Florida Law Review

Volume 48 | Issue 4 Article 7

September 1996

Florida's Private Property Rights Protection Act: Does it Inordinately Burden the Public Interest?

Julian Conrad Juergensmeyer

PROPERTY RIGHTS AND WRONGS: HISTORIC PRESERVATION AND FLORIDA'S 1995 PRIVATE PROPERTY RIGHTS PROTECTION ACT

*Roy Hunt**

When the *Florida Law Review* invited the College of Law faculty to write essays on topics of our choosing, I immediately knew my topic—the implications for historic preservation of Florida's 1995 Bert J. Harris, Jr., Private Property Rights Protection Act.[1] This is a topic about which I have had many thoughts, and preparation for writing this essay has forced me to crystallize and organize them. Much of that crystallization occurred at 13,000 feet as I lay in my sleeping bag on the slopes of Mt. Everest this past January. Distance—chronological as well as geographical—does indeed lend perspective, and one of the things that resurfaced in my mind was an old column by William Safire.

In 1981, Mr. Safire expressed his disgust that "a band of preservationists was able to get the National Register of Historic Places in Washington to declare some 800 buildings in a 125-block district in Miami Beach examples of Art Deco and Mediterranean Revival architecture."[2] The declaration thwarted "owners [who] would ordinarily tear down and replace these old hotels with modern condominiums," and thus "generate both a higher profit for the owners and a new source of

* Distinguished Service Professor of Law and Director, LL.M. in Comparative Law Program, University of Florida College of Law; B.A. 1955, Vanderbilt University; J.D. 1960, University of Mississippi; LL.M. 1962, Yale University. I thank the *Florida Law Review* for providing me the opportunity to write on a topic about which I feel so strongly—preservation of Florida's historic resources.

1. FLA. STAT. § 70.001 (1995).

2. William Safire, *What Government Is For*, GAINESVILLE SUN, Mar. 9, 1981, at 4A.

tax revenue for the city."[3] Mr. Safire used this example to make his point that "a primary purpose of government is to protect the sanctity of private property" and to remind us that "[p]eople . . . have the right to do whatever they want with whatever they own."[4] He concluded with a prediction that "[s]oon, a[property] owners [sic] right will be recognized as a chunk of freedom that government is formed to protect rather than attack."[5] Now, sixteen years later, Mr. Safire very well may claim prescience, as owners of three contiguous properties in a recently expanded Miami Beach Art Deco historic district have claimed, by virtue of Florida's 1995 Private Property Rights Protection Act, that the city owes them $2,000,000 for the "inordinate burden" on their property imposed by that expansion.[6]

The fact is that Mr. Safire in 1981 and the Florida Legislature in 1995 completely ignored the still valid 1978 holding of the United States Supreme Court in *Penn Central Transportation Co. v. New York*,[7] a case involving a challenge to the New York City landmark designation of Grand Central Station.[8] That case stands for the proposition that rights incident to property ownership are not absolute, but are subject to reasonable regulation for the benefit of the community without the necessity of the public paying monetary compensation.[9]

Is the United States Supreme Court wrong on this issue? Should private property rights be sacrosanct in our form of government, as Mr. Safire stated explicitly and the Florida legislature, by its action, has stated implicitly? I do not think so. I agree entirely with my good friend Richard Roddewig who suggests that:

> [A]nyone who carefully considers the nature of private property rights in America eventually finds an unmistakable truth: A substantial component of the value of private property is created by government action. What would the value of a piece of private property be without the public investment in utilities, roads, parks, schools, fire departments, or police? Or without such regulations as building codes, zoning ordinances, environmental regulations, or traffic laws? The fact is that public property rights are inextricably intertwined with private property rights, and

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3. *Id.*
4. *Id.*
5. *Id.*
6. *See* Letter from Murray H. Dubbin, City Attorney, City of Miami Beach, Florida, to Mark J. Bourlis, Attorney for Plaintiffs (Feb. 10, 1997) (on file with author).
7. 438 U.S. 104 (1978).
8. *Id.* at 107.
9. *See id.* at 138.

