Utility and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law*, 80 HARV. L. REV. 1165 (1967); Sax, *Takings, Private Property and Public Rights*, 81 YALE L.J. 149 (1971); Sax, *Takings and the Police Power*, 74 YALE L.J. 36 (1964) [hereinafter cited as Sax 1964].

27 COLUMBIA Comment, *supra* note 25, at 134. Whether a particular land use restriction will be rendered invalid by the government's failure to pay for losses proximately caused by it depends largely upon the particular circumstances of that case. Penn Cent. Transp. Co. v. New York City, 438 U.S. 104, 123-24 (1978); United States v. Central Eureka Mining Co., 357 U.S. 155, 168 (1958); United States v. Caltex, Inc., 344 U.S. 149, 156 (1952).

28 260 U.S. 393 (1922).

cumstances effected a "taking" of contract and property rights, because the company's deed expressly permitted such mining. Justice Holmes declared that the Court's conclusion hinged upon the "extent of the diminution [of property value]."[29] Because the statute made the mining of coal commercially impracticable and therefore destroyed the rights claimant had purchased from the owners of the surface land, the Court held that the statute effected a "taking."[30]

Judicial inquiries also focus on the purpose of the government regulation. A "taking" may be found more readily when interference arises from a physical invasion by government, rather than from some public program adjusting the benefits and burdens of economic life to promote the general economic good. Under the physical invasion analysis, "takings" have been found where the public or its agents physically use or occupy the claimant's property to facilitate a uniquely public function and thereby diminish the value of that property.[31]

Where land use restrictions do not involve an actual physical invasion of the property, however, courts require more than a mere diminution in value to support an allegation of "taking." Regulations prohibiting noxious or dangerous uses are generally upheld despite sometimes drastic diminutions in property value. For example, there was no "taking" where a city prohibited the operation of a brick yard within a residential city, notwithstanding an eighty-seven and one-half percent diminution in value;[32] nor was there a "taking" where the legislature forbade excavation for sand and gravel below the waterline,[33]

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29 *Id.* at 413.

30 *Id.* at 414-15. *See also* Armstrong v. United States, 364 U.S. 40, 46-49 (1960) (government's complete destruction of a materialman's lien in a certain property held a "taking"); Hudson Water Co. v. McCarter, 209 U.S. 349, 355 (1908) (if height restrictions make property wholly useless, "the right of property prevails over the public interest" and compensation is required).

31 *See, e.g.*, United States v. Causby, 328 U.S. 256 (1946) (government plane flightpath directly over claimant's property); Pumpelly v. Green Bay Co., 80 U.S. 166 (1871) (government flooded plaintiff's land). In *Causby*, the Supreme Court held that flights directly over the claimant's chicken farm destroyed the present use of the land and thereby constituted a "taking." The Court stated:

> The path of glide for airplanes might reduce a valuable factory site to grazing land, an orchard to a vegetable patch, a residential section to a wheat field . . . . But the use of the airspace immediately above the land would limit the utility of the land and cause *a diminution in its value.*

328 U.S. at 262 (footnote omitted) (emphasis added). *See also* Griggs v. Allegheny County, 369 U.S. 84 (1962) (overflights held a "taking"); Portsmouth Co. v. United States, 260 U.S. 327 (1922) (United States' military installation's repeated firing of guns over claimant's land is a "taking"); United States v. Cress, 243 U.S. 316 (1917) (repeated floodings of land caused by water project is a "taking").

Scholars have argued that the concept of physical invasion was in the minds of the framers when the fifth amendment was drafted. *See* F. BOSSELMAN, D. CALLIES, & J. BANTA, THE TAKING ISSUE 53-104 (1973); Sax 1964, note 26 *supra.*

32 Hadacheck v. Sebastian, 239 U.S. 394 (1915).

33 Goldblatt v. Town of Hempstead, 369 U.S. 590 (1962).

even though the regulation deprived the owner of the most beneficial use of the property.[34] Similarly, comprehensive zoning ordinances that separate incompatible uses and restrict density have been upheld, even when they diminish the land value by seventy-five percent[35] or threaten the land owner's first amendment rights of free association[36] and free speech.[37]

On the contrary, regulation designed primarily to provide a public amenity is not permitted to diminish property value excessively. Ordinances restricting swampland so that a township can enjoy the land in its natural state as a flood water basin and wildlife refuge constitute a "taking,"[38] as do ordinances creating a residential zone on plaintiff's private parking lot used by shoppers and commuters.[39]

In sum, regulation aimed essentially at restricting uses with adverse external effects on the public health, safety, and welfare may constitutionally impose a greater hardship upon the individual property owner than regulation providing for a public amenity. If the ordinance restricts property use for a public purpose, compensation is required to the extent of value diminution. If the ordinance restricts property use to prevent a public harm, no compensation is required even where diminution in value is great. Hence, the test for constitutionality balances private loss against public gain to produce an equitable distribution of public burdens.[40]

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[34] *Id.* at 692-93.

[35] Gorieb v. Fox, 274 U.S. 603 (1927) (requirement that portions of parcels be left unbuilt); Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926) (prohibition of industrial uses diminishing value of land by 75%); Welch v. Swasey, 214 U.S. 91 (1909) (height restriction). *Euclid* laid the cornerstone for modern community planning and forced landowners to accept a reduction in property value as one of organized society's less happy facts of life. The Supreme Court in *Euclid* sustained the government's power to restrict private land's profitability by zoning in order to achieve community planning goals, even though a higher rate of return on zoned property would be possible absent legislation. *See* Costonis, *The Disparity Issue: A Context for the Grand Central Terminal Decision*, 91 HARV. L. REV. 402, 403 (1977). As Justice Powell recently stated, "The cases are legion that sustained zoning against claims of serious economic damages." Young v. American Mini Theatres, 427 U.S. 50, 78 (1976) (Powell, J., concurring). *See also* Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668 (1976), where the Court noted: "By its nature, zoning 'interferes' significantly with owners' uses of property. It is hornbook law that '[m]ere diminution of market value or interference with the property owner's personal plans and desires relative to his property is insufficient to invalidate a zoning ordinance' . . . ." *Id.* at 674 n.8 (upholding zoning ordinance providing for a mandatory referendum on all changes in land use).

[36] Village of Belle Terre v. Boraas, 416 U.S. 1 (1974).

[37] Young v. American Mini Theatres, 427 U.S. 50 (1976) (sustaining Detroit zoning ordinance restricting "adult" theatre and bookstore locations).

[38] Morris County Land Improvement Co. v. Township of Parsippany-Troy Hills, 40 N.J. 539, 193 A.2d 232 (1963).

[39] Vernon Park Realty v. City of Mount Vernon, 307 N.Y. 493, 121 N.E.2d 517 (1954) (property value diminished from $463,000 to $50,000).

[40] This judicial calculus has been criticized, and other approaches to the "taking" issue have been proposed. Professor Freund suggested the following test for determining when just compensation is due: If government regulates property because it is useful to the public, it does so by

The Constitutionality of Landmark Preservation Ordinances

In upholding the constitutionality of landmark preservation ordinances, courts have adopted the prevailing test of examining the purpose of the ordinance and the economic impact on the landmark owner. The purpose of landmark preservation ordinances is to restrict land use in order to obtain a public good. Both aesthetic and economic benefits flow to the surrounding municipality when historically and architecturally significant buildings are preserved as part of the urban landscape. The impact on the landmark owner may vary drastically depending on whether the landmark is contained in an historic district or isolated in a nondesignated neighborhood. In theory, then, the constitutionality of landmark preservation statutes should vary with the type of landmark at issue and the amount of benefit it brings to its owner.

Historic District Preservation.—Landmark preservation initially took the form of ordinances to protect the special character of historic districts.[41] These ordinances have been successfully attacked only where the statutory standards are vague and arbitrarily enforced.[42] Otherwise, courts have consistently upheld against constitutional challenge the use of design and demolition controls in historic district preservation[43] and have not found a "taking" in the application of these

exercising the power of eminent domain; if government regulates property because it is harmful to the public, it does so through the police power. In the former case, just compensation is required, while in the latter it is not. E. FREUND, THE POLICE POWER 546-47 (1904).

Professor Sax distinguishes between regulation imposed by government acting in its "arbitral" capacity to reconcile competing private claims and regulation imposed by government acting in its "enterprise" capacity to provide a public facility. With the former, no compensation is required, no matter how severe the economic impact of the regulation; with the latter, compensation is inevitably required. Sax has refined the distinction to include in the noncompensable "arbitral" category all regulation aimed at preventing "spillover uses." "Spillover uses" were defined as those uses with an external impact upon other property or upon "public rights." Sax 1964, *supra* note 26, at 61-67.

Professor Michelman, *supra* note 26, at 1248-58, has articulated a "fairness" test. The central question in his inquiry is whether the government has loaded "upon one individual more than his just share of the burdens of government." Monongahela Navigation Co. v. United States, 148 U.S. 312, 325 (1893).

41 New Orleans (1925) and Charleston, South Carolina (1931) were among the first cities to adopt preservation ordinances. The ordinances created and regulated a single historic district in each city. J. MORRISON, *supra* note 14, at 129-86.

42 City of New Orleans v. Levy, 233 La. 844, 98 So. 2d 210 (1957); City of New Orleans v. Levy, 223 La. 14, 64 So. 2d 798 (1953).

43 Maher v. City of New Orleans, 371 F. Supp. 653 (E.D. La. 1974), *aff'd*, 516 F.2d 1051 (5th Cir. 1975), *cert. denied*, 426 U.S. 905 (1976) (Vieux Carre, or French Quarter, in New Orleans); M & N Enterprises v. City of Springfield, 111 Ill. App. 2d 444, 250 N.E.2d 289 (1969) (four block district surrounding Abraham Lincoln's home in Springfield, Illinois); Rebman v. City of Springfield, 111 Ill. App. 2d 430, 250 N.E.2d 282 (1969); Opinion of the Justices to the Senate, 333 Mass. 773, 128 N.E.2d 557 (1955) (Nantucket and Beacon Hill in Massachusetts); City of Santa Fe v. Gamble-Skogmo, Inc., 73 N.M. 410, 389 P.2d 13 (1964) (downtown Santa Fe).

ordinances to property, historic and nonhistoric, within the designated district.[44]

In upholding the constitutionality of historic district ordinances, courts have determined that both the aesthetic and the economic benefits of such ordinances accrue to the public at large. Zoning solely for aesthetic purposes has been favored by the Supreme Court in dictum: "It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."[45] The significance of the aesthetic benefits of historic district zoning is underscored by the *tout ensemble* rationale. This rationale was first enunciated in *City of New Orleans v. Pergament*,[46] which held that a large sign in a gasoline station within the Vieux Carre district of New Orleans violated a local

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Recent decisions indicate that controls will be upheld in areas less distinctive architecturally and historically than the New Orleans Vieux Carre, downtown Santa Fe, Beacon Hill, and Nantucket, which could perhaps be regarded as very special cases. *See, e.g.*, Town of Deering *ex rel.* Bittender v. Tibbetts, 105 N.H. 481, 202 A.2d 232 (1964) (small town in rural New Hampshire). *See also* 3 N. WILLIAMS, AMERICAN LAND PLANNING LAW § 71.13 (1975).

[44] Maher v. City of New Orleans, 371 F. Supp. 653 (E.D. La. 1974), *aff'd*, 516 F.2d 1051 (5th Cir. 1975), *cert. denied*, 426 U.S. 905 (1976). In *Maher*, the owner of a house and an adjacent Victorian cottage in the Vieux Carre proposed to demolish the cottage and replace it with an addition to his house. The proposed addition was said to be "Spanish style," similar to other buildings nearby, and would contain seven apartments to be rented. When the "taking" issue was raised in federal court, the court held that there was no evidence to indicate that the restriction precluded any reasonable use of the land:

> No evidence has been presented to indicate why this cottage could not be rented as a single family residence or, with permissible remodeling, as two or more apartments. It is common knowledge, of which the Court takes notice, that the French Quarter is a popular residential area, commanding rents higher than those prevailing in other parts of the city. Furthermore, no evidence has indicated that it might be at all difficult to sell this property. Under these circumstances, plaintiff has wholly failed to carry his burden of proving that he has been deprived of any reasonable use or return from his property.

371 F. Supp. at 662.

In Figarsky v. Historic Dist. Comm'n of Norwich, 171 Conn. 198, 368 A.2d 163 (1976), a Connecticut court also upheld restrictions imposed to prevent demolition. Although the building was of no specific architectural significance itself, the court found that it preserved the continuity of older buildings around the town green historic district and served to block from view an unattractive commercial strip. The building apparently was to be demolished and the premises sold as parking space for a McDonald's restaurant that adjoined to the rear. 3 N. WILLIAMS, AMERICAN LAND PLANNING LAW 289 (1975). The court held that absent proof that the restriction precluded any reasonable use of the property, there was no confiscation. 171 Conn. at 211, 368 A.2d at 172.

[45] Berman v. Parker, 348 U.S. 26, 33 (1954). Some states have held that aesthetic considerations alone are sufficient to justify zoning ordinances. Merritt v. Peters, 65 So. 2d 861 (Fla. 1953); Cromwell v. Ferrier, 19 N.Y.2d 263, 225 N.E.2d 749, 279 N.Y.S.2d 22 (1967); Oregon City v. Hartke, 240 Or. 35, 400 P.2d 255 (1965). For statistics indicating which states allow aesthetic considerations as a major, minor, or exclusive factor, see Note, *Aesthetic Zoning: The Creation of a New Standard*, 48 U. DET. J. URB. L. 740, 754 (1971). *See generally* Dukeminier, *Zoning for Aesthetic Objectives: A Reappraisal*, 20 LAW & CONTEMP. PROB. 218 (1955); Masotti & Selfon, *Aesthetic Zoning and the Police Power*, 46 U. DET. J. URB. L. 773 (1969).

[46] 198 La. 852, 5 So. 2d 129 (1941). The area of permitted signs was limited to 8 square feet on each side. The contested sign was 560 square feet in area.

preservation ordinance.[47] The court held that the preservation commission had the power to regulate all property within the district, including those buildings without architectural or historical significance,[48] recognizing that the quality of the area derives not only from the individual buildings, but also from the scale of the buildings, their harmony with each other, and the combination of buildings and open areas. Thus, the aesthetics of the whole were held to be greater than the sum of its component structures.

Other courts have noted that such aesthetic benefits in turn produce economic benefits. Historic districts contribute to the local economic base by increasing property values, stabilizing neighborhoods, encouraging private investment, and promoting tourism. The mobility of Americans has spawned a mushrooming tourist industry; many areas seeking something unique to attract the tourist dollar have discovered the lucrativeness of historic districts.[49]

Moreover, the economic costs of historic district preservation are widely distributed. Judicial decisions support the theory that historic district regulation is merely a variant of normal zoning regulation that requires all property within a classification to be treated equally. Although the burden of zoning regulation may fall unequally within the district, at least the overall burden is widely distributed. Moreover, the value of all properties within the district is enhanced, in theory, by the increased tourism and economic activity.[50] Therefore, property owners

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[47] The Vieux Carre district was established by amendment to the Louisiana Constitution. LA. CONST. of 1921, art. XIV, § 22A (amended 1936).

