



1995

Demolition by Neglect: A Loophole in Preservation Policy

Andrea Merrill Goldwyn
University of Pennsylvania

Follow this and additional works at: http://repository.upenn.edu/hp_theses

 Part of the [Historic Preservation and Conservation Commons](#)

Goldwyn, Andrea Merrill, "Demolition by Neglect: A Loophole in Preservation Policy" (1995). *Theses (Historic Preservation)*. 357.
http://repository.upenn.edu/hp_theses/357

Copyright note: Penn School of Design permits distribution and display of this student work by University of Pennsylvania Libraries.

Suggested Citation:

Goldwyn, Andrea Merrill (1995). *Demolition by Neglect: A Loophole in Preservation Policy*. (Masters Thesis). University of Pennsylvania, Philadelphia, PA.

This paper is posted at ScholarlyCommons. http://repository.upenn.edu/hp_theses/357

For more information, please contact libraryrepository@pobox.upenn.edu.

Demolition by Neglect: A Loophole in Preservation Policy

Disciplines

Historic Preservation and Conservation

Comments

Copyright note: Penn School of Design permits distribution and display of this student work by University of Pennsylvania Libraries.

Suggested Citation:

Goldwyn, Andrea Merrill (1995). *Demolition by Neglect: A Loophole in Preservation Policy*. (Masters Thesis). University of Pennsylvania, Philadelphia, PA.

E THE ARTS
NA
02
1995
G624

UNIVERSITY
PENNSYLVANIA
LIBRARIES



DEMOLITION BY NEGLECT:
A LOOPHOLE IN PRESERVATION POLICY

Andrea Merrill Goldwyn

A THESIS

in

Historic Preservation

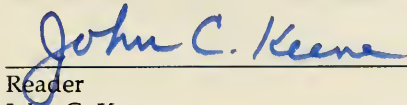
Presented to the Faculties of the University of Pennsylvania in
Partial Fulfillment of the Requirements for the Degree of

MASTER OF SCIENCE

1995



Supervisor
David Hollenberg



Reader
John C. Keene



Graduate Group Chair
David G. De Long

Fine Arts/NA/02/1995/G624

Acknowledgments

I would like to thank several people, without whose help, I could not have written this report. My advisor, David Hollenberg, provided calming guidance throughout this year. My reader, John Keene, as always, offered thoughtful clarifications.

Much of the research in this paper was in the form of oral interviews, and I thank all of the people who gave their time to speak with me. Alex Acosta, Randal Baron, Joan Brierton, Natalie Burns, Valerie Campbell, and Roger Lang were exceptionally helpful. Jennifer Goodman and Melissa McRaney at the Preservation Coalition of Greater Philadelphia shared their knowledge and insight on this topic. The staff at the National Trust for Historic Preservation Library at the University of Maryland was extremely helpful, on the phone, across the internet and in person.

I offer personal thanks to my mother, who had to go through all this once before, and my friends at Penn and in the outside world who have helped me through this experience.

DEMOLITION BY NEGLECT:
A LOOPHOLE IN PRESERVATION POLICY

Table of Contents

	page
Acknowledgments	ii
I. Introduction	1
II. The Elements of Demolition by Neglect	6
III. Legal Issues Arising of Efforts to Prevent Demolition by Neglect, by the Use of Minimum Maintenance Provisions in Historic Preservation Ordinances	17
IV. Case Studies	28
A. Philadelphia, PA	31
B. New York, NY	36
C. Washington, DC	43
D. Portland, ME	47
V. Tools for Closing the Loophole of Demolition by Neglect	53
VI. Conclusion	71
Appendix: Excerpts from Historic Preservation Ordinances	77
A. Maintenance Clauses	77
B. Penalties	79
C. Economic Hardship Requirements	82
D. Public Safety Exclusions	87
Bibliography	89

This temporal structure of a building can be compared to a person's experience of time. At every moment in one's life earlier times of infancy, childhood, youth, and all other stages up to new are still present, increasing in number yet unchanged and familiar, and subject to redefinition and appropriation. Never is one's past not present, nor is the individual's past ever cut off from the tradition of one's culture and the time of the natural world. *On Weathering: the Life of Buildings in Time*¹

INTRODUCTION

Historic preservation policy has moved from treating buildings as artifacts of history or architecture to considering them as elements of a larger societal fabric that should be maintained intact. In so doing, policy makers have created legislation that encourages or coerces property owners to make decisions about their property based not only on their own interests but on the interests of society, as defined in the establishment of the policy. While in some ways this is no different from the zoning laws that control land use and building size, in other ways it is very different, as evidenced by the strong reactions against the policy and the intentional disregard of that policy, evidenced by demolition by neglect.

Demolition by neglect occurs when an owner, with malicious intent, lets a building deteriorate until it becomes a structural hazard and then turns around and asserts the building's advanced state of deterioration as a reason

¹ David Leatherbarrow and Moshen Mostafavi, *On Weathering: the Life of Buildings in Time* (Cambridge, MA: M.I.T. Press, 1993), p. 112.

to justify its demolition.² It is an issue that affects not only the individual buildings that are deteriorating, but also entire neighborhoods, both commercial and residential, starting a cycle of decay and disinvestment. It is one of the toughest of the many issues that face historic preservationists.³

The predominant traditional approach to combating DBN has been to include minimum maintenance provisions in the local preservation ordinance. Preservation lawyer Christopher Duerksen writes of three components that comprise the maintenance issue: "First, communities must be sensitive to the possibility that complex and time-consuming procedures associated with landmark controls may persuade some owners to forego needed repairs simply to avoid the bureaucratic hassle. Second, there may be situations that call for the imposition of affirmative maintenance requirements where landmarks are being demolished de facto by neglect. Finally, preservationists should be aware that most local municipal building and health codes allow landmarks to be torn down despite opposition from the local preservation review body on the ground that the buildings have fallen into such disrepair that they are a threat to public safety."⁴

He is summarizing the issues that a locality must take into account in writing a preservation ordinance. In this thesis, I explore the phenomena of "demolition by neglect," to review how several jurisdictions have tried to address it and distill lessons from those efforts, and to propose better ways of

² Katherine Raub Ridley, "Demolition By Neglect, the New York State Context" (speaker's notes from the Preservation League of New York State Annual Meeting, April 23, 1993), p. 1.

³ Pratt Cassity and Connie Malone, "The United States Preservation Commission Identification Project" (Washington, DC: National Alliance of Preservation Commissions, 1994), p. 4.

⁴ Christopher Duerksen, ed. *A Handbook on Historic Preservation Law* (Washington, DC: The Conservation Foundation and the National Center for Preservation Law, 1983), pp. 107-08.

addressing the problem. The first section outlines and relates the many components of DBN, with the intention of isolating a definition to devise such policy. The next section focuses on the legality of the minimum maintenance provision of the ordinance, and gives a brief history of case law related to DBN. The third section presents case studies of ordinances and DBN in Philadelphia and three other cities, to determine how their methods and organization compare to the local program, and what can we learn from them. The fourth section will analyze these approaches, looking at the various means, both regulatory and incentive-based, that preservation advocates use to combat DBN, and place them within an array of traditional and innovative weapons. The fifth chapter concludes with a list of recommendations for Philadelphia's anti-neglect policy.

The focus of this report is not a history of DBN provisions (although that is one component) but a survey of current responses to the issue. Thus, most of the primary research has been in the form of oral interviews with people working in the preservation field and assessing documents used in the field, such as preservation ordinances and their minimum maintenance clauses. The selected case studies illustrate different ways in which DBN can evolve and the ways these municipalities have handled the situation. They are not paradigms, except in the fact that as a group they show how DBN is a pervasive problem that can appear in any community, even those with strong preservation laws.

There have been few studies that have focused on this issue. Two have considered the ordinance. One is a paper written in 1989 at the Virginia

Polytechnical Institute and State University by Nicholay and Tinsley.⁵ Another is a report written by David Meyer, a student in the historic preservation and law dual degree program at Boston University. A student at the University of New Orleans, Diane Ancker Broussard, wrote a thesis in 1992, focusing on the DBN citation process implemented by the Historic District Landmarks Commission of that city. This paper differs from the previous studies in that while it considers the role of the ordinance in addressing DBN, it also looks at the deficiencies of the ordinance and what other steps can fill in those holes.

While many people in the preservation community are aware of the ongoing problem of owner neglect, there is no body of work using quantitative analyses of the factors that contribute to DBN, or even of the number of buildings affected. Minimum maintenance guidelines often address owner neglect as the implied effect of violating the rules. There is no codified definition.

Nationally, this problem is of increasing importance. The State Preservation League of New York held a conference on DBN in 1993; and the National Trust for Historic Preservation included this as a topic for a panel discussion and presentation at the 1994 national convention in Boston, MA. The United States Preservation Commission Identification Project report, released in 1994, listed it as "the most difficult situation" for local

⁵ Diane Ancker Broussard, "An Analysis of the Demolition by Neglect Citation Process of the New Orleans Historic District Landmarks Commission." Master's thesis, University of New Orleans, 1992. p. 3.

commissions to solve, with only 25% of respondents reporting that they have the authority to protect designated structures from DBN.⁶

Demolition by neglect is currently a pervasive problem in Philadelphia. As the preservation community in Philadelphia is moving forward to address this issue, this study can serve as a guide to the traditional and innovative responses to DBN across the nation. The practice of demolition by neglect runs counter to the traditional means of historic preservation in this country. Preservation policy demands that property owners recognize that society has placed a value on factors long considered intangible, such as architectural merit or societal import, never properly communicated. Thus, although DBN is an issue that affects all areas of preservation policy and planning, the focus of this study will be on the cause, effect, and response to this loophole in preservation policy.

⁶ Cassity and Malone, p. 15. This is in comparison to 62% having authority to delay demolitions and 53% having power to deny demolition; Affirmative maintenance was the second lowest, after authority to regulate interior changes, a power only 8% of responding preservation commissions have- see appendix B, question 10.

THE ELEMENTS OF DEMOLITION BY NEGLECT

Neglect not only causes the destruction of a historic structure, [but] also destroys the morale of the residents and the aesthetic character of their neighborhood. Dilapidated structures soon become havens for crime, which not only affects the safety of the neighborhood, but also lowers property values. The uncertainty about the future of individual neighborhoods is thus often reflected by a cycle of disinvestment by the owners who may be residents, investors, and lending institutions. Reluctance to invest limits both homeowners and investors in their ability to obtain the financing to purchase or rehabilitate existing structures, further reinforcing the cycle of disinvestment which fosters the Demolition By Neglect of individual buildings.⁷

The root definition of demolition by neglect is simple: it occurs when an owner neglects his property to the point that the property suffers damage and starts to deteriorate. However, this explanation does not address the many variables that are also a part of DBN. The first element is determining the type of disrepair that would indicate neglect. The second factor is ascertaining the situation of the owner, and whether or not the neglect was a strategy to subvert an ordinance. Since the purpose of this paper is to examine demolition by neglect in a historic preservation context, it will focus on "historic" buildings as opposed to all others. By developing a more specific definition of the terms, conditions and participants, it should be easier to tailor regulations to retard incidents of offense.

These buildings become threatened long before demolition is proposed.... there are several scenarios which may lead to the loss of a building. Low density buildings in commercial or high

⁷ Allison Dyches, "Demolition by Neglect: What the Experts Say," *Preservation Progress*, (The Preservation Society of Charleston), vol. 35, no. 5, November 1991, p. 3.

density areas are often purchased for the value of the land, and maintenance deferred or eliminated. Eventually the toll of neglect raises rehabilitation costs above economic limits, or the buildings are left vacant and subject to vandalism and fire. In some cases property is held by estates with absent or uninformed heirs -- the buildings are vacant and again vulnerable to damage. A third, and unfortunately common, situation is a building vacated because of housing code violations which the owner is unwilling or unable to correct. And finally there are buildings which are purchased by well intentioned but underfinanced entrepreneurs whose rehab efforts halt once ready capital disappears.⁸

The two main issues to resolve in deciding if demolition by neglect of designated properties is happening are the nature of damage to the property and the disposition of the owner. This section looks at the rules for buildings under historic preservation regulation. The entire array of building maintenance regulation is beyond the scope of this paper; and while it is certainly a part of, and affects DBN, the protection of designated buildings is one subset of that larger field of issues.

The definition of damages to a building is typically found in the buildings codes and preservation ordinances of a municipality. While the existence of a minimum maintenance provision is a first step in defining neglect, that provision will be considerably strengthened by a specific list of defects to a building that will not be tolerated. Furthermore, the omission of this kind of list may be considered a deficiency of an ordinance and even supply a defense of vagueness for a property owner in court.

⁸Caroline Douthat, "Neglect and Demolition: City Preservation Policies Reviewed" *Oakland Heritage Alliance News*, vol. 8, no. 2, Summer 1988, pp. 8-9.

For example, the maintenance provision of the Charlottesville, VA preservation ordinance offers a general warning against neglect: "Neither the owner of nor the person in charge of a structure or site ... shall permit such structure, landmark, or property to fall into a state of disrepair which may result in the deterioration of any exterior appurtenance or architectural feature so as to produce, in the judgment of the appropriate board, a detrimental effect upon the character of the district as a whole or the life and character of the landmark, structure, or property..."⁹ The next part of the provision lists specific structural disrepairs that are intolerable:

- a. The deterioration of exterior walls or other vertical supports;
- b. The deterioration of roofs or other horizontal members;
- c. The deterioration of external chimneys
- d. The deterioration or crumbling of exterior plasters or mortar;
- e. The ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors;
- g. The lack of maintenance of surrounding environment, e.g., fences, gates, sidewalks, steps, accessory structures, and landscaping;
- h. The deterioration of any feature so as to create or permit the creation of any hazardous or unsafe condition or conditions.¹⁰

Charlottesville's ordinance emphasizes prevention, and reinforces that general idea with the checklist of conditions. Virginia preservation lawyer Oliver Pollard compares this provision to one in another city, Petersburg, VA. "The owner of any building or structure, which is located within a historic

⁹ Constance Beaumont, "Demolition by Neglect" unpublished memo from the National Trust for Historic Preservation, Washington, DC, September 21, 1990, p. 4. [The memo is not signed, but another NTHP memo on DBN (by Rieyn DeLony) refers to Beaumont as the author.]

¹⁰ Va. Code, Art. XVI, Section 31-141 in Oliver A. Pollard, III, "Counteracting Demolition by Neglect: Effective Regulations for Historic District Ordinances," *The Alliance Review*, Winter 1990, p. 3.

area, shall keep such structure properly maintained and repaired...“This ordinance requires prevention of only serious structural defects threatening permanent damage to a structure; a requirement that allows considerable damage to occur before repairs can be mandated.¹¹ Pollard asserts that the more specific terms of the Charlottesville ordinance will more effectively combat DBN by taking a proactive stand. The potential drawback to creating such a list is that it can place restrictions on a commission's ability to be flexible in issuing citations against the criminal activities of owners.

Maintenance guidelines for historic buildings can be modeled on general building codes, such as the BOCA Maintenance Code or the National Existing Structure Code. “Among other things, the NESC requires exterior walls, roof, stairs, porches and window and door frames to be maintained in a weatherproof condition. The NESC even requires maintenance of cornices, entablatures, wall facings and similar decorative features.”¹² One caution to this approach is that the more general building codes might allow the particular characteristics of the property that define its significance to deteriorate so that the property is a candidate for de-certification from the local register. The standard codes might be expanded to include those specific features.

Demolition by neglect cases often emerge only when owners request a permit for demolition or when a building has deteriorated to such an extreme

¹¹ Va. Code, Art 35, Section 16 in Pollard, p. 3.

¹² Pollard, p. 1.

degree that it would be visible to a passerby. Therefore, the issue of inspection must be considered. The fourth amendment of the U.S. Constitution protects against unwarranted intrusion into private property. Unfortunately, this kind of deterioration is usually a sign of much greater problems. In either case, this is often the first time that building inspectors are able to enter a property and review the damage. By this time, the damage is often more extreme than can be easily repaired, a result that can support an owner's claim of economic hardship. Therefore, the ability to determine whether deterioration has started, and the demarcation line of when it has started are also a part of determining DBN.

There is also the role of the municipal building inspector, who determines when a building has become a public safety hazard. The public safety exclusion, enabling building maintenance officials to authorize demolition of a building that is a hazard to safety, is a standard feature of most preservation ordinances.¹³ Duerksen warns that

On their face, public safety exclusions appear reasonable -- if a building is about to tumble down on pedestrians below, surely something must be done quickly -- but in practice, they are sometimes used by a local government or owner to circumvent local review procedures or to avoid facing up to hard choices between a proposed redevelopment scheme and the preservation of an important landmark....¹⁴

The inclusion of the public safety exclusion is necessary to uphold the legality of the ordinance. However, the savvy preservation commission should be

¹³ See Appendix, section D, for public safety exclusions in the New York, NY; Washington, DC; and Portland, ME historic preservation ordinances.

¹⁴ Christopher Duerksen, ed. *A Handbook on Historic Preservation Law* (Washington, DC: The Conservation Foundation and the National Center for Preservation Law, 1983), p. 112.

aware of the above scenario. It can attempt to mitigate these negative effects by establishing the right to review and comment on situations that do not pose an immediate danger.

