

PROFESSIONAL **A**RCHAEOLOGISTS OF **N**EW **Y**ORK **C**ITY



NEWSLETTER NO. 9
MARCH 1982

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THE NEXT PANYC MEETING IS SCHEDULED FOR:

Wednesday, 24 March 1982, 7:30 P.M.

CUNY Graduate Center

33 West 42nd Street, Room 1126

Material for inclusion in the PANYC Newsletter should be sent to Joel I. Klein,
 Envirosphere Company, 2 World Trade Center, New York, N.Y. 10048

MINUTES

Bankoff called the meeting to order at 10:20 A.M. Many NYAC members were also present at this meeting.

Secretary's Report

The Minutes of the last meeting were accepted as printed in the PANYC Newsletter No. 8.

The membership voted to accept Marilyn L. Simon's application for PANYC membership.

Marshall reported that she awaited a response from Colonel Walter M. Smith, District Engineer, in response to inquiries about the impact changes in CRM Regulations would have on resources in the N.Y. Army Corps District. The letter was sent December 23, 1981.

Copies of Ceci's letter outlining archaeological field school guidelines were sent to 24 universities and colleges and to 9 museums in New York City. Two letters were also sent to members of the New York City Board of Education. Brooklyn College responded by letter and LaGuardia Community College responded by telephone. Both responses indicated appreciation for the information. Salwen suggested that if a school is offering training for SOPA certification, the director of the field school should be qualified for SOPA certification. Sterud added that SHA guidelines should be in the AAA and AIA field school bulletins.

Responding to Marshall's notifications for dues payments and membership file updates, all members except for one have paid 1981 dues. Resumes are still needed from Askins, Harris, Rothschild, and Rose Solecki.

President's Report

Bankoff reported for Ceci that she wrote a letter to the Advisory Council on Historic Preservation concerning reported pothunting and trespassing at the TELCO site. Bankoff read Ceci's letter and ACHP's response. General consensus of the membership was that PANYC had fulfilled its role by bringing this incident to the attention of the ACHP but that further involvement is inappropriate.

Treasurer's Report

Sterud reported a starting balance of \$157.15 to which \$106 in deposits was added. After disbursements of \$73.13 the current balance in the treasury is \$190.02.

Committee Reports

Newsletter Committee

Klein sent out 46 copies of Newsletter No. 8. Four copies were complimentary, 3 were exchanges, 12 were subscriptions and the rest went to PANYC members. Klein is still awaiting receipt of resumes from members so that he can compile a Directory. He has only received 4 resumes. He also encouraged people to send news items for the Newsletter.

PANyc General Membership Minutes (cont'd)

Action Committee

Geismar has not yet checked into the situation at Brother's Island but will do so.

Geismar reported that an 18th century merchant vessel, in relatively good shape, had been found at 175 Water Street. Arrangements were being made to excavate this resource.

Salwen suggested that someone should look into the current status of the GSA plans to develop the site of the 1600's Jamaica Village in Queens.

Research and Planning Committee

Rothschild agreed to organize suggestions and issues for discussion of a repository for archaeological resources for New York City.

Dublin reported that she had heard that Drew University agreed to take the TELCO site materials. Geismar confirmed this. She noted that the repository plans for 175 Water Street materials was still negotiable though the South Street Seaport had made overtures. Salwen noted that NYU had agreed to accept Stadt Haus and 7 Hanover Square materials on a temporary basis. The main concern expressed by all focused on finding a place which meets curatorial standards. Optimally all agreed that the materials should remain in New York City. The critical criteria for an appropriate repository as summarized by Salwen include 1) a long-term commitment to research in New York and 2) demonstrated first steps toward suitable curation.

Legislative Committee

Orgel has not yet been officially notified of changes in the CRM Regulations for the U.S. Army Corps.

Salwen alerted the membership to a serious situation in Washington. The proposed presidential budget includes little money for historic preservation. Many national regulations are under review including Section 106 Procedures. A first draft will soon be circulated for comment.

Klein informed the group of his appointment to meet with City Council members. He will discuss amending the City Landmarks Law to include the word archaeology.

Public Relations Committee

Naar would like to include slides of work ongoing in New York City in a program she is coordinating for school children. She would also like to offer the program with PANyc as sponsor. Rothschild suggested that Naar submit a detailed outline for review by the Executive Board.

Naar suggested distributing a list of continuing education courses in archaeology to individuals on her "Friends of PANyc" list as a way of reaching out to the interested public. The list will be sent to the secretary and then distributed to Executive Board members for comment.

PANyc General Membership Minutes (cont'd)

Unfinished Business

Nominations Committee

The committee will include Ceci, Geismar and Cantwell. Bankoff proposed the following schedule for implementation of the election procedures: Feb. 22 - Slate drawn up and sent to secretary; March 1 - Ballots mailed to membership by secretary; March 15 - Ballots returned to secretary; March 24 - Next PANyc meeting.

Public Program Committee

Naar, Marshall, Winter, and Sanders volunteered to work with Bankoff on the 1982 Public Program. Bankoff will arrange to hold the program at the Museum of the City of New York in late April or early May. He foresees turning abstracts over to Klein 2 weeks before the meeting date so that they may be published in the PANyc Newsletter. The program will be fixed by mid-February. Klein noted that the papers last year were not oriented to the public. He also informed the group that publication of the papers would not be too expensive and that he plans to publish the proceedings this year. Bankoff proposed designing the program around a narrower theme than last year.

New Business

Salwen announced that Jan Baart, the City Archaeologist of Amsterdam, Netherlands, will speak at New York University on 9 February 1982.

Sterud reported that the Society of Historic Archaeology organizers requested that he exhibit Hobley's Buried London presentation at the next meeting in Denver, Colorado in January 1983. Sterud proposed that PANyc sponsor this exhibit at the AIA meeting, December 1982, in Philadelphia, Pa. and at the SHA meeting, January 1983, Denver, Colorado. Naar added that the American Museum of Natural History was still interested in showing this exhibit.

The next meeting will be on Weds., March 24, in the evening.

Bankoff adjourned the meeting at 11:30 A.M.

PRESERVATION OF LANDMARKS AND HISTORICAL DISTRICTS

§ 205-1.0 Purpose and declaration of public policy.—a. The council finds that many improvements, as herein defined, and landscape features, as herein defined, having a special character or a special historical or aesthetic interest or value and many improvements representing the finest architectural products of distinct periods in the history of the city, have been uprooted, notwithstanding the feasibility of preserving and continuing the use of such improvements and landscape features, and without adequate consideration of the irreplaceable loss to the people of the city of the aesthetic, cultural and historic values represented by such improvements and landscape features. In addition distinct areas may be similarly uprooted or may have their distinctiveness destroyed, although the preservation thereof may be both feasible and desirable. It is the sense of the council that the standing of this city as a world-wide tourist center and world capital of business, culture and government cannot be maintained or enhanced by disregarding the historical and architectural heritage of the city and by countenancing the destruction of such cultural assets.

b. It is hereby declared as a matter of public policy that the protection, enhancement, perpetuation and use of improvements and landscape features of special character or special historical or aesthetic interest or value is a public necessity and is required in the interest of the health, prosperity, safety and welfare of the people. The purpose of this chapter is to (a) effect and accomplish the protection, enhancement and perpetuation of such improvements and landscape features and of districts which represent or reflect elements of the city's cultural, social, economic, political and architectural history; (b) safeguard the city's historic, aesthetic and cultural heritage, as embodied and reflected in such improvements, landscape features and districts; (c) stabilize and improve property values in such districts; (d) foster civic pride in the beauty and noble accomplishments of the past; (e) protect and enhance the city's attractions to tourists and visitors and the support and stimulus to business and industry thereby provided; (f) strengthen the economy of the city; and (g) promote the use of historic districts, landmarks, interior landmarks and scenic landmarks for the education, pleasure and welfare of the people of the city. (Amended by L. L. 1973, No. 71, Dec. 17.)

§ 207-1.0 Definitions.—As used in this chapter, the following terms shall mean and include:

a. "Alteration". Any of the acts defined as an alteration by the building code of the city.

b. "Appropriate protective interest". Any right or interest in or title to an improvement parcel or any part thereof, including, but not limited to, fee title and scenic or other easements, the acquisition of which by the city is determined by the commission to be necessary and appropriate for the effectuation of the purpose of this chapter.

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.

d. "City-aided project". Any physical betterment of real property, which:

- (1) may not be constructed or effected without the approval of one or more officers or agencies of the city; and
- (2) upon completion, will be owned in whole or in part by any person other than the city; and

(3) is planned to be constructed or effected, in whole or in part, with any form of aid furnished by the city (either than under this chapter), including, but not limited to, any loan, grant, subsidy or other mode of financial assistance, exercise of the city's powers of eminent domain, contribution of city property, or the granting of tax exemption or tax abatement; and

(4) will involve the construction, reconstruction, alteration or demolition of any improvement in a historic district or of a landmark.

e. "Commission". The landmarks preservation commission.

f. "Day". Any day other than a Saturday, Sunday or legal holiday; provided, however, that for the purposes of subdivision d of section 207-16.0 of this chapter, the term "day" shall mean every day in the week.

g. "Exterior architectural feature." The architectural style, design, general arrangement and components of all of the outer surfaces of an improvement, as distinguished from the interior surfaces enclosed by said exterior surfaces, including, but not limited to, the kind, color and texture of the building material and the type and style of all windows, doors, lights, signs and other fixtures appurtenant to such improvement.

h. "Historic district." Any area which:

(1) contains improvements which:

- (a) have a special character or special historical or aesthetic interest or value; and

(b) represent one or more periods or styles of architecture typical of one or more eras in the history of the city; and

(c) cause such area, by reason of such factors, to constitute a distinct section of the city; and

(2) has been designated as a historic district pursuant to the provisions of this chapter.

i. "Improvement." Any building, structure, place, work of art or other object constituting a physical betterment of real property, or any part of such betterment.