> government creates a good portion of value by such things as land-use planning laws, zoning and building codes, and even historic preservation ordinances.[10]

This issue of property rights is my topic. In this essay, I will first place the issue in a larger national and international context and note the trend we find there. I will then analyze the Act itself. I will discuss the law's chilling effect and its inherent unfairness to certain property owners and communities. Finally, I will suggest positive ways in which I believe preservationists can respond to the challenge posed by this legislation.

As a preliminary comment, I do not believe that Florida's new Private Property Rights Protection Act represents legislative displeasure with historic preservation. The fact that Florida's legislature continues to fund historic preservation at levels unprecedented in other states is evidence of satisfaction, not dissatisfaction. Nonetheless, the parameters of this new legislation, aimed primarily at environmental laws that restrict development of wetlands, are so broad and its language so ambiguous that it has been and will continue to be invoked by disgruntled owners of historic properties.

I. THE CONTEXT

Although the Florida Legislature has created a new cause of action for "governmental actions that may not rise to the level of a taking under the State Constitution or the United States Constitution,"[11] the national literature would refer to this as "takings" legislation, a characterization that comes from the Fifth Amendment to the United States Constitution[12] and Article I, Section 9 of the Florida Constitution.[13] Nationally, there are two basic types of takings legislation: *compensation* laws and *assessment* laws. The first type requires government at one or more levels to pay those who successfully claim that certain laws or ordinances restrict use of their property. The second type requires governing bodies to conduct complex studies with respect to any proposed legislation to predetermine whether property owners might be adversely impacted by such legislation.[14]

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10. Richard Roddewig, *Historic Preservation and the Constitution: Dispelling the Thirteen Myths*, PRESERVATION FORUM, July/Aug. 1993, at 11, 14.

11. FLA. STAT. § 70.001(9) (1995).

12. U.S. CONST. amend. V ("[P]rivate property [shall not] be taken for public use without just compensation.").

13. FLA. CONST. art. I, § 9 ("No person shall be deprived of . . . property without due process of law. . . .").

14. The assessment approach might be likened to the Environmental Impact Statements

A bill quickly passed by Speaker Gingrich's House of Representatives as part of the Republicans' "Contract With America" was of the compensation type, and its impact was restricted to compensation for losses attributable to federal environmental regulations.[15] A comparable Senate bill never passed, although then Senator Dole's version involved both compensation and assessment elements and was much broader in its coverage than the House bill.[16] A major reason for the impasse was the resistance of such odd bedfellows as Reverend Donald Wildmon's conservative American Family Association (AFA) and the New York City Landmarks Commission.[17] The AFA expressed opposition upon realizing that such legislation, when carried to its logical conclusion, could result in the opening of topless bars and shops which sell pornographic material next door to churches and schools.[18] Both the House and Senate bills automatically died with the last Congress. However, the first session of the 105th Congress has seen the introduction in the House of an assessment-type bill sponsored by Representative Solomon.[19] Senator Hatch is sponsoring a bill combining assessment and compensation.[20] Both bills pose restrictions only upon the federal government.[21] Far more extreme are bills being rushed through both the Senate and House which would forget local, rather than federal, regulation of property.[22] In essence, local zoning disputes would become federal cases.[23]

The U.S. Congress is not the only legislative body contemplating this issue. As of July 30, 1996, every state had at least considered takings

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required by some federal and state laws; the difference being that the burden of assessment typically would be placed upon government rather than upon property owners.

15. Timothy Egan, *Unlikely Alliances Attack Property Rights Measures; Oppose Bills to Pay Owners for State Actions*, N.Y. TIMES (International), May 15, 1995, at A1.

16. *Id.* at A1, A8.

17. *Id.* at A8.

18. *Id.*

19. H.R. 95, 105th Cong., 1st Sess. (1997).

20. S. 781, 105th Cong., 1st Sess. (1997).

21. *See* H.R. 95; S. 781.

