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Landmarks and City Hall: How Historic Preservation Contributes to Municipal Government

FRANK B. GILBERT*

INTRODUCTION

Historic preservation demonstrates the effectiveness of a quite new municipal program that involves cooperation and support from both state governments and the Federal Government. At a time when many persons are talking about responsibilities that can be better handled at the state and local level, the success of historic preservation deserves attention.

While there are battles over specific buildings and policies, as well as objections to some of the provisions of preservation laws, the general public likes, and most property owners accept, historic preservation programs in their community. That is a remarkable change in many cities, and it involves an amendment to the definition of "progress." Until recently, "progress" meant both the construction of new skyscrapers and the demolition of old buildings.¹ Today historic buildings and districts receive serious attention in most cities, and their future is carefully considered, often leading to rehabilitation projects that are of

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¹ Compare two comments in *Time* magazine. In 1968 it reported the announcement of a 2,000,000-square-foot office tower to be built on top of Grand Central Terminal, a designated New York City landmark. This is the proposed building that led to the U.S. Supreme Court decision on historic preservation in *Penn Central Transportation Co. v. New York City*, *infra*, note 3. The *Time* article did not mention the New York City landmarks preservation law, and it included the following: "It's the wrong building in the wrong place at the wrong time," wailed the chairman of New York City's planning commission, Donald H. Elliott, who is helpless to do anything about it since the project conforms with zoning requirements." *Breuer's Blockbuster*, *TIME*, June 28, 1968, at 48.

In 1987 *Time* ran a cover story on historic preservation which included this observation: "Today it is almost obligatory for a city to have a fine old theater or train station or office building that has been saved, spiffed up and put back to good, if not necessarily its original use—a building that 20 years ago would have been pulled down without a second thought." Kurt Anderson, *Spiffing Up the Urban Heritage; After Years of Neglect, Americans Lavish Love and Sweat on Old Downtowns*, *TIME*, Nov. 23, 1987, at 74.

great value to specific neighborhoods and the entire city. In many cities, the mayor points to livable historic districts containing desirable homes, and the chamber of commerce promotes an older downtown area where new shops and restaurants have been opened.

Currently, there are federal preservation statutes and agencies that administer historic preservation programs.² In addition, all fifty states have laws and agencies devoted to historic preservation.³ These agencies and offices provide valuable help to local preservation programs on a regular basis, and it is significant that there is a good working relationship between city staff and federal and state officials on preservation issues.

Threatened landmarks and deteriorated historic neighborhoods are saved and rehabilitated with federal and state support that is combined with local leadership, imagination, and determination.⁴

I. CITY GOVERNMENTS RESPOND TO A PROBLEM

In the beginning there were private efforts—such as the saving of Mount Vernon and the start of Colonial Williamsburg—before the first legislation that regulated changes to historic buildings. These preservation victories demonstrated that historic buildings could be restored and that the public was interested in these landmarks.

It was a municipal government, Charleston, South Carolina, that responded in 1931 to the public concern about the loss of its old houses. This local ordinance and similar municipal laws went beyond the federal declaration of a national historic preservation policy and the federal

² See, e.g., the National Historic Preservation Act, 16 U.S.C. §§ 470, 470a-470h, 470i-470m (1994).

³ Penn Cent. Transp. Co. v. New York City, 438 U.S. 104, 107 (1978) (stating "Over the past 50 years, all 50 States and over 500 municipalities have enacted laws to encourage or require the preservation of buildings and areas with historic or aesthetic importance."); see also Estate of Tippet v. City of Miami, 645 So. 2d 533 (Fla. Dist. App. 1994) (per curiam) (Gersten, J., concurring) (noting that "In 1992, local historic preservation ordinances numbered more than 1700."); and Metropolitan Dade County v. P.J. Birds, Inc., 654 So. 2d 170, 176 (Fla. Dist. Ct. App. 1995) (noting that "All fifty states have adopted historic preservation laws, and numerous local preservation ordinances exist as well.").