j. "Improvement parcel." The unit of real property which (1) includes a physical betterment constituting an improvement and the land embracing the site thereof, and (2) is treated as a single entity for the purpose of levying real estate taxes; provided however, that the term "improvement parcel" said* also include any unimproved area of land which is treated as a single entity for such tax purposes.

k. "Interior." The visible surfaces of the interior of an improvement.

l. "Interior architectural feature." The architectural style, design, general arrangement and components of an interior, including but not limited to, the kind, color and texture of the building material and the type and style of all windows, doors, lights, signs and other fixtures appurtenant to such interior.

m. "Interior landmark." An interior, or part thereof, any part of which is thirty years old or older, and which is customarily open or accessible to the public, or to which the public is customarily invited, and which has a special historical or aesthetic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation and which has been designated as an interior landmark pursuant to the provisions of this chapter.

n. "Landmark." Any improvement, any part of which is thirty years old or older, which has a special character or special historical or aesthetic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation and which has been designated as a landmark pursuant to the provisions of this chapter.

o. "Landmark site." An improvement parcel or part thereof on which is situated a landmark and any abutting improvement parcel or part thereof used as and constituting part of the premises on which the landmark is situated, and which has been designated as a landmark site pursuant to the provisions of this chapter.

p. "Landscape feature." Any grade, body of water, stream, rock, plant, shrub, tree, path, walkway, road, plaza, fountain, sculpture or other form of natural or artificial landscaping.

q. "Minor work." Any change in, addition to or removal from the parts, elements or materials comprising an improvement including, but not limited to, the exterior architectural features or interior architectural features thereof and, subject to and as prescribed by regulations of the commission if and when promulgated pursuant to section 207-18.0 of this chapter the surfacing, resurfacing, painting, renovating, restoring, or rehabilitating of the exterior architectural features or interior architectural features or the treating of the same in any manner that materially alters their appearance, where such change, addition or removal does not constitute ordinary repairs and maintenance and is of such nature that it may be lawfully effected without a permit from the department of buildings.

r. "Ordinary repairs and maintenance." 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.

s. "Owner." Any person or persons having such right to, title to or interest in any improvement so as to be legally entitled upon obtaining the required permits and approvals from the city agencies having jurisdiction over building construction, to perform with respect to such property any demolition, construction, reconstruction, alteration or other work as to which such person seeks the authorization or approval of the commission pursuant to section 207-8.0 of this chapter.

t. "Person in charge." The person or persons possessed of the freehold of an improvement or improvement parcel or a lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person directly or indirectly in control of an improvement or improvement parcel.

u. "Protected architectural feature." Any exterior architectural feature of a landmark or any interior architectural feature of an interior landmark.

v. "Reasonable return." (1) A net annual return of six 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 in the assessed valuation for the year next pre-

*So is original. Should probably be "shall".

ceding 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 arms' 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:

(1) The ratio of the cash payment received by the seller to (a) the sales price of the improvement parcel and (b) the annual gross income from such parcel;

(2) The total amount of the outstanding mortgages which are liens against the improvement parcel (including purchase money mortgages) as compared with the assessed valuation of such parcel;

(3) The ratio of the sales price to the annual gross income of the improvement parcel, with consideration given, where the improvement is subject to residential rent control, to the total amount of rent adjustments previously granted, exclusive of rent adjustments because of changes in dwelling space, services, furniture, furnishings or equipment, major capital improvements, or substantial rehabilitation;

(4) The presence of deferred amortization in purchase money mortgages, or the assignment of such mortgages at a discount;

(5) Any other facts and circumstances surrounding such sale which, in the judgment of the commission, may have a bearing upon the question of financing; and

(3) For the purposes of this subdivision v:

(a) Net annual return shall be the amount by which the earned income yielded by the improvement parcel during a test year exceeds the operating expenses of such parcel during such year, excluding mortgage interest and amortization, and excluding allowances for obsolescence and reserves, but including an allowance for depreciation of two per centum of the assessed value of the improvement, exclusive of the land, or the amount shown for depreciation of the improvement in the latest required federal income tax return, whichever is lower; provided, however, that no allowance for depreciation of the improvement shall be included where the improvement has been fully depreciated for federal income tax purposes or on the books of the owner; and

(b) Test year shall be (1) the most recent full calendar year, or (2) the owner's most recent fiscal year, or (3) any twelve consecutive months ending not more than ninety days prior to the filing (a) of the request for a certificate, or (b) of an application for a renewal of tax benefits pursuant to the provisions of section 207-8.0 of this chapter, as the case may be.

w. "Scenic landmark." Any landscape feature or aggregate of landscape features, any part of which is thirty years or older, which has or have a special character or special historical or aesthetic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation and which has been designated a scenic landmark pursuant to the provisions of this chapter. (Amended by L. L. 1978, No. 71, Dec. 17.)

§ 207-20 Establishment of landmarks, landmark sites, interior landmarks, scenic landmarks and historic districts.—a. For the purpose of effecting and furthering the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, scenic landmarks and historic districts, the commission shall have power, after a public hearing:

(1) to designate, and as herein provided in subdivision j in order to effectuate the purposes of this chapter, to make supplemental designations as additions to, a list of landmarks which are identified by a description setting forth the general characteristics and location thereof;

(2) to designate and, in order to effectuate the purposes of this chapter, to make supplemental designations as additions to, a list of interior landmarks, not including interiors utilized as places of religious worship, which are identified by a description setting forth the general characteristics and location thereof;

(3) to designate and, in order to effectuate the purposes of this chapter, to make supplemental designations as additions to, a list of scenic landmarks, located on property owned by the city, which are identified by a description setting forth the general characteristics and location thereof; and

(4) to designate historic districts and the location and boundaries thereof, and in order to effectuate the purposes of this chapter, to designate changes in such locations and boundaries and designate additional historic districts and the location and boundaries thereof.

b. It shall be the duty of the commission, after a public hearing, to designate a landmark site for each landmark and to designate the location and boundaries of such site.

c. The commission shall have power, after a public hearing, to amend any designation made pursuant to the provisions of such subdivisions a and b of this section.

d. The commission may, after a public hearing, whether at the time it designates a scenic landmark or at any time thereafter,

specify the nature of any construction, reconstruction, alteration or demolition of any landscape feature which may be performed on such scenic landmark without prior issuance of a report pursuant to subdivision c of section 207-17.0. The commission shall have the power, after a public hearing, to amend any specification made pursuant to the provisions of this subdivision d.

e. Subject to the provisions of subdivisions g and h of this section, any designation or amendment of a designation made by the commission pursuant to the provisions of subdivisions a, b and c of this section shall be in full force and effect from and after the date of the adoption thereof by the commission.

f. Within five days after making any such designation or amendment thereof, the commission shall file a copy of same with the secretary of the board of estimate and with the department of buildings, the city planning commission, the board of standards and appeals, the fire department and the health services administration.

g. (1) The secretary of the board of estimate, within five days after the filing of such copy with such secretary, shall refer such designation or amendment thereof to the city planning commission, which, within thirty days after such referral, shall submit to such board a report with respect to the relation of such designation or amendment thereof to the master plan, the zoning resolution, projected public improvements and any plans for the renewal of the area involved.

(2) Such board may modify or disapprove such designation or amendment thereof within ninety days after a copy thereof is filed with the secretary of the board. If the board shall disapprove such designation or amendment thereof, it shall cease to be in effect on the date of such action by the board. If the board shall modify such designation or amendment thereof, such modification shall be in effect on and after the date of the adoption thereof by the board.

h. (1) The commission shall have power, after a public hearing, to adopt a resolution proposing rescission, in whole or in part, of any designation or amendment or modification thereof mentioned in the preceding subdivisions of this section. Within five days after adopting any such resolution, the commission shall file a copy thereof with the secretary of the board of estimate, who shall, within five days after such filing, refer such resolution to the city planning commission.

(2) Within thirty days after such referral, the city planning commission shall submit to such board a report with respect to the relation of such proposed rescission to the master plan, the zoning resolution, projected public improvements and any plans for the renewal of the area involved.

(3) Such board may approve, disapprove or modify such proposed rescission within ninety days after a copy of the resolution proposing same is filed with the secretary of the board. If such proposed rescission is approved or modified by the board, such rescission or modification thereof shall take effect on the date of such action by the board. If such proposed rescission is disapproved by the board, or is not acted on by the board within such period of ninety days, it shall not take effect.

i. The commission may at any time make recommendations to the city planning commission with respect to amendments of the provisions of the zoning resolution applicable to improvements in historic districts.

j. All designations and supplemental designations of landmarks, landmark sites, interior landmarks, scenic landmarks and historic districts made pursuant to paragraph a shall be made pursuant to notices of public hearings given, as provided in § 207-12.0.

k. Upon its designation of any improvement parcel as a landmark and of any landmark site, interior landmark, scenic landmark or historic district or any amendment of any such designation or rescission thereof the commission shall cause to be recorded in the office of the register of the city of New York in the county in which such landmark, interior landmark, scenic landmark or district lies, or in the case of landmarks, interior landmarks, scenic landmarks and districts in the borough and county of Richmond in the office of the clerk of said county of Richmond, a notice of such designation, amendment or rescission describing the party affected by, in the case of the county of Richmond, its land map block number or numbers and its tax map, block and lot number or numbers and in the case of all other counties, by its land map block and lot number or numbers. (Amended by L. L. 1973, No. 71, Dec. 17.)

CASE NOTES

§ 1. The designation of the Leonard Jerome House as a landmark after the owner had entered into a contract to sell to a purchaser who proposed to raise the building and erect an office building on the site did not constitute a deprivation of property without due process of law as the only effect of the law is to prohibit "alteration, reconstruction or demolition of the exterior architectural features of the building without prior approval of the commission, the owner being at liberty to do as it pleases within the interior." Matter of Manhattan Club v. Landmarks Preservation Comm., 51 Misc.2d 556, 373 N.Y.S.2d 349 (1964).