22. *Federal Takings Bills Threaten Local Zoning, Change Courts Jurisdiction*, PRESERVATION ADVOCATE NEWS (National Trust for Historic Preservation, Washington, D.C.), Oct. 1997, at 1.

23. *Id.*

legislation.[24] Indeed, twenty states had enacted such legislation.[25] Of these twenty, five, including Florida, enacted *compensation* type laws.[26]

Thus, it is apparent that the Florida legislation is not an isolated phenomenon. This legislation is simply part of a broad political project to reduce public interest regulation across America.[27] To place this trend in an even larger context, we can examine what has happened and what is happening with respect to the World Heritage Convention and the World Heritage List created pursuant to the Convention.

One can conveniently think of sites listed on the World Heritage List as National Historic Landmarks raised to the international level. Since it was first drafted by the international community in 1972, more than one-hundred nations have ratified the World Heritage Convention, resulting in the listing of the world's most significant cultural and natural sites.[28] Among the former are the historic cores of cities such as Bath, Rome, and Cracow.[29] Strikingly, no United States cities are listed.[30] For many years, I credited this absence to bias on the part of the international review committee. I then learned that the United States, unlike other ratifying nations, requires that all properties and sites nominated to the World Heritage List have one-hundred percent owner approval to do so, making it practically impossible for any U.S. city to reach World Heritage status.[31] A result is that sites listed in the United States are, without exception, national parks (the Everglades and Yellowstone are examples) or government-owned cultural sites like Independence Hall and San Juan's La Forteleza.[32] These sites were

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24. Robert Freilich, *What's Wrong with Takings Law: Is Takings Legislation Necessary?*, Presentation at Rocky Mountain Land Use Conference (Denver, Colo. Mar. 13, 1997) (notes on file with author).

25. *Id.*

26. *Id.*

27. Even this Florida legislative curb on government regulation in the public interest is insufficient to satisfy David Biddulph, leader of the Tax Cap Committee of New Smyrna Beach. Although the Florida Supreme Court on May 15, 1997 invalidated Biddulph's two proposed constitutional amendments dealing with private property rights, saying they violated the single subject clause of the Florida Constitution, *Advisory Opinion to the Attorney General re: People's Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects*, 22 FLA. L. WEEKLY S271, S272 (Fla. 1997), Mr. Biddulph's record of success is impressive and there is no reason to expect this setback to end his battle.

28. Ellen Hoffman, *Saving Our World's Heritage; World Heritage Convention's List of Natural and Cultural Monuments*, OMNI, Dec. 1993, at 52.

29. *U.S. Nomination Restrictions and World Heritage Cities*, US/ICOMOS NEWSLETTER (US/ICOMUS, Washington, D.C.), July-Aug. 1995, at 34.

30. *Id.*

31. *U.S. May Limit Its Participation in the World Heritage Convention*, US/ICOMUS NEWSLETTER (US/ICOMUS, Washington, D.C.), May-June 1996, at 13.

32. *U.S. Properties Inscribed a World Heritage List*, 26 TRENDS 14, 14 (1989).

nominated by the Secretary of the Interior pursuant to power vested in that office by Congress when the World Heritage Convention was implemented.[33]

Now the listing of even these sites is imperiled, particularly that of Yellowstone National Park.[34] Like the National Trust for Historic Preservation with its annual Eleven Most Endangered Places list, the World Heritage Committee has created a list titled "World Heritage in Danger," a list to which Yellowstone was added last year and which curtailed lucrative interests in the New World Mine in the vicinity of the Park.[35] The immediate congressional response was separate pieces of legislation in the House and Senate to transfer power to nominate public properties from the Secretary of the Interior to Congress.[36] The more serious of the two bills was actually supported by a majority of votes.[37] If not for special procedures requiring two-thirds approval, it would have gone to the President for signature or veto.[38] In the new 105th Congress, the House has passed similar restrictive legislation once again, and action is pending in the Senate.[39]

This is the context, both national and international, within which Florida's legislation is set. The Florida legislation is simply part of a much larger trend in the United States. It is ironic that government, which has already injured cities by what it has *not* done would now *do* even less.