If an owner does not follow this kind of maintenance, demolition by neglect begins. A key word in the refined definition of DBN is that the neglect is an intentional subversion of preservation policy, that the lack of maintenance is the means to an end, in pursuit of a goal -- often financial -- that the owner has in mind.¹⁵ A difficult point is how to prove that an owner does have the *intent* to neglect. A series of questions might be appropriate to establish a pattern supportive of a finding of DBN: is the owner an absentee landlord, does he pay property taxes, is his insurance current, has he requested a demolition permit, does he own other properties in similar states of disrepair, has he refused to make the minimum provisions to protect his property from fire, vandalism, intrusion?

Speculators and developers are not the only owners who commit DBN. In 1992, the Preservation Society of Charleston commissioned several studies of housing at risk in Charleston. In one survey focusing on an area of "low to moderate income residences" they found 116 out of 670 total buildings at risk. The most revealing aspect of the study was not the number of properties, but the ownership. After tracking down information on the non owner-occupied houses, they discovered that a larger than anticipated number were local or

¹⁵When considering the notorious (and recently deceased) speculator Sam Rappaport of Philadelphia, one is tempted to consider that his actions contained a not insignificant degree of spite directed at preservation itself.

nearby residents; and that only a minority owned multiple properties, which would suggest that they were slumlords.

Instead, they found that owners do not always have a redevelopment motive; sometimes they simply do not want to repair income (residential-rent) producing structures: "more often an owner cannot afford to make repairs. The question whether there is intent to demolish by neglect is not appropriate in these instances."¹⁶ These situations highlight the fact that it is important to determine ownership.

Owners of the affected properties were often within city and environs, and sometimes held multiple properties, which does suggest speculation. Some did not have resources to improve properties; others were heirs without knowledge of holdings. "The owner of record may have been dead for many years, tax bills being paid by relatives under the terms of some informal agreement, with no steps to probate the estate....Without clear title to property, no one can buy, sell, or invest money in rehabilitation."¹⁷ While this behavior is not the intentional neglect that this report focuses on, its effects are still harmful and should be addressed by an application of minimum maintenance guidelines.

All buildings follow a cycle of decline and entropy. However, every jurisdiction has regulations to protect the inhabitants and users of buildings against damage inflicted by this decline. Buildings designated as worthy of preservation (individually, or as contributing structures to historic districts)

¹⁶"Buildings at Risk: A Report to the Community," *Preservation Progress*, Vol. 35, no. 8, Winter 1992, p. 1.

¹⁷"Buildings at Risk: A Report to the Community," p. 3.

under federal, state or local registers have an added layer and/or different kinds of protection.

Neither federal nor state laws prohibit actions that are adverse to the integrity of a historic structure. ... In contrast, local ordinances may provide direct protection for historic resources by regulating their maintenance, alteration, and demolition.¹⁸

Under federal law, the National Historic Preservation Act recognizes significant properties by placing them on the National Register of Historic Places. The NHPA protects buildings against the potential impacts of activity by other federal agencies via its Section 106, which requires government agencies to determine the adverse effects of their undertakings on properties either designated or with the potential to be designated on the Register. An adverse effect is "the effect on a historic property (that) may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects in historic properties include, but are not limited to: ...4. Neglect of a property resulting in its deterioration or destruction"¹⁹

The National Park Service (which administers preservation at the federal level) recognizes the necessity of maintenance of the properties listed on the Register: "With regard to 'treatment,' the historic materials on buildings, structures, sites, and objects listed in the National Register of Historic Places, like all materials, deteriorate over time. Therefore, these properties require periodic work to preserve and protect their historic

¹⁸Stephen Kass, Judith M. LaBelle, and David A. Hansell, *Rehabilitating Older and Historic Buildings*, second edition (New York: John Wiley & Sons, Inc., 1993), p. 183.

¹⁹ Advisory Council on Historic Preservation, "Protection of Historic Properties," Section 106 Step By Step (Washington, DC: ACHP, October 1986), p. 25. Section 800.9 (b) of 36 CFR Part 800 in the federal register.

integrity. Properties that have deteriorated, and properties that have been unsympathetically altered or added to, require considerably more assistance to rehabilitate or restore them so that historic and architectural integrity is preserved”²⁰

Section 110 (k) (of the revised NHPA of 1992)²¹ requires that "Each federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant." This proviso can have an impact on properties at the local level, when economic options are being formulated. However the federal law does little to protect and maintain nationally designated properties (including contributing structures in National Register districts), on a continuing basis, instead relying on the measures of the state and local ordinances.

States often have their own state-wide registers, and sometimes have laws analogous to §106 ("little 106's".) The Pennsylvania statute on historic preservation authorizes a Pennsylvania Register for Historic Places²² for

²⁰ National Park Service, *Manual for State Historic Preservation Review Boards* (Washington, DC: U.S. Department of the Interior, 1992), pp. 39-40.

²¹ Advisory Council on Historic Preservation, *National Historic Preservation Act of 1966, as amended*, third edition, 1993, p. 29.

²² Pennsylvania Statutes, Title 37, Historical and Museums, Chapter 5, Historic Preservation. 37 Pa. C.S. @ 500 (1984).

publicly owned properties; however, the state no longer implements this order, and instead offers protection through the National Register. The strongest contribution of the states in this issue is their support to the local commissions.²³

The greatest level of protection is at the local level, where communities and municipalities enact historic preservation ordinances, which may contain minimum maintenance provisions. These regulations traditionally require the property owner to maintain the properties that fall under the statute, against threat of penalty. They will be the focus of discussion in later chapters.

There are also several larger issues to consider, outside the immediate realm of DBN or preservation. Demolition by neglect is part of the cycle of speculation, in which owners hold onto their properties, waiting for a stronger real estate market. Property owners who commit DBN might be trying to take advantage of increased floor area ratios and changing uses that go into effect only when a building is demolished and new construction begins.

The tax structure is heavily weighted toward new construction, and since the federal Tax Reform Act of 1986 it does not encourage rehabilitation. The draw of suburbs with lower business taxes detracts from inner city rehabilitations. The continuing decline and depopulation of cities, assisted by

²³ According to Randal Baron of the Philadelphia Historical Commission, the state of Pennsylvania has recently started plans for its first contribution to preservation in Philadelphia, a restoration of the Freedom Theatre in North Philadelphia. Personal interview, February 3, 1995.

decreasing federal funding for revitalization, also contributes the atmosphere that makes DBN an attractive (and sometimes only) option for property owners. The goal of the preservation ordinance and commission must be to work with knowledge of these conditions, while continuing to make progress at the level of the individual building.

As this section has shown, there are many facets of demolition of neglect that need to be defined so that a strategy will address them effectively. A property on a local preservation register, owned by someone with a record of irresponsibility, in an area with strong development pressures, is a candidate for demolition by neglect. As this section has shown, this is not the only scenario in which intentional DBN occurs, but it is a standard that preservation commissions can use when trying to enhance their minimum maintenance guidelines or anti-neglect policy.

Legal Issues Arising of Efforts to Prevent Demolition by Neglect, by the Use of Minimum Maintenance Provisions in Historic Preservation Ordinances

The values [that the police power] represents are spiritual as well as physical, aesthetic as well as monetary. It is well within the domain 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.²⁴

(O)nce it has been determined that the purpose of the Vieux Carre legislation is a proper one, upkeep of the buildings appears reasonably necessary to the accomplishment of the goals of the ordinance... The fact that an owner may incidentally be required to make out-of-pocket expenditures in order to remain in compliance with an ordinance does not per se render that ordinance a taking. In the interest of safety, it would seem that an ordinance might reasonably require buildings to have fire sprinklers or to provide emergency facilities for exits and light. In pursuit of health, provisions for plumbing or sewage disposal might be demanded. Compliance could well require owners to spend money. Yet, if the purpose be legitimate and the means reasonably consistent with the objective, the ordinance can withstand a frontal attack of invalidity.²⁵

The courts' findings in these two cases are the foundation of the traditional legal stance supporting minimum maintenance provisions. The first, from the U.S. Supreme Court's decision in *Berman v. Parker*, is the phrase, well known in preservation law, that authorizes the state to use its police power -- the power to protect the public health, safety, morals, or

²⁴ *Berman v. Parker*, 348 U.S. 26, 32-33 (1959). The court found in favor of a city (Washington, DC) against a complaint from a property owner whose property while in good condition was in a blighted area and scheduled for condemnation. The court extended the meaning of the police power to include aesthetics.

²⁵ *Maher v. City of New Orleans*, 516 F.2d 1051 (5th Cir. 1975) U.S. Court of Appeals, Fifth Circuit at 1067. Plaintiff was denied permission to demolish his property in the Vieux Carre historic district.

general welfare – to regulate for aesthetics as part of an urban renewal program. The second, from *Maier v. New Orleans*, declares that the goals of a historic district are valid, and that reasonably consistent regulations to enforce those goals are also within the law.

In the same ways that society regulates property by zoning ordinances, discouraging some activities while encouraging others, and rewards homeownership with substantial income tax reductions, it guards against the neglect of buildings, historic or otherwise. “...(I)t has always been the law in New York State -- and in England for 500 years before that -- that a person could not use his or her property in any way that interfered unreasonably with a neighbor’s peaceful use and enjoyment of land. In short, these 20th century land use controls, which include zoning and building laws, are merely modern adaptations of these ancient rules.”²⁶

The laws that prohibit allowing the deterioration of buildings are primarily in the building codes of a local government, while the regulations that specifically apply to properties on a register of historic buildings are in a municipality's preservation ordinance. This chapter will look at the development of minimum maintenance provisions of the local ordinance, and at several court cases that have tested that validity.²⁷

²⁶ Robert E. Stipe, "Local Preservation Legislation: Questions and Answers," *Rehabilitating Historic Properties 1984*, *Practicing Preservation Law*, Nicholas A. Robinson, chairman (n.p.: Practising Law Institute, 1984), p. 57.

²⁷The preservation attorney Oliver A. Pollard III has written the most complete report on the legal validity of minimum maintenance guidelines. The structure of this section is derived from his article in the *Preservation Law Reporter*, (vol. 8, 1989 Annual, pp. 2001-11) "Minimum Maintenance Provisions: Preventing Demolition by Neglect" Individual quotations are cited.

The case law on demolition by neglect is not extensive. In many cases, an irate owner will file suit, in the process of obtaining a demolition permit. Preservation officials rarely attempt to prosecute on this issue. There are several reasons for this. The first is expense. In most cities, the commission dealing with preservation does not have the staffing to pursue and prosecute cases. Most offices do not have an attorney on staff; instead, they use the city solicitor to handle legal matters; and in most communities, the crime of neglecting a building is fairly low on the local district attorney's list of felonies and misdemeanors. The second reason is that many commissions do not want to jeopardize their preservation ordinance by putting it up for challenge in a criminal prosecution. For example, in New York City, there has never been a case of DBN brought to trial, partially because of this risk. In addition, the (New York City) Landmarks Commission has had more success pursuing compromise and compliance than it has in actually litigating these issues.

The first issue regarding the legality of minimum maintenance provisions, and their enforcement, lies in the question of whether the state legislature has delegated to the local government the power to exercise the police power in such a way. The state's enabling legislation for local historical commissions must spell out this power. Most states have enabling legislation that grants authority to the local governments to regulate construction and maintenance. Listed below are several examples of this type of legislation:

North Carolina: The governing board of any municipality may enact an ordinance to prevent the demolition by neglect of any designated landmark or any building or structure within an established historic district. Such ordinance shall provide

appropriate safeguards to protect property owners from undue economic hardship.'

Rhode Island: 'Avoiding demolition through owner neglect. A city or town may by ordinance empower city councils or town councils in consultation with the historic district commission to identify structures of historical or architectural value whose deteriorated physical condition endangers the preservation of such structure or its appurtenances. The council shall publish standards for maintenance of properties within historic districts. Upon the petition of the historic district commission that a historic structure is so deteriorated that its preservation is endangered, the council may establish a reasonable time not less than thirty days within which the owner must begin repairs. If the owner has not begun repairs within the allowed time, the council shall hold a hearing at which the owner may appear and state his or her reasons for not commencing repairs. If the owner does not appear at the hearing or does not comply with the council's orders, the council may cause the required repairs to be made at the expense of the city or town and cause a lien to be placed against the property for repayment.'

Alabama: 'Demolition by neglect and the failure to maintain an historic property or a structure in an historic district shall constitute a change for which a certificate of appropriateness is necessary.'²⁸

There is also the issue of enabling statutes that authorize maintenance provisions, but not the specific guidelines that best protect designated properties. However, the localities can derive the authority to create such regulations as upholding the overall spirit of the enabling provision for maintenance.

In these cases, authority to enact such provisions may be inferred from historic preservation enabling legislation that empowers localities to create and regulate historic districts, or

²⁸Constance Beaumont, "Demolition by Neglect" unpublished memo from the National Trust for Historic Preservation, Washington, DC, September 21, 1990, p. 1-2. [The memo is not signed, but another NTHP memo on DBN (by Rieyn DeLony) refers to Beaumont as the author.]

from general enabling legislation that delegates police powers to localities to zone to protect or promote the public health, safety, morals or the general welfare. Whether the authority of a locality to require that historic properties be repaired or maintained is express or implied, affirmative maintenance provisions must not exceed the scope of this authority.²⁹

Once the locality's authority to enact these laws is established, the regulations must be able to withstand the tests of due process and regulatory takings. The due process of law requirement is fulfilled if the regulation is a valid exercise of the police power. Pollard writes, "A regulation must bear a rational relation to the achievement of a legitimate governmental purpose, and the means selected to carry it out must be reasonable and of general application." He cites the examples of *Penn Central*, *Village of Belle Terre v. Boraas*, *Berman v. Parker* and *Maher v. City of New Orleans* as cases in which local governments have upheld this relationship in municipal regulation.³⁰

One of the greatest concerns facing today's preservation commissions is the threat of a regulatory taking claim against the ordinance. The U.S. Supreme Court's recent rulings in *Nollan*, *Lucas*, and *Dolan* suggest that the court will be looking very carefully at property rights and the nexus of the state's interests (and their legitimacy) and the regulations it uses to enforce

²⁹ Pollard, p. 2005.

³⁰ Pollard, p. 2006. In *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978) the court validated historic preservation ordinances when it found that an ordinance did not deprive a property owner of all economic value of his property, and was not a taking. In *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974) the court further stretched the definition of public health and general welfare to rule against the unrelated members of a group house whose coexistence was characterized a threat to the peaceful safety of the neighborhood.

those interests.³¹ Regarding the regulatory aspect of the minimum maintenance issue, the *Maher* case is perhaps the most important. It established the legitimacy of the regulations, and it opened the loophole of economic hardship in the court's decision. "It is important to recognize that the court refrained from holding that every application of the city's minimum maintenance requirement would be constitutional. The court stated that the anti-neglect regulation in question could effect a taking in certain circumstances if the cost of maintenance were too unreasonable and 'unduly oppressive'. It is therefore necessary to examine how courts would address the issue of whether a regulation goes too far and thus constitutes a 'taking.'"³²

The Circuit Court for Isle of Wight County, VA confirmed the legality of the minimum maintenance provision of a local zoning ordinance in *Harris v. Parker*.³³ In this case, the town of Springfield, VA had requested an injunction to stop a property owner's continued disrepair of his buildings in the historic preservation district. The court ordered the owner to correct violations of the provision by performing specific maintenance tasks such as

³¹ In *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), 107 S. Ct. 3141 (1987) the court ruled that although the CA Coastal Commission had a legitimate purpose in mind when they regulated the plaintiff's property, that regulation in fact did not advance that goal. In *Lucas v. South Carolina Coastal Council*, 60 U.S. Law Week 4842 (1992) the court continued that line of thought, finding that the Coastal Commission unfairly singled out the plaintiff to keep his property clear while surrounding owners had already developed their land. In the most recent case, *Dolan v. City of Tigard*, __ U.S. __, 114 S. Ct. 2309 (1994) the court reiterated the *Nollan* finding in its decision that a municipality's interests in wanting to reduce traffic and improve drainage were legitimate but its means of advancing them, creating a public greenway on private property, did not demonstrate the requisite nexus of purpose and mechanism.

³² Pollard, p. 2008.

³³ Chancery No. 3079 (Cir. Ct Isle of Wight Cty., VA, April 15, 1985). See Rieyn DeLony, "Enforcement of minimum maintenance standards to prevent demolition by neglect (DBN)," unpublished memo to Constance Beaumont, October 30, 1992, Washington, DC: National Trust for Historic Preservation, pp. 4-5.

painting, repairing leaks, replacing roof shingles, and repairing broken windows.