⁴ In Independence, Missouri there are serious problems in the neighborhood surrounding President Truman's home, which his family gave to the Federal Government. The Superintendent of the Truman National Historic Site, Ken Apschnikit, said, "We rely on the local district and the teeth in that ordinance to make the district architecturally what it should be." Lisa Vogel & Pratt Cassidy, *The Buck Stops . . . Where?*, 10 HISTORIC PRESERVATION FORUM, Summer 1996, at 15, 18.

support for the documentation of historic buildings.⁵

Private philanthropy remains an important part of historic preservation and often leads to other preservation efforts in a community, but the larger role of historic preservation today depends on the support of city officials and the implementation of municipal preservation ordinances. With local laws in two thousand American cities, towns, and counties, historic preservation is no longer a novelty, and it is generally not regarded as a luxury, although some critics would like to limit historic preservation to buildings that will be acquired and operated by the government or a private donor. For certain owners of historic buildings, the definition of a landmark is "a property on the other side of town" or "a building owned by somebody else." To overcome this type of opposition, which is a minority position today, preservationists must continue to make a substantial contribution to their city.

The U.S. Supreme Court highlighted local preservation efforts in a major decision on historic preservation that denied a demolition application and upheld the constitutionality of a municipal historic preservation ordinance.⁶ That Supreme Court decision is the law today in the United States. In the decision, the Court noted that:

The New York City law is typical of many urban landmark laws in that its primary method of achieving its goals is not by acquisitions of historic properties, but rather by involving public entities in land-use decisions affecting these properties and providing services, standards, controls, and incentives that will encourage preservation by private owners and users.⁷

⁵ When work began on a comprehensive federal law on historic preservation, preservationists turned to the U.S. Conference of Mayors. Its study and report provided the foundation for the National Historic Preservation Act of 1966, which established the present Federal Historic Preservation Programs. The report of the Special Committee on Historic Preservation of the Conference of Mayors was published in 1966 under the title, *With Heritage So Rich*. ALBERT RAINS & LAURANCE G. HENDERSON, WITH HERITAGE SO RICH; A REPORT OF A SPECIAL COMMITTEE ON HISTORIC PRESERVATION UNDER THE AUSPICES OF THE UNITED STATES CONFERENCE OF MAYORS WITH A GRANT FROM THE FORD FOUNDATION (1966).

⁶ *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 116-17, 138 (1978).

⁷ *Id.* at 109-110. In *United Artists Theater Circuit, Inc. v. City of Philadelphia*, 635 A.2d 612, 619 (Pa. 1993), the Pennsylvania Supreme Court commented, "the *Penn Central* decision has enjoyed widespread acceptance."

II. ELEMENTS OF A SUCCESSFUL LOCAL PROGRAM

For a city, an effective historic preservation program involves a number of elements. Some of these features may not be obvious, but they deserve the attention of persons who want to start a local program or to strengthen an existing program. The list includes a city ordinance and architectural standards, both of which are visible. Other items on the list are important in order to achieve the expectations of those who wish to say, "Now the city has a historic preservation program."

Elements important to a successful historic preservation program include the following:

(1) A good working relationship with the mayor and the members of the city council—based on keeping them informed and understanding their policies and goals;

(2) A good working relationship with city department heads and staff—based on learning about their responsibilities and finding joint projects on which to work together;

(3) Information about the city's historic buildings and districts that is accurate, readable, up-to-date, and contained in a survey and other publications made available to the public;

(4) A local preservation ordinance⁸ with provisions for the creation of a historic preservation commission, the designation of historic property, the review of proposed changes to designated individual landmarks and buildings in historic districts, the development of alternatives by the preservation commission—especially for proposed demolitions, and the development of ways to prevent the loss of buildings through poor maintenance or "demolition by neglect;"

(5) A program to gain or retain the respect of property owners by providing help and preservation incentives, and by having an early warning system to discover problems;

(6) Architectural standards to guide the preservation commission in reaching sound and consistent decisions on proposed changes, thus permitting owners to make "reasonable beneficial use" of their property;⁹

⁸ For an example of a proposed local historic preservation ordinance, see Kristan E. Curry, *Historic Districts: A Look at the Mechanics in Kentucky and a Comparative Study of State Enabling Legislation*, 11 J. NAT. RESOURCES & ENVTL. L. 229, 267-80 (1996) (setting out in full a proposed ordinance drafted by Frank Gilbert).