By contrast, land in Europe is regarded as a scarce resource that must be controlled in the public interest rather than exploited for private gain. European governments have acted to preserve open space and deter suburban sprawl. They protect their important cultural landscapes. We throw ours away. One can argue that the heart of the problem is our national failure to have a philosophy of property adequate to harmonize both community interests and individual property interests. While that may well be true, I do not believe this is a timely argument given the immediacy of the challenge to environmental regulation, in general, and historic preservation, in particular.

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33. *U.S. Nomination Restrictions and World Heritage Cities*, *supra* note 29, at 4.

34. *Congressional Challenge to Preservation*, US/ICOMOS NEWSLETTER (US/ICOMUS, Washington, D.C.), Apr. 1997, at 1, 13.

35. *Id.* at 13.

36. *Id.* at 1.

37. *Id.*

38. *Id.*

39. *House Passes American Land Sovereignty Protection Act—Requires World Heritage Site Designation*, PRESERVATION ADVOCATE NEWS (National Trust for Historic Preservation, Washington, D.C.), Oct. 1997, at 2.

II. THE 1995 PRIVATE PROPERTY RIGHTS PROTECTION ACT

On May 19, 1995 the Associated Press distributed a photograph of a smiling Governor Chiles, seated under a stand of live oaks in a sunny pasture near Lakeland, signing into law a measure passed unanimously by the House and with only one dissenting vote by the Senate.[40] The measure he was signing is the Bert J. Harris, Jr., Private Property Rights Protection Act.

Why was our governor smiling? In his own words, he was smiling because "[w]e can be proud of this legislation. . . . It safeguards our environmental and growth-management protections while also offering private property owners a means to seek compensation for devalued land."[41] Other media characterizations were less charitable. The *Miami Herald*'s Carl Hiaasen, for example, said the

> "so-called 'property rights bill' passed by the Legislature is really the Land Speculator's Relief Act. . . . [T]he law will make it harder for homeowners to shape and preserve their neighborhoods. . . . In truth, the new law wasn't written to prevent ordinary citizens from being screwed. It was written to intimidate government from doing its job."[42]

Herald writer Peter Whoriskey on the same day wrote in much the same vein.[43] The *Gainesville Sun*'s editorial page editor wrote at length on the likely impact of the law in a piece titled "The Scam Over Property Rights."[44]

Why was our Governor smiling? He was smiling because politics is the art of compromise, and he deemed this bill the best compromise possible in view of the property rights steamroller that began rolling in Florida in 1993.

One example of this steamroller effect may be illustrative. According to insider Tom Pelham, only a day before final passage of the Act,

> "the Governor's Office, key legislators, and lobbyists for large landowner interest [sic] agreed to a controversial amendment (the Hopping/Chiles amendment) which

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40. *See Chiles Signs Land Rights Bill Into Law*, GAINESVILLE SUN, May 19, 1995, at 1A.

41. *Id.*

42. Carl Hiaasen, *Homeowners Lease Protected Under New Law*, MIAMI HERALD, May 7, 1995, at 1B.

43. *See* Peter Whoriskey, *A Developer's Dream: New Law Looms as Weapon in Land-Use Battles*, MIAMI HERALD, May 7, 1995, at 28A.

44. *See* Ron Cunningham, *The Scam Over Property Rights*, GAINESVILLE SUN, May 14, 1995, at 2G.

> expands the coverage of the Act to include non-vested property interest. [sic] In highly irregular fashion, legislation creating the new Act did not receive a single public hearing before any House committee prior to addition of the referenced amendment; instead, it was rushed to a floor vote in the House, which passed it unanimously, and to the full Senate, which passed it with only one dissenting vote."[45]

Recently, I listened to a tape of the proceedings in the House. Every time a serious question was asked about the potential impact of the proposed Act, the proponents' stock answer was that "this is a carefully crafted bill."[46] Small wonder we are warned to observe the making of neither laws nor sausage!