[48] 198 La. at 858, 5 So. 2d at 131. As the court explained:

> [T]here is nothing arbitrary or discriminating in forbidding the proprietor of a modern building, as well as the proprietor of one of the ancient landmarks, in the Vieux Carre to display an unusually large sign upon his premises. The purpose of the ordinance is not only to preserve the old buildings themselves, but to preserve the antiquity of the whole French and Spanish Quarter, the *tout ensemble*, so to speak, by defending this relic against iconoclasm or vandalism. Preventing or prohibiting eyesores in such a locality is within the police power . . . .

Id. (emphasis added). *See also* Opinion of the Justices to the Senate, 333 Mass. 773, 128 N.E.2d 557 (1955); Barney & Casey Co. v. Town of Milton, 324 Mass. 440, 87 N.E.2d 9 (1949).

[49] In City of New Orleans v. Pergament the court stated:

> The preservation of the Vieux Carre as it was originally is a benefit to the inhabitants of New Orleans generally, not only for the sentimental value of the show place but for its commercial value as well, because it attracts tourists and conventions to the city, and is in fact a justification for the slogan, America's most interesting city.

198 La. at 858, 5 So. 2d at 131.

A 1962 survey conducted by the Massachusetts commission appointed to study tourism empirically supports the theory that historic preservation results in increased tourism. R. MONTAGUE & T. WRENN, PLANNING FOR PRESERVATION (1964). *See generally* Van Alstyne, *Taking or Damaging by Police Power: The Search for Inverse Condemnation Criteria*, 44 So. CAL. L. REV. 1, 18 (1971); Wrenn, *The Tourist Industry and Promotional Publications*, 16 HISTORIC PRESERVATION 111 (1964); Comment, *La Recherche du Temps Perdu: Legal Techniques for Preservation of Historic Property*, 55 VA. L. REV. 302 (1969) [hereinafter cited as VIRGINIA Comment].

[50] *See* note 49 *supra* and note 89 and accompanying text *infra*.

within the district normally receive some of the benefits from the landmark designation which offset the impact of restricted land use.

Because of the general benefits produced and the distribution of the economic impact, courts have held district preservation regulation unconstitutionally confiscatory "only when it 'goes so far as to preclude the use of the property for which it is reasonably adapted.' "[51] The property owner must carry the evidentiary burden and show extreme economic hardship or inability to sell the property.[52] This strong constitutional presumption is within the contours of "taking" precedents for analogous comprehensive zoning ordinances.[53] It is also equitable in light of the public benefit derived from increases in both aesthetic and economic value and the small or negative burden placed on the private landowner.

Individual Landmark Preservation.—In only a few urban areas are architectural and historical buildings grouped in areas suitable for historic district zoning. Therefore, most statutes allow the local preservation commission to designate individual buildings as landmarks. A series of cases arising under the New York City landmark laws have dealt with the constitutionality of imposing design and demolition controls on the individual landmark—an important issue because of the city's abundant landmarks, extremely high real estate values, and comprehensive, innovative statutory scheme for preservation.[54]

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51 Maher v. City of New Orleans, 371 F. Supp. 653, 662 (E.D. La. 1974) (quoting Summers v. City of Glen Cove, 17 N.Y.2d 307, 217 N.E.2d 663, 270 N.Y.S.2d 611 (1966)), *aff'd*, 516 F.2d 1051 (5th Cir. 1975), *cert. denied*, 426 U.S. 905 (1976).

52 *See* note 44 and accompanying text *supra*.

53 *See* notes 32-37 and accompanying text *supra*.

54 The New York City landmark laws are codified at N.Y.C. CODE, §§ 205-1.0 to 207-21.0 (1973) (added by Local Law No. 46, Apr. 1965). *See generally* Rankin, *Operation and Interpretation of the New York City Landmarks Preservation Law*, 36 LAW & CONTEMP. PROB. 366 (1971).

New York City's Landmarks Preservation Law establishes a commission composed of 11 members, including "at least three architects, one historian qualified in the field, one city planner or landscape architect, and one realtor; . . . and at least one resident of each of the five boroughs." N.Y.C. CODE § 2004 (1973). The Commission is empowered to designate buildings or areas as landmarks or historic districts after a public hearing. The statute does not contain any criteria for the Commission's designation of sites, *id.* § 207-2.0, nor is the Commission required to consider arguments made at the public hearing regarding the unsuitability of the designation. *Id.* § 207-12.0b. *Cf.* VA. CODE § 10-142 (Supp. 1979) and W. VA. CODE § 8-26A-4 (Supp. 1979) (allowing imposition of preservation regulations only with the owner's consent). The Commission's determination can be disapproved or modified by the city's Board of Estimate. N.Y.C. CODE § 207-2.0f. The Board recently rejected an historic district designation in the Steinway section of Queens. N.Y. Times, Jan. 30, 1975, at 34, col. 1. Three landmark designations have recently been disapproved by the Board in response to the owners' objections. *Id.*, Feb. 7, 1975, at 35, col. 7.

Once a landmark is designated, the property owner has an affirmative duty to maintain the landmark in "good repair." N.Y.C. CODE § 207-10.0. In addition, the building cannot be altered, demolished, or reconstructed without obtaining a "certificate of no exterior effect," a "certificate of appropriateness," or a "notice to proceed" from the Commission. *Id.* § 207-4.0(a)(1). The Commission's refusal to grant such permission to alter or demolish is binding; violations are criminal offenses. *Id.* § 207-16.0.

Charitable Landmark Owners.—The application of the New York Landmarks Law was first upheld in *In re Trustees of Sailors' Snug Harbor v. Platt*,[55] which involved the preservation of a row of Greek Revival buildings[56] providing a home for retired seamen. In reversing the lower court, the appellate division focused on the landmark owner's tax-exempt status as a charitable organization. After noting that the Landmarks Law guaranteed a commercial landowner a "reasonable return,"[57] the court indicated the necessity of developing an alternative test for charities that do not, by definition, invest in property for the purpose of profit.[58] The court announced the "charitable purpose" test for tax-exempt owners: a "taking" will be found when the landmark designation "physically or financially prevents or seriously interferes with carrying out the charitable purpose"[59] of the landowner.

Taxpaying landowners may challenge the restrictions by establishing that the building is not "capable of earning a reasonable return," which is defined by the statute as a six percent yield of earned income exceeding operating expenses of the landmark. *Id.* §§ 207-8.0(a)(1)(a), 207-1.0(e), (q). Upon such a showing, the Commission is empowered to devise a compromise plan that may include exemption from or remission of real property taxes. *Id.* § 207-8.0(b), (c). If a plan that satisfies the landowner is not formulated, the Commission may recommend that the city acquire a "specified appropriate protective interest" in the landmark. *Id.* § 207-8.0(g)(1). If the city refuses to purchase or condemn, the owner is permitted to alter or demolish the landmark. *Id.* § 207-8.0(g)(2).

Charities, religious organizations, and other tax-exempt landowners may challenge the restrictions by meeting a different set of standards. *Id.* § 207-8.0(a)(2). If the standards are met, the Commission has a six-month period to locate a substitute purchaser or tenant. *Id.* Tax privileges are of no value to the already exempt owner. Therefore, if a new owner is not found, the Commission's only recourse is to recommend that the city itself acquire an interest in the property. *Id.* § 207-8.0(i)(4)(a).

In 1968, New York City offered another *quid pro quo* to taxpaying and tax-exempt landowners alike by allowing owners to transfer the "development rights" of the parcel containing the landmark to other lots within the midtown area. NEW YORK CITY, N.Y. ZONING RESOLUTION §§ 74-79 to 74-793 (1975). "Development rights" represent the total floor area allowed on the site under the applicable zoning law less the floor area actually contained in the landmark building. *Id.* Transferable development rights (TDRs) give the owners of landmarks a potentially marketable interest in all authorized but unbuilt floor space on the property. In this way, TDRs offer a concrete recognition of the potential profit that the landmark owner would reap by tearing down the small, aging structure and erecting a modern skyscraper. *See* notes 132-38 and accompanying text *infra*.

55 53 Misc. 2d 933, 280 N.Y.S.2d 75 (Sup. Ct. 1967), *rev'd*, 29 A.D.2d 376, 288 N.Y.S.2d 314 (1968).

56 Greek Revival architecture was part of the Neoclassical period of architecture, spanning the century from 1750 to 1850. One of the last distinct periods predating modern architecture, Neoclassicism revived and updated the primary characteristics of classical antiquity. Plane surfaces, symmetry, and geometric precision prevailed. The "Greek Revival" phase of Neoclassicism was believed to embody more of the "noble simplicity and calm grandeur" of classic Greece than did the later Roman order. H. JANSON, HISTORY OF ART 460 (rev. ed. 1969).

57 Non-tax-exempt owners receiving less than a six percent return on the property may receive a certificate of appropriateness to alter or demolish based upon hardship. N.Y.C. CODE §§ 207-8.0(a)(1)(a), 207-1.0(e), (q). *See* note 54 *supra*.

58 29 A.D.2d at 378, 288 N.Y.S.2d at 316.

59 *Id.*

The New York Court of Appeals did find a "taking," however, in *Lutheran Church in America v. City of New York*.[60] The property owner's desire to expand its office facilities by razing a mansion, once owned by J. Pierpont Morgan was frustrated when the preservation commission designated the Anglo-Italianate brownstone a landmark.[61] Following the principle enunciated in *Snug Harbor*, the court held that the "taking" test to be applied in the case of a charitable organization not seeking to sell or lease its property is whether the landmark designation would prevent or seriously interfere with the carrying out of the charitable purpose.[62] The court found a "taking," because the allegation of economic hardship of the plaintiff "stands substantially unrebutted by the defendants," and "it is uncontested that the existing building is totally inadequate for plaintiff's legitimate needs and must be replaced if plaintiff is to be able freely and economically to use the premises."[63]

Relying on *Lutheran Church*, the trial court in *Society for Ethical Culture v. Spatt*[64] held that the designation of an art nouveau[65] building owned by an educational and charitable organization as a landmark was "confiscatory" and unconstitutional because the Society, which needed additional space, was "obstructed" under the *Lutheran Church* test from selling, reconstructing, or replacing their meeting house by the landmark designation.[66] The appellate court reversed, finding no "taking" because the Society's proposed property develop-

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[60] 35 N.Y.2d 121, 316 N.E.2d 305, 359 N.Y.S.2d 7 (1974), *noted in* 25 DE PAUL L. REV. 160 (1975); 1975 WIS. L. REV. 260.

[61] This mansion, located on Madison Avenue and 37th Street in midtown Manhattan, is built upon a valuable piece of real estate. Before the Landmarks Preservation Law was enacted, the Lutheran church had received bids for construction of a 19-story office building on the site, intending to expand its office facilities and to provide space for other Lutheran organizations. Brief for Plaintiff at 8, Lutheran Church in America v. City of New York, 35 N.Y.2d 121, 316 N.E.2d 305, 359 N.Y.S.2d 7 (1974). The Commission's designation was based on the property's historic and architectural significance:

> [I]t was a notable New York City residence during the first half of the 20th century, . . . [it] is significant as an early example of Anglo-Italianate architecture, . . . it is one of the few free standing Brownstones remaining in the City, . . . it displays an impressive amount of fine architectural detail and that with its conservative appearance, it is a handsome building of great dignity.

Brief for Defendant at 10, Lutheran Church in America v. City of New York, 35 N.Y.2d 121, 316 N.E.2d 305, 359 N.Y.S.2d 7 (1974).

[62] 35 N.Y.2d at 131, 316 N.E.2d at 311, 359 N.Y.S.2d at 16.

[63] *Id.* at 132, 316 N.E.2d at 312, 359 N.Y.S.2d at 17. The dissent argued for remanding to the trial court for further fact finding. *Id.* at 133, 316 N.E.2d at 313, 359 N.Y.S.2d at 18 (Jasen, J., dissenting).

[64] N.Y.L.J., Dec. 24, 1975, at 7, col. 2., *rev'd*, 68 A.D.2d 112 (1979).

[65] The emergence of Art Nouveau by the 1890s and early 1900s undermined the authority of the revival style and produced a more contemporary style for twentieth century architecture. Art Nouveau is a style of decoration "based on linear patterns of sinuous curves." H. JANSON, *supra* note 59, at 559.

[66] Society for Ethical Culture v. Spatt, N.Y.L.J., Dec. 24, 1975, at 7, col. 2.

ment was primarily for commercial gain and only indirectly for furthering the charitable purpose.[67]

In these three cases—*Snug Harbor, Lutheran Church*, and *Society for Ethical Culture*—the New York Court of Appeals employed a "taking" test far more protective of the property interests of the individual landmark owners than of the public interest in historic preservation. In one of these cases, the statute was held to unconstitutionally effect a "taking" merely because the landmark owner was not allowed to expand its facilities in pursuit of its charitable purpose. Therefore, the New York statute, though one of the most liberal, was found to preserve landmarks ineffectively because it fails to provide just compensation for charitable landmark owners.

Commercial Landmark Owners.—Nevertheless, the Supreme Court upheld the application of New York's statute to individual landmarks in *Penn Central Transportation Co. v. New York City*,[68] the first challenge to the statute by a commercial landmark owner. The Preservation Commission had designated Grand Central Terminal in Manhattan a landmark, recognizing the structure's much-heralded fusion of beauty and function.[69] Penn Central, the owner of the terminal, was trying to minimize its economic losses on terminal operations and therefore submitted two plans to construct a multistory office tower over the terminal.[70] Both plans were rejected by the Commission.[71]

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[67] 68 A.D.2d 112 (1979). Unlike the Lutheran Church, the Society intended to use proceeds from the development of a luxury apartment high rise on the property to build a school on another site.

[68] 438 U.S. 104 (1978).

[69] Constructed at the beginning of the twentieth century according to a plan selected in a nationwide architectural competition, Grand Central Terminal was formally opened in 1913. It was immediately heralded as a triumph of comprehensive urban design, "the conceptual archetype of an integrated multi-level development, mixed activities and direct mass transportation access." R. OKAMOTO & F. WILLIAMS, URBAN DESIGN MANHATTAN 38 (1969). The building features a Beaux Arts facade, a monumental statutory grouping of Mercury, Hercules, and Minerva around the clock on the 42nd Street facade, and a vast interior space—the Grand Concourse—that is 125 feet high to the vaulted ceiling and covered with constellations painted by the French artist Paul Helleu.