§ 2. Petition of real estate owner for an order prohibiting the Commission from naming certain acres within Greenwich Village as Historic Districts on the ground that it could take no action on these proposals between December 28, 1966 which was the expiration date of the 18-month period after the Commission was appointed and that period beginning 36 months

thereafter was denied as a designation can be made during the "interim" 36-month period and hearings could be had within such periods provided these be limited to those made pursuant to notices published in the first 18-month period and subsequent 6-month periods. Ragone v. Landmarks Preservation Commission, 167 (S1) N.Y.L.J. (2-18-67) 15, Col. 3 P.

§ 3 A landmark designation of a building that had been the home of J. P. Morgan, Jr. and which was now owned by a religious corporation and used for its offices was an unconstitutional confiscation of the corporation's property where the building was wholly inadequate for the purposes of the religious corporation which wished to demolish the mansion and build a modern office building on the site and where no adequate compensation was awarded for curtailment of the owner's free use of the premises.—Lutheran Church in America v. City of N.Y., 35 N.Y.2d 121, 375 N.E.2d 303, 359 N.Y.S.2d 7 (1974).

§ 4. Application of landmarks law through denial of a certificate of appropriateness for construction of a tower over Grand Central Station was not unconstitutional since in this case the application of the law did not impose such a burden as to constitute a

comparable taking the plaintiffs not being able to establish that they were incapable of obtaining a reasonable return from Grand Central Terminal operations.—*Penn. Central Transportation Co. v. City of N. Y.*, 39 A. D. 2d 265 (1976).

§ 207-3.0 Scope of commission's powers.—a. Nothing contained in this chapter shall be construed as authorizing the commission, in acting with respect to any historic district or improvement therein, or in adopting regulations in relation thereto, to regulate or limit the height and bulk of buildings, to regulate and determine the area of yards, courts and other open spaces, to regulate density of population or to regulate and restrict the locations of trades and industries or location of buildings designed for specific uses or to create districts for any such purpose.

b. Except as provided in subdivision a of this section, the commission may, in exercising or performing its powers, duties or functions under this chapter with respect to any improvement in a historic district or on a landmark site or containing an interior landmark, or any landscape feature of a scenic landmark, apply or impose, with respect to the construction, reconstruction, alteration, demolition or use of such improvement, or landscape feature or the performance of minor work thereon, regulations, limitations, determinations or conditions which are more restrictive than those prescribed or made by or pursuant to other provisions of law applicable to such activities, work or use. (Subd. b amended by L. L. 1973, No. 71, Dec. 17.)

§ 207-4.0 Regulation of construction, reconstruction, alterations and demolition.—a. (1) Except as otherwise provided in paragraph two of this subdivision a, it shall be unlawful for any person in charge of a landmark site or an improvement parcel or portion thereof located in an historic district of any part of an improvement containing an interior landmark, to alter, reconstruct or demolish any improvement constituting a part of such site or constituting a part of such parcel and located within such district or containing an interior landmark or to construct any improvement upon land embraced within such site or such parcel and located within such district; or to cause or permit any such work to be performed on such improvement or land, unless the commission has previously issued a certificate of no effect on protected architectural features, a certificate of appropriateness or a notice to proceed authorizing such work, and it shall be unlawful for any other person to perform such work or cause same to be performed, unless such certificate or notice has been previously issued.

(2) The provisions of paragraph one of this subdivision a shall not apply to any improvement mentioned in subdivision a of section 207-17.0 of this chapter, or to any city-aided project, or in cases subject to the provisions of section 207-11.0 of this chapter.

(3) It shall be unlawful for the person in charge of any improvement or land mentioned in paragraph one of this subdivision a to maintain same or cause or permit same to be maintained in the condition created by any work in violation of the provisions of such paragraph one.

b. (1) Except in the case of any improvement mentioned in subdivision a of section 207-17.0 of this chapter and except in the case of a city-aided project, no application shall be approved and no permit or amended permit for the construction, reconstruction, alteration or demolition of any improvement located or to be located on a landmark site or in an historic district or containing an interior landmark shall be issued by the department of buildings, and no application shall be approved and no special permit or amended special permit for such construction, reconstruction or alteration, where required by article seven of the zoning resolution, shall be granted by the city planning commission or the board of standards and appeals, until the commission shall have issued either a certificate of no effect on protected architectural features, a certificate of appropriateness or a notice to proceed pursuant to the provisions of this chapter as an authorization for such work.

c. (1) A copy of every application or amended application for a permit to construct, reconstruct, alter or demolish any improvement located or to be located on a landmark site or in an historic district or containing an interior landmark shall, at the time of the submission of the original thereof to the department of buildings, be filed by the applicant with the commission. A copy of every application, under article seven of the zoning resolution, for a special permit for any work which includes the construction, reconstruction or alteration of any such improvement shall, at the time of the submission of such application or amended application of the city planning commission or the board of standards and appeals, as the case may be, be filed with the commission.

(2) Every such copy of an application or amended application filed with the commission shall include plans and specifications for the work involved, or such other statement of the proposed work as would be acceptable to the department of buildings pursuant to the building code. The applicant shall furnish the commission with such other information relating to such application as the commission may from time to time require.

(3) Together with the copies of such application, or amended application every such applicant shall file with the commission, a request for a certificate of no effect on protected architectural features or a certificate of appropriateness in relation to the proposed work specified in such application. (Amended by L. L. 1973, No. 71, Dec. 17.)

§ 207-5.0 Determination of request for certificate of no effect on protected architectural features.—a. (1) In any case where an applicant for a permit from the department of buildings to construct, reconstruct, alter or demolish any improvement on a land-

mark site or in an historic district or containing an interior landmark, or an applicant for a special permit from the city planning commission or the board of standards and appeals authorizing any such work pursuant to article seven of the zoning resolution, or amendments thereof, files, a copy of such application or amended application with the commission, together with a request for a certificate of no effect on protected architectural features, the commission shall determine: (a) whether the proposed work would change, destroy or affect any exterior architectural feature of the improvement on a landmark site or in an historic district or any interior architectural feature of the interior landmark upon which said work is to be done, and (b) in the case of construction of a new improvement, whether such construction would affect or not be in harmony with the external appearance of other, neighboring improvements on such site or in such district. If the commission determines such question in the negative, it shall grant such certificate; otherwise, it shall deny such request.

(2) Within thirty days after the filing of such application and request, the commission shall either grant such certificate, or give notice to the applicant of a proposed denial of such request. Upon written demand of the applicant filed with the commission after the giving of notice of a proposed denial, the commission shall confer with the applicant. The commission shall determine the request for a certificate within thirty days after the filing of such demand. If a demand is not filed within ten days after the giving of notice of the proposed denial, the commission shall determine such request within five days after the expiration of such ten-day period.

(3) In the event of a denial of such a certificate, the applicant may file with the commission a request for a certificate of appropriateness with respect to the proposed work specified in such application. (Amended by L. L. 1973, No. 71, Dec. 17.)

§ 207-6.0 Factors governing issuance of certificate of appropriateness.—a. In any case where an applicant for a permit to construct, reconstruct, alter or demolish any improvement on a landmark site or in an historic district or containing an interior landmark, files such application with the commission together with a request for a certificate of appropriateness, and in any case where a certificate of no effect on protected architectural features is denied and the applicant thereafter, pursuant to the provisions of section 207-5.0 of this chapter, files a request for a certificate of appropriateness, the commission shall determine whether the proposed work would be appropriate for and consistent with the effectuation of the purposes of this chapter. If the commission's determination is in the affirmative on such question, it shall grant a certificate of appropriateness, and if the commission's determination is in the negative, it shall deny the applicant's request, except as otherwise provided in section 207-8.0 of this chapter.

b. (1) In making such determination with respect to any such application for a permit to construct, reconstruct, alter or demolish an improvement in an historic district, the commission shall consider (a) the effect of the proposed work in creating, changing, destroying or affecting the exterior architectural features of the improvement upon which such work is to be done and (b) the relationship between the results of such work and the exterior architectural features of other, neighboring improvements in such district.

(2) In appraising such effects and relationship, the commission shall consider, in addition to any other pertinent matters, the factors of aesthetic, historical and architectural values and significance, architectural style, design, arrangement, texture, material and color.

(3) All determinations of the commission pursuant to this subdivision b shall be made subject to the provisions of section 207-3.0 of this chapter and the commission, in making any such determination, shall not apply any regulation, limitation, determination or restriction as to the height and bulk of buildings, the area of yards, courts or other open spaces, density of population, the location of trades and industries, or location of buildings designed for specific uses, other than the regulations, limitations, determinations and restrictions as to such matters prescribed or made by or pursuant to applicable provisions of law, exclusive of this chapter; provided, however, that nothing contained in such section 207-3.0 or in this subdivision b shall be construed as limiting the power of the commission to deny a request for a certificate of appropriateness for demolition or alteration of an improvement in an historic district (whether or not such request also seeks approval, in such certificate, of construction or construction of any improvement), on the ground that such demolition or alteration would be inappropriate for and inconsistent with the effectuation of the purposes of this chapter, with due consideration for the factors hereinabove set forth in this subdivision b.

c. In making the determination referred to in subdivision a of this section with respect to any application for a permit to construct, reconstruct, alter or demolish any improvement on a landmark site, other than a landmark, the commission shall consider (1) the effects of the proposed work in creating, changing, destroying or affecting the exterior architectural features of the improvement upon which such work is to be done, (2) the relationship between such exterior architectural features, together with such effects, and the exterior architectural features of the landmark, and (3) the effects of the results of such work upon the protection, enhancement, perpetuation and use of the landmark on such site. In appraising such effects and relationship, the commission shall consider, in addition to any other pertinent matters, the factors mentioned in paragraph two of subdivision b of this section.

d. In making the determination referred to in subdivision a of this section with respect to an application for a permit to alter, reconstruct or demolish a landmark, the commission shall consider the effects of the proposed work upon the protection, enhancement,

perpetuation and use of the exterior architectural features of such landmark which cause it to possess a special character or special historical or aesthetic interest or value.

c. In making the determination referred to in subdivision a of this section with respect to an application for a permit to alter, reconstruct or demolish an improvement containing an interior landmark, the commission shall consider the effects of the proposed work upon the protection, enhancement perpetuation and use of the interior architectural features of such interior landmark which cause it to possess a special character or special historical or aesthetic interest or value. (Amended by L. L. 1973, No. 71, Dec. 17.)