⁹ *Penn Central*, 438 U.S. at 138. The concept of "reasonable beneficial use" was first articulated by Justice William Brennan in the Supreme Court's *Penn Central* opinion. Discussing recent U.S. Supreme Court decisions in the land use area, a concurring opinion in a Florida historic preservation case stated: "Moreover, the Supreme Court has repeatedly reaffirmed the principle that a regulation results in a taking only when it denies an owner all economically viable use of its land."

(7) A public education program reaching the entire city so that all residents learn about its historic buildings and appreciate the city's history and the value of these buildings; and;

(8) A private preservation organization that supports the preservation commission by testifying at public hearings and offering creative solutions when historic buildings are threatened.

III. DEVELOPING A ROLE AT CITY HALL

When city officials look at historic preservation programs, they generally ask three questions: How does historic preservation affect other city departments and programs? Is the particular preservation ordinance fair to individual property owners? Finally, what is the preservation program costing the city, and what are we getting for our money?

In addition, these questions typically raise a number of more specific questions for the preservation commission, including the following: What is the schedule for developing the city's annual budget and what programs have the strong support of the mayor and the members of the city council? How are individual landmarks and historic districts treated on the zoning maps? What, if anything, does the comprehensive plan say about the preservation and reuse of landmarks and historic neighborhoods? How are the building inspectors and the law department carrying out the city's code enforcement program? What are the policies and priorities when government money is used to upgrade old houses? How do the tax assessors treat historic property—for example, at the time when a neighborhood is designated an historic district?

With these questions in mind, the chairpersons of preservation commissions and other persons interested in historic preservation need to invest considerable time in learning about the policies and operations of municipal (and sometimes county) government.

A. Participating in Decisions at an Early Point

To avoid being spoilers, preservationists must find a way to participate in decisions through comments at an early point in the preparation of building plans. Buildings designated as historic by preservation commissions and those listed as such in surveys may put

Estate of Tippet v. City of Miami, 645 So. 2d 533, 536 (Fla. Dist. Ct. App. 1994) (Gersten, J., concurring).

government officials on notice of their historic character. Unfortunately, commissions have been faced with situations where their suggestions came too late. For example, they are told that expensive working drawings have been prepared by the architect for the project and that any changes would be costly.

Therefore, a preservation commission cannot wait for the referral of plans, unless the local ordinance or city procedures are amended to provide for an early consultation initiated by the official responsible for the work affecting one or more historic buildings.

The plans may be for a public works project affecting a building owned by the city, for a neighborhood conservation program using community development money, or for renewing a part of downtown. When the preservation commission presents recommendations at a hearing, these comments may amount to a public announcement of agreements previously reached.

Preservation commissions must coordinate their activities with the duties of other city departments, such as those responsible for municipal buildings, housing, community development, economic development, building inspection, fire protection, planning, and zoning. This list illustrates the many agencies that may—or may not—help to continue the use of historic buildings.¹⁰ After reading some reports, other documents, and ordinance provisions, the commission chair starts coordination efforts by setting up meetings with senior city officials. The larger the

¹⁰ In a well developed part of a city, an owner may want to replace a small historic building with a larger structure. A city and its historic preservation commission need to be creative at that time. The Zoning Resolution of New York City has two special permit mechanisms that promote the preservation of landmarks by permitting the transfer of unused development rights, attributable to a landmark building, in order to increase the size of a new building nearby.

The first transfer mechanism:

allows an individual landmark building to transfer development rights for development on abutting lots or lots across the street, if the City Planning Commission finds that the transfer will not unduly increase the bulk of the new building and based on the establishment of a continuing maintenance program for the landmark. Approximately ten of these special permits have been approved by the Planning Commission since 1975.

Memorandum from Valerie Campbell, New York City Landmarks Preservation Commission, to Frank Gilbert, National Trust for Historic Preservation (Oct. 7, 1996) (on file with *Journal of Natural Resources and Environmental Law*).