[70] *See* COLUMBIA Comment, *supra* note 25, at 135-38. After the designation of the property, Penn Central entered into a lease agreement with United General Properties, Inc. (UGP), a wholly owned subsidiary of Union General Properties, Ltd., a United Kingdom corporation. UGP was to construct a multistory office tower over the terminal. Upon completion of the proposed office tower, Penn Central was to receive from UGP an annual rent of $1.10 per square foot, exclusive of ground space, plus $400,000, plus five percent of gross income, with a guaranteed minimum of $3,000,000 per year. As additional compensation, UGP was to pay a certain portion of the taxes on the terminal site and building, Penn Cent. Transp. Co. v. City of New York, N.Y.L.J., Jan. 23, 1975, at 16, col. 4 (Sup. Ct. Jan. 21, 1975), at an estimated value of $578,500 annually. Penn Cent. Transp. Co. v. City of New York, 50 A.D.2d 265, 270, 377 N.Y.S.2d 20, 26 (1975). The rental payments would be offset in part by the elimination of $700,000 to $1,000,000 in net rents presently received from concessionaires whose space would be occupied by the new building. *Id.*

[71] The first proposal provided for the construction of a 55-story office building to be cantilevered above the existing facade and to rest on the roof of the Terminal. The second blueprint

Claiming lost revenues, Penn Central brought suit, alleging a "taking" without just compensation in violation of the fifth and fourteenth amendments.[72]

The trial court held the landmark ordinance unconstitutional as applied to the terminal, finding that "landmark designation generally constitutes a taking for which compensation is mandated."[73] The appellate division reversed, criticizing the trial court's holding as one that would "eviscerate" the city's landmark program.[74] The court concluded that the ordinance did not effect a "taking," because the plaintiffs had not satisfied their "exceedingly heavy" burden of proving that they were deprived of "all reasonable beneficial use of their property."[75] The court of appeals affirmed, because Penn Central was receiving many forms of economic return on its property,[76] including government subsidies, tax exemptions, and paternalism for the troubled monopoly.[77] The court also imputed value to the terminal property from the increased business to the hotels and office buildings owned by Penn Central that were located around the terminal and from the transferability of development rights permitted by the New York statute.[78]

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called for tearing down a portion of the Terminal that included the 42nd Street facade, stripping off some of the remaining features of the Terminal's facade, and constructing a 53-story office building. For an illustrated assessment of the two plans, see Huxtable, *Grand Central at a Crossroads*, N.Y. Times, Jan. 29, 1978, § 2 at 25, col. 4; Huxtable, *The Stakes are High for All in Grand Central Battle*, N.Y. Times, Apr. 11, 1969, at 28, col. 4.

The Commission denied a certificate of "no exterior effect" on September 20, 1968. Appellants then applied for a certificate of "appropriateness" as to both proposals. After four days of hearings at which over 80 witnesses testified, the Commission denied this application as to both proposals. In rejecting the first plan, the Commission explained that the bulk of the new tower "would reduce the Landmark itself to the status of a curiosity." Penn Cent. Transp. Co. v. City of New York, 50 A.D.2d 265, 276, 377 N.Y.S.2d 20, 31 (1975) (Lupiano, J., dissenting). The Commission's reasons for rejecting certificates respecting the second plan are summarized in the following excerpt: "To protect a landmark, one does not tear it down. To perpetuate its architectural features, one does not strip them off." *Id.*

72 The Terminal owners challenged the landmark restrictions on state as well as federal constitutional grounds. Brief of Plaintiffs at 3, Penn Cent. Transp. Co. v. City of New York, 42 N.Y.2d 324, 366 N.E.2d 1271, 397 N.Y.S.2d 914 (1977).

73 N.Y.L.J., Jan. 23, 1975, at 16, col. 4 (Sup. Ct. Jan. 21, 1975). In passing, the court expressed that the Terminal "leaves no reaction here other than that of long-neglected faded beauty." *Id.*

74 50 A.D.2d 265, 272, 377 N.Y.S.2d 20, 27 (1975).

75 *Id.* at 272, 377 N.Y.S.2d at 28. The court criticized the plaintiffs' accounting for attributing railroad operating expenses to real estate operations and for imputing no rental value to the terminal space devoted to railroad purposes. In addition, the court was not convinced of the plaintiffs' inability to increase the Terminal's commercial income by putting underutilized space to revenue-producing use. *Id.*

76 42 N.Y.2d 324, 366 N.E.2d 1271, 397 N.Y.S.2d 914 (1977), *noted in* 42 ALB. L. REV. 523 (1978); 27 BUFFALO L. REV. 157 (1977); 78 COLUM. L. REV. 134 (1978); 6 FORDHAM URBAN L. REV. 667 (1978).

77 42 N.Y.2d at 331, 366 N.E.2d at 1275-76, 397 N.Y.S.2d at 918.

78 *Id.* at 335, 366 N.E.2d at 1277-78, 397 N.Y.S.2d at 920-21. The court reasoned that the transferability of development rights permitted by the New York statute, *see* note 57 *supra*, represented value and provided "significant, perhaps 'fair,' compensation for the loss of rights above

Therefore, Penn Central was found to be receiving a reasonable return even if the terminal itself "can never operate at a profit."[79]

In a divided opinion, the United States Supreme Court affirmed the holding of the court of appeals.[80] The majority rejected the argument that individual landmark designation arbitrarily singles out parcels for less favorable treatment than neighboring properties. Because the New York statute establishes a comprehensive land use plan to preserve significant buildings no matter where they are located in the city, the Court found that the statute does not discriminate unconstitutionally against landmark owners.[81] The majority also held that the application of the landmark preservation statute to Grand Central Terminal did not effect a "taking." The Court reasoned that Penn Central could continue to use the property precisely as it had for the past sixty-five years: as a railroad terminal containing concessions. Therefore, the architectural controls did not interfere with Penn Central's "primary expectation concerning the use of the parcel,"[82] especially because the Commission had not prohibited all construction above the terminal, but only construction according to the two plans submitted. In addition, under the statute Penn Central could transfer the development rights for the airspace above the terminal.[83] Finally, the majority found that the preservation of vast numbers of landmarks under the plan benefited all New York citizens, including Penn Central, by improving the economy and quality of life in the city as a whole.[84] There-

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the Terminal itself." *Id.* at 336, 366 N.E.2d at 1278, 397 N.Y.S.2d at 922. It noted that construction of new office buildings was given serious consideration on two of the available receiving parcels, the sites of the Biltmore and Roosevelt Hotels owned by Penn Central. *Id.* at 335, 366 N.E.2d at 1277, 397 N.Y.S.2d at 921.

79 *Id.* at 333, 366 N.E.2d at 1276, 397 N.Y.S.2d at 920.

80 438 U.S. 104, 122 (1978). It appears that the majority in *Penn Central* was persuaded by the public benefits of landmark preservation and the dissent convinced by the private burdens. Justice Brennan, writing for the majority, began with praise for landmark preservation laws that protect lessons of the past, precious features of our heritage, and examples of quality for today. *Id.* at 108. The majority reasoned that these programs have so improved the quality of life as to benefit the individual landmark owner who bears the cost of such a program. *Id.* at 134-35. The dissent, written by Justice Rehnquist and joined by Chief Justice Burger and Justice Stevens, began by emphasizing the burdens on the landowner. *Id.* at 138-39. The multimillion dollar loss imposed on the appellants was "uniquely felt and [was] not offset by any benefits flowing from the preservation of some 400 other 'landmarks' in New York City." *Id.* at 147. On the whole, the program imposes a substantial cost on less than one-tenth of one percent of the buildings in New York for the general benefit of all its people, and this is precisely the type of burden that the fifth amendment is designed to prevent. *Id.* Therefore, the dissent reasoned that the costs of such a program should be borne by all the taxpayers of the city lest the "desire to improve the public condition is, indeed, achieved 'by a shorter cut than the constitutional way of paying for the change.'" *Id.* at 153 (quoting Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 416 (1922)).

81 *Id.* at 133-35.

82 *Id.* at 136.

83 *Id.* at 137.

84 *Id.* at 134-35.

fore, no "taking" had occurred, because the restrictions imposed upon the property permitted reasonable beneficial use of the landmark site and afforded the owner a *quid pro quo* for restricted property development.[85]

The Constitutional Argument for Greater Protection of the Isolated Landmark Owner

The Supreme Court's decision in *Penn Central* confirmed the constitutionality of landmark and historic district preservation. By providing aesthetic and economic benefits, preservation statutes are a valid exercise of the police power to regulate for the general welfare of the community and generally require no compensation to the landowner. Despite the different economic ramifications of historic district and individual landmark designations, the regulation of landmarks is uniformly favored with a strong presumption of constitutionality. The property owner has the burden of proving not mere diminution in property value, but a deprivation of all reasonable use of the property.

The reasonable use test has not always been applied, however. Where the landmark owner is a charitable corporation, courts have applied a standard more deferential to the interests of the property owner. If the landmark designation interferes with the charitable purpose of the landmark owner, the court will find a "taking" for which just compensation is mandated.

Furthermore, the "reasonable use" test is not easily applied to the isolated landmark. In a case involving a comprehensive preservation plan and some flow of economic benefits to the landmark owner under the statute, a majority of the Supreme Court in *Penn Central* did not feel compelled to find a "taking." If, however, the building is not part of an historic district, not a part of a comprehensive preservation program, and not owned by the owner of other adjacent commercial properties, there is no *quid pro quo* for the economic burdens cast on the landmark owner. In such a situation, courts may more readily find an unconstitutional "taking" of the owner's reasonable use of the property.

Therefore, it can be argued that landmark preservation statutes must provide compensation for landmarks owned by charitable organizations or isolated from comprehensive preservation schemes. Without compensatory provisions, the statute may be unconstitutional as applied in these special cases, and the goal of preservation will be frustrated.

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[85] *Id.* at 138.

THE POLICY RATIONALE FOR GREATER LEGISLATIVE PROTECTION OF THE ISOLATED LANDMARK OWNER

Even without a direct constitutional mandate, there are strong policy reasons for compensating the owners of isolated landmarks. Landmark preservation is an inspired endeavor from which society as a whole benefits. By placing the costs of architectural preservation squarely on the landmark owner, though, design and demolition controls may actually discourage private citizens from purchasing and maintaining landmark property. The use of design and demolition controls without compensation undermines the legislative policy of preserving significant buildings.

Compensation is needed, therefore, to effectuate the policy of landmark preservation, especially in the case of isolated landmark owners. In historic districts, rising property values, benefits to the neighborhood from increased tourism, and other factors[86] create an "average reciprocity of advantage"[87] by which all properties in the historic district benefit from the prosperity of the district as a whole. No such reciprocity exists when an isolated landmark is singled out and treated differently from the surrounding buildings.[88] The economic base of the area, and hence its property values, are not likely to be enhanced by a single designation, nor does the isolated landmark owner receive any *quid pro quo* from surrounding properties to offset his impaired right to develop his property for personal profit.

Therefore, without compensation for isolated landmarks, preservation statutes will be frustrated because there is little economic incentive for commercial interests to purchase landmarks or potential landmark buildings. Commercial enterprises will not be inclined to purchase or maintain properties guaranteed only a reasonable use, but will look for properties where they can be assured the most profitable use of the land. Therefore, failure to address the economic consequences of individual landmark designation will "create a class of buildings which will be shunned like lepers."[89]

This scenario presents city councils with two equally suspect alternatives. They may simply refuse to designate any downtown structure that is not operating profitably. Many communities have followed this course of action, perhaps in response to the political pressures exerted by downtown real estate magnates.[90] The result may be the loss of buildings rich in historic and architectural value.[91] Alternatively, the

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86 *See* notes 49-50 and accompanying text *supra*.

87 Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415 (1922) (Holmes, J.).

88 *See* notes 80-85 and accompanying text *supra*.

89 J. PYKE, *supra* note 21, at 28.

90 Costonis, *Development-Right Transfer: A Proposal for Financing Landmark Preservation*, 1 REAL EST. L.J. 163, 166 (1972).

91 This mentality is illustrated by the demolition of the Old Stock Exchange in Chicago. The

city council may designate arbitrarily, with little regard for economics, and hope that public relations and protracted litigation will end the complaints of landmark owners. This course of action will only further discourage private interests from purchasing, restoring, and inhabiting landmark properties.

LEGISLATIVE INCENTIVES FOR COMPENSATING LANDMARK OWNERS

To implement the policy of architectural preservation with any degree of success, legislation must resolve the difficult and central problem of financing the cost of landmark preservation. In this light, legislators should consider various alternatives for shifting all or part of the costs of landmark preservation programs from the owner to the community as a whole.

Government Acquisition

The principle is well-established that government may exercise its power of eminent domain to acquire landmark properties. In 1896, the Supreme Court first acknowledged,[92] and has since affirmed,[93] that the preservation of historic property is a "public use" for which the power of eminent domain can be exercised.

The exercise of the eminent domain power offers a flexible device for compensating landmark owners. It appears settled that the extent of the "taking" rests wholly in the discretion of the legislature, subject only to the restraint that just compensation be paid.[94] Therefore, the government might purchase or condemn the entire fee. Alternatively, the city might take a lesser interest in the landmark property, such as an easement. By granting an easement, the government would take

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Old Stock Exchange was the work of Louis Sullivan and Dankmar Adler, two of the most accomplished practitioners of the renowned Chicago School of Architecture. Built in 1893, it has been likened by architectural historians to the great palaces of Florence. In 1969, the Commission on Historic and Architectural Landmarks recommended that the Exchange be designated as a Chicago landmark. The City Council denied the request on the ground that the costs of designation outweighed the building's aesthetic merits. *Id.* at 164 n.3. The Old Stock Exchange was demolished in 1972 and was replaced by a 45-story office tower destined to be a financial disaster. In consolation, the floor of the Old Stock Exchange has been reconstructed as an exhibit at the Art Institute of Chicago.

92 United States v. Gettysburg Elec. R.R., 160 U.S. 668 (1896) (involving the condemnation of land for the Gettysburg National Military Reservation). The fifth amendment states: "[N]or shall private property be taken for public use, without just compensation." U.S. CONST. amend. V.

93 Courts that have undertaken to define "public use" have given the concept an increasingly expansive construction, holding the public use test satisfied by a "taking" for the benefit or advantage of the public rather than an actual use by the public. *See* 2A P. NICHOLS, EMINENT DOMAIN § 7.519 (3d rev. ed. 1976).

94 Shoemaker v. United States, 147 U.S. 282, 298 (1893). Legislative determination of a particular use as public is awarded great deference, as indicated by Justice Douglas's statement in Berman v. Parker, 348 U.S. 26, 32 (1954), that "[t]he role of the judiciary in determining whether that power [eminent domain] is being exercised for a public purpose is an extremely narrow one."

only a portion of the property owner's rights, such as the building facade or development rights. The landmark owner would retain possession subject to the restrictive easement and would be compensated to the extent of the easement granted. Thus, the power of eminent domain gives the city the ability to condemn all or part of the landmark and compensate the owner accordingly. Condemnation should be coupled with a procedural stay, allowing the city's democratic forum an opportunity to decide upon some reasonable use of the premises. After a designated period elapses, the owner may insist upon having the public assume ownership.[95] These alternatives make government acquisition a flexible and direct mechanism for compensating landmark owners.