The two major tests of whether a regulation is a taking without compensation are legitimacy of governmental action and economic impact.³⁴ In regard to minimum maintenance regulations and legitimate state interests Pollard writes, "(A) strong argument can be made that minimum maintenance provisions do not constitute a taking on the grounds of failure to meet legitimate state interest, since they are intended to protect the public from threats to health and safety, the harmful effects of decreased property values, destruction of scenic beauty, and loss of precious historical, architectural, and cultural resources which demolition by neglect can cause."³⁵

Another issue particularly important to the legitimacy of DBN regulation is its economic impact. The owner can be expected to claim that either the repair requirements are too expensive, or the building has no economic value, or a combination of the two, so that the minimum maintenance provision constitutes a taking.

A major part of the economic taking criteria is the reasonable use test. A regulation does not constitute a taking unless it deprives a landowner of the entire reasonable economic value of the property. Duerksen writes, "Although courts have almost uniformly upheld tough code provisions despite relatively large expenditures, for the most part, courts apply a

³⁴ Pollard, p. 2008.

³⁵ Pollard, p. 2009.

reasonableness test in assessing the condition of building code provisions -- the importance of the public interest at stake versus the economic burden on the owner. Local review bodies thus should be prepared to defend affirmative maintenance requirements with adequate proof of public need and evidence that rehabilitation is economically feasible or include relief provisions in the local ordinance to deal with the more difficult cases."³⁶ The basic provisions of an economic hardship requirement are that "(1) there is no reasonable return possible on the property as it is, (2) there is no profitable use to which the property could be adapted, and (3) sale or rental of the property is impractical."³⁷

The key point for preservation groups trying to cite violations on a property is that the cost of remedying those violations should not destroy all economic use of the property. There are several cases that considered that question. In *Buttnick v. Seattle*³⁸ the court ruled that a City Council had not imposed unnecessary or undue hardship on the owner of a property when it ordered the owner to replace a dangerously deteriorated parapet.³⁹

"In *Figarsky v. Historic District Commission*⁴⁰, the Supreme Court of Connecticut affirmed the denial of a demolition permit, holding that the cost of repairs and reroofing ordered by the building inspector upon a house in a historic district were not of sufficient magnitude to constitute a hardship warranting approval for demolition."⁴¹ The court found against property

³⁶ Christopher Duerksen, ed, *A Handbook on Historic Preservation Law* (Washington, DC: The Conservation Foundation and the National Center for Preservation Law, 1983), p. 109-110.

³⁷ Pollard, p. 2009-10.

³⁸ *Buttnick v. Seattle*, 719 P.2d 93, 95 (Wash. 1986).

³⁹ DeLony, pp. 3-4.

⁴⁰ *Figarsky v. Historic District Commission*, 368 A.2d 163 (Conn. 1976).

⁴¹ DeLony, p. 3-4.

owners who had let their property (a contributing structure to a local historic district) deteriorate and then applied for a demolition permit. The owners had claimed that requiring them to repair the building as ordered by the local building inspector amounted to a taking. While the court did not remark specifically on the maintenance issue, it did agree with the municipality by stating that the goals of the historic district were valid, that one of those goals was not to provide maximum benefit to the owners but to maintain the integrity of the district, and that being forced to follow the rules of that district (including, implicitly, maintenance) did not result in a taking of the property.

In *Lemme v. Dolan*⁴² the owner of a fire-damaged property sought a demolition permit from the city's Historic Resource Commission after receiving a notice from the city to stabilize that building. The Commission denied the owner's application for the permit and the city's Board of Zoning Appeals affirmed that decision. The property owner filed suit challenging the city's decision, maintaining that neither restoration nor new construction were economically feasible, so that the minimum maintenance requirement constituted a taking. The court rejected the challenge noting among other reasons that the owner had failed to "seek and afford the Commission an opportunity to grant waiver or variance so that any new development ordered and approved by the Commission would yield a fair return ... and that there were a number of factual issues that remained unresolved, such as the accuracy of the property owner's submissions to establish costs and

⁴² *Lemme v. Dolan* 558 N.Y.S. 2d 991 (App. Div. 1990).

economic hardship and **the effect of the owner's own neglect in maintaining the building.**⁴³ (emphasis added)

In *Lubelle v. Rochester Preservation Board*⁴⁴ a court found that the denial of a demolition permit was not a taking, as the owners had been trying to demolish the property unsuccessfully for many years to expand a parking lot, and that the subsequent neglect and fire on the property did not enhance the owner's case. This case is especially interesting because the property in question was designated as a local landmark against the property owner's objections.⁴⁵

The final example is *Weinberg v. City of Pittsburgh*,⁴⁶ a case that also raises the question of whether a current owner should be responsible for years of neglect. In the case, the property owners sued the preservation commission after being denied a demolition permit, and won their claim in court. The property, vacant and neglected for five years before the Weinbergs bought it, is locally designated. However, according to the trial summary, there is no maintenance provision in the Pittsburgh ordinance. The court's decision hinged on the fact that there was no economic use for the property, as the repairs required to fully restore and make the property eligible for resale would be prohibitively expensive. Furthermore, the commission did not do its own analysis of the economic ramifications, instead, relying partially on the plaintiff's appraiser. A criticism of the first decision does

⁴³ *Preservation Law Reporter*, vol. 9, August 1990.

⁴⁴ *Lubelle v. Rochester Preservation Board*, No. 3481/85, Monroe County Supreme Court, decided June 14, 1988.

⁴⁵ "New York Court Finds No Taking in Demolition by Neglect Situation" *Preservation Law Update*, 1988-29, July 18, 1988.

⁴⁶ *Weinberg v. City of Pittsburgh*, No. S.A. 981-1990 (Pa. Ct. Comm. Pleas Nov. 29, 1993) appealed and affirmed, Dec. 19, 1994.

assert, "if a historic preservation organization or other opponents do not come forward with countervailing evidence and a commission refrains from engaging in its own fact finding where the record presented is nor complete, the record most likely will overwhelmingly favor the applicant, thereby making a decision to deny an application to demolish a historic structure highly vulnerable on appeal."⁴⁷

The cases that punish demolition by neglect, which force owners to rectify the situations of their own making are not uncommon. A ruling such as the one in *Weinberg* points out deficiencies in the preservation ordinance that other commissions should be aware of. It does indicate that a maintenance requirement might have strengthened the commission's case; and it does remind commissions that the ordinance is not enough. Solid economic findings and innovative strategies to enhance the role of rehabilitation will further enhance it. In this case, if the ordinance had a maintenance requirement and if the preservation advocates had provided some other economic options for the owners, the decision might have turned the other way.

⁴⁷ *Preservation Law Reporter* vol. 13, April 1994, p. 1074.

CASE STUDIES

The most important tool for controlling demolition by neglect is a carefully crafted provision in your local preservation ordinance requiring affirmative maintenance and ensuring that the local commission is equipped with adequate remedies and enforcement authority.⁴⁸

Perhaps the primary lessons to be learned from other cities are that every city has its own context for preservation and that no city has been substantially more successful than another due to the use of a particular measure. Success has depended in the main on perceptions regarding the importance of preservation and the resulting political will to pass and administer strong regulations with accompanying incentives or benefits as necessary.⁴⁹

Its harder to force people to do things than to stop them from doing other things -- Valerie Campbell, in regards to the minimum maintenance requirement⁵⁰

The quotes above suggest that the local preservation ordinance is the most important factor in combating demolition by neglect. This chapter examines that premise, looking at four ordinances, and four situations of owner neglect, to compare the substance of each ordinance and to consider what happens when a real building is threatened. In this section, I will look at the process of DBN in Philadelphia -- at how the ordinance functions, at how different city offices work together and separately in the process. Then, I

⁴⁸ Elizabeth S. Merritt, "Demolition By Neglect, Introductory Comments," Preservation League of New York State Annual Meeting, April 23, 1993, p. 2.

⁴⁹ John M. Sanger Associates, Inc., "A Preservation Strategy for Downtown San Francisco," *Rehabilitating Historic Buildings*, Stephen Kass, ed. (n.p.: Practising Law Institute, 1983), p. 526.

⁵⁰ Counsel for the New York City Landmarks Preservation Commission, telephone interview, January 30, 1995.

will compare this system with its counterparts in New York, NY, Washington, D.C., and Portland, ME -- all cities that have recently had notable or notorious DBN cases.

In each of these cities, there are several components to analyze which make up the process of DBN policy. The first is the ordinance. The chart below shows the similarities and differences in basic provisions effecting demolition by neglect. The first question is whether there is a minimum maintenance provision in the preservation ordinance. If there is such a provision, does it list specific repairs to make, or conditions to avoid?

The next group of questions involves penalties. Does the ordinance list penalties for violating these provisions; are those penalties fines, jail time, a combination of the two, or any other provisions? Another key point to the issue of penalties, is whether there is a ceiling on the remedies, or are they unlimited?

The last group of questions regards the economic hardship provision: is there such a provision, and if so, does it specify how an owner must prove economic hardship. The chart provides a vehicle of comparison for the four cities. Each case is explicated in greater detail in this chapter. Specific provisions of the ordinances are reproduced in the appendix at the end of this report in three sections: minimum maintenance provisions; penalties; and requirements for economic hardship.

**Provisions of Local Preservation Ordinances That Effect Demolition by
Neglect, at a glance**

	Philadelphia, PA	New York, NY	Washington, D.C.	Portland, ME
year of pres. ordinance	1955, original 1985, revised	1965	1979	1990
minimum maintenance	yes	yes	no	yes
specifics	no	no	n/a	yes
penalties	yes	yes	yes	yes
fines	\$300	\$25-\$250	\$1000	*
jail time	90 days	30 days	90 days	
ceiling	on jail time; not on fines	\$100-\$500 and or 3 months- 2nd offense	on both: it is a one-time penalty	no; multiple penalties are allowed
economic hardship	yes	yes	yes	yes
specifics	yes	yes	yes	yes

* the preservation ordinance refers to another part of the Portland statutes for specific terms of penalties; this section does list restrictions on future building permits that will go into effect as another penalty

The case studies illustrate the ways in which anti-neglect policy works in real situations. They further explicate the minimum maintenance provisions and other sections of the ordinance. They show the interaction of different players, local preservation groups, private organizations, and the buildings department. They highlight the political forces that support or impede enforcement of the ordinance.

A. PHILADELPHIA

Philadelphia has had a preservation ordinance since 1955. The City Council enacted a revised ordinance in 1985. In the relatively short history of preservation policy, that is a lifetime.

Eighteenth and nineteenth century buildings -- private, residential and public -- line the streets of the downtown, Center City. This is a city that has been aware of its historic architectural assets for many years, and has taken great strides in protecting them. In fact, Philadelphia had one of the highest numbers of rehabilitations in the country, during the most generous years of the federal tax credits.

Nonetheless, even with an active and aware preservation community, a strong ordinance and a city-wide tradition of history and architecture, the problem of DBN persists. The Victory building is one of several large, landmark buildings in Philadelphia (other notable ones are the Naval Home and Eastern State Penitentiary) that have suffered because they have become obsolete, the commercial real estate market has seriously declined, and no new uses have surfaced.

The Philadelphia preservation ordinance has been a key component in the protection of buildings at the local level. However, the ordinance is not enough. Buildings such as the Victory Building still suffer from owner neglect and poor maintenance, even with the minimum maintenance provisions in the ordinance. That regulation, which does not list specific repairs, does authorize that, "the exterior of every historic building, structure and object and of every building, structure and object located within an historic district shall be kept in good repair as shall the interior portions of

such buildings, structures and objects, neglect of which may cause or tend to cause the exterior to deteriorate, decay, become damaged or otherwise fall into a state of disrepair."⁵¹ The ordinance also specifically lists penalties for violations of the ordinance, including, "a fine of three hundred (300) dollars or in default of payment of the fine, imprisonment not exceeding ninety (90) days"⁵² or restoration of the building to its appearance prior to violation.⁵³ Part of the problem with enforcement lies in the first part of the remedies. While the ordinance does provide a specific dollar amount, it does not specify if that penalty is to be taken for each individual violation, for each day that the violation continues, and, if the offender is a corporation, who would go to jail.

These penalties did not deter Sam Rappaport, who owned the Victory Building until his death in 1994. The story of the Victory Building is illustrative because it follows so closely the definition of DBN derived in the first chapter. Rappaport had a history of speculation and neglect. He owned properties all over the city that were notable for their poor condition, often visible from the street, and for the complaints regarding maintenance from his tenants. By the late 1980s the Philadelphia real estate boom, which the federal tax credits for rehabilitating historic buildings had, in part, fueled, was over, and there was an overabundance of rehabilitated and new office space. Speculation was a less profitable industry and Mr. Rappaport had missed the window of opportunity for rehabilitating or selling the Victory Building.

⁵¹ Section 14-2007 of the City of Philadelphia code § 8 (c).

⁵² *Ibid.*, § 9 c.

⁵³ *Ibid.*, §9 d.

The Philadelphia Historical Commission denied his request for a permit to demolish the building. The last street level tenants left the building. Vagrants, rodents, and trash filled the building. Even though the city had ordered him to install fire sprinklers in 1985, Rappaport openly defied the ruling, and a fire caused extensive damage in 1991. Rappaport put up a sign on the ground floor declaring space for rent, and entered an auction to sell off the property; neither action was successful.

Under the new ordinance, owners had the opportunity to prove economic hardship as a reason for requesting demolition.⁵⁴ The specificity of proof was an improvement, in that it strengthened the legality of the ordinance, but it did open up a loophole for owners to make a valid claim of hardship. Rappaport attempted to do just this. Meanwhile, Rappaport had entered a protracted battle to prove that there was no economic use for the building. The following is an excerpt from the appraisal commissioned by the Historical Commission, for a November 1991 hearing on the fate of the building:

Conclusion: There does not appear to be any method that could economically save the Victory Building in the current market. This building is so important to the city of Philadelphia, as an historic landmark, that the owner should be requested to delay the demolition of this property so that potential grants, both public or private, could be explored and some non-market use for this property could be developed. ...If this is unsuccessful, the only other option is demolition. ...The sad lesson that can be learned from this property and other properties that have been considered for demolition is that in a good market, almost any property can be rehabilitated and reused.... In a bad market, it is impossible to rehabilitate anything on an economic basis without some degree of public assistance. Therefore, timing is

⁵⁴ Ibid., § (7) (f) (.1-.7) and (7) (j).

the critical factor from the property owner's standpoint. This could still result in many demolitions in the future.⁵⁵

The Historical Commission denied the request for a demolition permit. Rappaport appealed the decision to a Board Review of the Board of Licenses and Inspections. At that review, Howard Kittel, then director of the Preservation Coalition, testified that,

Any current hardship incurred by the applicant is self-induced. He should not be allowed to deprive the public of a historic resource (its current status as a certified historic structure makes this self-evident) due to his lack of stewardship of the resource over, at least, the past decade... 'Is it a hardship to hold a property for a long period of time and then complain that there is no longer a market after tax laws and investment climate have changed?'⁵⁶

The Board denied this request as well.

The building has continued to deteriorate, increasing the eventual cost of repair and rehabilitation, and reducing the economic value. The building has also become more of a public hazard, narrowly escaping the Department of License and Inspections' "repair or demolish" order, interpreted as an order to demolish, but later modified to mean a repair of only those parts of the buildings at risk, while leaving the whole intact. After a series of proposals to private organizations, such as Jefferson Hospital, and public ones, such as the federal government, (which has an obligation to try to use designated historic buildings as opposed to new construction), the Victory

⁵⁵ M. Richard Cohen, appraisal of the Victory Building, August 30, 1991, on file at the Preservation Coalition of Philadelphia.

⁵⁶ "Testimony of Howard Kittel, Before the Board Review of the Board of Licenses and Inspections Regarding the Victory Building at 1001-1013 Chestnut Street" unpublished document on file at the Preservation Coalition of Philadelphia.

Building remains vacant, becoming best known as the building with trees growing out of it.

In the end though, the Victory Building might win out over those who would let it rot. The costs of demolition would be prohibitive. The Preservation Coalition received a \$20,000 grant to seal the building at street level and exclude vandals and vagrants. Sam Rappaport has died. For several years, the focus of development in that area of Center City has been on opening the Convention Center. Now the Center is in operation. It is bringing people into Philadelphia, which should encourage public and private investment for that sector.⁵⁷

The City Council has already started this process by passing the "blight" bill.⁵⁸ This amendment to Philadelphia's Property Maintenance Code requires that, "all exposed architectural elements or appurtenances thereto, including facades... shall be maintained in good structural and decorative repair."⁵⁹ This bill, passed in 1993, applies to the front facades of commercial properties in the Center City Extended Commercial Area. The area is a rectangle in the center of Philadelphia, bounded by Front, Vine, Eighteenth and Pine streets. The bill affects all properties, not just designated ones (although a large section of this area is now in the Rittenhouse-Fitler Square local historic district). One major drawback is that the enforcement of the bill is that "all conditions not in conformance with the requirements... shall be repaired or removed..."⁶⁰ Like the repair or demolish order, the Historical

⁵⁷Randal Baron, Assistant Historic Preservation Officer, Philadelphia Historical Commission, personal interview, February 3, 1995.

⁵⁸ Chapter 4.2-100 to 103 of the Philadelphia Code, approved June 2, 1993.

⁵⁹ *Ibid.*, Section 4.2-103 (a).