§ 207-7.0 Procedure for determination of request for certificate of appropriateness.—The commission shall hold a public hearing on each request for a certificate of appropriateness. Except as otherwise provided in section 207-8.0 of this chapter, the commission shall make its determination as to such request within ninety days after filing thereof.

§ 207-8.0 Request for certificate of appropriateness authorizing demolition, alterations or reconstruction on ground of insufficient return.—a. (1) Except as otherwise provided in paragraph two of this subdivision a, in any case where an application for a permit to demolish any improvement located on a landmark site or in an historic district or containing an interior landmark is filed with the commission, together with a request for a certificate of appropriateness authorizing such demolition, and in any case where an application for a permit to make alterations to or reconstruct any improvement on a landmark site or containing an interior 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 includes 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 for a permit 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 207-6.0 of this chapter, shall, within ninety days after the filing of the request for such certificate of appropriateness, make a preliminary determination of insufficient return. (Subd. a, par. 1 amended by L. L. 1973, No. 71, Dec. 17.)

(2) In any case where any application and request for a certificate of appropriateness mentioned in paragraph one of this subdivision a is filed with the commission with respect to an improvement, the provisions of this section shall not apply to such request if the improvement parcel which includes such improvement has received, for three years next preceding the filing of such request, and at the time of such filing continues to receive, under any provision of law (other than this chapter or sections 458, 460 or 479 of the real property tax law), exemption in whole or in part from real property taxation; provided, however, that the provisions of this section shall nevertheless apply to such request if such exemption is and has been received pursuant to Sections 420, 422, 424, 425, 426, 427, 428, 430, 432, 434, 436, 438, 440, 442, 444, 450, 452, 462, 464, 466, 470, 472 or 474 of the real property tax law and the applicant establishes to the satisfaction of the commission, in lieu of the requirements set forth in paragraph one of this subdivision a, that:

(a) the owner of such improvement has entered into a bona-fide agreement to sell an estate of freehold or to grant a term of at least twenty years in such improvement parcel, which agreement is subject to or contingent upon the issuance of the certificate of appropriateness or a notice to proceed;

(b) the improvement parcel which includes such improvement, as existing at the time of the filing of such request, would not, if it were not exempt in whole or in part from real property taxation, be capable of earning a reasonable return;

(c) such improvement has ceased to be adequate, suitable or appropriate for use for carrying out both (1) the purposes of such owner to which it is devoted and (2) those purposes to which it had been devoted when acquired unless such owner is no longer engaged in pursuing such purposes; and

(d) the prospective purchaser or tenant:

(1) in the case of an application for a permit to demolish seeks and intends, in good faith either to demolish such improvement immediately for the purpose of constructing on the site thereof with reasonable promptness a new building or other facility; or

(2) in the case of an application for a permit to make alterations or reconstruct, seeks and intends in good faith to alter or reconstruct such improvement, with reasonable promptness.

b. In the case of an application made pursuant to paragraph one of subdivision a of this section by an applicant not required to establish the conditions specified in paragraph two of such subdivision, as promptly as is practicable after making a prelimi-

nary determination as provided in paragraph one of such subdivision a, the commission, with the aid of such experts as it deems necessary, shall endeavor to devise, in consultation with the applicant, a plan whereby the improvement may be (1) preserved or perpetuated in such manner or form as to effectuate the purposes of this chapter, and (2) also rendered capable of earning a reasonable return.

c. Any such plan may include, but shall not be limited to, (1) granting of partial or complete tax exemption, (2) remission of taxes and (3) authorization for alterations, construction or reconstruction appropriate for and not inconsistent with the effectuation of the purposes of this chapter.

d. In any case where the commission formulates any such plan, it shall mail a copy thereof to the applicant promptly and in any event within sixty days after giving notice of its preliminary determination of insufficient return. The commission shall hold a public hearing upon such plan.

e. (1) If the commission, after holding a public hearing pursuant to subdivision d of this section, determines that a plan which it has formulated, consisting only of tax exemption and/or remission of taxes, meets the standards set forth in subdivision b of this section, as such plan was originally formulated, or with such modifications as the commission deems necessary or appropriate, the commission shall deny the request of the applicant for a certificate of appropriateness and shall approve such plan, as originally formulated, or with such modifications.

(2) Such plan, as so approved, shall set forth the extent of tax exemption and/or remission of taxes deemed necessary by the commission to meet such standards.

(3) The commission shall promptly mail a certified copy of such approved plan to the applicant and shall promptly transmit a certified copy thereof to the tax commission. Upon application made by the owner of such improvement pursuant to the provisions of paragraph five of this subdivision e, the tax commission shall grant, for the fiscal year next succeeding the date of approval of such plan, the tax exemption and/or remission of taxes provided for therein.

(4) In accordance with procedures prescribed by the regulations of the commission, it shall determine, upon application by the owner of such improvement made in advance of each succeeding fiscal year, the amount of tax exemption and/or remission of taxes, if any, which it deems necessary, as a renewal of such plan for the ensuing fiscal year, to meet the standards set forth in subdivision b of this section, and shall promptly mail a certified copy of any approved renewal of such plan to the applicant and shall promptly transmit a certified copy of such renewal to the tax commission. Upon application made by the owner of such improvement pursuant to the provisions of paragraph five of this subdivision e, the tax commission shall grant, for such fiscal year, the tax exemption and/or remission of taxes specified in such determination.

(5) Where any such plan or a renewal thereof is approved by the commission, pursuant to the provisions of the preceding paragraphs of this subdivision e, prior to January first next preceding the fiscal year to which the tax benefits of such plan or renewal thereof are applicable, the owner shall not be entitled to such benefits for such fiscal year unless he files an application therewith with the tax commission between February first and March fifteenth, both dates inclusive, next preceding such fiscal year. Where any such plan or a renewal thereof is approved by the commission between January first and June thirtieth, both dates inclusive, next preceding the fiscal year to which the tax benefits of such plan or renewal thereof are applicable, the owner shall not be entitled to such benefits for such fiscal year unless he files an application therewith with the tax commission on or before August first of such fiscal year.

f. (1) In any case where the commission determines, after holding a public hearing pursuant to subdivision d of this section, that a plan which it has formulated, consisting in whole or in part of any proposal other than tax exemption and/or remission of taxes, meets the standards set forth in subdivision b of this section, as such plan was originally formulated, or with such modifications as the commission deems necessary or appropriate, the commission shall approve such plan, as originally formulated, or with such modifications, and shall promptly mail a copy of same to the applicant.

(2) The owner of the improvement proposed to be benefited by such plan mentioned in paragraph one of this subdivision f may accept or reject such plan by written acceptance or rejection filed with the commission. If such an acceptance is filed, the commission shall deny the request of such applicant for a certificate of appropriateness. If a new application for a permit from the department of buildings and a new request for a certificate of appropriateness are filed, which application and request conform with such proposed plan, the commission shall grant such certificate as promptly as is practicable and in any event within thirty days after such filing.

(3) If such accepted plan consists in part of tax exemption and/or remission of taxes, the provisions of paragraphs two, three, four and five of subdivision e of this section shall govern the granting of such tax exemption and/or remission of taxes.

g. (1) Except in a case where the applicant is required to establish the conditions set forth in paragraph two of subdivision a of this section, if

(a) The commission does not formulate and mail a plan pursuant to the provisions of subdivisions b, c, and d of this section within the period of time prescribed by such subdivision d; or

(b) the commission does not approve a plan pursuant to the provisions of subdivision e or f of this section within sixty days after the mailing of such plan to the applicant; or

c) a plan approved by the commission pursuant to the provisions of paragraph one of subdivision f of this section is rejected by the owner of such improvement pursuant to the provisions of paragraph two of such subdivision;

the commission may, within ten days after expiration of the applicable period referred to in subparagraphs (a) and (b) of this paragraph one, or within ten days after the filing of a rejection of a plan pursuant to paragraph two of subdivision f of this section, as the case may be, transmit to the mayor a written recommendation that the city acquire a specified appropriate protective interest in the improvement parcel which includes the improvement with respect to which the request for a certificate of appropriateness was filed, and shall promptly notify the applicant of such action.

(2) If, within ninety days after transmission of such recommendation, or, if no such recommendation is transmitted, within ninety days after the expiration of the period herein prescribed for such transmission, the city does not:

(a) give notice, pursuant to section three hundred eighty-two of the charter, of an application to condemn such interest or any other appropriate protective interest agreed upon by the mayor and the commission; or

(b) enter into a contract with the owner of such improvement parcel to acquire such interest, as so recommended or agreed upon;

the commission shall promptly grant issue and forward to the owner, in lieu of the certificate of appropriateness requested by the applicant, a notice to proceed.

h. No plan which consists in whole or in part of the granting of a partial or complete tax exemption or remission of taxes pursuant to the provisions of this chapter shall be deemed to have been approved by the commission unless it is also approved by the board of estimate within the period of time prescribed by this section for approval of such plan by the commission.

i. (1) In any case where the applicant is required to establish the conditions set forth in paragraph two of subdivision a of this section, as promptly as is practicable after making a preliminary determination with respect to such conditions, as provided in paragraph one of subdivision a of this section, and within one hundred and eighty days after making such preliminary determination, the commission, alone or with the aid of such persons and agencies as it deems necessary and whose aid it is able to enlist, shall endeavor to obtain a purchaser or tenant (as the case may be) of the improvement parcel or parcels with respect to which the application has been made, which purchaser or tenant will agree, without condition or contingency relating to the issuance of a certificate of appropriateness or notice to proceed and subject to the provisions of paragraph three of this subdivision i, to purchase or acquire an interest identical with that proposed to be acquired by the prospective purchaser or tenant whose agreement is the basis of the application, on reasonably equivalent terms and conditions.