The use of eminent domain for landmark preservation, however, has practical limitations. If the entire fee is condemned, the city as landmark owner must put the property to some use. Buildings so acquired can be converted into office space for federal, state, or local officials. The government might also derive income from leasing space in the landmark to private tenants.[96] Yet, not all landmarks can be utilized as office space. Necessary floorplan modifications may be costly or inconsistent with the architectural style. The result may be the preservation of landmarks as public museums, rather than as productive and functional elements of the urban environment. Therefore, the government should consider resale of the landmark with appropriate deed restrictions.[97] On resale, design and demolition restrictions should be reflected in a lower price for the property, making the landmark more attractive on the open market and shifting the diminution in property value to the city taxpayers at large.

Government acquisition is further limited by the constitutional mandate of "just compensation." The problem of determining the amount to be paid may present difficulties. Generally, the owner's loss, rather than the taker's gain, is the measure of compensation.[98] Where fair market value can be determined it is the normal measure of recovery;[99] and fair market value is "what the willing buyer would pay in cash to a willing seller."[100] This rule of compensation has the advantage of encouraging the landmark owner to keep the property in good

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95 *E.g.*, CHICAGO, ILL., REV. MUN. CODE § 21-64.1 (1968). The owner who wishes to alter or demolish his landmark has the right to compel the city to decide whether it will exercise its power of eminent domain and compensate the owner, or whether it will release him from the regulations. The owner is required to postpone plans to alter or demolish for a specified period in order to permit the Chicago City Council to take such action. *Id.*

96 Boston's old city hall now generates more than $200,000 in annual rents for the city. Among the new tenants are lawyers and stockbrokers. NEWSWEEK, June 19, 1978, at 63.

97 *See* note 44 *supra.*

98 United States v. Miller, 317 U.S. 369, 375 (1943).

99 United States *ex rel.* T.V.A. v. Powelson, 319 U.S. 266, 275 (1943).

100 317 U.S. at 374.

repair. Nevertheless, problems of value peculiar to the owner, consequential damages, enhanced value brought about by the project for which the land is condemned, and compensation for interests less than a fee often require protracted litigation.[101]

Even where the parties involved can agree upon valuation of the condemned site or easement, the city must pay the bill. In light of the highly publicized financial distress of some major cities, acquisition may be fiscally impossible absent a revenue-generating use for the structure. Public ownership also reduces the tax base, putting further stress on the city budget. Chief Judge Breitel aptly summarized this dilemma:

> In times of easy affluence, preservation of historic landmarks through use of the eminent domain power might be desirable, or even required. But when a less expensive alternative is available, especially when a city is in financial distress, it should not be forced to choose between witnessing the demolition of its glorious past and mortgaging its hopes for the future.[102]

Therefore, extensive public ownership of historic property presents substantial physical, fiscal, and constitutional problems. Too much reliance on government acquisition may strain the limits of the city budget and reduce many habitable landmarks to museum status. Nonetheless, if used on a limited basis, the power of eminent domain offers a flexible device for compensating landmark owners and achieving preservation goals. The government may acquire all or part of the site and mitigate the costs of acquisition through revenues from the building's lease or sale.

Tax Incentives

Some commentators advocate an approach to historic preservation whereby the burden falls neither solely upon the landowner, as orthodox police power doctrine demands, nor completely upon government, as eminent domain principles dictate.[103] This "middle way" utilizes a mixture of public and private resources to establish incentives for private participation.[104] An array of such incentives can be developed using the income, property, and estate and gift taxes.

Income Tax Incentives.—Until recently, the Internal Revenue Code inadvertently encouraged the demolition of old buildings, including historic properties. To encourage the rehabilitation of historic structures and neighborhoods, Congress included provisions in the Tax

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101 *See generally* 4 P. NICHOLS, note 93 *supra*; 1 L. ORGEL, VALUATION UNDER EMINENT DOMAIN (2d ed. 1953); E. RAMS, EVALUATION FOR EMINENT DOMAIN (1973).

102 Penn Cent. Transp. Co. v. City of New York, 42 N.Y.2d 324, 337, 366 N.E.2d 1271, 1278, 397 N.Y.S.2d 914, 922 (1977).

103 Costonis, *supra* note 35, at 403-09.

104 *See* Costonis, *supra* note 1, at 580-81; Wilson & Winkler, *supra* note 14, at 341-45; Rankin, note 54 *supra*.

Reform Act of 1976 to stimulate private action and discourage destructive development. The Act provides that an owner of a "certified historic structure"[105] may deduct the cost of certified capital rehabilitation improvements over a five-year period, as opposed to the longer amortization period for most other real estate.[106] This accelerated write-off enables owners to use their tax savings to pay debts incurred for improvements, rather than to pay federal income taxes. A similar benefit is provided by the new investment tax credit. If an investment is made in a qualified rehabilitative commercial or industrial building that has been in existence for more than twenty years, and the rehabilitation leaves seventy-five percent of the existing walls in place as external walls, the taxpayer can claim an investment tax credit on the improvements equal to ten percent of the improvements.[107] Although the owner may not also claim the five-year write-off, several methods of depreciation may be claimed. This provision improves the cash flow available to the owner for debt service, thereby encouraging rehabilitation of older buildings for commercial use.

The owners of historic buildings are further allowed to donate partial interests in property, such as facade easements, to a qualifying body or organization and claim a federal tax deduction for the value thereof.[108] Not only is the owner able to deduct the value of the easement on his federal tax return, but also the owner's real estate tax assessment is reduced since the fair market value of his or her property is reduced.

The Tax Reform Act also establishes penalties for those who demolish or substantially alter historic structures. When a National Register structure is demolished, the developer will be foreclosed from claiming two significant tax deductions: the demolition cost and the nondepreciated cost of the new structure.[109] This has the effect of permanently increasing the cost of the new structure. In addition, the developer is limited to straight-line depreciation on any new building erected on the site.[110] This deprives the developer of the benefit of accelerated depreciation, which is usually needed to defer the cost of new construction.[111]

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105 A certified historic structure is any structure that is either: (1) listed individually in the National Register of Historic Places, (2) located within, and certified by the Secretary of the Interior as being part of an historic district listed in the National Register of Historic Places, or (3) located within an historic district designated under a state or local statute that has been certified by the Secretary of the Interior. I.R.C. § 191(d)(2).

106 *Id.* § 191(a).

107 *Id.* § 167(o)(2).

108 *Id.* §§ 170(f)(3), 2055, 2522.

109 *Id.* § 280B(1). *See* Jahns, Legal Aspects of Landmark Preservation in Illinois (prepared for Landmarks Preservation Service, Chicago, Ill.).

110 I.R.C. § 167(n)(1).

111 *Id.* § 167.

Therefore, the Tax Code stimulates the preservation of historic, income-producing structures by allowing favorable tax treatment for rehabilitation, and discourages destruction of historic buildings by reducing tax incentives for demolition and new construction on the site of the demolished historic structure. Taken together, the incentives and disincentives in the Tax Reform Act should promote preservation goals. Yet, if profits are high enough, protection from demolition is not ensured. Moreover, nonincome-producing residential structures, such as homes, are not covered. Therefore, the protection afforded by current federal income tax incentives is limited. More effective provisions must be implemented at the state and local levels. Maryland, for example, discourages demolition of historic properties and provides income tax incentives for rehabilitation and charitable donations of such properties.[112] A maintenance and repairs deduction might also provide an income tax incentive for landmark owners.

Property Tax Incentives.—The property tax, essentially a local levy, can also serve to encourage private preservation efforts. Property tax incentives can take a variety of forms, each relatively unique, including exemptions, credits, abatements, and reduced assessments.

An exemption, as the name implies, is a formal and permanent immunity from property tax levies. Many states grant exemptions from state and local taxes for property owned by nonprofit corporations or associations that seek to acquire and restore historic structures.[113] Preferential tax exemptions also attach in the case of individual property owners in some states. The Louisiana constitutional amendment creating the Vieux Carre district in New Orleans empowers the district commission to exempt structures within the district from municipal and parochial taxation.[114] Puerto Rico has enacted legislation providing property tax exemptions for significant buildings located in the Old San Juan historic district.[115] Preservation by private owners in the district is compulsory, the exemption is automatic, and the duration of the exemption varies with the extent of restoration undertaken.[116]

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112 MD. TAX. & REV. CODE ANN. § 281A (Supp. 1978). *See* Shull, *The Use of Tax Incentives for Historic Preservation*, 8 CONN. L. REV. 334, 340 (1976).

113 CONN. GEN. STAT. § 12-81(7) (1979) (provides real property tax exemption for property owned by a Connecticut corporation organized exclusively for scientific, educational, literary, historical or charitable purposes, if the property is used for those purposes); N.J. STAT. ANN. § 54:4-3.52 (West Supp. 1979) (provides real property tax exemption for buildings listed on the state register of historic places owned by a nonprofit corporation); N.Y. NOT-FOR-PROFIT CORP. LAW § 1408 (McKinney Supp. 1978) (exempts historic sites held by an historical society provided the sites do not exceed six acres in any single locality). *See* Shull, *supra* note 112, at 342-43.

114 LA. CONST. of 1921, art. XIV, § 22A (amended 1936).

115 P.R. LAWS ANN. tit. 13, § 551 (1962).

116 *Id.* A five-year exemption is available for partial restoration of designated buildings, including at a minimum the facade, vestibule, and main staircase. For total restoration, a ten-year exemption is available. *See* Shull, *supra* note 112, at 342.

A state that does not wish to exempt historic property from local taxation altogether may instead allow a tax credit upon fulfillment of certain conditions. Maryland has adopted rather comprehensive tax credit legislation. Cities and counties in the state are authorized to enact ordinances granting up to a ten percent real property tax credit for documented restoration and preservation expenses incurred in maintaining property deemed historically or architecturally significant under standards established by the Maryland Historic Trust.[117] In addition, a credit of up to five percent may be allowed for costs incurred in constructing a new building in a designated historic district, if the building is architecturally compatible with the character of the district. Tax credits acquired in any given year may be carried forward for as many as five subsequent years until exhausted. A locality may require, as a condition to awarding credits, that the owner of the historic property periodically exhibit the property for public educational purposes.[118]

Tax abatement schemes typically provide relief as mitigation for the showing of economic hardship suffered as a result of landmark designation. In New York City, for example, the owner must show that a reasonable rate of return is not realized on a landmark property. The Board of Estimate may, upon recommendation of the Landmarks Preservation Commission, grant a full or partial tax exemption or remission of the tax in order to preserve the building.[119]

A better property tax incentive for historic preservation is reduced or preferential assessments. This type of incentive is attractive because it allows historic property to be assessed at a level consistent with its restricted market value, *i.e.*, its market value in light of the fact that its historic character must be maintained.[120] Reduced assessments are currently operationalized in three ways. First, a certification of the property as a landmark or of an area as an historic district is deemed to be prima facie evidence that the value of the property for commercial, residential, or other purposes is reduced.[121] A second approach to reduced assessment for historic properties is to base the assessed value upon actual use rather than upon the highest and best economic use permitted in the zone.[122] Third, the tax assessment is reduced in some states to reflect encumbrances resulting from easements or use restrictions.[123] Using this approach, the landmark owner can donate an his-

117 MD. TAX. & REV. CODE ANN. § 12G (Supp. 1978).

118 *Id.*

119 *See* note 54 and accompanying text *supra*. *See also* CONN. GEN. STAT. § 12-127a (1975).

120 Shull, *supra* note 112, at 344.

121 VA. CODE §§ 10-135 to 10-140 (Supp. 1979).

122 CAL. GOV'T CODE §§ 50280-50289 (Deering Supp. 1979); CAL. PUB. RES. CODE §§ 5031-5033 (Deering Supp. 1979) (taxed on actual use provided the owner enters into a 20-year contract to preserve and maintain the building and to allow public visual observation of the exterior).

123 ILL. ANN. STAT. ch. 24, § 11-48.2-6 (Smith-Hurd Supp. 1979); N.C. GEN. STAT. § 160A-

toric or facade easement to a public body.[124] Once an easement of this type has been granted, the property can no longer be developed and the restriction is recognized in assessing the property for tax purposes.[125]

Estate and Gift Tax Incentives.—Estate and inheritance taxes might also be used to encourage private preservation efforts. At the federal level, the value of the gross estate is based, in part, on the fair market value of the decedent's real property at the time of death.[126] Under this method of valuation, residential historic property in a commercial urban area (to choose the most extreme example) is often appraised at a value that can only be realized by tearing down the residence and putting the site to more intensive use. In order to pay the tax, the heirs may be forced to sell the property to developers. Remedial legislation would require real properties listed in the National Register of Historic Places to be valued for estate tax purposes at its value in existing use. States might well implement similar provisions. With the exception of Nevada, all states impose some form of death taxation that could be easily adapted to promote architectural preservation.[127]

Effectiveness of Tax Incentives.—Like government acquisition, tax relief shifts the burden of preservation from the landmark owner to the taxpaying citizens at large. The advantage of tax relief over government acquisition is that after the tax code has been drafted to provide incentives for private citizens, businesses, and investors, the government need not intervene, thus minimizing the taxpayers' administrative costs. Tax incentives also ensure that landmarks are utilized by private concerns and not converted into government-owned mausoleums.

The effectiveness of the incentive, however, hinges upon the adequacy of the tax relief. It is unclear whether tax benefits are, in general, sufficient to direct private investment activity.[128] The reduction in taxes must at least approach the profits sacrificed when the landmark is situated on urban land with high development potential. Therefore, allowance for rehabilitation and maintenance deductions may not be sufficient to encourage private investment in landmark property. The incentive scheme should also include reduced property tax assessments to reflect the reduction in market value of the property once the design and demolition controls have been imposed. Relief should be granted

399.5(6) (Supp. 1978); OR. REV. STAT. § 271.740 (1977); TENN. CODE ANN. § 11-1805 (Supp. 1978); VA. CODE § 10-151 to 10-158 (Supp. 1979); W. VA. CODE § 8-26A-4 (1976).

124 VA. CODE § 10-151 to 10-158 (Supp. 1979).

125 *Id.* § 10-155.

126 I.R.C. § 2031; Treas. Reg. § 20.2031-1(b) (1979).

127 *See* R. WAGNER, DEATH AND TAXES 59 (1973).

128 *See* Henke, *Preferential Property Tax Treatment for Farmland*, 53 OR. L. REV. 117 (1974); Shull, *supra* note 112, at 347. Studies have been undertaken to analyze the effect of public tax policy on neighborhood landmark preservation. News Notes, *HUD Research Money Put to Work in Many Areas in 1975*, 8 J. HOUSING 368 (1975).

to the residential landmark owner as well as the commercial landmark owner. Finally, tax relief should be used as only one element in a comprehensive incentive program.