By now, you may have guessed that I don't much like the Act. You are right. The single aspect of the Act I can praise is its acceleration of ripeness. In general, I agree with National Trust President Richard Moe:

> When government "takes" private property, it must pay for it. No one disputes that. But this principle is now being expanded exponentially to accommodate the notion that any regulation that limits the right to make as much money as possible from one's property is a "taking"—and the owner must be compensated.
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> Such proposals will weaken or destroy laws designed to protect and strengthen community livability.[47]

Or, put in the language of Yale law professor Carol Rose in a recent law review article: "What is most at risk in the new takings measures is the tradition of public rights because, in their authors' anxiety to protect private rights, the measures may lose sight of the complementary character of public and private rights in any functioning property regime."[48] The National Trust's Constance Beaumont adds her own caution: "If freedom were absolute, we would have collective ruin."[49]

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45. Tom Pelham, *Florida Legislature Enacts Private Property Rights Protection Act*, FLORIDA PLANNING, May/June 1995.

46. Tape of Legislative Debates for H.B. 863, held by Florida House of Representatives (May 1-2, 1995) (on file with Julian C. Juergensmeyer, Professor of Law, University of Florida).

47. Richard Moe, *President's Note, Takings and Communities*, HISTORIC PRESERVATION, July/Aug. 1995, at 8.

48. Carol M. Rose, *A Dozen Propositions on Private Property, Public Rights, and the New Takings Legislation*, 53 WASH. & LEE L. REV. 265, 267 (1996).

49. Constance E. Beaumont, *Property Rights and Civic Responsibilities: Balancing Tangibles with Intangibles*, PRESERVATION FORUM, July/Aug. 1993, at 30, 35.

III. ANALYSIS OF THE ACT

The 1995 Private Property Rights Protection Act creates a new statutory cause of action with respect to "a specific action of a governmental entity [which] inordinately burden[s]," restricts, or limits an existing or vested use of real property.[50] It is up to a court to determine whether an inordinate burden has been imposed. To successfully demonstrate an inordinate burden, the property owner must show that the effect of the government's specific action leaves him or her permanently unable to realize investment-backed expectations on the property as a whole, or that he or she is left with property uses that are permanently unreasonable and constitute a disproportionate share of a burden imposed for the good of the public.[51] If the judge finds that an inordinate burden has been imposed, he or she must empanel a jury to determine compensation for the fair market value of the property loss created by the government action. A specific action includes an action on an application or permit such as the typical certificate of appropriateness (COA) sought from a preservation review board.

All of this sounds eminently fair. How could one cavil at such legislation? The devil is in the details. An example, typical of the Act's "doublespeak," is the definition of the term "existing use." Under the Act, "existing use" means not only an actual, present use or activity on the real property but also any reasonably foreseeable, non-speculative land use[52]—wording that likely will lead to definition in terms of the relevant comprehensive plan's future land use element, an acceleration of development certainly not intended by the 1985 Growth Management Act. It was this extraordinary statutory definition of existing use that was the subject of the last-minute amendment previously described.[53]

There are other details with implications more specific to historic preservation and to basic notions of fairness in the sense of treating those similarly situated equally. The first detail I will examine is Subsection (12) of the Act, which states:

> No cause of action exists under this section as to the application of any law enacted on or before May 11, 1995, or as to the application of any rule, regulation, or ordinance adopted, or formally noticed for adoption, on or before that date. A subsequent amendment to any such law, rule, regulation, or ordinance gives rise to a cause of action

50. FLA. STAT. § 70.001(2) (1995).
51. *Id.* § 70.001(3)(e).
52. *Id.* § 70.001(2)(b).
53. Pelham, *supra* note 45.

> under this section only to the extent that the application of the amendatory language imposes an inordinate burden apart from the law, rule, regulation, or ordinance being amended.[54]