⁶⁰ *Ibid.*, Section 4.2-103 (e).

Commission might adapt this regulation to designated properties to enforce only repair. Although it is not specific to demolition by neglect, this bill is another weapon that the Historical Commission might use in cooperation with the Department of Licenses and Inspections to slow owner neglect.

The Victory Building has been the victim of two interrelated forces. The first is economic. The deceased Mr. Rappaport was not a developer, but a speculator, who never did a development project on any of his buildings. After the real estate boom ended, he could not sell it. There was no good economic use for the building, and his response was to discontinue essential maintenance. The second is the disinterest of the municipality to prosecute violators of the maintenance clauses of the preservation ordinance. There is a nexus between the two, because the will of the city to act on violations of the preservation ordinance is diminished in an economically troubled time. All city services are being rationed, and the ordinance is perceived as regulatory and anti-growth. The Victory Building might win out over these obstacles, if its circumstances continue to change. In that way the preservation ordinance has been successful. The city did not enforce maintenance clauses, but the demolition request process has held off the wrecking ball.

B. New York City

New York City has been in the vanguard of the development of preservation policy. Indeed, the U.S. Supreme Court's decision in the *Penn Central* case is the bedrock for much subsequent preservation regulation and adjudication. New York is the city of extremes: the most resources, stretched

in the most directions. The example of the house on South Elliot Street, described below, is a successful application of new strategies of dealing with DBN because of the unique place of New York in the preservation pantheon, and the strong legal position that the preservation ordinance holds.

The New York ordinance has a clear minimum maintenance guideline. It states that:

Every person in charge of an improvement on a landmark site or in an historic district shall keep in good repair (1) all of the exterior portions of such improvement and (2) all interior portions thereof which, if not so maintained, may cause or tend to cause the exterior portions of such improvement to deteriorate, decay, or become damaged or otherwise to fall into a state of disrepair.⁶¹

It defines ordinary repairs and maintenance as any:

- (1) work done on any improvement; or
- (2) replacement of any part of an improvement; for which a permit issued by the department of buildings is not required by law, where the purpose and effect of such work or replacement is to correct any deterioration or decay of or damage to such improvement or any part thereof and to restore same, as nearly as may be practicable, to its condition prior to the occurrence of such deterioration, decay or damage.⁶²

It does not specify what good repair means, or how exterior or interior maintenance will be enforced.

The penalties section of the ordinance lists punishment for violations of the above section as between \$25 and \$250 for a first offense and \$100 to \$500 or up to three months of imprisonment, (or a combination thereof) for a

⁶¹ New York Administrative Code, Title 25, Chapter Three, "Landmark Preservation and Historic Districts," §25-311 (a).

⁶² *Ibid.*, §25-302 (r).

second offense. It states that each day an offense continues will be a separate offense.⁶³ It also gives the Landmarks Commission authority to go to the state supreme court (a court of appeals) to request an injunction of any practices violating the ordinance, and, "directing the restoration, as nearly as may be practicable, of any improvement or any exterior architectural feature thereof or improvement parcel affected by or involved in such violation, and upon a showing by the commission that such person has engaged or is about to engage in any such act or practice, a permanent or temporary injunction, restraining order or other appropriate order shall be granted without bond."⁶⁴ The ordinance also requires owners to prove that a property cannot earn a reasonable return,⁶⁵ and specifically defines the terms of reasonable return.⁶⁶

New York has a large system of historic properties; as of September 1, 1994, there were 20,176 designated buildings, 1000 individual landmarks; 19,000 contributing to districts. The New York Landmarks Preservation Commission is the municipal agency that administers preservation policy. The New York Landmarks Conservancy is one of many private, non-profit advocacy organizations. The Department of Buildings monitors safety and building code violations, and prosecutes violations in court. The Buildings Department is more inclined to take owners to court to seal buildings, than it is to force major affirmative maintenance. The Department of Housing

⁶³ Ibid., §25-317 (b).

⁶⁴ Ibid., §25-317 (e).

⁶⁵ Ibid., §25-309 a.(1)(a).

⁶⁶ Ibid., §25-302 (v).

Preservation and Development demolishes buildings for building code, not preservation, violations.⁶⁷

The ordinance has several provisions that control for maintenance, but, the reality of the situation is that the Landmarks Commission is very reluctant to take DBN cases to court, even with these provisions. This reluctance stems from several factors, including the expense of the trial, the risk to the ordinance,⁶⁸ the risk that the suit might trigger a successful hardship plea by the owner, and the impolitic fact that the city owns many abandoned buildings.⁶⁹ Thus, a kind of stalemate has ensued, in which the Buildings department cites violations; owners make minimal repairs to stabilize the properties, to make their cases less attractive for litigation; and the problem continues without resolve.

Instead of following this traditional path, more innovative ones are being pursued. In the case of 59 South Elliot Place, several elements came together to intervene on behalf of a neglected building in a local historic district. Public and private agencies worked together using private resources, a receivership, and a revolving fund.

The streetscape of South Elliot Street in the Fort Greene, Brooklyn historic district is intact. Although the surrounding neighborhood has a borderline quality, it appears to be above average, lined with well kept nineteenth century row houses. The block that contains 59 South Elliot is

⁶⁷Dorothy Miner, former counsel, NY Landmarks Commission, telephone interview, February 20, 1995.

⁶⁸ Valerie Campbell, telephone interview, January 30, 1995.

⁶⁹ Roger Lang, Director, Community Programs and Services, NY Landmarks Conservancy, personal interview, March 6, 1995.

somewhat deceptive. Behind the 1874 facade, there is an empty pit. Like a movie facade, all that remains of this house is the boarded up set, in front of nothing. However, that is not the whole story, because the fact that the facade remains is in some ways a triumph against the ravages of deterioration. The loss of the building is unfortunate, but through the efforts of the New York Landmarks Conservancy, the facade remains, and the streetscape of the community, a particular concern of the Conservancy, is intact.

A private developer owned the 1840's rowhouse. He did a poor rehabilitation job on it, removing a load bearing wall, and ignoring a roofing problem. In 1980,⁷⁰ the Buildings Department declared the building unsafe. It lost money and was empty for over ten years, becoming unsafe to abutters, creating a situation where the Buildings Department issued orders to raze or repair; in both 1987 and 1992 they started work on an order to demolish it.⁷¹

The Buildings Department was not the only agency with an interest in the property. Because the building was a contributing structure to a historic district, the Landmarks Preservation Commission became involved, and asked the Landmarks Conservancy to investigate stabilizing the property. The Conservancy had already invested both human and financial resources in the district as a part of its community development program, and was concerned that this building not become the first gaping hole in an otherwise cohesive streetscape.⁷²

⁷⁰ Manuel Perez-Rivas and Myung Oak Kim, "Some Lose Facade As House Crumbles." *New York Newsday*, April 13, 1993, p. 29.

⁷¹ Christopher Gray, "The Tale Lurking Behind a Fort Greene Facade." *New York Times*, January 8, 1995. Real Estate section.

⁷² Roger Lang, telephone interview, March 1, 1995.

In an attempt to get repairs made on the property to maintain the building and keep the streetscape cohesive, the Landmarks Conservancy, the Landmarks Commission and the city's Law Department worked out a solution. The city's Law Department planned to foreclose on the property and requested to the court of jurisdiction that the Conservancy be appointed receiver. Lawyers for the Landmarks Commission and Conservancy arrived at this decision, as the only way to get the repairs made while the building was in private hands. Although the foreclosure process had begun, it could take up to a year, or longer if the owner had contested, which he did not.⁷³ The owner has lost control of the property.

When the Conservancy became receiver, it gained legal standing to enter the property and make repairs. At the first inspection the building was precarious but still standing; however, not long afterward it collapsed. The role of the Conservancy became to stabilize the facade, clear out the debris, and search for redevelopment opportunities. They spent \$40,000 taken out of a revolving fund on the stabilization and clean-up (including a special \$15,000 grant for this project). The Conservancy also took on a risk, because as receiver, it assumed liability for the property against fire and vandalism. They hope to recoup their expenditure when the property is sold, and after \$30,000 in back taxes are paid.

This property is a tough sell. Building a new house would cost approximately \$100 a square foot; the original house was 3500 square feet, for a total of \$350,000 in a neighborhood where single family row houses cost closer to \$250,000. As of this writing, one potential buyer had come forward at an

⁷³ Roger Lang, telephone interview, April 13, 1995.

auction, but later pulled out of the deal, citing the great expense of building in the narrow lot, under current residential zoning.

In this example the building did deteriorate due to neglect, but the overall district was maintained. How one perceives the result of this sequence of events depends on what the goals were. If the goal is to preserve and maintain all buildings, then there was failure, because the building no longer stands. However, if one takes a larger view, and considers that the building was under the auspices of the Landmarks Commission because it is part of a district, then the actions of the Commission and the Conservancy have maintained the character of the district.

In retaining the facade, they have retained the opportunity to redevelop the property so it can again become a truly contributing member of this community. This incident also strengthens the case for ongoing surveillance of designated properties for deterioration; if someone had been able to get into the building sooner, the entire structure might have survived. The lesson for neglect prevention policy is that combining human and financial resources in a creative way can help a building, and a neighborhood.

C. WASHINGTON, D.C.

The Preservation Act deems a historic landmark to be a "treasure" and regards the owner of such a landmark to be a joint trustee, with the District, of that treasure. Under the Act, "the preservation of our District's treasures is mandatory. And no owner may abuse (that) trusteeship by allowing deterioration of any one of our treasures".⁷⁴

-- Councilman Frank Smith

Washington, D.C. is another city with a long relationship to preservation. Georgetown, one of the first historic districts in the country, is here. The story of its rehabilitation and rebirth is a touchstone in the history of preservation, in the way it influenced similar activity in other cities, i.e., Philadelphia's Society Hill, as well as spreading across the city, in equal parts gentrification and renewal. The case described here, *D.C. Preservation League v. Department of Consumer and Regulatory Affairs*, is the latest chapter in the history of the President Monroe apartments.⁷⁵

The D.C. preservation ordinance does not have a minimum maintenance provision. Demolition permits for designated buildings are issued only in cases of clearly defined economic hardship, or to projects with "special merit" for the city.⁷⁶ The definition of demolition in the ordinance,

⁷⁴ *DC Preservation League v. Department of Consumer and Regulatory Affairs*, D.C. No. 93-AA-198, p. 9.

⁷⁵ Sources for this section include the case transcript (see note 27); Andrea Ferster, "Difficult Issues Facing Preservation Commissions: Demolition By Neglect" taped session N26 of the 48th Conference of the National Trust for Historic Preservation, Boston, MA, October 27, 1994 ; Andrea Ferster, unpublished notes from that talk, on file at the National Trust for Historic Preservation, Boston, MA.

⁷⁶ Building Restrictions and Regulations of the District of Columbia, Chapter 10. "Historic Landmark and Historic District Protection, §5-1002 (11): "Special merit" means a plan or building having significant benefits to the District of Columbia or to the community by virtue of

"the razing or destruction, entirely or in significant part, of a building or structure and includes the removal or destruction of any facade of a building or structure,"⁷⁷ might be stretched to include neglect. The ordinance also regulates against alterations to exteriors and interiors of designated properties, without permits.⁷⁸ The ordinance does discourage speculation by requiring owners to submit design and finance plans for new construction as a requirement for a demolition permit. The D.C. Preservation League, a private advocate for preservation in the city, has used agreements for new construction as an opportunity to ensure maintenance of existing buildings. They get owners to commit to maintaining one building as leverage for allowing new projects.⁷⁹

Criminal penalties for violations include jail time (up to ninety days), fines (up to \$1000), or both.⁸⁰ An additional civil remedy requires violators to "restore the building or structure and its site to its appearance prior to the violation" on top of the other penalties.⁸¹

The D.C. Historic Preservation Division is one part of the Department of Consumer and Regulatory Affairs. Requests for demolition (or alterations)

exemplary architecture, special features of land planning, or social or other benefits having a high priority for community services." Special merit is a point of vagueness in the ordinance because it allows the Mayor to bypass demolition request procedures for projects that might have a value to the city, but adversely impact a designated property.

⁷⁷ Ibid., §5-1002 (3).

⁷⁸ Ibid., §5-1002 (1): "'Alter' or 'alteration' means a change in the exterior of a building or structure or its site, not covered by the definition of demolition, for which a permit is required: Except, that 'alter' or 'alteration' also means a change in any interior space that has been specifically designated as an historic landmark.'

⁷⁹ Joan Brierton, former staff person, DC Preservation League, personal interview, March 31, 1995.

⁸⁰ Building Restrictions and Regulations of the District of Columbia, chapter 10, Historic Landmark and Historic District Protection §5-1010 (a).

⁸¹ Ibid., §5-1010 (b).

go through the Division, but can be appealed to the Mayor. In this case, the owners of the President Monroe Apartment Building did that, and were granted permission by the Mayor to demolish their deteriorated structure. The D.C. Preservation League, sued the Department of Consumer and Regulatory Affairs, claiming that the Mayor's agent exceeded his authority in making the decision.

The President Monroe apartment building is located on a run-down part of Massachusetts Avenue, near Union Station, in Washington, D.C.. This once income-producing residential property is now a structure without a facade or many of its exterior decorative elements. The owners, Scoville Street Corporation, removed these pieces to diminish the economic and historic value and make the property less appealing as the object of a lawsuit. Scoville purchased the property in 1990, before its designation as a landmark, and in 1992 requested permission to demolish the building, based on the deteriorated condition. The agent of the Mayor found that Scoville had in fact created much of the damage through lack of maintenance, and intentional destruction, but nonetheless granted this permission. The D.C. Preservation League appealed this decision in the case described here.

Scoville did not provide evidence of economic hardship or special merit, but requested the demolition based on the public safety hazard created by the building they had damaged. Scoville also claimed that after demolishing the existing structure, they would reconstruct a building in the image of the landmark, in the name of enhancing the public interest aspect of the Preservation Act.

The court found that the Mayor's agent had in fact exceeded his authority, as he (the agent) had found Scoville responsible for the deterioration, and recognized that other buildings at the same level of deterioration had been rehabilitated and restored, and still authorized the demolition. In the decision, the court reiterates the findings of the Mayor's agent, that Scoville was "largely responsible for the Monroe's rapid decline," and had "'clearly created or exacerbated' the Monroe's deteriorated state", including "destruction of the facade, the entire fourth floor, ... and the balconies on the west side of the building," among the "most historically significant pieces of the building."⁸² The judge sent the case back to the agent with instructions to deny the demolition permit.

The most relevant part of the case is the section on remedies.⁸³ The judge gave several options. The first was to give the case to the Corporation Counsel, to initiate proceedings to have Scoville restore the altered property. This remedy would have returned the building to its more intact condition at Scoville's expense. The judge also suggested the option of turning the case over to the Board for the Condemnation of Insanitary Buildings to make a determination of repair or demolition, due to the building's hazardous condition. A decision to demolish would have to go through the demolition request process of the preservation ordinance.⁸⁴

On the face, either of the remedies would be a victory. However, as the case was coming to a decision, Scoville filed for bankruptcy.⁸⁵ The building (or what remains of it) stands, open to the elements and to vandals. This is a

⁸² *Ibid.*, p. 15, note 17; and p. 16, note 18.

⁸³ *DC Preservation League* p. 15-6.

⁸⁴ *Ibid.*, p. 16.

⁸⁵ *Ibid.*, p. 16, note 19.

frustrating turn of events for the instant case. The Preservation League had an aggressive agenda; and this case should be a precedent to warn against owner neglect. The decision still has legal validity, but it also illustrates the ways in which determined property owners can bypass the ordinance and the legal system.

D. PORTLAND

If you can find the right people, an economic solution is better than a legal one. -- Natalie Burns⁸⁶

The final example, Portland, Maine is different from the others in that its preservation ordinance is relatively new, and its community and the players more receptive to change. The cities in the prior examples have a longtime tradition of preservation policy and regulation. This can have both positive and negative effects. Long standing traditions are often difficult to change, especially when there are bureaucratic and political obstacles. In Portland, this would not appear to be a problem, yet in the case discussed below, *City of Portland v. Tracy-Causser*,⁸⁷ the building is still empty.

The Portland ordinance was enacted in 1990. It was written in consultation with preservation expert Richard Roddewig, who used the opportunity of writing a new ordinance to work out deficiencies that had surfaced in "first-generation" ordinances.⁸⁸ Support had been building for preservation in Portland over many years. This ordinance not only looked to

⁸⁶ Associate Corporate Counsel, City of Portland, telephone interview, March 27, 1995.

⁸⁷ *City of Portland v. Tracy-Causser Associates, Inc.*, No. 91-LU-006 (Me. Dist. Ct., decided October 20, 1993)

⁸⁸ Natalie Burns, associate corporation counsel, city of Portland, and counsel for the plaintiff in this case; telephone interview, March 27, 1995.

other cities as examples, but incorporated ideas from the city's building department codes.