Exemption schemes designed to effectuate preferential policies arguably contravene the fourteenth amendment guarantee of equal protection on the ground that the statutory classifications are underinclusive. Courts have rejected such challenges,[129] because the power to tax is often directed toward achieving non-revenue related ends.[130] In sum, statutory tax classifications based on the historical or architectural nature of property appear to be reasonable[131] and should therefore present no constitutional difficulty.

Finally, lawmakers must weigh the effect of tax relief on the flow of revenues. Since the tax assessment and collection machinery is already in existence, administrative costs involved are negligible. The primary difficulty with an extensive tax exemption plan is the depletion of local funds. The long-term commercial consequences of preservation, such as increased property values and tourist-stimulated business, may, however, ultimately produce a wider tax base. Therefore, a reduction in tax revenues is not the inevitable corollary of tax exemption plans. In addition, states could reimburse localities for tax losses when local units provide exemptions for architectural preservation.[132] Such cost sharing is justified because the state itself usually derives a general commercial benefit from preservation programs, and its adoption would completely foreclose revenue reduction problems.

Transfer of Development Rights

A few states offer indirect assistance to landmark owners by allowing them to transfer the development rights of the parcel containing the landmark to other lots in the vicinity.[133] Since many landmarks are

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129 *E.g.*, Reynolds Metal Co. v. Martin, 269 Ky. 378, 107 S.W.2d 251, *appeal dismissed*, 302 U.S. 646 (1937) (income tax); Williams v. City of Bowling Green, 254 Ky. 11, 70 S.W.2d 967 (1934) (occupational tax).

130 VIRGINIA Comment, *supra* note 49, at 313. *See, e.g.*, I.R.C. § 38 (investment credit). *See also* Perthur Holding Corp. v. Commissioner, 61 F.2d 785, 786 (2d Cir. 1932), *cert. denied*, 288 U.S. 616 (1933).

131 *See* Inter-County Rural Elec. Coop. Corp. v. Reeves, 294 Ky. 458, 171 S.W.2d 978 (1943) (dictum).

132 VIRGINIA Comment, *supra* note 49, at 314. *See* WIS. STAT. ANN. § 71.09(7) (West Supp. 1978) (state must reimburse locality for revenues lost because elderly have been exempted from extraordinary local taxes); 1 ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, THE ROLE OF THE STATES IN STRENGTHENING THE PROPERTY TAX 12 (1963) (the Commission also suggests that outright grants, if supported by appropriations, are more economical and more equitable than tax exemptions and therefore should be favored. *Id.* at 11).

133 For an excellent discussion of the plan, see Costonis, note 1 *supra*; Marcus, *Air Rights Transfers in New York City*, 36 LAW & CONTEMP. PROB. 372 (1971); Note, *Development Rights Transfer in New York City*, 82 YALE L.J. 338 (1972). *See also* Costonis, *Development Rights Transfer: An*

small, having been built before the advent of the skyscraper, they often do not utilize the "floor area" of additional stories permitted under most zoning laws. It is this authorized but unconstructed floor space that may be transferred in the form of a development right. The transferee-owners are then permitted to build on their properties in excess of the applicable zoning regulations.

The transfer of development rights (TDRs) may be financed in various ways. The TDR might be sold directly to the transferee by the landmark owner, or the city might establish a TDR bank "funded" with lot area from publicly owned landmarks, with donations from private owners (potential tax deductions), and with lot area from condemned properties. The bank would in turn sell TDRs to private parties who wish to develop property beyond the floor area permitted by existing zoning laws. The proceeds from the bank sale could be used to finance other governmental acquisitions of landmark properties. A third alternative is illustrated by New York's South Street Seaport District.[134] A consortium of banks, acting as middlemen, purchased the development rights from the property owners in the historic district. As the city's urban renewal plan progresses, the development rights will be transferred to specific receiving lots.[135]

The severing of development potential from property and allowing its transfer to another site has precedents in other areas of resource maintenance—transfer of airspace, sale of water rights, and regulation of oil and gas production.[136] Proponents of this incentive zoning provision argue that it permits governments strapped for funds to offer "nondollar trade-offs of palpable economic value."[137] Preservation costs are shifted from the landmark owner to the urban development process. Essentially a self-controlled market operation, the transfer imposes relatively little cost on the public or the municipality. TDRs also help to ease the urban space shortage and expedite private development. In addition, the planning commission may sell development rights and utilize the receipts to fund the preservation program. Hence, multiple benefits are conferred upon the landmark owner, the transferee, and the city.

The effectiveness of TDRs as an incentive for landmark preservation is limited, however, by the extent to which a market exists for the

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Exploratory Essay, 83 YALE L.J. 75 (1973); Note, *The Unconstitutionality of Transferable Development Rights*, 84 YALE L.J. 1101 (1975).

134 NEW YORK CITY, N.Y. ZONING RESOLUTION §§ 74-79 to 74-793 (1975).

135 Marcus, *Mandatory Development Rights Transfer and the Taking Clause: The Case of Manhattan's Tudor City Parks*, 24 BUFFALO L. REV. 77, 93 (1974).

136 For a discussion of the legal precedents for a development rights system, see Carmichael, *Transferable Development Rights as a Basis for Land Use Control*, 2 FLA. ST. U.L. REV. 35, 53-99 (1974).

137 Costonis, *supra* note 35, at 406. The potential benefits of TDR legislation are enumerated in Costonis, *supra* note 90, at 170-73.

transfer. Only in the most congested urban centers, such as New York, Chicago, and Los Angeles,[138] is such a premium placed upon airspace that developers will pay for these rights. In less dense areas, there is no guarantee that the value of TDRs will equal or even approach conversion value for the landmark site. Therefore, implementing a TDR program requires a sophisticated understanding of the interrelationships between the various submarkets for housing, commercial floorspace, and land.

The effectiveness of the program rests also on the statutory draftsmanship. Transfers should not be restricted to adjacent lots, but should extend to lots located within the general vicinity of the landmark. Otherwise, the market for development rights will be depressed, and the landmark may be "suffocated" by adjacent superdensity. Transfers should also be subject to carefully defined planning controls to prevent the creation of undue congestion at the transfer site. The amount of lot area transferable from specific landmarks may be determined by the preservation costs associated with the landmark, not simply on the basis of the authorized but unbuilt floor space of the landmark, in order to provide meaningful compensation to the owner. The incentive may be weak where the landmark owner must bear the risk of realizing value through TDRs.[139]

Coordination of Assistance

In sum, there is precedent for a variety of incentive mechanisms whereby the cost of preservation may be shifted from the landmark owner to society as a whole. It is likely that the adoption of these measures will result in more effective advancement of preservation goals, by encouraging individuals and commercial enterprises to purchase and maintain architecturally distinctive buildings. The remaining difficulty is primarily that of drafting and administering appropriate legislation. The available mechanisms must be tailored to the particular demogra-

[138] The top office rental in Manhattan has soared to about $25 per square foot. Real estate markets are strong in other major cities too, but space is less costly. Top rentals in Chicago and Los Angeles are about $12 per square foot, according to one study, while some Washington, D.C., landlords are receiving $15 per square foot. Carberry, *Resurgent Real Estate in Manhattan Traced to Improved Outlook*, Wall St. J., Apr. 6, 1979, at 1, col. 6.

[139] These are just a few of the provisions recommended by Costonis, *supra* note 90, at 168-69. Professor Costonis criticizes the New York transfer plan because of its lack of economic incentives, design controls, and guarantees that the landmark will ultimately be saved; its procedural complexity; and its element of voluntariness on the part of the owner. Costonis, *supra* note 1, at 586-89. He states further that the "plan also lacks a mechanism that precisely defines the obligations assumed by the present and future owners of the landmark in consequence of the transfer authorization and that affords the city an effective remedy for the breach of these obligations." *Id.* at 588-89. Also, since the transfers are apparently irrevocable, the owner could rebuild only to the former structure's bulk if the landmark burned down. *Id.*

phy of each community. The coordination and harmonization of these various devices will provide a more complete and effective incentive for private interests to preserve historic properties.

Whatever the mix of direct and indirect, public and private incentives, the local landmarks commission should take maximum advantage of the variety of federal assistance available for preservation purposes. In 1978, the Department of the Interior budgeted $45 million for restoration projects, compared with only $300,000 in 1968.[140] In addition, the Department of Housing and Urban Development (HUD) makes available federal assistance for local urban renewal plans, including plans for "restoration of acquired properties of historic or architectural value."[141] HUD also makes grants to states for preservation studies[142] and offers matching grants to states for the preparation of historic surveys and preservation plans, involving the acquisition and development of historic sites and structures.[143] Matching grants are also available from HUD for government acquisitions meeting the requirements of the Open-Space Land program.[144] Furthermore, improvement of historic sites owned by the public may be funded in part by the Urban Beautification Program.[145] All of these sources of federal assistance reduce the economic strain placed upon local government and landmark owners. Local agencies should coordinate their efforts with federal agencies to achieve the optimum in effective preservation programs.

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140 NEWSWEEK, June 19, 1978, at 63.

141 42 U.S.C. § 1460(c)(10) (1976). When local funds are insufficient to effect the proposed project, federal grants may cover up to two-thirds, or in some cases three-fourths, of the net cost. These funds may be used to finance surveys, planning work, and general environmental improvement, as well as to fund the acquisition of threatened historic property for resale to interested preservationists. Additional assistance is available in the form of loans, technical advice, and special mortgage insurance. *See* U.S. DEP'T OF HOUSING & URBAN DEVELOPMENT, PRESERVING HISTORIC AMERICA 8 (1966). This pamphlet also contains 19 case studies of cities that have taken advantage of the urban renewal program to further historic preservation goals. *Id.* at 10-45.

142 U.S. DEP'T OF HOUSING & URBAN DEVELOPMENT, *supra* note 141, at 52. The federal government will finance up to two-thirds of the cost of such projects and will subsidize the entire cost of the ensuing reports. U.S. DEP'T OF HOUSING & URBAN DEVELOPMENT, PROGRAMS OF HOUSING AND URBAN DEVELOPMENT 29 (1967).

143 16 U.S.C. § 470a(a)(1) (1976).

144 42 U.S.C. §§ 1500-1500d-1 (1976). This program permits a state or local government to apply for a federal grant that will cover up to 50% of the purchase price of "(1) predominantly undeveloped land of historic significance, (2) historic structures, where the structure's value does not increase the fair market value of the land, and (3) developed land from which non-historic structures will be removed. In addition, federal funds may be used to landscape or otherwise improve the setting of an historic site acquired through a program grant." VIRGINIA Comment, *supra* note 49, at 317.

145 16 U.S.C. § 460*l*-8 (1976).

CONCLUSION

Although Congress has articulated a policy favoring preservation and has acted to provide remuneration for landmark owners, the mechanics of preservation have been left to state and local governments, to be administered through preservation laws and ordinances. These local ordinances provide for the designation of individual properties and districts of historic and architectural distinction, and prohibit the alteration or demolition of the designated structures. The public benefits that flow from such restrictions are many and varied, and usually outweigh any individual incidence of hardship. Where, however, urban pressure places a premium upon economic development and the landmark is an inefficient use of space, the imposition of design and demolition controls will make the property undesirable on the open market. This detrimental effect on property value is even more pronounced where the landmark is isolated and does not receive any *quid pro quo* from the surrounding properties.

Therefore, the use of design and demolition controls to implement the goal of architectural preservation may be so burdensome to the private landmark owner as to threaten the constitutionality of the preservation statute. Furthermore, even where the losses from maintenance and foregone property development are significant, courts will not find a "taking" requiring just compensation unless the owner is deprived of all reasonable or charitable use of the property. These cases are rare, and, under *Penn Central*, local statutes may avoid problems of constitutionality by establishing comprehensive preservation programs. The detrimental effect of design and demolition controls on the value of the isolated landmark property, however, creates a class of highly undesirable property. This discourages private interests from purchasing and preserving landmark properties. Thus, the economics of design and demolition controls undermines the goal of historic preservation. Compensation for the isolated landmark owner would obviate such a result.

Preservation statutes must, therefore, be revised to provide incentives for the private use and maintenance of landmark properties. A variety of legislative precedents and techniques are available for distributing the costs of historic preservation. Tax relief should be the centerpiece of new legislation, because it provides incentives for private investment with minimum government involvement beyond already established agencies for tax administration. Yet, tax relief may not be sufficient. In high density urban areas where lost profits from foregone development are substantial, preservation statutes should provide for the transfer of development rights. If carefully drafted and sensibly administered, TDR programs can provide relief for the landmark owner through private resources. Where there is no market for TDRs or if TDRs fail to pass the constitutional test, government acquisition

should provide final recourse. The local government should be required at least to condemn the development rights of the property, but it should strive to find tenants or buyers for the property. In so doing, the government can help to finance preservation efforts and can return the landmark to active private use. The optimum combination of these devices will vary with the real estate market of any particular area.

The end result should be a mixture of public and private resources to offset the economic burden cast on the isolated landmark owner, thereby encouraging the preservation and continued use of historically and architecturally significant landmarks.

Gary L. Tygesson

We are pleased to dedicate this symposium issue of the Northwestern University Law Review to Justice Walter V. Schaefer, who retired from the Illinois Supreme Court in 1976 after twenty-five years of distinguished service. The planning and editing of this issue took over a year and a half, and spanned two editorial boards. It is our hope that it will stand as a lasting tribute to a most eminent jurist.

WALTER V. SCHAEFER

DOUGLAS WOOD

& ASSOCIATES, INC. □ STRUCTURAL ENGINEERS
299 ALHAMBRA CIRCLE □ SUITE 510
CORAL GABLES, FLORIDA 33134
(305) 461-3450 FAX: (305) 461-3650

October 19, 2006

Ms. Kara Noelle Kautz
City of Coral Gables
Historical Resources Department
Historic Preservation Officer

Reference: **Preliminary Observation of Existing Structural Systems for Collapsed Residence at 1044 Coral Way Coral Gables, Florida**

Dear Ms. Kautz:

As requested by the City, the writer visited the collapsed residence at 1044 Coral Way in the morning of October 17, 2006. At that time, the writer was met by Ms. Kara Kautz and Simone Chin of the City and by Mr. & Mrs. Waldo Toyos III, the property owners.

The purpose of this visit was to take a preliminary look at the overall present condition of the structural systems for this collapsed residence and to determine if its present condition is sufficiently stable to conduct an investigation of the cause of the structural collapse.

As can be seen in the attached photographs, this residence experienced a devastating collapse (A historical photograph of this residence is attached as Photograph No. 20). Much of the roof structure and second floor or loft appears to have fallen and shifted toward the rear of the residence. The supporting walls in the rear of the structure completely collapsed, and much of the roof is now resting on the ground floor and on the rubble of the exterior walls (Refer to Photographs No.'s 1, 2, 12, 13, 14, 17 and 18). Almost all of the remaining walls, elevated floor and roof structures appear to have been significantly damaged by the collapse. Almost all of the remaining wall and porch columns are cracked and leaning (Refer to Photographs No.'s 4, 5, 6, 7, 8, 9, 10, 11, 12 and 19).