A literal reading of Subsection (12) tells us that communities with good historic preservation ordinances in place or formally noticed for adoption on or before May 11, 1995 are protected. For example, the City of West Palm Beach slipped under the wire with a comprehensive new preservation ordinance in February 1995.[55] Consequently, specific actions applying such laws, rules, regulations or ordinances give rise to no cause of action under the Act. Assuming this language is interpreted as the principal drafters intend, such communities have cause to worry only to the extent that existing ordinances are amended or new ordinances are adopted.[56]

Communities without such preservation legislation in place prior to May 11, 1995 are in a very different situation. They have every right to be intimidated. Action on a COA following adoption of an ordinance clearly could trigger an action under the Act. Already, one professional has informed me that the preservation ordinance a city commission hired him to prepare was subsequently denied passage upon advice of the city's attorney that it likely would expose the city to suit under the Act.[57]

Outside the area of historic preservation, the Palm Beach Post has reported that Palm Beach County abandoned plans to limit development in a 20,500 acre agricultural reserve area east of the Everglades.[58] The county had hoped to lower permitted densities from one house per five acres to one house per ten acres.[59] An assistant county attorney stated that the county abandoned its plans based on the fear that further

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54. FLA. STAT. § 70.001(12) (1995).

55. West Palm Beach, Fla., Ordinance 2815-95 (Feb. 1995).

56. *See* David L. Powell et al., *Florida's New Law to Protect Private Property Rights*, FLA. B.J., Oct. 1995, at 12, 14.

57. Interview (Interviewee requests that his or her name and the circumstances of the interview remain confidential). I hasten to add that not all governmental entities are so timid, as evidenced by the Lake Worth City Commission's recent approval of an updated historic preservation ordinance. *Fresh Start in Lake Worth*, HISTORIC PALM BEACH COUNTY PRESERVATION BOARD (Historic Palm Beach County Preservation Board, Palm Beach, Florida), Fall 1996.

58. *See* George Bennett, *New Law Foils Plan to Cut Ag Reserve Development*, PALM BEACH POST, May 25, 1995, at 1B.

59. *Id.*

restriction of the area would trigger claims under the new takings law.[60]

More recently, the Act served as the basis for Fidelity Federal's challenge to the City of West Palm Beach's new height cap on waterfront buildings.[61] This situation is an interesting one for several reasons. In a March 1996 referendum, West Palm Beach voters chose by a 60-40 margin to lower building heights from fifteen stories to five along its waterfront.[62] On the eve of this referendum, Fidelity Federal filed an application to demolish a three-story lakefront building in order to erect a new high rise.[63] Subsequently, the City initiated historic landmark designation for the three-story building.[64]

It seems that the Act served its purpose of intimidation. The City of West Palm Beach, apparently ignoring its citizens' wishes, agreed to the replacement of the existing three-story building with a massive new high-rise.[65] In the process, the city dropped the proposed landmark designation and exacted an agreement from Fidelity Federal to replicate in its new building the first two stories of the historic structure being demolished.

Another detail to be examined is one I find particularly troublesome and one that I think poses problems for persons living in historic districts and under preservation ordinances adopted prior to May 11, 1995. I am concerned with that portion of the Act which states that the terms " 'inordinate burden' [and] 'inordinately burdened' do not include . . . impacts to real property caused by an action of a governmental entity taken to grant relief to a property owner under this section."[66]

This language adopts an extraordinarily one-sided view of private property protection. It benefits the property owner who has succeeded in an action under the Act or, more likely, succeeded in intimidating local government to settle by filing a claim under the Act. At the same time, the Act explicitly prohibits neighboring damaged property owners

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60. *Id.*

61. Anne L. Boles, *City Wants to Settle Height-Cap Dispute*, PALM BEACH POST, June 4, 1997, at 3B.

62. *See* Anne L. Boles, *Thrift Challenges 5-Stay Height Cap*, PALM BEACH POST, Jan. 31, 1997, at 7B. Still unresolved is the applicability of the Act in the first place. One certainly can argue that a citizen referendum does not fall within the definition of a specific action of a governmental entity. It is important that this issue be resolved in view of the strong trend at every level toward government by referendum.