The ordinance has a minimum maintenance provision⁸⁹ which states, "All landmarks and all contributing structures located in an historic district shall be preserved against decay and deterioration by being kept free from the following structural defects by the owner who may have legal custody and control thereof" and lists six structural areas that must be maintained. It lists an appeals procedure in case of economic hardship, although it does not specify how to prove hardship. It also has a strong penalties clause (with daily accruing fines), and it ties violations of the ordinance to the granting of future building permits for designated or non-designated property. "If a person violated the ordinance either willfully or through gross negligence, he may not obtain a building permit for any alteration or construction on the historic landmark site for five years. Moreover, for a period of 25 years, any alteration or construction on the property is subject to special design standards imposed in the ordinance, whether or not the property involved is historic."⁹⁰

The progressive Portland ordinance also considers the role of economics in preservation via its incentive plan clause.⁹¹ The statute does

⁸⁹ Which is titled "minimum maintenance requirement" implying an awareness of demolition by neglect that other ordinances do not possess.

⁹⁰ Portland Code, Land Use, Article IX. Historic Preservation, Sec. 14-696 (a)(2).

⁹¹ *Ibid.*, Sec. 14-667: "The purpose of an incentive plan is to provide a mechanism to allow a reasonable use without the demolition of the complete structure or important architectural elements. The planning board, in cooperation with the committee and the owner, may prepare a report and recommend to the board of appeals an incentive plan to assure reasonable use of the structure. This incentive plan may include, but is not limited to, loans or grants from the City of Portland or other public or private sources, acquisition by purchase or eminent domain, building and safety code modifications to reduce cost of maintenance, restoration, rehabilitation or renovation, changes in applicable zoning regulations, including a transfer of development rights, or relaxation of the provisions of this article sufficient to allow reasonable use of the structure."

not specify what should or should not be in an incentive plan, but it lists several options for the planning board to consider when making such a plan. These include loans, acquisition by eminent domain, "building and safety code modifications to reduce the cost of maintenance," changes in zoning, transfer of development rights, or "relaxation of the provisions of this article sufficient to allow reasonable use of the structure." All of these options can be tools of anti-neglect policy. In an anti-regulatory atmosphere, the potentially negative effects of the length and specificity of the ordinance are offset by its flexibility.

In one of its first major tests, a court upheld the constitutionality of the minimum maintenance requirement (even if its enforcement was not) in the decision in *City of Portland v. Tracy-Causser Associates, Inc.*⁹² Instead, this case turned on a plea of economic hardship that the city did not thoroughly investigate.

The property in question is the Tracy-Causser building. It is a nineteenth century, commercial structure in downtown Portland that has significance because it is one of the last surviving buildings of its era, a landmark age in the history of the city. The owners, Tracy-Causser Associates had owned the building prior to its designation as a local landmark, which they opposed. They applied for a demolition permit, which they did not receive.

⁹² Sources for this section include transcript of *City of Portland v. Tracy-Causser*; "Maine Court Rules Enforcement of Order to Repair Historic Property Would Result in Unlawful 'Taking,'" *Preservation Law Reporter*, December 1993, p. 1195; Natalie Burns telephone interview, March 27, 1995; Natalie Burns, "Difficult Issues Facing Preservation Commissions: Demolition By Neglect" taped session N26 of the 48th Conference of the National Trust for Historic Preservation, Boston, MA, October 27, 1994; Natalie Burns, unpublished notes from that talk, on file at the National Trust for Historic Preservation, Boston, MA.

The owners then let the building deteriorate. It was becoming a public hazard, and a home for vagrants, vandals, and rodents. The City ordered the owners to do specific repairs, from sealing the property to fixing decayed structural elements. The City followed notification procedures by writing to the owners but received no action. The next step was to file an enforcement action in district court. At this point, the owners responded. First they filed a movement to dismiss, which was denied. Then they requested a stay to gather information for a claim of economic hardship, which they later stated would be an economic hardship in itself and let the case go to trial.

The court found that the intent of the ordinance was valid. "It is the City's position that it has the authority under the Historic Preservation Ordinance to order the expenditure of funds to prevent the owners of a historic landmark from doing by lack of action what they have received no permit to do by affirmative action, namely, demolish the building."⁹³ They agreed that the intent of the repair order was valid, "the repairs directed by the city are aimed at preventing the building, quite literally, from falling down."⁹⁴ However, it ruled that the case turned on "whether the City's repair order can or should be enforced."⁹⁵

The court went on to find that the specific repairs ordered by the city would place an economic hardship on the owners. The land was assessed at \$41,720 and the building at \$1,610.⁹⁶ Tracy-Causser brought in estimates that the repairs would cost \$100,000 and still not make the building inhabitable.⁹⁷

⁹³*City of Portland v. Tracy-Causser*, p. 4

⁹⁴*Ibid.*, p. 3.

⁹⁵*Ibid.*, p. 2.

⁹⁶ Natalie Burns, unpublished notes from National Trust for Historic Preservation conference, October 27, 1994, on file at the National Trust for Historic Preservation, Boston, MA., p. 1.

⁹⁷ *City of Portland v. Tracy-Causser*, p. 4.

(They claimed that to do that would cost over one million dollars.)⁹⁸ They asserted that there could be no economic benefit for them as owners, only burdens; and that the sole beneficiary of such repairs would be the public, so that the requirement to spend that amount of money on repairs would be a taking without just compensation. The court agreed that performing the repairs required by the city would be a taking.⁹⁹ The court did rule that Tracy-Causser had to seal the building to prevent further intrusion, and had to remove vegetation -- essentially mothballing the structure.¹⁰⁰

The court relied on the *Maher* decision, which stated that while a maintenance clause could be valid, if it imposed an economic hardship, it would be a taking.¹⁰¹ Natalie Burns, who defended the City of Portland, commented that the city's greatest fault in this case was not supplying its own economic data.¹⁰²

The story of the Tracy-Causser building does not end here. After the case was decided, (and before the owners made the required minimal repairs,) the property was sold to a new owner who agreed to the Commission's demands. More recently, this owner sold to a third owner who is in negotiation to finalize the purchase under the requirements of the Commission.

Like the last case, this was a mixed result for the preservation commission. Tracy-Causser Associates won this battle, but the ordinance and the building won the war. The ordinance and its minimum maintenance

⁹⁸ Natalie Burns notes at 1; case at 4 states that Tracy-Causser claimed the estimate to be 1.5 million; which the court agreed with

⁹⁹ *City of Portland v. Tracy-Causser*, p. 8.

¹⁰⁰ *Ibid.*, p. 9.

¹⁰¹ *Ibid.*, p. 7.

¹⁰² Natalie Burns, telephone interview, March 27, 1995.

clause were validated. The court's findings should force the commission to engage in sounder economic analysis in the future. A greater awareness of economics, along with the versatile statutes of the ordinance, should also give the commission more clout. Finally, the building is still standing, with a real potential for rehabilitation.

Demolition by neglect is a difficult topic to summarize because there are so many instances and each situation involves unique circumstances and turns of regulation and fate. The characteristic that unifies these case studies is that in each instance a property owner stopped caring for a building because it had fallen out of economic use. The owners of the three commercial properties tried to get the buildings demolished; the fourth essentially abandoned his property. In each case, preservationists pursued extraordinary measures to enforce codes of their ordinances to stop the demolition of these buildings.

TOOLS FOR CLOSING THE LOOPHOLE OF DEMOLITION BY NEGLECT

Whenever such tough choices have become apparent to a landmarks commission, the tendency has been to relax the standards of appropriateness, to compromise with the property owner. This practice colors the rigor of the local law's requirements. ...Just as all property owners must adhere to building code requirements for public safety reasons, whether or not they can afford to do so, so also may some limited adherence to historic preservation and aesthetic police power controls be required.¹⁰³

Despite substantial restrictions on the demolition of historic buildings imposed by local historic preservation ordinances, many historic properties are destroyed each year as a result of conscious efforts by their owners to avoid the application of these restrictions.¹⁰⁴

Many studies of demolition by neglect place the local preservation ordinance at the top of their lists of approaches to controlling DBN. In the previous chapters, the definition, the legal validity, and the practical effects of the ordinance have indicated that it is important for commissions to have a strong ordinance to combat DBN. However, they have also suggested that it is not always enough; that, in fact, the ordinance should be used with other measures, both regulatory and incentive based, to build an effective stance against DBN. In addition, there is a larger set of circumstances that influence DBN. This problem does not exist because of an ordinance, no matter how well or poorly written it is.

¹⁰³ Nicholas Robinson, "Historic Preservation: The Metes and Bounds of a New Field" 1 *Pace Law Review* 511- 566 (1981), pp. 548-49.

¹⁰⁴ Oliver A. Pollard, "Minimum Maintenance Provisions: Preventing Demolition by Neglect" 8 *Preservation Law Reporter*, vol. 8, 1989 Annual, p. 2001.

The legality of preservation ordinances and the minimum maintenance clauses within those ordinances has been discussed in previous chapters. Preservation commissions can strengthen their regulatory activity, based on this legal footing.

They can improve enforcement and notification policies, take legal action against owners in the form of nuisance claims, or make repairs themselves. However, this line of action runs into the growing property rights movement and a general political atmosphere discouraging regulation.

Simultaneously, preservation groups can try to create incentives within and outside the preservation community to encourage investment and occupancy of buildings -- one of the surest ways to slow neglect. These measures include direct grants and loans to owners, using a revolving fund; lobbying for tax incentives; and working with other municipal agencies to discourage vacancy. The full array of incentives also includes a re-evaluation of preservation policy that incorporates economics as a vital element of that policy.

However, these tools are often expensive and will not work in an emergency. Both types of approaches should be considered to develop a multi-layered strategy, with the dual goals of stopping the intentional neglect of buildings, and creating an atmosphere where such neglect will not be rewarded.

Regulatory Approaches

The first sets of approaches are the legal and administrative regulations that preservation commissions use as compliance mechanisms with owners

who have neglected their properties. These are the measures that are largely reactive, and focus on buildings already inflicted by deterioration, or on punishing the owners of those buildings for their misconduct. These include the provisions of an ordinance specifying maintenance guidelines and enforcement procedures, requests for demolition permits, and the review and appeals process that follows such requests. They also include legal activity on the part of neighbors citing existing or anticipated nuisance on adjoining or nearby properties.

The first logical approach to stopping neglect is simply the enforcement of the maintenance provision found in preservation ordinances and building codes. An enforcement policy already exists in most jurisdictions that regulate against DBN. Instead the issue is that it is not enforced, or that it is unenforceable. When it is, the penalties are often so minor as to be negligible to someone genuinely interested in not maintaining a property. One change would be to increase the penalties, but this raises political risks that pro-development municipalities are unlikely to approve.

Even when the penalties are enforceable in themselves, if a property owner does not respond, the next step is legal action against that owner. One remedy a court can order is to have owners restore the damaged property. Many ordinances have a process for appealing decisions on certificates of appropriateness for demolition or alterations. The ordinance should also have specific definitions of economic hardship, to avoid an owner's defense strategy of no economic use. This can also circumvent an owner's claims that specific required maintenance will render a building economically useless. "A preservation commission should be aware, among other things, of the

financial resources and nature (individual, business or a nonprofit organization) of the property owner, the cost of repairs, the current value of the property, and potential uses of the property if it is called upon to review a hardship case."¹⁰⁵ In the context of DBN, the commission should be sure that its target is fluid financially, and able to make the remedies, or the court will likely find in favor of the property owner.

The pursuit of litigation is very expensive and time consuming, and can put an ordinance at risk. An unintended effect is that owners will partially comply with the remedies for violation by making some of the required repairs. This response leads to stalemate. The property is no longer in such grave danger as to be a strong case in court, but it is not being maintained, and the larger problem of the owner's neglect remains unresolved. One preservationist feels that the landmarks statute has reached a level of maturity strong enough that it can be extended, and that future emphasis should be on more assertive tactics: "the benefits of individual landmarks and historic districts are clear -- we should go past fear of hardship, and (the fear) of adding fuel to the anti-preservation fire by supporting more aggressive enforcement."¹⁰⁶

In order to enforce the ordinance, the enforcers must be aware of the violations. In many situations, a preservation commission will not realize the neglect of a property until the owner comes forth to request its demolition. One way of making a pre-emptive strike against this neglect would be to make two different surveys of properties. Property owners

¹⁰⁵Oliver A. Pollard, "Counteracting Demolition by Neglect: Effective Regulations for Historic District Ordinances," *The Alliance Review*, Winter 1990, pp. 1-4. at 3.

¹⁰⁶Valerie Campbell, telephone interview, January 30, 1995.

occasionally defend their violation of preservation ordinances by claiming that they did not know about the designation of their property as a landmark or as a contributing structure of a district. If this designation was attached to the property deed, the owner could not claim this ignorance. This would be a time and labor intensive effort by municipal or private preservation groups, but it could have long-term benefits for this issue and for preservation as a whole.

A survey of building conditions would be a step more specific to DBN control. The fourth amendment of the U.S. Constitution denies government access to search private property without probable cause of violation.

However, "it is sufficient to show that 'reasonable legislative or administrative standards for conducting an... inspection are satisfied' in order to obtain a warrant to inspect."¹⁰⁷ An initial survey of blight would have to start with exterior damage. This survey can start with a check for abandonment, via mail boxes or exterior power meters in disuse, or boarded up windows. Another area to investigate is openings in the building that create access for vagrants, vandals and rodents. This is not a complete approach for determining neglect because many of the small problems that will become major structural damage start on the inside of a building. The following is a preliminary list of areas to inspect:¹⁰⁸

- Is metal flashing at joints and intersections loose or damaged?
- Is gutter system corroded, set at incorrect pitch, or undersized?

¹⁰⁷Stephen Kass, Judith M. LaBelle, and David A. Hansell, *Rehabilitating Older and Historic Buildings* (New York: John Wiley & Sons, Inc., 1993 2nd edition), p. 223.

¹⁰⁸ William Shopsin, *Restoring Old Buildings for Contemporary Uses* (New York: Whitney Library of Design, 1989), p. 104. This list was written for people considering buying old buildings, however, it can also be adapted for this use.

- Is ridge sagging?
- Is roofing material itself in good condition?
- Are tiles or shingles loose, missing, cracked, or worn?
- Are foundation walls and sills cracked
- Does masonry or wood show signs of excessive dampness?
- Is brownstone or cast concrete crumbling or eroded?
- Is wood warped or rotted?
- Is paint chalking, blistered, peeling, or cracked?
- Are sills, lintels, and sashes in good condition?
- Does glass require replacement?
- Does size and ventilation of doors and windows provide adequate ventilation?
- Is cast-iron facade rusted, corroded, or cracked?
- Are wood elements, such as shutters and porch railings, rotted or missing?
- Are terra cotta or stone ornaments loose, eroded, or stained?"

This list asks specific questions that might not always indicate demolition by neglect, but will alert surveyors that there might be a current or future problem. After surveying a property, the surveyors should determine if the building is designated and whether it is an individual landmark, or a contributing structure to a local historic district. Preservation commissions should be flexible in their application of the ordinance. If they try to cite every minor violation, they will lose credibility. They can apply the owner profile described in the "Elements" section, to determine if a pattern of DBN has begun. If the next step is going to be notification of the violation, the commission must be sure that it is willing to fight for that particular building, and weigh the political implications of singling out any one property owner.

This kind of survey is another time consuming task for preservation groups, but it is the only way to assess the extent of damage at the city-wide level. While the preservationists should set the guidelines of such a survey, this is a good opportunity to work with local building and safety officials.

Preservationists can benefit from their knowledge of structures, and building officials will be sensitized to preservation.

A less complete approach would be to make the inspections at each property transfer, or request for a building permit or certificate of appropriateness. "In addition to, or in lieu of, inspections to verify that routine maintenance is being performed, a municipality may wish to monitor work being done pursuant to a permit or certificate of appropriateness issued by the commission. Permission for such inspections could be made a condition of issuance of the permit or certificate, thus avoiding any constitutional complications."¹⁰⁹

A more aggressive reaction to a neglected building is for a municipal agency to claim that it is blighted, and exert the power of eminent domain. The use of the condemnation power applied to preservation goes back to *Berman v. Parker*.¹¹⁰ San Antonio, TX; Richmond, VA; Baltimore, MD; and Louisville, Kentucky all authorize the use of eminent domain as a means of protecting historic buildings from deterioration or neglect.¹¹¹ This approach does raise questions of what will happen to the building after the city has obtained control. Cities have not always shown themselves to be responsible owners of buildings in the past.

¹⁰⁹Kass, LaBelle, and Hansell, p. 223.

¹¹⁰ See chapter on "Legal Issues" note 1.

¹¹¹Constance Beaumont, "Demolition by Neglect" unpublished memo from the National Trust for Historic Preservation, Washington, DC, September 21, 1990, p. 1-2. [The memo is not signed, but another NTHP memo on DBN (by Rieyn DeLony) refers to Beaumont as the author.]