Under a second type of special permit, "development rights can also be transferred between a landmark building and adjacent lots. . . if the lots are merged into a single zoning lot and the new building is connected to the landmark building." *Id.* For example, the sale of developmental rights to an apartment house being built on the same zoning lot as the landmark St. Jean Baptiste Church in Manhattan financed a substantial restoration of the church, including the addition of a handicapped accessible entrance. *Id.*

city, the more important such coordination becomes.

B. The Chance to Demonstrate a Building's Potential

When a developer comes to city hall with a proposal, the economic development director may evaluate the plans without realizing their impact on some historic buildings. If the chair of the historic preservation commission has a working relationship with the economic development director, the chair and the commission may have a chance to demonstrate the value and the potential of these historic buildings before the city makes commitments.

In many situations, the preservation commission has the burden of proof—the responsibility of demonstrating with facts and figures that a historic building should be considered a valuable asset by the community. To meet this burden, the commission usually needs help from experts who will assist in the preparation of an engineering and economic analysis of a building.

In the planning area, the right kind of zoning will encourage owners to maintain or rehabilitate their buildings because they do not have zoning that permits larger buildings or commercial uses in new buildings of the same size. On the other hand, a neighborhood association may discover that, having won the designation of a historic district, the group must take the additional step of getting the zoning changed. For example, the zoning for the district may provide an incentive to demolish old houses, if the mapping permits garden apartments. Height limitations may help to protect the character of a historic district.¹¹

C. The Opportunity to Guide Changes in a Historic District

Some neighborhood leaders believe that the historic district designation does the entire job of preserving an area, mistakenly thinking that such a designation will empower them to stop all changes in their neighborhood. These views present a serious problem for the preservation commission and other city officials. The reality is that some changes will take place and that the preservation commission has the opportunity to guide these changes, since they involve designated historic buildings and districts. This responsibility has led to many

¹¹ The New Mexico Court of Appeals dismissed a challenge to legislation in Santa Fe that permitted the Historic Design Review Board to limit the height of structures within certain historic districts to lesser heights than that allowed by the underlying zoning. *Mandel v. City of Santa Fe*, 894 P. 2d 1041 (N.M. Ct. App. 1995).

significant preservation victories in American cities.

Because of their high expectations, neighborhood activists need to learn that planning and zoning policies are an essential part of a city's historic preservation program. In its *Penn Central* opinion, the Supreme Court said: "In contrast to discriminatory zoning, which is the antithesis of land-use control as part of some comprehensive plan, the New York City law embodies a comprehensive plan to preserve structures of historic or aesthetic interest wherever they might be found in the city. . . ."¹²

Planning often involves some delicate distinctions and decisions. As an incentive for owners, the zoning ordinance may provide for special permits to allow new uses for designated historic buildings, including professional offices or apartments. For example, some historic buildings are large old houses, zoned for single-family, residential use. The likelihood of these buildings remaining single family homes is low, although neighbors may feel that this is a possibility. To avoid the demolition of such buildings, special use permits in the zoning ordinance should be considered—with careful limitations on this solution.

The typical neighborhood worries about a change in its character because of the introduction of offices or apartments. The fear is that there will be more noise, increased traffic, and parking problems, including the need for parking spaces created next to houses. However, if a change of use provision is added to the zoning, it will provide that each case will be considered separately, with conditions in each permit to protect the neighborhood.¹³

¹² *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 132 (1978). In Nashville, Tennessee, an editorial supported the adoption of historic zoning in downtown with a warning: Nashville needs to back off for a minute from its development frenzy and figure out how it is going to preserve its historic character.

....
All of those discussions and plans desperately need to elevate historic preservation to a new level of concentration. If preservation continues to be an after-thought—something that is considered only when convenient—Nashville's historic character will be lost.
Historic Zoning Needed Downtown, THE TENNESSEAN, July 22, 1996, at 10A.