(2) The applicant shall, within a reasonable time after notice by the commission that it has obtained such a purchaser or tenant, which notice shall be served within the period of one hundred and eighty days provided by paragraph one of this subdivision i, enter into such agreement to sell or lease (as the case may be) with the purchaser or tenant so obtained. Such notice shall specify a date for the execution of such agreement, which may be postponed by the commission at the request of the applicant.

(3) The provisions of this section shall not, after the consummation of such agreement, apply to such purchaser or tenant or to the heirs, successors or assigns of such purchaser or tenant.

(4) (a) If, within the one-hundred eighty-day period following the commission's preliminary determination pursuant to paragraph one of subdivision a of this section, the commission shall not have succeeded in obtaining a purchaser or tenant of the improvement parcel, pursuant to paragraph one of this subdivision i, or if, having obtained such a purchaser or tenant, such purchaser or tenant fails within the time provided in paragraph two of this subdivision i, to enter into the agreement provided for by such paragraph two, the commission, within twenty days after the expiration of the one-hundred-eighty day period provided for in paragraph one of this subdivision i, or within twenty days after the date upon which a purchaser or tenant obtained by the commission pursuant to the provisions of such paragraph one fails to enter into the agreement provided for by said paragraph, whichever of said dates later occurs, may transmit to the mayor a written recommendation that the city acquire a specified appropriate protective interest in the improvement parcel or parcels which include the improvement or are part of the landmark site with respect to which the request for a certificate of appropriateness was filed, and shall promptly notify the applicant of such action.

(b) If, within ninety days after transmission of such recommendation, or, if no such recommendation is transmitted, within ninety days after the expiration of the period herein prescribed for such transmission, the city does not give notice, pursuant to section three hundred eighty-two of the charter, of an application to condemn such interest or any other appropriate protective interest agreed upon by the mayor and the commission, or does not enter into a contract with the owner of such improvement parcel to acquire such interest, as so recommended and agreed upon; the commission shall promptly grant issue and forward to the owner, in lieu of the certificate of appropriateness requested by the applicant, a notice to proceed.

(5) Such notice to proceed shall authorize the work of demolition, alteration, and/or reconstruction sought with respect to the improvement parcel or parcels concerning which the application was made, only if such work (a) is undertaken and performed by the purchaser or tenant specified pursuant to the provisions of paragraph two of subdivision a of this section, in the application, or a bona-fide assignee, successor, lessee or sub-lessee of such purchaser or tenant (other than the owner who made application therefor), and (b) is

undertaken and performed with reasonable promptness after the issuance of such notice to proceed.

CASE NOTES

§ 1. Matter of designation of compact of buildings used as a home for elderly mariners as a landmark was remanded for further consideration where lower court was not supplied with sufficient facts on which to render a satisfactory determination as to such questions as whether the preservation of the charity's buildings would seriously interfere with the use of the property, whether the buildings were capable of conversion to a useful purpose without excessive

cost and whether the cost of maintaining them without use would entail serious expenditure.—Matter of the Trustees of the Seaford Sloop Harbor, 29 A. D. 2d 378, 368 N. Y. S. 2d 314 (1968).

§ 2. Test for constitutional application of landmarks law to a charity is whether maintenance of the landmark either physically or financially prevents or seriously interferes with carrying out the charitable purpose.—Id.

§ 207-9.0 Regulation of minor work.—a. (1) Except as otherwise provided in section 207-11.0 of this chapter, it shall be unlawful for any person in charge of an improvement located on a landmark site or in an historic district or containing an interior landmark to perform any minor work thereon, or to cause or permit such work to be performed, and for any other person to perform any such work thereon or cause same to be performed, unless the commission has issued a permit, pursuant to this section, authorizing such work.

(2) It shall be unlawful for any person in charge of any such improvement to maintain same or cause or permit same to be maintained in the condition created by any work done in violation of the provisions of paragraph one of this subdivision a.

b. The owner of an improvement desiring to obtain such a permit, or any person authorized by the owner to perform such work, may file with the commission an application for such permit, which shall include such description of the proposed work, as the commission may prescribe. The applicant shall submit such other information with respect to the proposed work as the commission may from time to time require. The commission shall promptly transmit such application to the department of buildings, which shall, as promptly as is practicable, certify to the commission whether a permit for such proposed work, issued by such department, is required by law. If such department certifies that such a permit is required, the commission shall deny such application, and shall promptly give notice of such determination to the applicant. If such department certifies that no such permit is required, the commission shall determine such application as hereinafter provided.

c. (1) The commission shall determine:

(a) whether the proposed work would change, destroy or affect any exterior architectural feature of an improvement located on a landmark site or in an historic district or interior architectural feature of an improvement containing an interior landmark; or

(b) If such work would have such effect, whether judged by the standards set forth in subdivision b, c, d and e of section 207-6.0 of this chapter with respect to an improvement of similar classification hereunder, such work would be appropriate for and consistent with the effectuation of the purposes of this chapter.

(2) If the commission determines the question set forth in subparagraph (a) of paragraph one of this subdivision c in the negative, or determines the question set forth in subparagraph (b) of such paragraph in the affirmative, it shall grant such permit, and it shall deny such permit if it determines such question set forth in subparagraph (a) in the affirmative and determines such question set forth in subparagraph (b) in the negative.

d. The procedure of the commission in making its determination with respect to any such application shall be as prescribed in subparagraph two of subdivision a of section 207-5.0 of this chapter, except that any period of thirty days referred to in such subparagraph shall, for the purposes of this subdivision d, be deemed to be twenty days.

e. The provisions of this section shall be inapplicable to any improvement mentioned in subdivision a of section 207-17.0 of this chapter and to any city-aided project. (Amended by L. L. 1973, No. 71, Dec. 17.)

§ 207-10.0 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 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. (Amended by L. L. 1973, No. 71, Dec. 17.)

§ 207-11.0 Remedying of dangerous conditions.—a. In any case where the department of buildings, the fire department or the health service administration, 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 remedying 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. (Subd. a amended by L. L. 1973, No. 71, Dec. 17.)

§ 207-120 Public hearings; conferences.—a. The commission shall give notice of any public hearing which it is required or authorized to hold under the provisions of this chapter by publication in the City Record for at least ten days immediately prior thereto.

The owner of any improvement parcel on which a landmark or a proposed landmark is situated or which is a part of a landmark site or proposed landmark site or which contains an interior landmark or proposed interior landmark, or any property which includes a scenic landmark or proposed scenic landmark shall be given notice of any public hearing relating to the designation of such proposed landmark, landmark site, interior landmark or scenic landmark, the amendment to any designation thereof on the proposed revision of any designation or amendment thereto. Such notice may be served by the commission by registered mail addressed to the owner or owners at his or their last known address or addresses, as the same appear in the records of the office of the city director of finance or if there is no name in such records, such notice may be served by ordinary mail addressed to "Owner" at the street address of the improvement parcel or property in question. Failure by the commission to give such notice shall not invalidate or affect any proceedings pursuant to this chapter relating to such improvement parcel or property. (Subd. a amended by L. L. 1973, No. 71, Dec. 17.)

b. At any such public hearing, the commission shall afford a reasonable opportunity for the presentation of facts and the expression of views by those desiring to be heard, and may, in its discretion, take the testimony of witnesses and receive evidence, provided, however, that the commission, in determining any matter as to which any such hearing is held, shall not be confined to consideration of the facts, views, testimony or evidence submitted at such hearing.

c. The commission may delegate to any member or members thereof the power to conduct any such public hearing and to hold any conference required to be held under the provisions of sections 207-50 and 207-9.0 of this chapter.

d. The commission, may, in its discretion, direct that notice of any such public hearing on a request for a certificate of appropriateness, or any plan formulated by the commission in relation thereto, be given by the applicant to such owners of property in the neighborhood of the improvement or improvement parcel to which such request relates, as the commission deems proper. When so directed, the applicant shall mail a notice of such hearing to such owners, at their last known addresses, as the same appear in the records of the office of the city director of finance, and shall likewise mail a notice of such hearing to persons who have filed written requests for such notice with the commission. A reasonable period of time, as prescribed by the regulations of the commission, shall be afforded the applicant for giving notice of such hearing to such owners and persons. Any failure to give or receive such notice shall not invalidate any such hearing or any determination made by the commission with respect to such request for a certificate or with respect to such plan.

§ 207-130 Extension of time for action by commission.—Whenever, under the provisions of this chapter, the commission is required or authorized, within a prescribed period of time, to make any determination or perform any act in relation to any request for a certificate of no effect on protected architectural features, a certificate of appropriateness or a permit for minor work, the applicant may extend such period of time by his written consent filed with the commission. (Amended by L. L. 1973, No. 71, Dec. 17.)

§ 207-140 Determinations of the commission; notice thereof.—a. Any determination of the commission granting or denying a certificate of no effect on protected architectural features, a certificate of appropriateness or a permit for minor work shall set forth the reasons for such determination.

b. The commission shall promptly give notice of any such determination and of any preliminary determination of insufficient return made pursuant to paragraph (1) of subdivision a of section 207-8.0 of this chapter to the applicant. Such notice shall include a copy of such determination.

c. Subject to the provisions of section 207-8.0 of this chapter, any determination of the commission granting a certificate of no effect on protected architectural features, a certificate of appropriateness or a permit for minor work may prescribe conditions under which the proposed work shall be done, in order to effectuate the purposes of this chapter, and may include recommendations by the commission as to the performance of such work, provided that the provisions of this subdivision shall not apply to any notice to proceed granted pursuant to the provisions of subdivision g of section 207-8.0 of this chapter. (Amended by L. L. 1973, No. 71, Dec. 17.)