If an owner (public or private)¹¹² refuses to act on a property, neighbors can make a claim of public nuisance. In *Kelly v. Boys' Club*,¹¹³ a group of neighbors claimed that the Boy's Club of St. Louis was causing a public nuisance by neglecting a set of buildings in their (historic district) neighborhood. After a trial court dismissed their suit, the Court of Appeals for Missouri found in 1979 that the neighbors had a valid cause for action in one of their five counts. (Three others were dismissed, because the buildings had already been demolished; a claim of emotional distress was dismissed because the court found that the action of the defendants was not directed at the plaintiffs, although in disregard of their rights, and that this was not sufficient.) On the fourth claim the court found that

Plaintiffs here have alleged that defendants intentionally and deliberately allowed residential buildings located in a residential neighborhood to seriously deteriorate, to become a health hazard, and to become a haven for vandals, arsonists, and undesirables. The activities included failure to obey city ordinances and refusal to permit other persons to protect the property. The allegations sufficiently plead an unreasonable, unusual and unlawful use of the buildings causing discomfort, annoyance, inconvenience and damage to plaintiffs. The allegations are sufficient to state a cause of action for nuisance.¹¹⁴

and concluded that

A property owner cannot knowingly allow his property to become a haven for criminals to the detriment of his neighbors and deny that his property has become a nuisance because of the resulting criminal activities are those of third parties. Additionally, the allegations of vermin infestation, health

¹¹² Kass, LaBelle, and Hansell, p. 221.

¹¹³"Can Neglect of a Historic Structure Constitute 'Nuisance'?" *Preservation Law Update*, 1988-31; July 26, 1988.

¹¹⁴ *Kelly v. Boys' Club of St. Louis, Inc.*, 588 S.W. 2d 254 (Mo. App. 1979), at 257.

dangers, and fire hazards do not involve the actions of third parties but rather the action or inaction of defendants and are in themselves sufficient to support a claim of nuisance.¹¹⁵

Neighbors can work with preservation advocates to develop a strategy of nuisance. This plan should be successful in historic districts, which inherently establish a public interest in maintaining their historic character. Although this seems to be a powerful strategy, I have not found any other cases that used it.

An extension of the existing nuisance claim, which is strongest when the building is in such poor shape that it is beyond repair, is anticipatory nuisance. In this kind of case, neighbors who anticipate that an owner's neglect will become a greater nuisance in the future can file suit. (Preservation) lawyer Terry Tondro has started to develop a strategy using this tool.¹¹⁶ In order to gain standing, neighbors must show that there will be a loss of property value, due to diminished architectural and neighborhood character. Residents of a historic district can show that a deteriorating property in the district negatively affects their investment-backed expectations. There is also damage to the public interest, which has demonstrated a preservation prerogative by condoning the historic district. Furthermore, the insertion of the demolition clause of the preservation ordinance implies the city's interest in maintaining buildings, and will support a nuisance claim. The other major component of anticipatory nuisance is proving that the nuisance will occur, a practice recognized in

¹¹⁵ Ibid., at 257.

¹¹⁶ Terry Tondro, "Difficult Issues Facing Preservation Commissions: Demolition By Neglect," taped session N26 of the 48th National Trust for Historic Preservation conference, Boston, MA, October 27, 1994.

some, but not all states. Like all other litigation, this technique relies on plaintiffs with extensive financial resources to pursue it; however, by acting before a building has suffered irreparable damage, it has great potential to create precedents that will discourage demolition by neglect.

Another set of approaches is regulatory in that it does not encourage owners to stop neglecting properties, nor does it punish them; instead it takes action into the hands of the preservation community, and focuses on the saving the building rather than prosecuting the owner.

Buildings -- especially historic buildings which were built to last -- actually have few enemies. The most common are water, vandalism, and extreme changes of temperature. If those three adversaries can be contained, there is rarely any physical urgency to complete the rehabilitation. Therefore, stabilizing and warehousing a building until the market adjusts, until a traditional developer can be located, or until a preservation group creates a workable rehabilitation plan should be considered as a credible option. And although some costs will be involved in mitigating the dangers from water, vandalism, etc., those costs are nearly always less than would be the cost of demolition and disposal.¹¹⁷

Preservationists can take control of the property away from the owner by having the building placed in receivership to make repairs. This process can work with the nuisance claims outlined above, as a remedy against nuisance. In the Fort Greene example in the previous chapter, a judge appointed the New York Landmarks Preservation Conservancy as receiver at

¹¹⁷ Donovan Rypkema, *The Economics of Historic Preservation* (Washington, DC: National Trust for Historic Preservation, 1994), p. 90-91

the request of the city's Law Department. The receiver gains standing to access and repair the building but he also must bear any liabilities.

Another option is for the municipality or private preservation group to make the repairs itself without being a receiver. "A number of communities that have enacted laws that permit a specified local agency (often public works) to take necessary steps to secure a derelict power to make repairs and bill the owner for them to avoid what is often call demolition by neglect. The validity of these more far-reaching laws will generally depend on the economic impact of an owner. Courts are less likely to make an owner pay if the chances of earning a reasonable return on the property are slim."¹¹⁸ These repairs would have to be on the exterior only, but they could include the stabilization of precarious exterior elements, sealing the building from unlawful entry, or removing exterior vegetation. The Philadelphia Preservation Coalition made these improvements on the Victory Building to slow down the cycle of entropy until a better use for the property emerges.

Preservationists involved in either of these actions can attach a lien to the property to recoup their expenses after a sale, and after other liens, such as back taxes, are repaid. Pollard claims that, "this type of mechanism has enough teeth either to prompt compliance or to prevent demolition by neglect in the event of non-compliance."¹¹⁹ This is not always so, because the situation is usually that the building has several liens on it, and the preservation one is rarely the top priority. A further caution against liens is that they can make the property less attractive for new development.

¹¹⁸ Christopher Duerksen, ed., *A Handbook on Historic Preservation Law* (Washington, DC: The Conservation Foundation and the national Center for Preservation Law, 1983), p. 112.

¹¹⁹Pollard, "Minimum Maintenance Provisions: Preventing Demolition by Neglect," p. 2004.

The best way for a preservation group to stop an owner's neglect of a property is to buy the property themselves. This is of course, a very expensive option, that preservation groups should consider only in cases where the property holds irreplaceable value to the community and the threat is most ominous.

A popular funding mechanism for any of these options is the revolving fund. If a fund is feasible, it is a very good choice. However, the revolving fund is expensive to start, and sometimes slow to revolve. The fund relies on properties selling at a reliable pace, and in a depressed real estate market, the pace and the very prospect of a sale are quite unreliable.

Incentive-Based Approaches

The second major group of approaches to ongoing DBN is to create incentives that encourage the continued maintenance of buildings. As several in the preservation community have said, it is easier to force people to stop doing something than to force them to start -- such as maintaining their properties. When there is a financial incentive in the demolition of a building, forcing a maintenance program is going to be virtually impossible. These carrots often exist outside the walls of the preservation community, and tend toward large-scale, money-intensive programs that have many goals, only one of which is discouraging DBN. They include tax incentives for commercial and residential properties; downtown redevelopment schemes; changes in the zoning system that rewards new construction. They also include a shift in attitude among preservationists, with a greater

emphasis on the economics of preservation. I will also briefly mention the preservation evergreens, education and technical support, which make preservation a more widely understood goal, and in this case, facilitate maintenance.

The most concrete forms of incentives are financial ones. These include making grants or loans available to property owners so they can make repairs themselves. "Some communities provide financial assistance to property owners who face financial hardship caused by the requirement that certain repairs be made. For example, some ordinances establish a revolving fund for this purpose."¹²⁰ This use of the revolving fund relies on qualified borrowers repaying loans rather than the sale of properties.

In New York, the Conservancy has done that with its revolving loan fund, providing below market rate loans for residents of targeted areas, particularly for residential owners and non-profit groups in local historic districts outside the wealthier parts of Manhattan, such as Brooklyn and Harlem. The fund, which provides loans for rehabilitation, maintenance, and facade improvement, is currently worth \$3.5 million, with an ultimate goal of \$6 million. They partially fund these activities by a \$300,000 Community Development Block Grant put to use by their Community Programs and Services division.

The next set of financial incentives is using tax incentives to increase rehabilitation and maintenance. In the past tax incentives at the federal level

¹²⁰Kass, LaBelle, and Hansell p. 221.

have been primarily for income producing properties, to encourage rehabilitation. Today, that concept is expanding to include a proposed federal homeowners credit,¹²¹ as well as state-level tax credits and abatements. One law review article has suggested applying the cost of maintenance against the property tax as an incentive. "Rather than compromise the historic preservation objectives of the local law, it would make more sense to recognize that the affirmative maintenance of regulated structures is costly and to allow a credit against local real property taxes to cover these costs. Such a process would necessitate an amendment of the state's real property tax system to allow it. Precedent exists in civil law countries such as France for such indirect subsidies of historic structures."¹²² Some of the established preservation oriented taxes come with provisos for maintenance, such as found in the Dallas, TX ordinance:

If the city manager has reason to believe that a historic landmark has been totally or partially destroyed or altered by the willful act or negligence of the owner or his representative in violation of the preservation criteria contained in the ordinance designating the historic landmark, the city manager shall immediately cause the matter to be scheduled for the earliest possible consideration by the city council. If after giving notice and hearing to the owner, the City Council determines that the historic landmark has been totally or partially destroyed or altered by the willful act or negligence of the owner or his representative, the owner shall immediately repay to the city all of the tax revenues that were not paid because of the tax freeze. [Tax freeze is good for 8 years after completion of restoration.]¹²³

¹²¹ see Harry K. Schwartz, "A Federal Historic Rehabilitation Tax Credit For Home Ownership" *Historic Preservation News* Reprint, October/November 1994, pp. 14-17.
¹²² Robinson, p. 548.

¹²³Kass, p. 388.

There are, however, drawbacks to relying on tax credits. The remarkable success of the 1980's federal rehabilitation tax credits was probably a single moment in the history of preservation. It caught the wave of popularity of preservation as a fashion of architecture. Also, it flourished in an era of generally higher taxes, which made these tax breaks more attractive. Today, a revival of these incentives, to their pre-1986 standards, would not carry the same weight. Finally, they rely on government participation, which is not a stable factor over long periods of time, such as the life of a building.

One factor that contributes to demolition by neglect is vacancy. Therefore, another goal of DBN-prevention should be to encourage occupancy. If an owner is neglecting a property to its detriment, it is up to the interested preservation advocates to find another owner, whom has a use suited to that building. Preservationists should also go into negotiations with owners with a conciliatory attitude. Preservation staffs should use the services of a real estate economist for practical advise and to convey that they are aware of and interested in the economic ramifications of reuse and rehabilitation.

Other municipal agencies play a role in demolition by neglect and should play a role in the strategy for stopping it. The first goal should be the active cooperation of the municipal buildings department. Buildings officials are inclined toward demolition because it swiftly removes liability for both the city and the owner. The Philadelphia Department of Licenses and Inspections's notorious "repair or demolish" is another loophole (like those in other cities) which can and should be closed. Several cities in northern

California cities (Livermore, [ordinance number 826]; Yreka [ord. no. 480], Fremont [ord. no. 426]) have special code applications of their building maintenance code specifically for historic properties.¹²⁴ Philadelphia's blight bill for the Center City district applies basic tenets of the building maintenance code specifically to architectural elements and facades. Preservation commissions should use whatever political support they have to build a coalition with the departments that have the most direct contact with buildings.

Unfortunately, the municipalities themselves are often the owners of abandoned and deteriorating properties. While these are often not the buildings listed on registers of historic places, this continued neglect sends a message of complicity on the part of the government. Rehabilitation, not demolition, of abandoned buildings should be a part of the downtown redevelopment plans.

Preservation has already moved into community development, such as the New York Landmark Conservancy's Community Programs and Services division, or the Charleston Housing Trust. One of the steps recommended by a study of Charleston's DBN problem was to increase its partnership with the Housing Trust. This public agency runs a revolving fund to buy and sell properties for rehabilitation, and has powers of condemnation. It also "works with code enforcement officials and others to identify buildings for purchase, concentrating in houses of historic or architectural merit, problem code enforcement properties, and buildings that

¹²⁴Duerksen, p. 117.

are highly visible where rehabilitation will have a maximum effect on the neighborhood.”¹²⁵

Beyond specific agencies, there are a few issues far outside the preservation community that do have an impact on building neglect, and might become part of the preservation agenda. The first is zoning. When zoning for new construction is greater than existing buildings, there is an immediate incentive to demolish the building, through a permit, or through neglect. Tax incentives weighted toward new construction are another incentive. The last vestiges of urban renewal in comprehensive plans also lean toward demolition. The fact that all of these areas affect DBN and preservation is an indication that preservationists need to understand and become involved in the decision of these issues.

Finally, one of the fundamental tenets of a preservation plan for a community is education. Maintenance issues can be a part of that program. Technical preservation assistance often focuses on decorative elements and details unique to "historic" properties. The goal of maintenance education for these buildings would be to teach owners general upkeep and repairs methods that are reasonable and livable. This training would be especially beneficial for occupants of historic districts.

Demolition by neglect is a complex problem, with many facets to address. The preservation ordinance can be a powerful tool when it is fully

¹²⁵ "Buildings at Risk: A Report to the Community," *Preservation Progress*, Vol. 35, no. 8, Winter 1992, p. 4.

enforced. When that is not possible, preservation advocates will have to turn to other methods, of regulation and incentive, to coerce or convince owners to stop neglecting properties. Each community has different levels of DBN and different resources at its disposal. Therefore, each must try to create an effective strategy that it can afford, that is politically viable, and that will have measurable results in controlling neglect.

CONCLUSION

The purpose of this study has been to measure the validity and effectiveness of the minimum maintenance provision of preservation ordinances to prevent instances of demolition by neglect. A further objective has been to survey and assess actions that complement the ordinance in achieving this goal, and in discouraging, in a proactive way, circumstances that allow owner neglect to flourish. The study originated with the intent of suggesting a strategy for the Philadelphia preservation community to address the problem of demolition by neglect of historic resources. In this conclusion is that series of recommendations, and a consideration of why demolition by neglect is such a vexing dilemma.

For the Philadelphia preservation community, there are two obstacles, not confined to preservation, that will impede an anti-neglect policy. The first is fiscal. As stated, owner neglect is an issue in which economics plays an important role. At present, Philadelphia is a city facing major crises of depopulation and overbuilding in the downtown. This is an environment conducive to demolition by neglect. The second obstacle is that, due to the economic downturn, preservation, as a real estate concern, and as a political force, does not have the clout necessary to influence policy decisions at the city-wide level, such as changing zoning or creating taxation incentives, that might decrease the advantages for owners in neglecting their properties. Philadelphia also suffers from the unique situation of having what some perceive as an overabundance of "historic" buildings; the argument follows that if one deteriorates due to neglect, there are so many others still standing.

Therefore, Philadelphia's preservationists should try to attack this problem at the micro level -- individual buildings at risk; and at a macro level -- changing perceptions about preservation and encouraging the interaction of preservation and economics.

Given these conditions, the preservation community should utilize its resources in the following ways. The historic preservation ordinance itself was revised, in 1985, at the height of the federal tax incentive inspired rehabilitation movement. It seems unlikely that the ordinance would be rewritten, or strengthened in its language.¹²⁶ Instead, it should be strengthened in its enforcement.

There is however, one section of the ordinance that needs improvement. The enforcement provision needs clarification to secure correct enforcement. The penalty for any violation of the ordinance is three hundred dollars. The penalties section does not specify if the penalty is for each violation on a property, or if the penalty increases each day the violation continues. This penalty would not deter a speculator or developer from neglecting a property. The last section of the penalty clause requires restoration of any element of a building that has been altered without a permit, or in any violation of the ordinance. This section should be applied to demolition by neglect cases.

Currently, the Bureau of Licenses and Inspections (L. and I.) is responsible for making determinations of code violation. L. and I. has their own system, their own officers, and their own objectives, which are not always the same as those of the Philadelphia Historical Commission and

¹²⁶ Especially considering the way the ordinance was threatened by the Pennsylvania Supreme Court's first decision in the Boyd Theater case, further exposure seems improbable and unwise.

other advocates for preservation. The Preservation Coalition has started a preliminary list of buildings that appear from the exterior to be undergoing neglect. It should follow up that list with a title search of those properties. Then it should develop an owner profile that suggests a pattern of neglect, based on paper records, as outlined in the "Elements of DBN" chapter.

When there is a list of insinuating combinations, the Coalition, or the Historical Commission should go to L. and I. to work with them to start the enforcement process. L. and I. has shown some (slight) interest in compromise. It originally ordered demolition of the Victory Building as a threat against the owner to repair all violations. When it became clear that the owner desired this action, L and I. revised its order, requiring that only the most precarious elements are stabilized or removed. That type of citation should be the norm for designated buildings. This concession could be a springboard for further rapprochement.

L. and I. does not have any inherent interest in saving designated buildings. Their goal is to prevent public hazard and reduce liability. Therefore, the Preservation Coalition and the historical Commission must be willing to commit their admittedly strained human and financial resources to go to L. and I., to go out on inspections, to follow up and monitor violations, to put Philadelphia's designated buildings on L. and I.'s agenda.

The next step is to follow up those violations with legal action. For reasons stated above, the Commission might be very unwilling to place the ordinance at risk in litigation against neglecting owners. Instead, it might concentrate on working with L. and I. to enhance and enforce the building code and the blight bill. It might also explore bringing charges of anticipatory

or existing nuisance against violating owners, to set a precedent that would discourage neglect.