The severity of the collapse and the extent of damage to almost all of the structural elements due to the collapse, combined with the usual issues of deterioration of materials (rot, insect damage, rust, concrete carbonation, etc.) and lack of structural capacity relative to current Building Code and current design practices, it is not feasible to repair the existing structural systems and, of course, the finishes attached to them. At

this point in time, it would only be possible to recreate the former residence. Of course, it would be possible to salvage some materials from the collapsed residence and incorporate them into a recreated residence. Due to the amount of work it would, of course, be necessary to adhere to the current Building Code and current design practices.

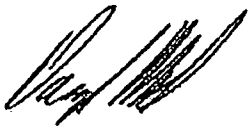
Relative to the issue of conducting an investigation of the cause of the collapse, we conclude that in its current state, the residence is not sufficiently safe to conduct a meaningful investigation. The precarious condition of almost all of the structural members and systems along with the unpredictable behaviors of the damaged members and rubble piles make the present condition unsafe and the adequacy of a shoring and bracing scheme questionable. In addition to this, the collapse of the roof and rear walls down to the very floor, make access to some critical areas virtually impossible.

If it is desired to conduct a meaningful investigation into the cause of this collapse, then it is the writer's opinion that it would be necessary to perform a carefully controlled removal of the existing materials. The sequence of removal would need to be determined by the writer, and the writer or his representative would need to be present at all times to observe the operation, to document the materials as they are removed, to determine adjustments in the sequence of removal and to determine the need for retaining certain materials for further observation and evaluation. Temporary shoring and bracing would be required in various configurations during this controlled removal.

Undoubtedly, such a controlled removal along with constant observation by the writer or his representative would have a fairly high cost. Also, due to the uncertainties, it would not be possible to accurately predict the level of services required, and consequently, to set a fixed cost. Also, due to the risk of injury, it may become necessary for the City to indemnify the contractor, engineer and owner.

Please call if you have any questions or would like to discuss these issues in further detail.

Sincerely
DOUGLAS WOOD & ASSOCIATES, INC.



Douglas Wood, P.E.
President

For the purpose of disclosure, it should be noted that it has been reported to the writer that the owner of this property is also the property owner for a project on which Douglas Wood & Associates, Inc. is providing structural engineering services as a subconsultant to the project architect.

M. HAJJAR & ASSOCIATES, INC.

45 Valencia Avenue, Coral Gables, Florida 33134, Tel 305-445-2399, Fax 305-445-2219

September 20, 2006

Mr. Waldo Toyos
832 Cortez Street
Coral Gables, Florida 33134

RE: 1044 Coral Way
Coral Gables, Florida 33134

This office has conducted a visual observation of subject property on September 22, 2006, as per your request. Mr. Glenn Pratt, the Architect, was present during our site visit. There were no structural drawings available to us to review. A set of preliminary architectural drawings dated 12.20.04 prepared by Bellin & Pratt Architects was provided to us by Mr. Pratt at the job site. These plans outline the proposed alteration and addition to the existing house.

BRIEF DESCRIPTION OF THE BUILDING:

The referenced property appears to be one-story residential structure with high ceilings and dormer windows. The approximate dimensions are 30 feet wide (E-W) by 37 feet deep (N-S) and the height varies from 12'-9" to approximately 20 feet. The structure of this house consists of concrete masonry block exterior wall supporting the roof. The roof structure is framed with wood rafters. It appears that the roof was originally covered with wood shingles and at a later date Spanish tiles were added on top of the existing roof.

FINDING OF SITE INVESTIGATIONS:

The results of our visual observations are presented herein:

The rear section of the existing house has collapsed (south side). There is no access to get inside the house as the remaining standing structure is not structurally stable and/or safe to even get close to the house. This house appears to be structurally unsafe at this time and could cause imminent danger.

Our visual observation of the job site indicates that the wood members were badly rotted and damaged. This could be the result of long term roof leak and termite damage. The additional load from the new roof tile could have also contributed to this failure. However, the lack of existing structural drawing and access to the inside of the property a thorough structural investigation is not possible or recommended by this office.

M. HAJJAR & ASSOCIATES, INC.

45 Valencia Avenue, Coral Gables, Florida 33134, Tel 305-445-2399, Fax 305-445-2219

We have attached photos of the residence taken in 2004, prior to the collapse of the structure. The pictures show deterioration and damage which may be caused by extensive and prolonged exposure to water infiltration. This may have been the cause for the failure of structural roof members.

RECOMMENDATIONS:

In our opinion, further investigation of the remaining building is not feasible at this time. The building can collapse at any time since the structure has shifted and vertical members may be unstable. The structural condition of the existing building is not structurally safe for continued occupancy and must be removed. Please reference current photographs included herein.

As a routine matter, in order to avoid possible misunderstanding, nothing in this report should be construed directly or indirectly as a guarantee for any portion of the structure. To the best of our knowledge and ability, this report represents an accurate appraisal of the present condition of the building based upon careful evaluation of observed condition, to the extent reasonably possible.

Sincerely,

Mohammad Hajjar P.E.
Principal

Attachments: 2004 photos
Current photos

Cc: Glenn Pratt, Architect
Project file

The City of Coral Gables

Historical Resources Department

February 16, 2010

Mr. and Mrs. Waldo Toyos III
PO Box 143401
Coral Gables, Florida 33114

Re: 1044 Coral Way

Dear Mr. and Mrs. Toyos:

Enclosed please find a copy of the staff report addressing the removal of the Local Historic Landmark designation from the property at 1044 Coral Way.

The Historic Preservation Board will conduct a public hearing at its regular meeting scheduled for **Thursday, February 18, 2010** to consider this item. The meeting begins at 4:00 P.M. and will be held in the Coral Gables City Hall, 2nd floor, City Commission Chambers.

Please be advised that a representative must be the meeting to present the application and answer any questions that may arise. Should you need any additional information or have questions please feel free to call the office.

Sincerely,

Kara Kautz
Historic Preservation Officer

Enclosure

cc: File LHD 2003-18 REVISED
Dona Spain, Assistant City Manager
Elizabeth M. Hernandez, City Attorney

RECEIVED
CITY OF CORAL GABLES
HISTORICAL RESOURCES
2010 APR -8 PM 4:45

REPORT OF THE CITY OF CORAL GABLES

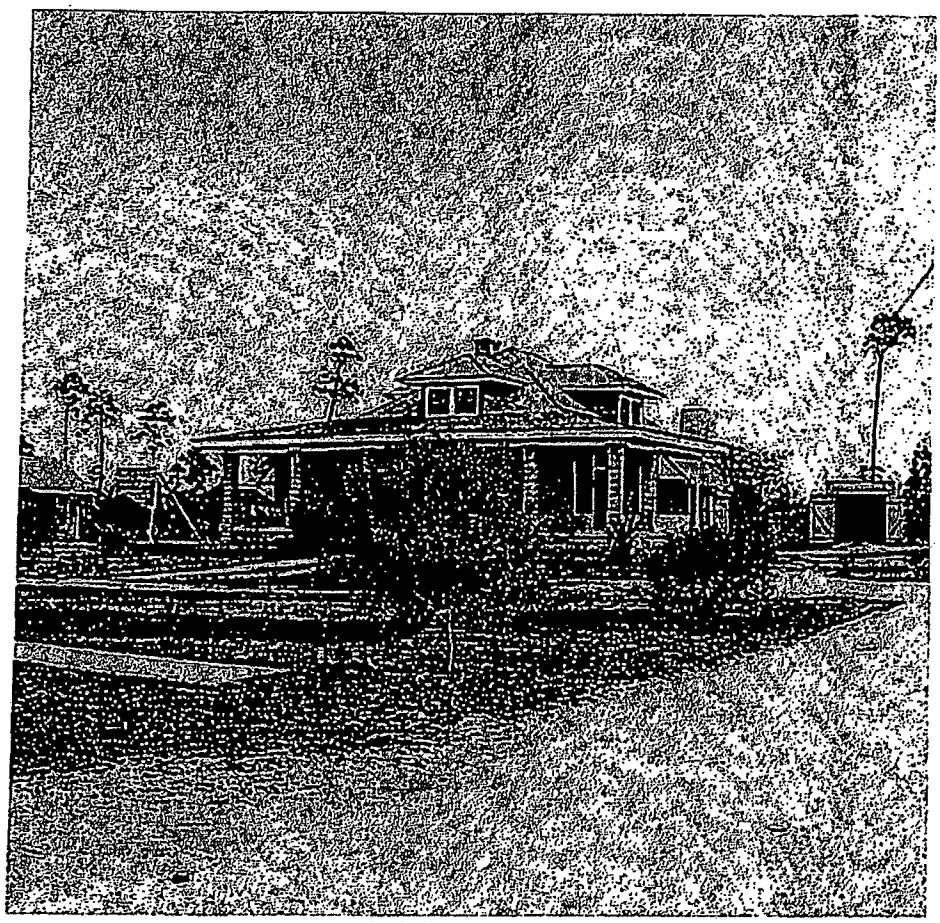
HISTORIC PRESERVATION DEPARTMENT

TO THE HISTORIC PRESERVATION BOARD

ON THE DESIGNATION OF

THE PROPERTY AT

1044 CORAL WAY



1920s Photograph

The City of Coral Gables

Historical Resources Department

LHD 2003-18 (REVISITED)
APRIL 15, 2004
FEBRUARY 18, 2010

DESIGNATION REPORT
PROPERTY AT
1044 CORAL WAY
CORAL GABLES, FLORIDA

Date of Construction:	ca. 1910
Architect:	Unknown
Builder:	Hall Construction Co.
Legal Description:	Lot 1 and the West 32 feet of Lot 2, Block 11, Coral Gables Section "A," according to the Plat thereof, as recorded in Plat Book 5, at Page 102, of the Public Records of Miami-Dade County, Florida
Original Owner:	Worth St. Clair
Present Owner:	Waldo Toyos and Jemima Cubas Toyos
Original Permit No.:	55
Present Use:	Residence
Listed on the Coral Gables: Register of Historic Places	April 15, 2004
Site Characteristics:	The property is located on the southeast corner of the intersection of Coral Way and Cordova Street. The main elevation of the residence faced north onto Coral Way.

SUMMARY STATEMENT OF SIGNIFICANCE

1044 Coral Way is among the first residences to be constructed on Coral Way. Constructed prior to 1924, the home was built for Worth St. Clair and his wife Emma Merrick, sister to Reverend Solomon G. Merrick (George Merrick's father). It remained a family home until 1955-1956, when Worth St. Clair's second wife Lillian Merrick Hampton St. Clair, Solomon Merrick's cousin, died.

The main residence was an excellent example of Florida Vernacular architecture, based on the Bungalow architectural typology.

BACKGROUND

The following is a brief timeline of events that eventually resulted in the demolition of the historic structure.

The property was designated by the Historic Preservation Board as a Local Historic Landmark on April 15, 2004 (Resolution number HPB22-LHD2003-18). A Certificate of Appropriateness application was received for the construction of an addition, the rehabilitation of the historic residence, and the installation of at-grade improvements in July of 2004. A variance was requested at that time to exceed the maximum allowable floor area. Case file COA (SP) 2004-17 was reviewed by the Historic Preservation Board and on January 20, 2005 a motion to approve the design and the requested variances failed; however, the Board passed a motion to waive the one-year limitation related to the determination of the variances as specified in Section 24-10 of the "Zoning Code". The Owners did not resubmit plans to the Board.

At the beginning of May 2006, the home at 1044 Coral Way collapsed and was cited as an unsafe structure by City of Coral Gables Code Enforcement. The Historical Resources Department signed a permit for an emergency chain link fence for the perimeter of the property. A letter was then issued by the Building Official on May 10, 2006 deeming the structure unsafe. A request for a Certificate of Appropriateness [case file COA (SP) 2006-13)] for demolition was reviewed by the Historic Preservation Board on August 17, 2006. A motion was passed to approve the application with staff's recommendations pending receipt of more information: additional supporting architectural drawings, photographs, structural report and forensic report so that the Board can be more certain that what the Board are going to get with the new structure is what the Board is looking for and to be brought back next month at next meeting. On October 19, 2006, the matter was continued and presented to the Historic Preservation Board. The Board passed a motion to allow the demolition of the property with the understanding that as much as possible be salvaged from the ruins, saved and secured to be used in the future home and allowed the demolition with the understanding that the original historic building would be re-created unless the Board agrees to a lesser solution when they see the specific plans with additions.

On June 21, 2007, the Historic Preservation Board considered Case File COA (SP) 2007-13, a Special Certificate of Appropriateness for the construction of a new residence and the installation of at-grade improvements. At their regular meeting, the Board approved the design of the new residence with conditions and noted that the requested revisions could be brought to the Historical Resources Department staff for administrative approval. On August 2, 2007, staff issued a letter granting administrative approval of the requested revisions.

At the same June, 2007 meeting the Historic Board also denied a request from the owner to remove the local historic landmark designation of the property.

On December 20, 2007, the Historic Preservation Board revisited Case File COA (SP) 2007-13 when it was discovered that a variance from the Coral Gables Zoning Code was needed to implement the previously approved design. The Board granted a variance to allow the proposed residence to exceed the maximum allowable square foot floor area. The Board also

granted an extension for the expiration of the approved variance to be three years, rather than the usual two-year expiration date for variances.

The current request before the Board is to determine whether the property meets the criteria for designation as a Local Historic Landmark in its current state, without the original structures.

CRITERIA FOR SIGNIFICANCE

A. Historical, cultural significance:

1. Is associated in a significant way with the life or activities of a major historic person important in the past;

Constructed prior to 1924, the home was built for Worth St. Clair (sic. Claire) (b. about 1878, d. 1952) and his wife Emma Merrick (b. about 1870, d. 1925). Emma Merrick was the sister of Reverend Solomon Greasley Merrick and aunt to Coral Gables' founder George Merrick. Worth and Emma St. Clair arrived from Baltimore, Maryland in 1910.

Worth St. Clair assisted the Reverend Solomon Merrick with the fruit farming on the plantation until 1916. It was that year his association with George E. Merrick's real estate ventures officially began. Integrated into the development team, Worth St. Clair was in charge of the construction of *Riverside Farms, North Miami Estates, South Bay Estates, and Twelfth Street Manors.*

Besides his involvement with George Merrick's developments, he took over "The Coral Gables Garage" in 1924. Identified at the time as the first modern business building in the City, the garage operated on the southeast corner of Alhambra Circle and Salzedo Street. By 1926, the property had grown to be an entire block long and was the local facility for Hudson Brougham and Essex cars.