§ 207-150 Transmission of certificates and applications to proper city agency.—In any case where a certificate of no effect on protected architectural features, certificate of appropriateness or notice to proceed is granted by the commission to an applicant who has filed with the commission a copy of an application for a

permit from the department of buildings, the commission shall transmit such certificate or a copy of such notice to the department of buildings. In any case where any such certificate or notice is granted to an applicant who has filed an application for a special permit with the city planning commission or the board of standards and appeals pursuant to article seven of the zoning resolution, the commission shall transmit such certificate or a copy of such notice to the planning commission or the board of standards and appeals, as the case may be. (Amended by L. L. 1973, No. 71, Dec. 17.)

§ 207-160 Penalties for violations; enforcement.—a. Any person who violates any provision of subdivision a of section 207-4.0 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 207-9.0 of this chapter or any provision of section 207-10.0 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 for not more than thirty days, or by both such fine and 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 of not more than five hundred dollars or by imprisonment 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 207-4.0 of this chapter or paragraph two of subdivision a of section 207-9.0 of this chapter or any violation of the provisions of section 207-10.0 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.

§ 207-170 Reports by commission on plans for proposed projects.—a. Plans for the construction, reconstruction, alteration or demolition of any improvement or proposed improvement which:

(1) is owned by the city or is to be constructed upon property owned by the city; and

(2) is or is to be located on a landmark site or in an historic district or contains an interior landmark; shall, prior to city action approving or otherwise authorizing the use of such plans with respect to securing the performance of such work, be referred by the agency of the city having responsibility for the preparation of such plans to the commission for a report. Such report shall be submitted to the mayor, the city council and to the agency having such responsibility and shall be published in the City Record within 45 days after such referral.

b. (1) No officer or agency of the city whose approval is required by law for the construction or effectuation of a city-aided project shall approve the plans or proposal for, or application for approval of, such project, unless, prior to such approval, such officer or agency has received from the commission a report on such plans proposal or application for approval.

(2) All such plans, proposals or applications for approval shall be referred to the commission for a report thereon before consideration of approval thereof is undertaken by any such officer or agency and the commission shall submit its report to each such officer and agency and such report shall be published in the City Record within 45 days after such referral.

c. Except as provided in subdivision d of section 207-2.0, where the commission so requests, plans for the construction, reconstruction or alteration or demolition of any landscape feature of a scenic landmark shall, prior to city action approving or otherwise authorizing the use of such plans with respect to securing the performance of such work, be referred by the agency of the city having responsibility for the preparation of such plans to the commission for a report. Such report shall be submitted to the mayor, the city council and to the agency having such responsibility and shall be published in the City Record within 45 days after such referral. No such report shall recommend disapproval of any such plans where land contour work or earthwork is necessary in order to conform with applicable laws concerning regulation of lots, storm water disposal and water courses. The administrator of the parks, recreation and cultural affairs administration may request an advisory report concerning work proposed to be performed on, or in the vicinity of, a scenic landmark, and such report shall be published in the City Record. (Amended by L. L. 1973, No. 71, Dec. 17.)

Former W. Side Synagogue Is Given Landmark Status

By MICHAEL GOODWIN

Despite the reservations of several of its members, the Landmarks Preservation Commission yesterday designated a former synagogue on the Upper West Side as a landmark.

The designation of the vacant building, at 130 West 79th Street, formerly the Mount Nebo Synagogue, came at a daylong hearing of the commission at City Hall where possible designation was discussed for several better-known buildings.

Included among these were the Woolworth Building, at 233 Broadway; Lever House, at 390 Park Avenue; the Hearst Magazine Building, at 959 Eighth Avenue; the B. Altman & Company building, at 355 Fifth Avenue, and Pomander Walk, an enclosed, 63-unit apartment complex between West 94th and 95th Streets and West End Avenue and Broadway that was designed to resemble a London street.

Votes Are Put Off

Decisions on those properties and nine others were put off for later hearings. Most of those who spoke argued for landmark designation — several supporters spoke for more than one building — but representatives of the owners of many of the properties requested that votes not be taken.

Charles S. Webb, an attorney representing the F. W. Woolworth Company, asked that consideration of the company's building, a Gothic structure across from City Hall, be put off. Although the company had opposed landmark status when it was proposed twice previously, calling it "onerous," Mr. Webb said no decision had been reached on the company's stand on the current proposal.

Proposals for landmark designation can be made by individuals, community groups, members of the commission or practically anybody else who feels a special affection for a piece of property. After that, the commission discusses the proposals and decides by majority vote whether to grant a public hearing. Many are "winnowed out" before the hearings are held, said Kent L. Barwick, the chairman of the commission.

"I would hope that all the buildings we give hearings to are significant," he said.

Since its creation in 1965, the commission has designated as landmarks the exteriors of about 700 properties, seven scenic areas and the interiors of 28 buildings. In addition, it has created 42 historic districts, covering about 15,000 properties.

Designation means that the commission must approve all new construction within a historic district

and any changes to landmark structures. The Board of Estimate has the power to veto designations.

The designation of the former synagogue, by a vote of six to two, with one abstention, was greeted with applause and cheers from about 25 supporters.

"We're elated," said Alan Towers, president of a group called The Committee to Save Mount Nebo. "The system works."

He said the group was already trying to find uses for the building, which is on the south side of 79th Street, between Columbus and Amsterdam Avenues.

Attorney Is Not Pleased

Howard Zipser, an attorney representing the developers who planned to demolish the building and build an apartment house, was not pleased.

"We have a serious problem," he said. "The building clearly is not meritorious."

He said the owners would have to decide whether to challenge the designation on the ground that landmark status was an economic hardship. By law, designation may not prevent owners from making at least a six percent profit on their investment. If owners request and receive hardship waivers from the commission, they may demolish landmark buildings.

The building was purchased by Alexander Edelman and Emil Talei last year for \$2.4 million.

Built in 1927

The six-story structure was built in 1927 and designed by Walter S. Schneider in what Mr. Towers's group called a "synthesis of Byzantine and other Near-Eastern influences."

In the debate before the vote, several commissioners said the building did not seem architecturally significant, but that it had played important cultural and historical roles in the neighborhood.

"It is not architecturally significant," Mr. Barwick said before voting against designation.

Elliot Willensky, a commissioner, said he agreed that there was no single "measure" of the building that made it a landmark. Nonetheless, he said, "we designate buildings because they mean something in time" and that the building had meant something to many people. He voted for designation.

Interfaith Group Assails City's Landmarks Law

By CHARLES AUSTIN

Hundreds of churches and synagogues in the city are burdened with the obligation to preserve old buildings that were capriciously designated as landmarks, according to a study released yesterday by a group of New York religious leaders.

The study was undertaken by a group appointed by the Committee of Religious Leaders in the City of New York, made up of Protestants, Roman Catholics and Jews. It concluded that the 1966 Landmarks Preservation Law is "unworkable and unacceptable" with respect to religious property and has been used as a "convenient means of abusing the civil and property rights" of religious institutions.

Charging that the Landmarks Preservation Commission frequently designated churches as landmarks without regard for historic or architectural standards, the interfaith panel said the commission had "willingly accommodated local groups in abusing the law by employing it for zoning purposes rather than for its lawful purpose of architectural preservation."

The group also charged that the law created "governmental interference with the free exercise of religion in the city," and it made recommendations for amending the law.

Says Intolerable Burdens Imposed

Hundreds of churches and synagogues have been designated landmarks, either individually or because they are in "historic districts" defined by the commission. One-third of the churches so designated objected to the classification, and two-thirds of the 50 churches and synagogues whose designation is pending are opposed, said the Rev. N. J. L'Heureux, Jr., chairman of the panel.

Once a structure is designated a landmark, it cannot be demolished, replaced or altered without the approval of the Landmarks Commission.

The interfaith group said this imposed intolerable burdens upon churches with dwindling memberships that wanted to sell their buildings or renovate them for more efficient use.

While the landmarks preservation law anticipated the need to relieve commercial owners from the burdens of unprofitable structures, the law failed to take into account the needs of nonprofit owners, the report said.

Kent L. Barwick, chairman of the Landmarks Commission, said yesterday that he had not read the report of the interreligious committee and therefore could not comment on it.

The 40-page report listed several examples of churches and synagogues whose plans to dispose of property or alter their buildings had been thwarted by the demands of the landmarks law.

Among the cases cited was the controversial plan to demolish the parish house of St. Bartholomew's Episcopal Church in Manhattan to make way for a high-rise office tower. But Bishop Stuart J. Wetmore of the Episcopal Diocese of New York pointed out that the commission had been formed before the debate over St. Bartholomew's.

The panel also cited the Village Presbyterian Church on 13th Street in Manhattan, a congregation that closed its doors in 1978. The restrictions that the landmark designation placed on the building made it difficult to sell, and the delay caused the Presbytery of New York to incur heavy property taxes and management expenses, the panel said.

The interfaith panel also charged that the landmarks law was used to restrict development and deny property owners the appeal processes stipulated in the city's zoning laws. Only after a building has been designated a landmark may the owner appeal to reverse the decision, the report said.

Says No Standards Used

There are no discernible standards for designating architectural or historic landmarks, Mr. L'Heureux said, referring to the case of the Episcopal Church of St. Paul and St. Andrew on the Upper West Side. According to the report, no attention was paid to the artistic merits of the 80-year-old building until the Landmarks Commission visited the site. The report said the commission "had to search far and wide to find a label for this architectural mishmash that even the designer chose not to have listed among his works in his biographies!"

The Committee of Religious Leaders recommended that when the Landmarks Commission considers designating a church or synagogue as a landmark, it give notice to the governing body of the congregation and to its denominational office. If church leaders find that the landmark designation would interfere with the religious ministry of the congregation, the report suggested, the law should require the commission to drop the case.

It also said that the city should be required to pay for all losses and expenses incurred by congregations as a result of the landmark procedures.

In addition to Mr. L'Heureux and Bishop Wetmore, the interfaith panel included Rabbi Morris Goldberg, past president of the New York Board of Rabbis; Edgar Tafel, an architect; George J. McCormack, an attorney representing the Roman Catholic Archdiocese of New York; Kevin M. Kearney, an attorney for the Roman Catholic Diocese of Brooklyn, and the Rev. Leland Gartrell, director of planning for the Council of Churches of the City of New York.