For the most endangered buildings, the commission might work with the city's legal department to have the Coalition appointed receiver, to gain standing for interior inspection and to make repairs. The Coalition must have the financial resources to undertake this responsibility. A separate corporation, financed by a revolving fund might be the answer, but that in itself takes a substantial amount of money to start, and might move slowly in a depressed real estate market.

Preservationists should also try to work with other city agencies, such as the Housing Authority and Redevelopment Authority, two agencies that have control of abandoned buildings. Tom Hine, architecture writer for the *Philadelphia Inquirer*, has suggested that if the city has a real interest in promoting preservation as a planning and development tool, the City Council should become involved in the process of requests and appeals for demolition.¹²⁷ The passage of the "blight" bill, suggests that the City Council does have an awareness of the value of well-maintained facades, historic or otherwise, as an attraction in the city.

That comment raises a major issue -- does the city have such an interest? This is not always clear. The mayor of Philadelphia has denigrated preservationists in a national newspaper. At the same time, the designation of several historic districts has been anticipated and welcomed by residents who lobbied for such designation. The preservation community will be able

¹²⁷ Tom Hine, "The Battle for the Victory Building," *Philadelphia Inquirer*, February 23, 1992.

to enact more effective anti-neglect policy if it has more secure political backing.

At the beginning of this report, I mentioned a response from the National Alliance of Preservation Commissions survey, that demolition by neglect is one of the most difficult situations for preservation commission to deal with. One of the results of this report is to prove that they are right. There are steps that preservationists can take, and there are policies that can incorporate an anti-DBN stance, but in many ways, DBN defies preservation assumptions and goals. It does not happen because owners want to stop preservation; it happens because preservation is an obstacle in their way. Even if we close this loophole, there is the fear that another one will open up, because it is not the desire to make money, to ignore and avoid preservation policy that we will have conquered but this one avenue; another will inevitably open.

As stated in the "Elements" section of this paper, economics is a key motivation for owner neglect. Preservation policy at the local level has traditionally focused on enacting the regulatory aspect of the ordinance. Thus DBN persists, despite the many efforts to contain it. Preservationists must work at an incremental level, building by building and owner by owner, to force or persuade owners to stop neglect. They should also be aware of the larger circumstances that encourage owners to neglect properties, so that they can exert an influence of change on those conditions. Closing the loophole that allows demolition by neglect is a challenging issue for preservation. The groundwork for meeting that challenge already exists. It is up to truly

committed individuals in every community to determine the appropriate solution for the buildings they want to protect.

committed individuals in every community to determine the appropriate solution for the buildings they want to protect.

APPENDIX

Containing excerpts from:

Section 14-2007 of The Philadelphia Code, "Historic Buildings, Structures, Sites, Objects and Districts."

"Landmarks Preservation and Historic Districts" of the New York Administrative Code, § 25-301 to 321.

"Chapter 10. Historic Landmark and Historic District Protection" of the District of Columbia Building Restrictions and Regulations, §5-1001 to 1015.

"Article IX. Historic Preservation" of the Land Use chapter of the Portland, Maine Code, Sections 14-601 to 704.

A. Maintenance clauses

Philadelphia

§14-2007 (8) Performance of Work and Maintenance

(a) The Department shall, upon the request of the Commission, examine the buildings, structures, sites and objects designated as historic by the Commission and report to the Commission on their physical condition.

(c) The exterior of every historic building, structure and object and of every building, structure and object located within an historic district shall be kept in good repair as shall the interior portions of such buildings, structures and objects, neglect of which may cause or tend to cause the exterior to deteriorate, decay, become damaged or otherwise fall into a state of disrepair.

(d) The provisions of Section 14-2007 shall not be construed to prevent the ordinary maintenance or repair of any building, structure, site or object where such work does not require a permit by law and where the purpose and effect of such work is to correct any deterioration or decay of, or damage to, a building, structure, site or object and to restore the same to its condition prior to the occurrence if such deterioration, decay or damage.

New York

§ 25-311, Maintenance and repair of improvements

a. Every person in charge of an improvement on a landmark site or in an historic district shall keep in good repair (1) all of the exterior portions of such improvement and (2) all interior portions thereof which, if not so maintained, may cause or tend to cause the exterior portions of such

improvement to deteriorate, decay, or become damaged or otherwise to fall into a state of disrepair.

b. Every person in charge of an improvement containing an interior landmark shall keep in good repair (1) all portions of such interior landmark and (2) all other portions of the improvement which, if not so maintained, may cause or tend to cause the interior landmark contained in such improvement to deteriorate, decay or become damaged or otherwise fall into a state of disrepair.

c. Every person in charge of a scenic landmark shall keep in good repair all portions thereof.

d. The provisions of this section shall be in addition to all other provisions of law requiring any such improvement to be kept in good repair.

Washington

§ 5-1002. Definitions.

(1) "Alter" or "alteration" means a change in the exterior appearance of a building or structure or its site, not covered by the definition of demolition, for which a permit is required; Except, that "alter" or "alteration" also means a change in any interior space which has been specifically designated as an historic landmark.

(3) "Demolish" or "demolition" means the razing or destruction, entirely or in significant part, of a building or structure and includes the removal or destruction of any facade of a building or structure.

Portland

§ 14-690. Preservation of Protected Structures.

(a) Minimum Maintenance Requirement.

All landmarks and all contributing structures located in an historic district, shall be preserved against decay and deterioration by being kept free from the following structural defects by the owner who may have legal custody and control thereof.

(1) Deteriorated or inadequate foundation which jeopardizes its structural integrity;

(2) Defective or deteriorated floor supports or structural members of insufficient size to carry imposed loads with safety which jeopardize its structural integrity;

(3) member of walls, partitions, or other vertical supports that split, lean, list or buckle due to defective material or deterioration which jeopardize its structural integrity;

- (4) Structural members of ceilings and roofs, or other horizontal structural members which sag, split or buckle due to defective materials or deterioration or are of insufficient size to carry imposed loads with safety which jeopardize its structural integrity;
- (5) Fireplaces or chimneys which list, bulge or settle due to defective material or deterioration or are of insufficient size or strength to carry imposed loads with safety which jeopardize its structural safety;
- (6) Lack of weather protection which jeopardizes the structural integrity of the walls, roofs, or foundation;
- (b) The owner or such other person shall repair such building, object or structure within a specified period of receipt of a written order to correct defects or repairs to any structure as provided by subsection (a) above, so that such structure shall be preserved and protected in accordance with the purposes of this article.
- (c) Any such order shall be in writing, shall state the actions to be taken with the reasonable particularity, and shall specify dates for compliance which may be extended by the Department (of Urban Planning and Development) for reasonable periods to allow the owner to secure financing, labor or material. Any such order may be appealed to the Board of Appeals within 30 days. the Board shall reverse such an order only if it finds that the Department had no substantial justification for requiring action to be taken, that the measures required for time periods specified were not reasonable under all of the circumstances. the taking of an appeal to the Board or to Court shall not operate to stay any order requiring structures to be secured or requiring temporary support unless the Board or Court expressly stay such order. The City shall seek preliminary and permanent relief in any court of competent jurisdiction to enforce any order.

B. Penalties

Philadelphia

§14-2007 (9) Enforcement

- (a) The Department is authorized to promulgate regulations necessary to perform its duties under this Section.
- (b) The Department may issue orders directing compliance with the requirements if this Section. An order shall be served upon the owners or person determined by the Department to be violating the requirements of this Section. If the person served is not the owner of the property where the violation is deemed to exist or to have occurred, a copy of the order shall be sent to the last known address of the registered owner and a copy shall be posted on the property. Where the owner's address is unknown, a copy of the order shall be posted on the property.

(c) Any person who violates a requirement of this Section or fails to obey an order issued by the Department shall be subject to a fine of three hundred (300) dollars or in default of payment of the fine, imprisonment not exceeding ninety (90) days.

(d) Any person who alters or demolishes a building, structure, site or object in violation of the provisions of Section 14-2007 or in violation of any conditions or requirements specified in a permit shall be required to restore the building, structure, site or object involved to its appearance prior to the violation. Such restoration shall be in addition to and not in lieu of any penalty or remedy under the Code or any other applicable law.

New York

§ 25-317, Penalties for violations; enforcement.

a. Any person who violates any provision of subdivision a of section 25-305 [regulation of construction, reconstruction, alterations and demolition] of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars and not less than one hundred dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

b. Any person who violates any provision of subdivision a of section 25-310 [regulation of minor work] of this chapter or any provision of section 25-311 shall be punished, for a first offense, by a fine of not more than two hundred and fifty dollars or less than twenty-five dollars or by imprisonment, and shall be punished for a second, or any subsequent offense, by a fine of not more than five hundred dollars or less than one hundred dollars, or by imprisonment for not more than three months, or by both such fine and imprisonment.

c. Any person who files with the commission any application or request for a certificate or permit and who refuses to furnish, upon demand by the commission, any information relating to such application or request, or who willfully makes any false statement in such application or request, or who, upon such demand, willfully furnishes false information to the commission shall be punished by a fine for not more than ninety days, or by both such fine and imprisonment.

d. For the purpose of this chapter, each day during which there exists any violation of the provisions of paragraph three of subdivision a of section 25-305 of this chapter or paragraph two of subdivision a of section 25-310 of this chapter or any violation of the provisions of section 25-311 of this chapter, shall constitute a separate violation of such provisions.

e. Whenever any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of this chapter mentioned in subdivisions a and b of this section, the

commission may make application to the supreme court for an order enjoining such act or practice, or requiring such person to remove the violation or directing the restoration, as nearly as may be practicable, of any improvement or any exterior architectural feature thereof or improvement parcel affected by or involved in such violation, and upon a showing by the commission that such person has engaged or is about to engage in any such act or practice, a permanent or temporary injunction, restraining order or other appropriate order shall be granted without bond.

Washington

§ 5-1010 Penalties; remedies

(a) Criminal penalty.- Any person who willfully violates any provision of this chapter or of any regulation issued under the authority of this chapter shall, upon conviction, be fined not more than \$1,000 or be imprisoned for not more than 90 days, or both. All prosecutions for violations of this chapter or of any regulations issued under the authority of this chapter shall be brought in the name of the District of Columbia in the Superior Court of the District of Columbia by the Corporation Counsel or any of his assistants.

(b) Civil remedy.- Any person who demolishes, alters or constructs a building or structure in violation of §§ 5-1004, 5-1005 or 5-1007 shall be required to restore the building or structure and its site to its appearance prior to the violation. Any action to enforce this subsection shall be brought by the Corporation Counsel. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty. (1973 Ed., § 5-830; Mar. 3, 1979, D.C. Law 2-144, § 11, 25 DCR 6939.)

Portland

§ 14-696. Additional Penalties for willful violation or gross negligence.

(a) In addition to the penalties authorized by section 14-695, a violation which is intentional, or occurs through gross negligence, shall be subject to the following provisions:

(1) No permit shall be issued under chapter 6 of this Code for any alteration or construction affecting such property for a period of five (5) years following the last date of the violation, other than permits necessary to correct the violation. However, upon presentation of evidence satisfactory to the planning board that the violation has been corrected, any remaining portion of the five-year prohibition on issuance of a permit may be waived.

(2) For a period of twenty-five (25) years, any alteration or construction on the property shall be subject to this article, whether or not any remaining structure or object on the property continues to have the cultural, historical,

architectural or archaeological character and integrity that caused it to be nominated or designated as a landmark or part of a district.

(3) As a condition for any new land use approval, the owner may be required to rebuild, reconstruct, restore, or replicate the structure or object on the property.

(b) Paragraphs (1) and (2) of subsection (a) shall not apply to violations which are limited to noncontributing structures.

C. Economic Hardship Requirements

Philadelphia

§ 14-2007 (7) Permits

(f) In any instance where there is a claim that a building, structure, site or object cannot be used for any purpose which it is or may be reasonable adapted, or where a permit application for alteration, or demolition is based, in whole or in part, on financial hardship, the owner shall submit, by affidavit, the following information to the Commission:

(.1) amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship, whether business or familial, if any, between the owner and the person from whom the property was purchased;

(.2) assessed value of the land and improvements thereon according to the most recent assessment;

(.3) financial information for the previous two (2) years which shall include, as a minimum, annual gross income from the property, itemized operating and maintenance expenses, real estate taxes, annual debt service, annual cash flow, the amount of depreciation taken for federal tax purposes, and other federal income tax deductions produced;

(.4) all appraisals obtained by the owner in connection with his purchase or financing of the property, or during his ownership of the property;

(.5) all listings of the property for sale or rent, price asked and offers received, if any;

(.6) any consideration by the owner as to profitable, adaptive uses for the property;

(.7) the Commission may further require the owner to conduct, at the owner's expense, evaluations or studies, are reasonably necessary in the opinion of the Commission, to determine whether the building, structure, site or object has or may have alternate uses consistent with preservation.

(j) No permit for the demolition of an historic building, structure, site or object or of a building, structure, site or object located within an historic district, which contributes, in the Commission's opinion, to the character of the district, unless the Commission finds that issuance of the permit is

necessary in the public interest, or unless the Commission finds that the building, structure, site or object cannot be used for any purpose for which it is or may be reasonably adapted. In order to show that building, structure, site or object cannot be used for any purpose which it is or may be reasonably adapted, the owner must demonstrate that the sale of the property is impracticable, that commercial rental cannot provide a reasonable rate of return and that other potential uses of the property are foreclosed.

New York

§ 25-302, Definitions:

c. Capable of earning a reasonable return.

having the capacity, under reasonably efficient and prudent management, of earning a reasonable return. For the purposes of this chapter, the net annual return, as defined in subparagraph (a) of paragraph three of subdivision v of this section, yielded by an improvement parcel during the test year, as defined in subparagraph (b) of such paragraph, shall be presumed to be the earning capacity of such improvement parcel, in the absence of substantial grounds for a contrary determination by the commission.

v. Reasonable return.

(1) A net annual return of six percent per centum of the valuation of an improvement parcel.

(2) Such valuation shall be the current assessed valuation established by the city, which is in effect at the time of the filing of the request for a certificate of appropriateness; provided that:

(a) The commission may make a determination that the valuation of the improvement parcel is an amount different from such assessed valuation where there has been a reduction on the assessed valuation for the year next preceding the effective date of the current assessed valuation in effect at the time of the filing of such request; and

(b) The commission may make a determination that the value of the improvement parcel is an amount different from the assessed valuation where there has been a bona fide sale of such parcel within the period between March fifteenth, nineteen hundred fifty-eight, and the time of the filing of such request, as the result of a transaction at arm's length, on normal financing terms, at a readily ascertainable price and unaffected by special circumstances such as, but not limited to, a forced sale, exchange of property, package deal, wash sale or sale to a cooperative. In determining whether a sale was on normal financing terms, the commission shall give due consideration to the following factors:

where an application for a permit to make such alterations or to reconstruct any improvement on a landmark is filed with the commission, and the applicant requests a certificate of appropriateness for such work, and the applicant establishes to the satisfaction of the commission that:

- (a) the improvement parcel (or parcels) which include such improvement, as existing at the time of the filing of such request, is not capable of earning a reasonable return; and
- (b) the owner of such improvement:
 - (1) in the case of an application to demolish, seeks in good faith to demolish such improvement immediately (a) for the purpose of constructing on the site thereof with reasonable promptness a new building or other income-producing facility, or (b) for the purpose of terminating the operation of the improvement at a loss; or
 - (2) in the case of an application for a permit to make alterations or reconstruct, seeks in good faith to alter or reconstruct such improvement, with reasonable promptness, for the purpose of increasing the return therefrom:

the commission, if it determines that the request for such certificate should be denied on the basis of the applicable standards set forth in section 25-306 of this chapter, shall, within ninety days after the filing of this request for such certificate of appropriateness, make a preliminary determination of insufficient return.

Washington

§5- 1004 Demolitions

- (e) No permit shall be issued unless the mayor finds that issuance of the permit is necessary in the public interest, or that failure to issue a permit will result in unreasonable economic hardship to the owner.
- (f) The owner shall submit at the hearing such information as is relevant and necessary to support his application.
- (g) (1) In any instance where there is a claim of unreasonable economic hardship, the owner shall submit by affidavit, to the Mayor at least 20 days prior to the public hearing, at least the following information:
 - (A) For all property:
 - (i) The amount paid for the property, the date of purchase and the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased;
 - (ii) The assessed value of the land and improvements thereon according to the 2 most recent assessments;
 - (iii) Real estate taxes for the previous 2 years
 - (iv) Annual debt service, if any, for the previous 2 years;

(v) All appraisals obtained within the previous 2 years by the owner or applicant in connection with his purchase, financing or ownership of the property;

(vi) Any listing of the property for sale or rent, price asked and offers received, if any; and

(vii) Any consideration by the owner as to profitable adaptive uses for the property; and

(B) For income producing property:

(i) Annual gross income from the property for the previous 2 years;

(ii) Itemized operating and maintenance expenses for the previous 2 years;

(iii) Annual cash flow, if any, for the previous two years

Portland

§ 14-662. Information to be supplied by applicant [for a permit to alter or demolish a designated property]

(a) The applicant shall submit by affidavit the following information for an application to be considered to be complete:

(1) The assessed value of the property and/or the structure in the case of a demolition for the two (2) most recent assessments.