¹³ In Reno, Nevada, a special permit allowed a vacant historic house that was zoned residential to be used for offices. A neighborhood association challenged the granting of the permit. During the administrative proceedings, there had been testimony that restoration to a single-family residential home was cost prohibitive. The Nevada Supreme Court upheld the issuance of the special use permit, stating: "There was also some question whether the Hawkins House would be preserved in its present condition as a historical landmark if the new use was not permitted." *City of Reno v. Harris*, 895 P.2d 663, 668 (Nev. 1995).

In Denver, Colorado, permission has been given to establish a bed and breakfast in historic houses in certain residential zones, when a number of conditions have been met, including the following: [T]he property shall be landscaped in a manner that protects the appearance and value of

D. Understanding How City Hall Works

Once a historic preservation commission understands how city hall works and develops alliances with key persons and departments in municipal government, the commission will be able to answer in a positive way the three questions raised above.

(1) Preservation activities are coordinated with city departments; this cooperation has made possible some joint efforts that have been well received.

(2) The commission listens to owners of historic property, and finds ways to meet their needs while carrying out its responsibility to preserve the city's historic landmarks and districts. The commission recognizes that their assignment always will be to strike a delicate balance. At times the commission will make a sound decision that a property owner will not accept.¹⁴

(3) The cost of the staff support for the unpaid commissioners is low.¹⁵ In addition, many preservation commissions may consult with the city's legal department on due process requirements when designating property or reaching decisions on applications from owners. The return to the city for its commitment to historic preservation can be measured qualitatively in terms of rehabilitated buildings and neighborhoods, and quantitatively in terms of the taxes paid by the owners of historic buildings. The city-owned buildings that have been preserved have survived the decision-making process at city hall.

surrounding properties and neighborhoods and improves environmental conditions thereby promoting the general welfare. The landscaping shall be continuously maintained which includes necessary watering, weeding, pruning, pest control and replacement of dead or diseased plant material. . . .

. . . .

No social activities, such as weddings, receptions, private parties or similar events, will be permitted unless at least ninety (90) per cent of the participants are overnight guests.

DENVER, COLO., CODE, §§ 59-54r(3)(ii), (v) (1982).

¹⁴ In Beaufort, South Carolina, the Architectural Review Board denied an application for a certificate of appropriateness for a chain link fence on property in the historic district. The Court of Appeals upheld the decision, saying that there was ample evidence that the proposed fence was both inappropriate and detrimental to the interests of the city. *Gurganious v. City of Beaufort*, 454 S.E.2d 912 (S.C. Ct. App. 1995).

¹⁵ Special projects of the commission are often partly financed by Certified Local Government grants—Federal money distributed by the State Historic Preservation Office. These small grants have a favorable impact on city council members. The C.L.G. program has turned out to be an effective and creative program, one that was authorized by a 1980 amendment to the National Historic Preservation Act. This new provision has led to regular contact between state preservation offices and local commissions and to the improvement of city historic preservation programs.

IV. OBJECTIONS TO HISTORIC PRESERVATION

Members of the City Council are sensitive to the objections of individual voters—including property owners—and it is thus impressive that so many historic preservation programs exist today. These programs are possible because the control is at the local level, close to the persons whose property is being regulated. Local control has provided an opportunity for recruiting creative leaders in many cities, who have produced tangible results for their community in the form of preserved and rehabilitated landmarks.

Before the advent of historic preservation laws, older buildings seem to have survived by accident or on a haphazard basis. Then cities passed preservation ordinances because of the support and votes of thousands of city council members. Each local preservation law represents a willingness by a city to regulate property. Behind many of the laws is a record of unpopular demolitions involving historic structures. While the demolition of such a building was lawful and was useful to the owner, the new building on the site often disappointed persons in the community.

In its *Penn Central* opinion, the Supreme Court said that landmarks and historic areas have been

destroyed without adequate consideration of either the values represented therein or the possibility of preserving the destroyed properties for use in economically productive ways. . . . Not only do these buildings and their workmanship represent the lessons of the past and embody precious features of our heritage, they serve as examples of quality for today.¹⁶

Today, members of city councils may not remember past demolitions of historic buildings, but they feel the pain of owners who talk about property rights. Because of the growth of historic preservation programs, property owners are more vocal at city hall, making the subject more political than it was before the *Penn Central* opinion.