The Case for Tightening the Reins on Landmarking

The writer of the following article served as Corporation Counsel from 1975 to 1977 under former Mayor Abraham D. Beame. He now practices law as counsel to the firm of Botein Hayes Sklar & Herzberg, and is adjunct professor of local government law at New York Law School.

By W. BERNARD RICHLAND

The designation of the former Mount Nebah Synagogue on West 79th Street as a landmark earlier this month called attention to the operations of the Landmarks Preservation Commission, a relatively obscure but powerful municipal body.

The building had been abandoned by its congregation and offered to a developer for demolition and replacement. Its architectural merit is dubious. The chairman of the commission itself, in voting with the minority against the

Point of View

designation, said the building was "not architecturally significant."

And the landmark designation, with the consequent prohibition of redevelopment, is of perhaps questionable validity under the precedent of a 1974 case decided by the state Court of Appeals. In that case, a designation on a Fifth Avenue property owned by another religious institution, the Lutheran Church, was declared invalid.

It may be said that the commission's action on the 79th Street synagogue was uncharacteristic, and that the Board of Estimate will yet upset it. Nevertheless, the episode suggests the dangers in the operation of the city's landmarks law, which can be misused even as it serves as an essential element in the struggle for historic preservation.

The Landmarks Preservation Commission in its present form was created by a New York City law in 1965. It had an embattled career until its authority was solidly established by the Supreme Court in 1978, when its validity was upheld and a challenge to the landmark designation of Grand Central Terminal was rejected.

I was Corporation Counsel during the Grand Central litigation. In the face of a sharp reduction of staff and an explosion of litigation brought on by the fiscal crisis, I gave the matter high priority.

I assigned to the appeal a talented young lawyer, Nina Gershon, now a Federal Magistrate, and authorized her to call on any of my assistants for help. It was her brief, and her argument at the first appellate level, that formed the basis for the final successful result in the case.

The special character of Grand Central as a superb civic and cultural asset, the vast contribution made by the city to its creation, the profitable nature of its operation and the importance of the landmark law itself, I felt, required such a commitment.

Landmarking a structure has serious consequences. Once a structure is designated a landmark it cannot be demolished or replaced and it cannot be altered or even painted except with the permission of the commission. Violation of the law is either a misdemeanor punishable by a year in jail, or a 90- or 30-day sentence, depending on whether a landmark structure is erased, altered, resurfaced or painted without permission or there is a failure to keep it in good repair. All this plus money fines.

A complicated formula, based principally on a 6 percent return on the assessed value of the property (which may be either a major or a minor percentage of its actual value) determines whether the Landmarks Commission must permit the landmarked property to be demolished and replaced. An expensive and time-consuming procedure further discourages any demolition or substantial alteration of a landmarked building.

The commission is unique in several ways. Unlike a decision by the other major land-use regulatory body, the City Planning Commission, a landmarking decision becomes effective immediately. It remains so until and unless, within 90 working days, the Board of Estimate by a majority vote repeals it.

In contrast, zoning regulations adopted by the City Planning Commission to which affected property owners object do not become effective unless they are approved by a three-fourths vote of the Board of Estimate. And even without such objections, they do not become effective until they are either acted on by the board within 60 days or the 60 days expire with no such action.

The protesting property owner has a nearly hopeless task when he appears before the board to ask for repeal of the Landmarks Commission's decision. The commission enjoys sacred-cow status with the board, whose elected members seem to be intimidated by the mystique of "art" and "architecture." Moreover, the elected members of the board almost never attend the sessions, leaving that task to minor, powerless functionaries on their staff.

Finally, the board's regular calendar is so long that the protesting owner is limited to a three-minute statement to a group of robots programmed to vote for the Landmarks Commission's position.

Encouraged by the careless attitude of the Board of Estimate and secured against judicial review by the Grand Central decision, the commission entered upon a veritable landmarking binge. It has touched all sorts of structures, areas, interiors, objects and artifacts with its magic wand and declared them immortal.

There are about 800 landmark designations, including buildings, scenic areas and spaces, plus historic districts covering more than 15,000 properties. There are more landmarks in New York City, it seems, than the standard guidebooks list for Rome, Florence or Venice.

And this list is growing. It will continue to grow year by year because of a growth factor built into the law: landmarks, exterior and interior, are defined as an improvement "any part of which is 30 years old or older, which has a special character or special historical or esthetic interest." Thus, each year more properties come of age to be landmarked.

The undistinguished and abandoned 79th Street synagogue is in appropriate company on the landmarks list. One day in 1960, the Board of Estimate waved into landmark immortality the "IRT subway system underground interior." Specifically mentioned are the Borough Hall station of the Lexington Avenue line in Brooklyn and the "walls adjacent to the platform."

Do those walls "foster civic pride in the beauty and noble accomplishments of the past"—as the landmarks law puts it? Also included in the designation are the Wall Street, Fulton Street, City Hall stations, and on the



The former Mount Nebo Synagogue building at 130 West 79th Street was designated a landmark

Seventh Avenue and Broadway IRT lines, the 50th, 72d, 79th, 110th and 116th Street stations.

Other landmark designations that raise eyebrows include seven sidewalk clocks, the subway kiosk at 72d Street and Broadway, the Eldridge Street Synagogue on the Lower East Side, the former Public School 71 in Brooklyn, and assorted office buildings and apartment houses. Many of these properties have no distinguishing architectural features warranting landmark status.

I have personal knowledge of one situation. I represented an owner before the Board of Estimate, trying unsuccessfully to prevent a landmarks designation of a property at 1231 Broadway, on the southeast corner of Broadway and 31st Street. It is operated as the Clark Apartments, a decrepit, single-room-occupancy hotel. The Landmarks Commission designated it as the "Grand Hotel." A hotel so named once operated in the building.

In neither guidebooks, Yellow Pages nor the massive dictionary catalogue of the art and architecture division of the New York Public Library is there



New York Times / Sara Krulwich

The former "Grand Hotel" has been named a landmark

any reference to the Grand Hotel. The dilapidated structure has no ballroom, no dining room, no kitchen, not a single one of the facilities usually associated with hotels. There are innumerable structural problems within, and the facade is in deplorable condition.

Yet the staff report, which the commission adopted, declared the structure a historic gem. It was found to have been designed by Henry Engelbert, an obscure designer-builder, whose name appears in no recognized compendium or index of American architects. It was found to have a "handsome mansard roof" though there is nothing remarkable about mansard roofs. Its "white marble facade" is nothing of the sort, and if any worthy ornamentation ever existed it is now all but invisible under the grime and pollution of a century.

The "Grand Hotel" is a blight on even its somewhat shabby neighborhood. Anything constructed in its place would be an improvement. But in designating this structure, the Landmarks Commission has foreclosed that possibility and perpetuated a slum.

It is the Board of Estimate that ultimately must accept the blame for this situation. For that is where the buck stops. The board has simply relinquished its oversight of the Landmarks Commission. Its members should give a proper hearing to property owners challenging Landmarks Commission decisions.

Only by an awakened interest in the actions of the commission by the elected members of the Board of Estimate can a proper balance be achieved between the need to preserve and to renew the city.

To condemn the building as a "blight" on its "somewhat shabby neighborhood" is to see only its present condition. This shortsighted view of city life recalls the urban removal philosophy of the 1960's.

Boston's Quincy Market was also thought to be a blight — before its glorious and very prosperous resurrection. Greenwich Village and SoHo were similarly described before their rediscovery. It was the Landmarks Commission's ability to recognize the lasting historic, architectural and cultural importance hidden behind "the grime and pollution of a century" that gave these two districts a new and financially rewarding lease on life.

Mr. Richland also expressed alarm that the commission's powers allow it to designate structures that are 30 or more years old, allowing newer buildings to become eligible for designation when they come of age. This far-sighted section of the law merely recognizes that our society continues to produce buildings that might be found to be of landmark quality. Certainly that is cause for celebration rather than alarm.

Has the Landmarks Preservation Commission gone too far? No. It has not gone far enough. In a city where areas in such obvious need of landmark attention as the Upper West Side and the Theater District remain unrecognized, it is hard to recognize the signs of a "binge."

The fact is that the commission's limited resources prevent it from acting quickly enough on its mandate. In these days of shrinking government resources and increasing development pressures, the real cause for alarm is that irreplaceable historic treasures are being lost before the commission has a chance to give them its "degree of protection."

Instead of waving what Mr. Richland has described as its "magic wand" and saving too many buildings, the commission is often unable to act as parts of our heritage are reduced to rubble.

Around the country, preservation has become a key to progress. It is most unfortunate that New York's progress is already under tight rein. We agree that there is a problem with landmark designation: The problem is getting to the landmarks while there is still something left to protect.

Point of View

Landmark Authority Is Wisely Applied

In a Point of View article two weeks ago, W. Bernard Richland, City Corporation Counsel from 1975 to 1977, contended that the Board of Estimate should restrain the "binge" of landmark designations by the Landmarks Preservation Commission. The following reply is by the president of the Municipal Art Society, a partner in the law firm of Cahill Gordon & Reindel.

By RALPH C. MENAPACE

In a city where such civic treasures as the Woolworth Building and Rockefeller Center are not official landmarks, and where the Landmarks Preservation Commission is constantly deluged with letters urging the designation of other significant sites, it is hard to accept the premise that the commission is overstepping its bounds. Yet that is the shrill alarm that Bernard Richland is sounding.

Is the commission on a "binge?" The facts suggest the opposite.

In each of the fiscal years 1980 and 1981, the Landmarks Commission designated 40 landmark sites, ranging from individual buildings to historic districts. To date, there are only 670 individual landmarks in the city, 42 historic districts, 28 interior landmarks and eight scenic landmarks. If this is empire building, the commission has a long way to go.