In 1925, Emma Merrick died and the following year, Worth St. Clair married Lillian Merrick Hampton, a first cousin of Reverend Solomon Merrick, in Washington, DC. They travelled back to Coral Gables and again took up residence at 1044 Coral Way.

The property remained in the Merrick/St. Clair family until 1955-1956, when Lillian Merrick Hampton St. Clair, Worth St. Clair's second wife, died.

ADDITIONS / ALTERATIONS

At the time of designation in 2004, it was noted that the residence had undergone minor alterations. By the end of the 1940s, the screened porch on the east was extended towards the front and was eventually enclosed. Additionally, several windows and doors throughout the structure had been replaced.

In 2006, the primary structure on the property collapsed and was ultimately removed, along with the freestanding garage structure. No permanent structure remains on the site.

ARCHITECT

The architect of the original residence at 1044 Coral Way is unknown.

STAFF RECOMMENDATION

The City of Coral Gables has no processes in place for the removal of the local historic designation status. There are no criteria for the de-designation of a locally historic property.

In looking for an example from the National Park Service, arbiters of the National Register of Historic Places, one finds within Title 36 Section 65.9 entitled "Withdrawal of National Historic Landmark Designation." This section provides a set of conditions for the de-designation of a National Historic Landmark. It states, in part:

> (a) National Historic Landmarks will be considered for withdrawal of designation only at the request of the owner or upon the initiative of the Secretary.
> (b) Four justifications exist for the withdrawal of National Historic Landmark designation:
> (1) The property has ceased to meet the criteria for designation because the qualities which caused it to be originally designated have been lost or destroyed, or such qualities were lost subsequent to nomination, but before designation;
> (2) Additional information shows conclusively that the property does not possess sufficient significance to meet the National Historic Landmark criteria;
> (3) Professional error in the designation; and
> (4) Prejudicial procedural error in the designation process.

It is important to note, however, that the City of Coral Gables standards do differ from those of the National Park Service. The most notable example of the differences is that the City has the authority to designate without owner consent while the Park Service does not.

As stated above, the City has no criteria for the withdrawal of local historic designation from a property. In absence of criteria, if one applies the National Register standards to this property, only criteria (B)(1) would be appropriate because the structures at 1044 Coral Way were lost.

However, the Staff Report for the local historic designation of the property, written in 2004, does not base the designation solely on the architectural significance of the structures on the property, but applies the criterion for historical significance (at the time of designation this criterion was called "historical, cultural significance"). B The full staff recommendation to designate in that report reads as follows:

> "The residence at 1044 Coral Way has retained its integrity as an example of the Florida Masonry Vernacular architecture that was derived from the Bungalow building typology. Because of its direct association with the Merrick Family, as one of the earliest homes in the City of Coral Gables, and its architectural adaptation to the South

Florida climate, the staff finds the property at 1044 Coral Way eligible for listing in the Coral Gables Register of Historic Places."

Although the architecture and typology of the house are noted and obviously important, reference is also made to the importance of the original property owners' direct association to the Merrick family. The first Mrs. St. Clair was the sister of Solomon Merrick and the second Mrs. St. Clair was Solomon's cousin. In addition, Worth St. Clair was an integral part of the history of Coral Gables. He helped Solomon Merrick farm the original plantation and then helped George Merrick in the real estate development of Coral Gables. Staff found the entire property eligible for designation, not just the structures.

The applicant requests removal of the Local Historic Landmark Designation from the property. Staff finds that although the house is no longer standing, the property is still significant as the site of the Worth St. Clair home and the site still has strong and lasting ties to the history of Coral Gables.

In addition, allowing the de-designation of the property would set a dangerous and irreversible precedent in the City. It would also undermine the strength of our preservation program and the Coral Gables Zoning Code. The ability to de-designate a property as a historic landmark would, in a worst case scenario, essentially allow owners who did not consent to designation to diminish the architectural integrity of their property and then seek to remove the historic designation.

It is Staff's opinion that while the property has lost its architectural integrity and significance, the historic integrity of the property remains because of its association with the Merrick family and therefore continues to meet the minimum criteria for listing on the Coral Gables Register of Historic Places.

Staff finds the following:

In spite of substantial alterations that have occurred over time, the property located at 1044 Coral Way (legally described as Lot 1 and the West 32 feet of Lot 2, Block 11, Coral Gables Section "A," PB 5-102) remains significant to the City of Coral Gables history based on its: historical and cultural associations.

Therefore, Staff recommends the following:

A motion to **DENY** the request for the removal of the Local Historic Designation of the property at 1044 Coral Way (legally described as Lot 1 and the West 32 feet of Lot 2, Block 11, Coral Gables Section "A," PB 5-102).

Respectfully submitted,

Kara Noelle Kautz
Historic Preservation Officer

Bibliography

1940s Archival Photographs, City of Coral Gables, Historical Resources Department.

Building Microfilm Records for 1044 Coral Way, Building and Zoning Department, Microfilm Division, Coral Gables, Florida.

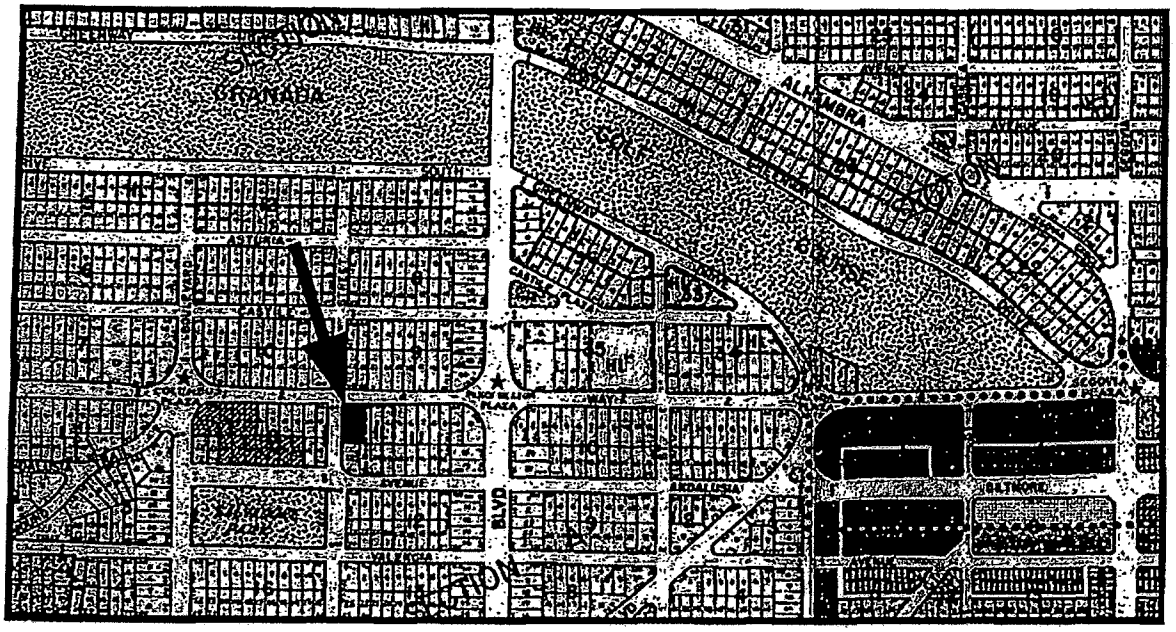
Coral Gables Use & Area Map, City of Coral Gables, June 1997, Plate No. 2.

Miami Rivera, 1924, 1926 and 1955

Real Estate Map, private collection of Aristedes Millas

Written Correspondence with "Skipper" Hill

Genealogy database, http://www.ancestry.com/trees: Lists compiled by Kelly Robinson and Jill Bennett



Location Map

REVIEW GUIDE

Definition: The Review Guide lists some of the more prominent features, which contribute to the overall character of a structure and/or district. It is not intended to be all-inclusive, as photographic documentation fully illustrates the present physical character of the property.

Use: The Review Guide may be used to address the impact of new construction, additions/modifications/alterations and/or renovations which may become the subject of some future Certificate of Appropriateness consideration....and

The Review Guide by describing EXISTING physical characteristics may be used to determine whether or not elements which create the character of the structure and/or district is present and/or whether or not later additions or alterations have so changed that character so as to cause the property (ies) to become ineligible for listing.

Residence Address: 1044 Coral Way

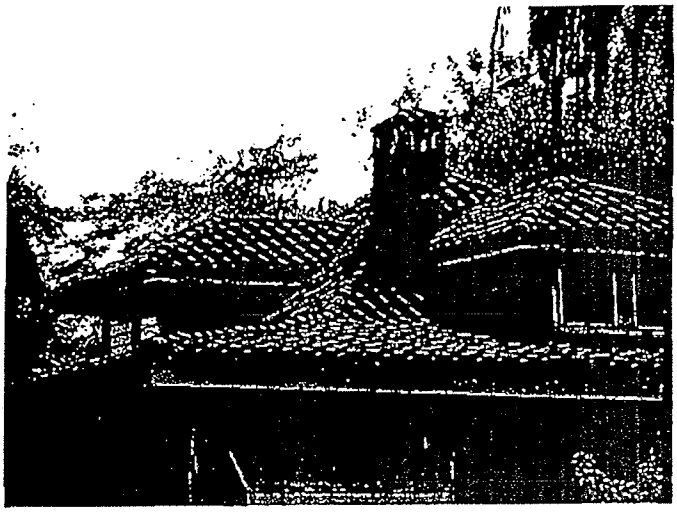
Date of Construction: ca. 1910

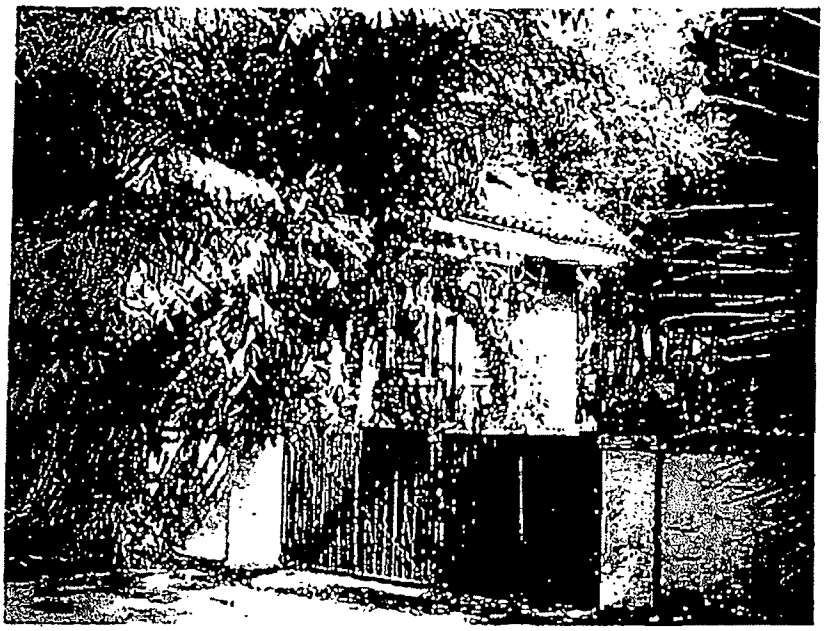
Construction Material: Original structure was masonry covered with stucco, barrel tile