The courts have disappointed opponents of historic preservation through the many decisions supporting local preservation ordinances.¹⁷ It was predicted that opponents would intensify their lobbying of mayors

¹⁶ *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 108 (1978).

¹⁷ *See, e.g., Metropolitan Dade County v. P.J. Birds, Inc.*, 654 So. 2d 170, 179 (Fla. Dist. Ct. App. 1995) (holding that the designation of the plaintiff's property as a historic site did not violate its due process rights under either the U.S. or Florida Constitutions).

and city council members after many judges rejected the arguments alleging the taking of property, the unfair burden on individual owners and the arbitrary designation of buildings.

A. Debating the Actual Record of the Commission

At public hearings and in the newspapers, opponents of historic preservation become emotional as they talk about interference with their property. Often these comments do not reflect what the local commission has actually done or the proposal that is actually being considered. It is up to the preservationists to refocus the public debate on issues such as the actual record of the commission, the text of the legislation before the city council, and the real impact on property owners.

Under these circumstances preservationists are engaged in a constant public education program that raises public awareness and thereby helps them when a controversial issue arises. Like other government agencies, without affirmative measures the daily accomplishments of the preservation commission may go unnoticed. The commission may decide to publish at regular intervals a list of all the approvals it gives. This list helps demonstrate to the community the commission's ability to work with property owners and illustrates its contribution to the city.

In building and maintaining support for historic preservation, the commission is advised to emphasize the popularity of historic districts with the residents. Today these neighborhoods are a special part of many cities because they contain houses that appeal to a segment of the housing market. Mayors and city councils respond favorably to the economic benefits of historic preservation, such as higher property values and additional real estate taxes.

Because the mayor and the city council members may have delegated to the preservation commission the responsibility of listening to the concerns and problems of the owners of historic property, an expectation may arise that most of the issues will be resolved at that level. A guiding principle in this work should be to find an appropriate way to meet the current needs of the property owner.

During 1995 in Fort Worth, Texas there was a major struggle at the end of a three-and-one-half year effort to pass and implement a stronger preservation ordinance. The Fort Worth Zoning Commission recommended the denial of six proposed designations because of owner objections, although the amended ordinance did not contain a provision for owner consent. The preservation community mobilized on behalf of the stronger ordinance and its implementation, making it easier for the members of the city council to cast important and difficult votes

supporting historic preservation and the designation of the buildings in dispute as historic properties.¹⁸

V. UNIQUE FEATURES OF THIS LOCAL GOVERNMENTAL PROGRAM

Historic preservation continues to be a topic that attracts considerable attention. In the past there has been a certain drama attached to trying to stop the bulldozer and to the identification of villains and heroes. Behind the headlines are several special features that make historic preservation a valuable program for a city. Some notable examples of these special features include the following.

(1) Thousands of persons have served on local historic preservation commissions, and this program has brought into municipal government many persons who had never before taken an active role in government. Some commission appointments go to community activists who will try to find the answers to questions they raised as private citizens. Other appointments go to architects, lawyers, and other professionals whom the city could not afford to pay for their time.¹⁹ Through the preservation program, municipal government gets help from new people who will take the local preservation law and make it work.

(2) Historic preservation benefits from a national and local constituency that few other city departments have. Preservation is a good way for a city to gain national recognition. While the preservationists in any city are likely not a majority, they provide support for the city's program and praise for its historic districts; additionally, preservationists support the rehabilitation of landmarks and creative projects that find new uses for old buildings. The preservation achievements in small and large cities are noticed beyond their borders, in part because of the preservation network. Examples of cities receiving attention because of their historic preservation program include Annapolis, Maryland, Galveston, Texas, Pasadena, California and

¹⁸ The testimony at the public hearing included comments from a prominent businessman, Robert Bass. He recalled a visit to Fort Worth in 1991 by Mayor Joseph Riley of Charleston, South Carolina. Bass said,

His visit and message to us about the power of preservation to stabilize and transform a city was what set us on the course to do many things, including revising and strengthening our local preservation ordinance. Joe Riley told us that it's up to us to set the rules on how preservation and development in our city occur. And now you [the Mayor] and the members of the City Council have the chance to do just that—set the rules which will benefit us all.