63. *Id.*

64. *See* Anne L. Boles, *Preservationists Call Thrift Historic; Owner Says It's Not*, PALM BEACH POST, May 29, 1997, at 1B.

65. *See Height Cap*, WEST PALM BEACH POST, July 16, 1997, at 2B.

66. FLA. STAT. § 70.001(3)(e) (1995).

from seeking recourse under the Act.[67] No recovery is allowed against the governmental entity for the resulting diminution in value of the neighbor's property caused by such settlement or by capitulation in the face of suit. On this point, the Act seems blatantly unfair.

IV. THINKING ALTERNATIVELY

For preservationists, if there is an upside to this depressing legislation, it is in the challenge to seek better ways to achieve the overarching goal of preserving our historic resources. I believe there are better ways and I believe one is found in the conservation easements recognized and encouraged by the Florida Statutes.[68] Conservation easements are perpetual, undivided interests in real property which may be created in the form of a restriction, easement or covenant, and they may be acquired by any governmental body or by a charitable organization whose purposes include preserving sites or properties of historical, architectural, archaeological, or cultural significance.[69] This is not to suggest that communities with preservation ordinances abandon them. It is to suggest that such efforts be supplemented and strengthened through use of these private and perpetual agreements with respect to real property so that they are not subject to the whim of whatever government is in ascendance.

There are many models and incentives for encouraging conservation easements. At the federal level, a major incentive stems from the ability to take a charitable income tax deduction for the gift of such an easement if the property is listed on the National Register.[70] In Florida, there is the potential for reducing one's property taxes through the gift of such an easement.[71] It is also possible to accomplish preservation through the purchase of such easements.[72]

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67. *See id.*

68. FLA. STAT. § 704.06 (1995).

69. Examples include certain easements on Mar-A-Lago given by Donald Trump to the National Trust for Historic Preservation as part of a package permitting the transformation of this National Historic Landmark to a private club and easements given to the National Trust by the Florida Trust on Fort Lauderdale's Bonnet House at the time Mrs. Bartlett gifted her home to the latter. *See* Letter and Attachments from Michael J. McNerney, Attorney, Fort Lauderdale, Florida to Gary Wilburn, Attorney, National Trust for Historic Preservation, Washington, D.C. (Oct. 12, 1983) (on file with author).

70. *See* 26 U.S.C. § 170(a), (c) (1994).

71. *See* FLA. STAT. § 193.505 (1995).

72. The purchase of whole blocks of facade easements by the city of Annapolis, Maryland serves as an example. *See generally* MARYLAND DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT, PRESERVATION EASEMENTS (1975) (on file with author). A major and successful Florida effort at urban revitalization utilizing this technique is found in Tampa's Tampa Heights and Seminole Heights neighborhoods.

Of course, we need to provide other incentives, and we need to publicize and utilize those incentives that already exist. By so doing, we deprive the potential claimant under the Property Rights Act of the very heart of his or her claim that the property has been inordinately burdened. This can be done by providing constitutionally-authorized tax abatement at the city and county levels.[73]

It is also incumbent upon preservationists and local governments to develop hard evidence to rebut the oft-heard statement that, "historic designation will lower the value of my property." In fact, the opposite likely is true. If anything, a property may be "inordinately benefited" from such designation. For example, in 1995 the state historic preservation office of South Carolina sponsored an authoritative economic study of house prices to address this very point.[74] Among the most striking findings was information that homes located in two nationally and locally designated historic districts increased in price at a rate almost twenty-five percent faster than did homes in the community at large.[75]

Again, it is time to think alternatively. In conclusion, I would say beware! But don't despair.

73. *See* FLA. CONST. art. VII, § 3(e); *see also* FLA. STAT. §§ 196.1997, .1998 (1995).

74. John A. Kilpatrick, University of South Carolina, House Price Implications for Historic District Designations (Aug. 8, 1995) (draft) (on file with author).

75. *Id.*