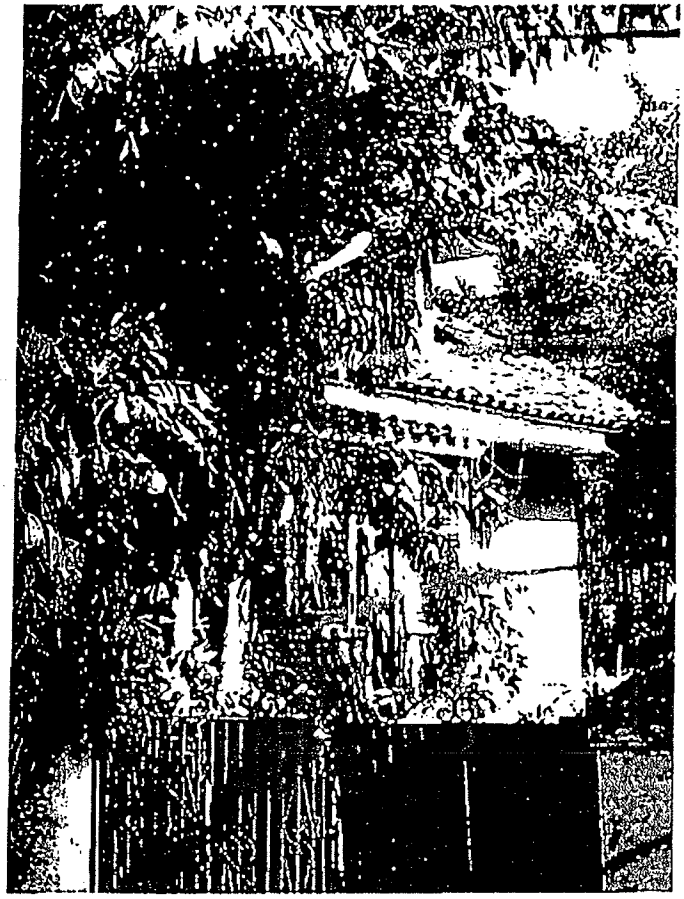
Photograph 1940s

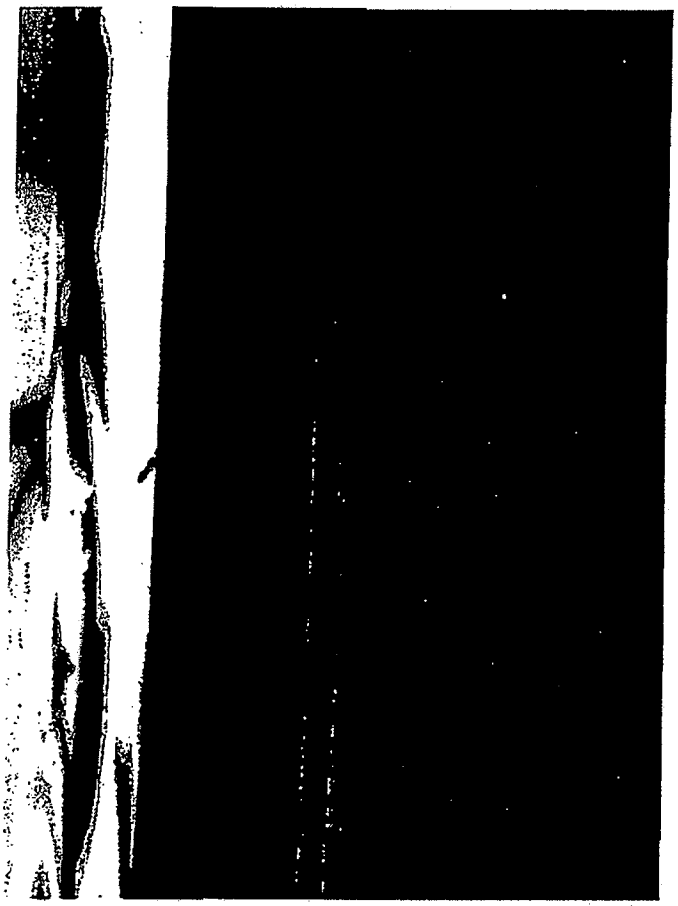
Photographs, Year 2010

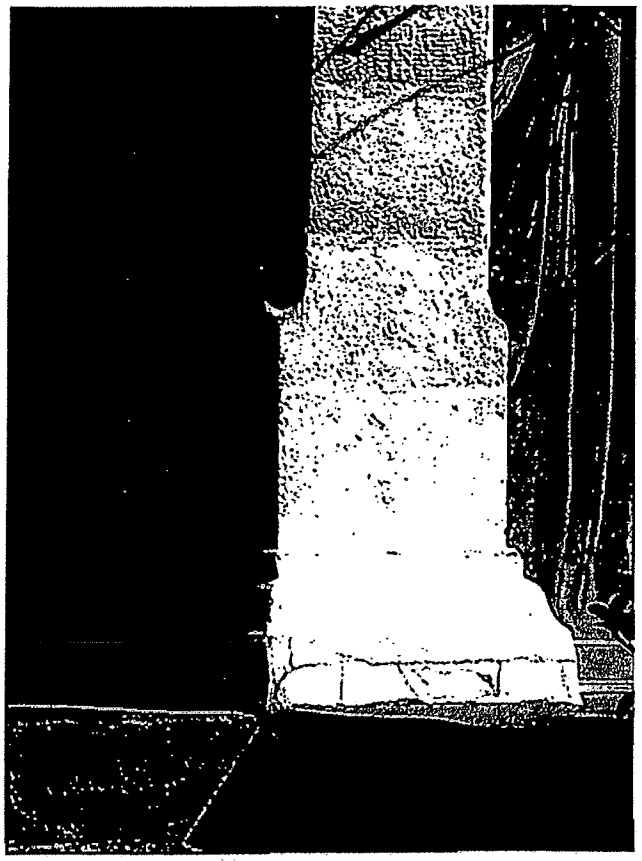
Photographs, Year 2004











Early panoramic view of Coral Way

AGENDA
NOTICE OF REGULAR MEETING
HISTORIC PRESERVATION BOARD
TO BE HELD ON THURSDAY, JUNE 21, 2007
AT 4:00 P.M.
CITY COMMISSION CHAMBERS
405 BILTMORE WAY
CORAL GABLES, FLORIDA

I. **CALL TO ORDER**

II. **ELECTION OF CHAIRPERSON**

III. **ELECTION OF VICE-CHAIRPERSON**

IV. **NOMINATION AND APOINTMENT OF CITIZEN-AT-LARGE BY THE BOARD-AS-A-WHOLE**

V. **CHAIRPERSON'S OPENING ADDRESS**

VI. **ANNOUNCEMENT OF DEFERRAL OF AN AGENDA ITEM**

VII. **SWEARING IN OF THE PUBLIC**

VIII. **APPROVAL OF THE MINUTES**

PUBLIC HEARINGS

SIGN-IN SHEET: *Those who wish to address the Historic Preservation Board during the public hearing portion must legibly record their name and address on the sign-in sheet with the item(s) they wish to address at the recording secretary's table. The primary purpose of the sign-in sheet is to assist staff in the recording of the minutes.*

PROCEDURE: *The following format shall be used; however, the Chairperson in special circumstances may impose variations.*

- *Identification of item by Chairperson*
- *Disclosure statement by Board members*
- *Presentation by Staff*
- *Applicant or Agent presentation*
- *Public comment-support/opposition*
- *Public comment closes - Board discussion*
- *Motion, discussion and second of motion*
- *Board's final comments*
- *Vote*

VIX. **LOCAL HISTORIC DESIGNATION:**

1. **CASE FILE LHD 2007-01 AND COA (SP) 2007-11** Consideration of the local historic designation of the property at 6801 Granada Boulevard, legally described as Tract 2 of Cartee Homestead, according to the Plat thereof, recorded in Plat Book 43, at Page 30, of the Public Records of Dade County, Florida. The applicant is also requesting the issuance of an accelerated Special Certificate of Appropriateness and design approval for the division of the property to create two separate building sites.

2. **CASE FILE LHD 2007-03** Consideration of the local historic designation of the property at 20 Casuarina Concourse, Lots 30 and 31, Block A of Coral Gables Estates Number 2, according to the Plat thereof, recorded in Plat Book 60 at Page 37 of the Public Records of Miami-Dade County, Florida.

3. **CASE FILE LHD 2007-04** Consideration of the local historic designation of the property at 111 Salamanca Avenue, legally described as Lots 10 and 11, and the East 30 feet of Lot 12, Block 29, Douglas Section of Coral Gables, according to the Plat thereof, as recorded in Plat Book 25, at Page 69, of the Public Records of Dade County, Florida.

X. **AD VALOREM TAX RELIEF:**

1. **CASE FILE AV 2005-04** An application requesting ad valorem tax relief for the property at 2103 Country Club Prado, a local historic landmark, legally described as Lots 26 and Lot 27, Block 23, Coral Gables Section "E," according to the Plat thereof, as recorded in Plat Book 8, at Page 86, of the Public Records of Miami-Dade County, Florida. The related Special Certificate of Appropriateness – Case File COA (SP) 2005-02 was granted design approval on April 28, 2005 by the Historic Preservation Board.

2. **CASE FILE AV 2004-04** An application requesting ad valorem tax relief for the property at 221 Aledo Avenue, a local historic landmark, legally described as Lots 25-28, Block 15, Coral Gables Coconut Grove Section 1, according to the Plat thereof, as recorded in Plat Book 14, at Page 25, of the Public Records of Miami-Dade County, Florida. The related Special Certificate of Appropriateness – Case File COA (SP) 2004-23 was granted design approval on October 21, 2004 by the Historic Preservation Board.

3. **CASE FILE AV 2001-03** An application requesting ad valorem tax relief for the property at 2515 De Soto Boulevard, a local historic landmark, legally described as Lot 9, Block 3, Coral Gables Section "A". The related Special Certificate of Appropriateness – Case File COA (SP) 2001-03 and COA (SP) 2001-10 were granted design approval on February 22, 2001 and May 24, 2001, respectively, by the Historic Preservation Board.

XI. STANDARD CERTIFICATE OF APPROPRIATENESS:

1. CASE FILE COA (ST) 2007-47 An application for the issuance of a Standard Certificate of Appropriateness for the Coral Gables City Hall at 405 Biltmore Way, a national historic landmark, legally described as Tracts B and C, Coral Gables Biltmore Section, according to the Plat thereof, as recorded in Plat Book 43, Page 90, of the Public Records of Dade County, Florida. The applicant is requesting design approval for renovation of the City Commission Chambers for ADA compliance.

XII. SPECIAL CERTIFICATE OF APPROPRIATENESS:

1. CASE FILE COA (SP) 2007-05 Continued An application for the issuance of a Special Certificate of Appropriateness for the property at 915 Bayamo Avenue, a local historic landmark, legally described as Lots 14 to 16 inc., Block 252, Coral Gables Riviera Section 12, according to the Plat thereof, as recorded in Plat Book 28, Page 35, of the Public Records of Miami-Dade County, Florida. The applicant is requesting design approval for the construction of an addition and alterations to the existing structure and the installation of at-grade improvements.

2. CASE FILE COA (SP) 2007-06 Continued Consideration of the local historic designation of the property at 1317 Obispo Avenue, legally described as Lot 25 and the East one-half of Lot 26, Block 18, Coral Gables Section "E," according to the Plat thereof, recorded in Plat Book 8, at Page 13, of the Public Records of Dade County, Florida. The applicant is requesting the issuance of a Special Certificate of Appropriateness and design approval for the construction of an addition and renovations to the existing structure.

3. CASE FILE COA (SP) 2007-08 Consideration of the local historic designation of the property at 830 Castile Avenue, legally described as Lots 3 and 4, Block 34, Coral Gables Section "B", according to the Plat thereof, recorded in Plat Book 5, at Page 111, of the Public Records of Miami-Dade County, Florida. The applicant is requesting the issuance of a Special Certificate of Appropriateness and design approval for the construction of an addition and renovations to the existing structure.

4. CASE FILE COA (SP) 2007-13 An application for the issuance of a Special Certificate of Appropriateness for the property at 1044 Coral Way, a local historic landmark, legally described as Lot 1 and the west 32 feet of Lot 2, Block 11, Coral Gables Section "A," according to the Plat thereof, recorded in Plat Book 5, at Page 102, of the Public Records of Miami-Dade County, Florida. The applicant is requesting design approval for the construction of a new residence and the installation of at-grade improvements.

5. CASE FILE COA (SP) 2007-14 An application for the issuance of a Special Certificate of Appropriateness for the property at 1044 Coral Way, a local historic landmark, legally described as Lot 1 and the west 32 feet of Lot 2, Block 11, Coral Gables Section "A," according to the Plat thereof, recorded in Plat Book 5, at Page 102, of the Public Records of Miami-Dade County, Florida. The applicant is requesting de-designation of the historic property.

6. **CASE FILE COA (SP) 2007-10** An application for the issuance of a Special Certificate of Appropriateness for the property at 4320 Santa Maria Street, a contributing structure within the "Florida Pioneer Village Historic District," legally described as Lots 21 and 22, less the South 15 feet of Lot 22, Block 93, "Amended Plat of Coral Gables Country Club Section Part Five", according to the Plat thereof, recorded in Plat Book 23, at Page 55, of the Public Records of Miami-Dade County, Florida. The applicant is requesting approval for variances from the Coral Gables Zoning Code for the allowable side setback and for the allowable total side setback.

XIII. BOARD ITEMS/CITY COMMISSION UPDATE:

XIV. CITY PROJECTS UPDATE:

XV. ITEMS FROM THE SECRETARY:

XVI. DISCUSSION ITEMS:

XVII. OLD BUSINESS:

XVIII. NEW BUSINESS:

XIX. ADJOURNMENT:

Respectfully submitted,

Kara N. Kautz
Historic Preservation Officer

NOTE: Any person, who acts as a lobbyist pursuant to the City of Coral Gables, and the Miami-Dade County Conflict of Interest and Code of Ethics, must register with the City Clerk, prior to engaging in lobbying activities before City Staff, Boards, Committees and/or the City Commission. A copy of the Ordinance is available in the Office of the City Clerk, City Hall.

Any aggrieved party may appeal any decision of the Historic Preservation Board to the City Commission by filing a written Notice of Appeal and the applicable appeal fee with the City Clerk not less than five (5) days and within fourteen (14) days from the date of the decision. The notice shall concisely set forth the decision appealed and the grounds for the appeal. If any person decides to appeal any decision made with respect to any matter considered at this public meeting or hearing, the aggrieved party will need a record of the proceedings. For such purpose the aggrieved party may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based.

Any person making impertinent or slanderous remarks or who become boisterous while addressing the Board, shall be barred from further audience before the Board by the Chair, unless permission to continue or again address the Board is granted by the majority vote of the Board Members present. Clapping, applauding, heckling or verbal outbursts or any remarks in support or opposition to a speaker shall be prohibited. Signs or placards shall not be permitted in Commission Chambers.

Any person requiring special accommodations for participation in the meeting because of a disability should call Kara N. Kautz, Historic Preservation Officer, at (305) 460-5090 no less than five (5) working days prior to the meeting.

AGENDA
NOTICE OF REGULAR MEETING
HISTORIC PRESERVATION BOARD
TO BE HELD ON THURSDAY, APRIL 15, 2010
AT 4:00 P.M.
CITY COMMISSION CHAMBERS
405 BILTMORE WAY
CORAL GABLES, FLORIDA

I. **CALL TO ORDER**

II. **CHAIRPERSON'S OPENING ADDRESS**

III. **APPROVAL OF THE MINUTES**

IV. **ANNOUNCEMENT OF DEFERRAL OF AN AGENDA ITEM**

V. **SWEARING IN OF THE PUBLIC**

PUBLIC HEARINGS

SIGN-IN SHEET: *Those who wish to address the Historic Preservation Board during the public hearing portion must legibly record their name and address on the sign-in sheet with the item(s) they wish to address at the recording secretary's table. The primary purpose of the sign-in sheet is to record the attendance at the meeting and to assist in the accurate recording of the minutes.*

PROCEDURE: *The following format shall be used; however, the Chairperson in special circumstances may impose variations.*

- *Identification of item by Chairperson*
- *Disclosure statement by Board members*
- *Presentation by Staff*
- *Applicant or Agent presentation*
- *Public comment-support/opposition*
- *Public comment closes - Board discussion*
- *Motion, discussion and second of motion*
- *Board's final comments*
- *Vote*

VI. **LOCAL HISTORIC DESIGNATION:**

1. **CASE FILE LHD 2003-18 REVISED** Consideration of the removal of the local historic designation of the property at **1044 Coral Way**, legally described as Lot 1 and W 32 FT of Lot 2, Coral Gables Section "A", Block 11, according to the Plat thereof, as recorded in Plat Book 5, at Page 102, of the Public Records of Miami-Dade County, Florida. An application to remove the local historic designation was previously denied on June 21, 2007.

2. **CASE FILE LHD 2010-002** Consideration of the local historic designation of the property at **802 Milan Avenue**, legally described as Lot 11, Block 9, Coral Gables Granada Section, according to the Plat thereof, recorded in Plat Book 8, Page 113, of the Public Records of Miami-Dade County, Florida.

VII. AD VALOREM TAX RELIEF:

1. **CASE FILE AV 2007-01** An application requesting ad valorem tax relief for the property at **4320 Santa Maria Street**, a contributing structure within the "Florida Pioneer Village Historic District," legally described as Lots 21 and 22, less the South 15 feet of Lot 22, Block 93, "Amended Plat of Coral Gables Country Club Section Part Five", according to the Plat thereof, recorded in Plat Book 23, at Page 55, of the Public Records of Miami-Dade County, Florida. The related Certificates of Appropriateness (listed below) were granted approval by staff or the Historical Preservation Board – Case File COA (ST) 2005-10 (March 27, 2006), Case File COA (SP) 2006-09 (June 15, 2006), Case File COA (SP) 2006-17 (November 16, 2006), Case File COA (ST) 2006-76 (November 16, 2006), Case File COA (SP) 2007-10 (June 21, 2007) Case File COA (ST) 2007-72 (August16, 2007).

VIII. BOARD ITEMS / CITY COMMISSION / CITY PROJECTS UPDATE

IX. ITEMS FROM THE SECRETARY

X. DISCUSSION ITEMS

XI. OLD BUSINESS

XII. NEW BUSINESS

XIII. ADJOURNMENT

Respectfully submitted,

Kara N. Kautz
Historic Preservation Officer

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1044 Coral Way


1032