Robert Bass, Statement to the Fort Worth City Council (Nov. 14, 1995).

¹⁹ In selecting commissioners, the mayor should also include at least one person who already knows the geography of city hall.

Louisville, Kentucky. In cities such as Santa Fe, New Mexico and Miami Beach, Florida, the existence of historic buildings contributes to increased tourism that brings in additional revenue.

(3) A successful historic preservation project in a highly visible part of the city—a facade rehabilitation in a prominent location, for example—presents an attractive picture of the activities of that local government. Small preservation projects are carried out more quickly and more successfully than other construction jobs in the city. At the end of each year, the preservation commission can point to a number of completed projects that it reviewed and approved.

(4) Much of the work reviewed and approved by a preservation commission involves money spent by private individuals rather than the government. It is the owner who decides to spend money on a building. Under the preservation ordinance, the commission receives and reviews applications involving proposed changes to designated properties. It is the owners of historic buildings who must take that first step, and the commission cannot make them do work on their buildings. However, the city government does require maintenance of all property for health and safety reasons, and the preservation commission does work with building inspectors. Nevertheless, property owners have considerable bargaining power when they bring proposals to the preservation commission. Property owners may find themselves negotiating proposals with a commission anxious to maintain the good will of the property owners.

(5) Finally, historic preservation is a municipal program that provides many persons with advice that they can use and appreciate. It fosters a healthy relationship between the municipal government and the residents of the city.

VI. INCREASING THE NUMBER OF PERSONS WHO BENEFIT FROM PRESERVATION

In looking at historic preservation, many persons only identify these activities with mansions, classical public buildings, house museums, and historic villages. That list accurately describes some of what has been accomplished, but historic preservation has gone beyond those achievements. As was already mentioned, a broader view of historic preservation is essential if these programs are to receive strong support from mayors and city council members.

The designation of historic districts is an effective way to give recognition to neighborhoods and to guide and accelerate their revival. In the past only a single area in a city was designated as historic, such as the French Quarter in New Orleans and Georgetown in the District of

Columbia. The growth of historic preservation is illustrated by the enactment in those two cities of legislation creating a city-wide preservation commission that has designated historic districts in other parts of the city. Today the preservation commissions in most cities have the power to designate property throughout the city as historic. From its limited beginnings, historic preservation has grown into a useful tool for city governments, especially when persons are worried about too much demolition.

Over the years, many neighborhood associations have come to city hall to apply for historic district designation. At this stage in the process, considerable work must be done to provide a solid foundation for the designation, including identifying and describing the architectural and historical significance of the district. Before holding a public hearing, the commission will explore the support for the proposal among all the residents and property owners in the area in order to minimize unanticipated issues that may arise.²⁰

A. Displacement of Families Causes Major Concern

Certain areas will not be made historic districts because of vocal opposition from low-income persons living there. For some time the displacement of families has caused major concern as old houses are bought for rehabilitation. As long ago as 1978, the Supreme Court recognized that, “[H]istoric conservation is but one aspect of the much larger problem, basically an environmental one, of enhancing—or perhaps developing for the first time—the quality of life for people.”²¹

Preservation commissions and private preservation organizations need to demonstrate that they can add something to the housing programs that help low-income families. With their enthusiasm for historic buildings, preservationists have the opportunity to participate in the actual rehabilitation of older houses.

²⁰ In Tampa, Florida, support for a city-wide historic preservation ordinance was led by Hyde Park Preservation, Inc., a neighborhood group that was worried about losing the residential quality of the neighborhood and the lower housing densities that are part of its character. Hyde Park was the first area designated as an historic district after the passage of the ordinance.

Stephanie Ferrell, director of the Historic Tampa-Hillsborough County Preservation Board, said, “Strong and continuing neighborhood support was crucial in getting the ordinance adopted In the past there had been unsuccessful attempts to pass legislation when there was not consistent neighborhood support.” *Tampa Preservation Ordinance*, FORUM NEWSLETTER, May 1988, at 3.