Is the commission on a binge? What proof is offered? Among the landmarks questioned was the Eldridge Street Synagogue, a symbol of the importance of Jewish culture on the Lower East Side and a significant expression of the Moorish Revival style of architecture so popular in synagogue design. The designation received a broad base of support.

Also questioned was the designation of seven turn-of-the-century street clocks. These surviving street amenities are excellent examples of cast-iron workmanship and they remain objects of public affection. The designation of selected decorative elements in certain subway stations and of the 72d Street subway kiosk recognizes the high quality of the original subway designs. It also helps insure the integration of these beautiful as well as historical elements into future subway renovations so that they can continue to delight millions of people.

These designations are not signs of a commission out of control, but rather of a commission finally realizing a common-sense tenet: There is more to our heritage that is worthy of recognition than places where George Washington slept, buildings of high architectural style and structures of monumental proportions.

The landmark law itself charges the commission to consider more than limited architectural concerns in its definition of a landmark: "Any improvement, any part of

which is 30 years old or older, which has a special character or special historical or esthetic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation and which has been designated as a landmark pursuant to the provisions of this charter."

If anything, the commission has been overly cautious in living up to its mandate.

Other parts of the country have not been slow to recognize the economic and cultural benefits of appreciating more than the mansion and the monument. Lowell, Mass., is preserving its milltown architecture with an eye towards the tourist industry. There, adaptive re-use has changed countless old manufacturing buildings into thriving restaurants and shops.

The new tax laws encourage such restoration. New York City has begun to see the benefits that can be derived from a careful use of the valuable resource that is our past.

Are the commission's designations a glacier slowly "freezing" more and more of our vital city? Designation does not issue a "prohibition on redevelopment" or make landmarks "immortal," as suggested by Mr. Richland. Designation merely establishes a review process for all change proposed for a landmark site. Appropriate and economically necessitated change is permitted.

Does change occur?

Walk through any of the city's historic districts and the answer that will greet you is yes. Look at such individual landmarks as the Villard Houses and Spencer Memorial Church and the answer is a resounding yes. In fact, some purists may lament the fact that designation is very far indeed from stopping change.

Does New York City's highest elected political body, the Board of Estimate, cower in fear of the Landmarks Preservation Commission? Does the commission always get its way?

This is a naive generalization. In the last two years, the board has turned down several designations. The number does not suggest tractability on the part of the board but rather the high standards used by the commission and its strict adherence to the criteria guiding its selection of landmarks.

Although issues involving landmarks are always open to question, it is a tribute that even Mr. Richland can find so few designations to question. Perhaps, like the Board of Estimate, he can find little to fault in the commission's distinguished track record.

Is the commission a "relatively obscure" body operating in a vacuum? The facts suggest the opposite.

The law establishes clear procedures for both the commission's designation and review hearings. The much-maligned Mount Nebo designation is a prime example of the openness of the commission's procedures.

Unlike some "public hearings," those held at the commission play a vital role in the decision-making process. Informed testimony can even influence decisions.

The commission's decision on Mount Nebo followed four and a half hours of public testimony and lengthy public discussion among the commissioners themselves. In a time when the independence of some commissions is in doubt, it is refreshing to see a city commission willing to vote its own mind and not that of its chairman.

Does Mr. Richland speak for a larger constituency?

The facts suggest he doesn't. In comparison to the continual outcry from experts, community groups, civic groups, individuals and professional organizations urging commission action, his voice seems an isolated one.

Overwhelming public support was instrumental in the creation of the commission, in its designation of our historic districts, and in its continuing effort to designate our unprotected civic treasures. There is great support for our present landmark process, and Mr. Richland suggests no other process nor any specific alterations to the one that exists.

He seems to take issue with only a handful of the thousands of sites protected by the commission. Out of the 674 individually designated landmarks in the city, Mr. Richland finds that the commission's most reprehensible act of recent times was the designation of the former "Grand Hotel," a property, in fact, represented by him.

It should be noted that the designation followed the recommendation of the local community board, which described the building as a "striking" marble-faced structure that is one of the few survivors of the Tenderloin era, when that area was an entertainment and hotel district. The picture of the "Grand Hotel" that accompanied Mr. Richland's article eloquently made the case for its architectural worth.

AMERICAN ASSOCIATION OF PHYSICAL ANTHROPOLOGISTS

REPORT OF THE AD HOC COMMITTEE ON THE ROLE OF HUMAN SKELETAL RESEARCH IN ANTHROPOLOGY

In California, archaeologically recovered prehistoric human skeletal remains have been reburied in unknown locations and without scientific study. This is an extreme example of policies being developed in many states. These have the potential to limit severely the study of biological adaptation in extinct human groups, not to mention education in biology and anthropology.

Though in certain cases physical anthropologists and archaeologists have been consulted, there are conspicuous examples, e.g., California, where the issue has been resolved by arguments which are primarily political rather than scientific. The reburial question bears upon control of knowledge issues and the responsibility of scholars to their profession, as well as to future generations of scholars. (There are obvious parallels between the Reburial and the Creationism controversies.) It is imperative that scientists be involved when policy decisions are made by state and federal authorities. It is also extremely important that scientists make clear efforts to educate the public concerning the importance of the study of mankind's biological heritage. Also significant in this context is the fact that the development of knowledge is cumulative, shaped by the continual application of new technology/methodology. There is a critical need to be able to retest prior theories using new perspectives, which is impossible when the data base is unavailable, perhaps in an unknown location.

With these thoughts in mind and stimulated by recent developments in California, President Giles appointed an ad hoc Committee to consider the reburial issue. Created on October 26, 1981, our charge has been to collect information concerning the reburial issue from all parts of the US and Canada. We are also to interact with other interested organizations, and to recommend appropriate actions for the AAPA. As Chair, I am serving as a clearinghouse for this information. Although the Committee is broadly representative of regional diversity, I would welcome input from any AAPA member concerning 1) the situation in your area, including policy decisions which affect the disposition of human skeletal remains; 2) your thoughts concerning appropriate action by the AAPA. Please address your comments to Jane Buikstra, Department of Anthropology, Northwestern University, 2006 Sheridan Road, Evanston, Illinois 60201.

I attended the recent meeting of the American Anthropological Association in Los Angeles, where there was a great deal of discussion of this issue. One point became very clear: there are a large number of archaeologists who are quite willing to write off human skeletal remains. I'm certain that this comes as no surprise to some of you, but it does mean that we must devote educational efforts not only to the public, but also to our colleagues. The Society for American Archaeology has also appointed a committee to investigate the issue, and I will serve as the linkage member between the SAA and AAPA groups.

An important point appears to be that any policy statement developed for dealing with human skeletal remains not specify any racial groups, but instead be broadly applicable. The US Department of the Interior is creating guidelines which are based upon known group affiliation and are appropriate to any ethnicity: Amish,

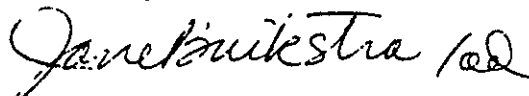
Hutterite, Protestant, Cherokee . . . The Illinois Department of Conservation is in process of adopting a similar statement, and a strong stand has already been taken by the Illinois Archaeological Survey. What about other states?

As an osteologist, my position on this issue is predictable: I think that we should develop a general position statement which is not racist but also which does not threaten the development of knowledge about mankind's past. I would like to hear the thoughts of the membership concerning their probable support for such a statement and the nature of the position they would support.

As a final note, I would like to offer some recommended reading. The Canadian Association of Physical Anthropologists has developed an excellent statement on the importance of human skeletal remains in education and research. It is entitled "Statement on the excavation, treatment, analysis and disposition of human skeletal remains from archaeological sites in Canada." It appears in the Canadian Review of Physical Anthropology, Vol. 1, No. 1, 1979, pp. 32-36. Statements of this type should be quite useful in educating colleagues as well as the public concerning the importance of human skeletal remains in scientific education and study.

May I please have your thoughts?

Sincerely,

A handwritten signature in cursive script that reads "Jane Buikstra" followed by a small mark that looks like "102".

Jane Buikstra
Chair

JEB:AD

PRELIMINARY PROGRAM AGENDA FOR THE THIRD NEW JERSEY SHPO CONFERENCE
ON ARCHEOLOGY AND HISTORIC PRESERVATION

(to be held on Friday, March 26, 1982, at 10:00 AM in the Archives
Exhibit Room of the New Jersey State Library in Trenton)

I. Opening Remarks

Olga Chesler

The New Jersey State Plan for
Archeology: Stage 2

II. Morning Session

Herbert Kraft

The Last Decade of New Jersey Archeology:
From Tocks Island to Today

John Hotop

Stage 2 Cultural Resource Surveys in Advance
of I-195, I-295, NJ 29, & NJ 129: The
Abbott Farm National Historic Landmark
and other Prehistoric Sites

Richard Hunter

Stage 2 Cultural Resource Surveys in Advance
of I-195, I-295, NJ 29, & NJ 129: Historic
and Industrial Sites in Southeast Trenton

Kurt Kalb

An Urban Ferry Tale

LUNCH 12:00 - 1:00

III. Afternoon Session

Alan Mounier and
Joan Gearren

Survey of Cultural Resources from the
Historic Era in the Watersheds of the
Great Egg Harbor and Tuckahoe Rivers

to be announced at the Conference

Edward Rutsch

✓ A Preservation Plan for Longpond
Ironworks in Ringwood State Park, West
Milford Township, Passaic County

Larry Schmidt

Historic Preservation and the New
Federalism: What is Happening to the
State/Federal Partnership

DISCUSSION

PROFESSIONAL ARCHAEOLOGISTS OF NEW YORK CITY

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Telephone _____

Are you a member of the New York Archaeological Council? _____

Are you a member of the Society of Professional Archaeologists? _____

Briefly state your interest in New York City archaeology and/or reasons for wanting to become a member of PANYC:

If you are interested in applying for membership in PANYC complete the attached form and mail it to Sydne Marshall, 808 West End Avenue, New York, New York 10025

ATTACH A COPY OF YOUR RESUME OR VITA