(2) Real property taxes paid for the previous two (2) years.

(3) The amount paid for the property by the owner, the date of purchase and the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased.

(4) The current balance of any mortgages or any other financing secured by the property and the annual debt service, if any, for the previous two (2) years.

(5) All appraisals obtained within the previous two (2) years by the owner or applicant in connection with purchase, offerings for sale, financing or ownership of the property, or state that none were obtained.

(6) All listings of the property for sale or rent, price asked and offers received, if any, within the previous four (4) years, or state that none were obtained.

(7) All studies commissioned by the owner as to profitable renovation, rehabilitation or utilization of any structures or objects on the property for alternative use, or a statement that none were obtained.

(8) For income-producing property, itemized income and expense statements from the property for the previous two (2) years.

(9) Estimate of the cost of the proposed alteration, construction, demolition or removal and an estimate of any additional cost that would be incurred to comply with the recommendations of the planning board for changes necessary for it to approve a certificate of appropriateness.

(10) Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture or other.

(b) In the event that the information required to be submitted by the applicant is not reasonably available, the applicant shall file with the affidavit a statement of the information that cannot be obtained and shall describe the reasons why such information is unavailable.

(c) Notwithstanding the submission of the above information, the board of appeals may require additional evidence as provided in section 14-680.

§ 14-680. Applicant to supply necessary evidence.

In determining the existence of the circumstances specified in this article, the committee, planning board or board of appeals may require such additional documentation or evidence as they may respectively determine to be necessary, including plans, drawings and elevations, and notwithstanding any time limit for action or decision specified in this article, it may continue a proceeding for such additional time as it reasonably takes an applicant or any other party to comply with the request for additional relevant documentation or evidence and may draw a negative inference with regard to the content of any material evidence not produced upon reasonable request.

D. Public Safety Exclusions

Philadelphia

none

New York

§ 25-312, Remediating of dangerous conditions

a. In any case where the department of buildings, the fire department or the department of health, or any officer or agency thereof, or any court on application or at the instance of any such department, officer or agency, shall order or direct the construction, reconstruction, alteration or demolition of any improvement on a landmark site or in an historic district or containing an interior landmark, or the performance of any minor work upon such improvement, for the purpose of remediating conditions determined to be dangerous to life, health or property, nothing contained in this chapter shall be construed as making it unlawful for any person, without prior issuance of a certificate of no effect on protected architectural features or certificates of appropriateness or permit for minor work pursuant to this chapter, to comply with such order or direction.

b. The department of buildings, fire department or department of health, as the case may be, shall give the commission as early notice as is practicable, of the proposed issuance or issuance if any such order or direction.

Washington

§ 5-1011. Insanitary and Unsafe Buildings

(a) Nothing in this chapter shall interfere with the authority of the Board for the Condemnation of Insanitary Buildings to put a building or structure into sanitary condition or to demolish it pursuant to the provisions of the Act of May 1, 1906 (D.C. Code, §§ 5-701 through 5-719): Except, that no permit for the demolition of an historic landmark or building or structure in an historic district shall be issued to the owner except in accordance with the provisions of this chapter.

(b) Nothing in this chapter shall affect the authority of the District of Columbia to secure or remove an unsafe building or structure pursuant to the Act of March 1, 1899 9 D.C. Code, §§ 5-601 through 5-603.) (1973 Ed., § 5-831; Mar. 3, 1979, D.C. Law 2-144, § 12, 25 DCR 6939.)

Portland

§14-699, Exception for dangerous buildings.

This article shall not apply to any structure which has been ordered demolished by the municipal officers or a court,... or to any structure which has been partially destroyed and is determined by the department to represent an immediate hazard to the public health or safety, which hazard cannot be abated by reasonable measures specified by the department, including securing apertures and/or erecting fencing.

BIBLIOGRAPHY

published sources

Advisory Council on Historic Preservation. *National Historic Preservation Act of 1966, as amended*, third edition. Washington, DC: 1993.

Advisory Council on Historic Preservation, "Protection of Historic Properties," *Section 106 Step By Step* . Washington, DC: ACHP, October 1986.

"Buildings at Risk: A Report to the Community." *Preservation Progress* (the Preservation Society of Charleston), vol. 35, no. 8, Winter 1992.

"Can Neglect of a Historic Structure Constitute 'Nuisance'?" *Preservation Law Update*, 1988-31; July 26, 1988.

City of Portland v. Tracy-Causser Associates, Inc. District Court of the State of Maine, Docket No. 91-LU-006.

"Demolition: When They Say It Can't Be Saved." Report on the proceedings of the conference, Syracuse, NY, November 20, 1993. New York State Department of Parks, Recreation and Historic Preservation, 1994.

"Difficult Issues Facing Preservation Commissions: Demolition by Neglect," taped session N26 of the 48th National Trust for Historic Preservation Trust Conference. Boston, MA: October 27, 1994.

District of Columbia Preservation League v. Department of Consumer and Regulatory Affairs. D.C. Court of Appeals No. 93- AA- 198 argued March 30, 1994; decided August 22, 1994.

Douthat, Caroline. "Neglect and Demolition: City Preservation Policies Reviewed." *Oakland Heritage Alliance News*, vol. 8, no. 2, Summer 1988, pp. 8-9.

Duerksen, Christopher, ed. *A Handbook on Historic Preservation Law*. Washington, DC: The Conservation Foundation and the National Center for Preservation Law, 1983.

Dyches, Allison. "Demolition by Neglect: What the Experts Say." *Preservation Progress*, (The Preservation Society of Charleston), vol. 35, no. 5, November 1991, pp. 3-4.

- "Emergency Stabilization Provisions: Are they Permissible in Preservation Ordinances?" *Preservation Law Update* 1989-28, July 12, 1989.
- "Fire Claims Odeon Theater on Historic Maryland Campus." *Historic Preservation News*, vol. 33, no. 8., December 1993/January 1994, p. 2.
- Sarah Fick, "Demolition of Rural Resources- What Are We Neglecting?" *Preservation Progress*, vol. 35, no. 5, November 1991, pp. 4-5.
- Goss, Sarah L. *Propriety of Using the Police Power for Aesthetic Regulation*. Washington, DC: National Park Service and National Center for Preservation Law, 1992.
- Gray, Christopher. "The Tale Lurking Behind a Fort Greene Facade." *New York Times*, January 8, 1995. Real Estate section.
- Harris, Samuel. "Alternative Use As A Preservation Strategy." *Historic Preservation Forum*, September/October 1993.
- "How Rappaport Wins." *The Philadelphia Inquirer*. April 4, 1993, editorial page.
- Irvin, Hilary Somerville. "The Vieux Carre DBN Clause Protecting the French Quarter." *The Alliance Review*, Winter 1990, p. 4-5.
- Kass, Stephen, ed. *Rehabilitating Historic Buildings*. . n.p.: Practising Law Institute, 1983.
- Kass, Stephen L., La Belle, Judith M. and Hansell, David A. *Rehabilitating Older and Historic Buildings*. New York: John Wiley and Sons, Inc., 1993, second edition.
- Kelly v. Boys' Club of St. Louis, Inc.*, 588 S.W. 2d 254 (Mo. App. 1979).
- Leatherbarrow, David and Mostafavi, Moshen. *On Weathering: the Life of Buildings in Time*. Cambridge, MA: M.I.T. Press, 1993.
- "Maine Court Rules Enforcement of Order to Repair Historic Property Would Result in Unlawful 'Taking.'" *Preservation Law Reporter*, vol. 12, December 1993, p. 1195.

- "Maine Trial Court Fails to Apply Suitable Economic Analysis in Demolition by Neglect Situation." *Preservation Law Update* 1993-18, December 1, 1993.
- "Maryland Board of Appeal Rules in Favor of Preservation Commission Which Denied Demolition Permit for Fire-Damaged Structure." *Preservation Law Update* 1994-6, February 4, 1994.
- "Michigan Commission Which Denied Demolition Permit Upheld on Appeal by New York State Historical Preservation Review Board." *Preservation Law Update* 1994-16, April 25, 1994.
- Morrison, Jacob H. *Historic Preservation Law*. National Trust for Historic Preservation, 1965.
- National Park Service. *Manual for State Historic Preservation Review Boards*. Washington, DC: U.S. Department of the Interior, 1992.
- "New York Court Finds No Taking in Demolition by Neglect Situation." *Preservation Law Update* 1988-29, July 18, 1988.
- "New York Hints that Owner Neglect Is Valid Consideration When Owner Seeks Demolition Permit on Hardship Grounds." *Preservation Law Update* 1990-28, August 3, 1990.
- Perez-Pena, Richard. "Collapse of Apartment Building in Harlem Kills 3," *New York Times*, Wednesday, March 22, 1995, p. A1, B4.
- Perez-Rivas, Manuel and Kim, Myung Oak. "Some Lose Facade As House Crumbles." *New York Newsday*, April 13, 1993, p. 29.
- Pollard, Oliver A., III. "Counteracting Demolition by Neglect: Effective Regulations for Historic District Ordinances." *The Alliance Review*, Winter 1990, pp. 1- 3.
- Pollard, Oliver A., III. "Demolition By Neglect: Testing the Limits and Effectiveness of Local Historic Preservation Regulation." *Notes on Virginia*, number 32, Winter 1988/89.
- Pollard, Oliver A., III. "Minimum Maintenance Provisions: Preventing Demolition By Neglect." *Preservation Law Reporter* , vol. 8, 1989 Annual, pp. 2001- 2011.

Preservation Law Reporter , vol. 13, April 1994, pp. 1068- 1075.

Robinson, Nicholas A., ed. *Historic Preservation Law*. n.p. : Practising [sic] Law Institute, 1979.

Robinson, Nicholas. "Historic Preservation Law: The Metes and Bounds of a New Field." *Pace Law Review*, vol 1, (1981) pp. 509-566.

Robinson, Nicholas A., ed. *Rehabilitating Historic Properties 1984, Practicing Preservation Law* . n.p. : Practising [sic] Law Institute, 1984.

Rypkema, Donovan D. *The Economics of Historic Preservation*. Washington, DC: National Trust for Historic Preservation, 1994.

Weinberg v. City of Pittsburgh, No. S.A. 981-1990 (Pa. Ct. Comm. Pleas Nov. 29, 1993)

Wiegand, Ginny. "City Officials Discuss Ways of Dealing With Abandoned Buildings." *The Philadelphia Inquirer*, March 24, 1993.

Wiegand, Ginny and Anthony R. Wood. "The Landlord of Center City;" "Demolition Looms Ever Larger for Victory Building;" "Speculation Breeds Decay and Dismay;" and "Shrewd, Generous and Enigmatic." *The Philadelphia Inquirer*, April 4, 1993, p. A1, A12-14.

Wiegand, Virginia S. and Anthony R. Wood. "What Rappaport Left Phila." *The Philadelphia Inquirer* September 11, 1994, p. E1.

Zintl, Amy. "Forsaken But Not Forgotten: America's Abandoned Landmarks" *Americana*, vol. 20, no. 6, February 1993, pp. 18-26, 83.

unpublished sources

Beaumont, Constance. "Demolition by Neglect" unpublished memo from the National Trust for Historic Preservation, Washington, DC, September 21, 1990, p. 4. [The memo is not signed, but another NTHP memo on DBN (by Rieyn DeLony) refers to Beaumont as the author.]

Broussard, Diane Ancker. "An Analysis of the Demolition by Neglect Citation Process of the New Orleans Historic District Landmarks Commission." Master's thesis, University of New Orleans, 1992.

- Burns, Natalie. "Difficult Issues Facing Preservation Commissions: Demolition By Neglect," 48th Conference of the National Trust for Historic Preservation, Boston, MA, October 27, 1994. unpublished notes on file at the National Trust for Historic Preservation, Boston, MA.
- Cassity, Pratt and Malone, Connie. "The United States Preservation Commission Identification Project." Washington, DC: National Alliance of Preservation Commissions, 1994.
- Cohen, M. Richard. Unpublished appraisal of the Victory Building, August 30, 1991, on file at the Preservation Coalition of Philadelphia
- DeLony, Rieyn. "Enforcement of minimum maintenance standards to prevent demolition by neglect (DBN)," unpublished memo to Constance Beaumont, October 30, 1992, Washington, DC: National Trust for Historic Preservation.
- Ferster, Andrea. "Difficult Issues Facing Preservation Commissions: Demolition By Neglect," 48th Conference of the National Trust for Historic Preservation, Boston, MA, October 27, 1994. Unpublished notes on file at the National Trust for Historic Preservation, Boston, MA.
- McRaney, Melissa. "Demolition by Neglect and Code Enforcement in Philadelphia and Other American Cities." unpublished draft, April 12, 1995, Philadelphia, PA, for the Preservation Coalition of Greater Philadelphia.
- Merritt, Elizabeth S., Associate General Council, National Trust for Historic Preservation. "Demolition By Neglect, Introductory Remarks." Unpublished notes from speech at the Preservation League of New York State Annual Meeting, April 23, 1993, on file at the National Trust for Historic Preservation, Washington, DC.
- Ridley, Katherine Raub. "Demolition By Neglect, the New York State Context." Unpublished speaker's notes from speech at the Preservation League of New York State Annual Meeting, April 23, 1993, on file at the National Trust for Historic Preservation, Washington, DC.
- "Testimony of Howard J. Kittel Before the Board Review of The Board of Licenses and Inspections Regarding the Victory Building at 1001-1013 Chestnut Street." Unpublished notes on file at the Preservation Coalition of Greater Philadelphia.

Tondro, Terry. "Difficult Issues Facing Preservation Commissions: Demolition By Neglect," 48th Conference of the National Trust for Historic Preservation, Boston, MA, October 27, 1994. Unpublished notes on file at the National Trust for Historic Preservation, Boston, MA.

historic preservation ordinances

"Chapter 10. Historic Landmark and Historic District Protection" of the District of Columbia Building Restrictions and Regulations, §5-1001 to 1015.

"Landmarks Preservation and Historic Districts" of the New York Administrative Code, § 25-301 to 321.

"Article IX. Historic Preservation" of the Land Use chapter of the Portland, Maine Code, Sections 14-601 to 704.

Section 14-2007 of The Philadelphia Code, "Historic Buildings, Structures, Sites, Objects and Districts."

interviews

Acosta, Alexandra. Assistant General Counsel, National Trust for Historic Preservation, Washington, DC, personal interview, March 10, 1995.

Baron, Randal. Assistant Historic Preservation Officer, Philadelphia Historical Commission, personal interview, February 3, 1995.

Barrett, Brenda. Director, Bureau of Historic Preservation, Pennsylvania Historic and Museum Commission, telephone interview, March 6, 1995.

Brierton, Joan. Former staff person, DC Preservation League, personal interview, March 31, 1995.

Burns, Natalie. Associate Corporate Counsel, City of Portland, telephone interview, March 27, 1995.

Campbell, Valerie. Counsel for the New York City Landmarks Preservation Commission, telephone interview, January 30, 1995

Cassidy, Pratt. Executive Director, National Alliance of Preservation Commissions, telephone interview, February 12, 1995.

- Dennis, Steven. Former director of the National Center for Preservation Law, Washington, DC, 1/19/95, telephone interview.
- Goodman, Jennifer. Executive director of the Preservation Coalition, personal interview October 5, 1994.
- Hamilton, Gary. Historic Preservation Officer, City of Portland, Maine, telephone interview, March 27, 1995.
- Harris, Samuel. Lecturer, University of Pennsylvania, personal interview, January 25, 1995.
- Lang, Roger P. Director, Community Programs and Services, New York Landmarks Conservancy, telephone interview, March 1, 1995; personal interview, March 6, 1995; telephone interview, April 13, 1995.
- Longworth, Nellie. Director, Preservation Action, Washington, DC, personal interview, January 12, 1995.
- Miner, Dorothy. Former counsel, NY Landmarks Commission, telephone interview, February 20, 1995.
- Raiche, Steven. Director, Historic Preservation Division, District of Columbia Department of Consumer and Regulatory Affairs, personal interview, January 13, 1995.

Anne & Jerome Fisher
FINE ARTS LIBRARY
University of Pennsylvania
Please return this book as soon as you have finished with
it. It must be returned by the latest date stamped below.

~~FINE ARTS LIBRARY
JAN 24 1997~~

~~FINE ARTS LIBRARY
JUL 17 2001~~

~~FINE ARTS LIBRARY
OCT 28 1998~~

~~RECEIVED
APR 19 2002
FINE ARTS LIBRARY~~

~~RECEIVED
JUN 16 2001
FINE ARTS LIBRARY~~

FISHER
FINE ARTS LIBRARY
JAN 30 1996
UNIV. OF PENNA.

3 1198 04977 2457



N/1198/04977/2457X

3 1198 04977 2457



N/1198/04977/2457X