²¹ *Penn Central*, 438 U.S. at 108 (quoting Frank B. Gilbert, *Introduction, Precedents for the Future*, 36 LAW & CONTEMP. PROBS. 311, 312 (1971) (quoting Robert Stipe, Address to the 1971 Conference on Preservation Law (May 1, 1971))).

Activities in several cities have demonstrated that preservationists can develop programs that reach low-income families, although the professionals in city government are correct to warn about the difficulties involved in this type of rehabilitation effort. In most situations, a preservation commission should seek a partnership with city departments as it works to make a contribution to housing.

VII. WHAT LOCAL GOVERNMENT DOES WELL

Interest in local government and its greater potential does not require a person to attack the Federal Government—an unattractive part of political life today. Although many mayors and cities are today struggling with heavy burdens, supporters of municipal government should look at the achievements and strengths of historic preservation programs.

Historic preservation is a government program that began as an experiment in a few cities more than fifty years ago. It is easier to bring proposals to city hall and to get a hearing from the mayor and the city council than to approach federal authorities. From the start, historic preservation programs involved statutes that changed the way things were done in cities. In fact, the process of enacting these preservation ordinances educated the community about what had been lost and outlined steps that might preserve historic buildings and neighborhoods in the future.

Citizen participation is essential in establishing a historic preservation program, and local governments can be quite good in developing the public's interest in problems and solutions. The challenge is to get creative ideas and significant help for a program and to avoid the confrontations often associated with citizen participation.

Private historic preservation groups have been formed in many communities with their work continuing after the local preservation ordinance is passed. The accomplishments of these groups have been impressive in large and small cities, such as San Antonio, Texas; Washington, D.C.; Bowling Green, Kentucky; and Las Vegas, New Mexico.²² While there is no shortage of organizations in American cities, a government program can benefit from a local citizen group that helps to make that program effective. In this regard, the citizen group will do a better job when it is working on a regular basis with the local

²² "With the renewed interest in historic preservation in the 1980s, over 900 buildings were listed on the National Register, ranging in style from early adobe to late Victorian." *Innroads—Las Vegas, New Mexico* (visited Feb. 15, 1997) <http://www.inns.com/nmlas_ve.htm>.

officials in charge of that city program.

The preservation commission in each city makes a record and tries to retain the support of the public and the elected officials. There is good feedback at the local level. More importantly, preservation commissions are held responsible for their decisions and their ability to save threatened buildings. This experience illustrates that government can be close to the people.

Standards and guidelines are also a vital part of any preservation program. They remove some of the mystery about the decisions of this part of government. Through the use of standards, preservation commissions have the opportunity to build a record of consistent decisions which can increase confidence in both the preservation program and in the local government. For example, both the Federal and state governments provide material on standards and guidelines, thus illustrating their advisory role with municipal officials. In addition, monthly public hearings that give close attention to individual applications from owners are another way to build confidence in a government program. A well written historic preservation ordinance will provide for such public hearings.

The types of historic buildings vary from city to city, and as a result, there were differences in the municipal preservation programs as they developed—in part, because of greater local interest in residential historic districts or individual landmarks or commercial buildings (Main Street revitalization). This flexibility may work in some other programs that may be moved to the local level.

Historic preservation has captured the imagination of many talented persons, and some of these individuals have been appointed to local preservation commissions so that they become involved in government. One feature of local government is the number of unpaid persons serving on municipal committees, boards, or commissions that make decisions on major issues. Because the Federal Government administers national programs, it is less able to create and use decision-making boards composed of volunteers, although it does have experts serving on advisory panels.

In summary, the points mentioned above contribute to the public's positive feelings about historic preservation as an activity of government. Local preservation programs have improved as members of each commission have learned more about historic buildings and rehabilitation techniques, including the financial incentives that historic preservation programs offer. Part of the improvement should be attributed to the commission's members getting involved in a part of local government and learning about its operation by taking on a more

active role.

The significance of historic preservation may be that it illustrates the elements and techniques that government officials may utilize in transferring programs to city hall—successfully. They will find value in each program's creative use of a local law, the educational features of the program, the accountability to the public, and the involvement of concerned citizens.

