

CARROT OR STICK: PROTECTING HISTORIC INTERIORS THROUGH  
ORDINANCES OR EASEMENTS

by

CAROLINE GABREY RAINEY

(Under the Direction of James Reap)

ABSTRACT

Historic interiors are often overlooked by preservationists in the study of historic preservation policies. The two common ways interiors are protected are through city preservation ordinances and the use of easements. This thesis examines the use of interior landmarking through the process of the New York City historic landmark ordinance. This study will include an analysis of landmarking issues and a comparison of properties landmarked with easement requirements in order to conclude whether the current ordinance or the use of preservation easements is the best method for interior preservation.

INDEX WORDS: Historic Preservation, Historic Interiors, Easements, Ordinance, New York City, New York, Private Property Rights, Financial Incentives, Landmarks Preservation Commission, National Register of Historic Places, Charitable Deduction

CARROT OR STICK: PROTECTING HISTORIC INTERIORS THROUGH  
ORDINANCES OR EASEMENTS

By

CAROLINE GABREY RAINEY

B.A., Sweet Briar College, 2010

M.A., University of Buckingham, 2012

A Thesis Submitted to the Graduate Faculty of The University of Georgia in Partial  
Fulfillment of the Requirements for the Degree

MASTER OF HISTORIC PRESERVATION

ATHENS, GEORGIA

2019

© 2019

Caroline Gabrey Rainey

All Rights Reserved

CARROT OR STICK: PROTECTING HISTORIC INTERIORS THROUGH  
ORDINANCES OR EASEMENTS

by

CAROLINE GABREY RAINEY

Major Professor: James Reap

Committee: Cari Goetcheus  
Jack Crowley  
Vincent Michael

Electronic Version Approved:

Suzanne Barbour  
Dean of the Graduate School  
The University of Georgia  
May 2019

## **DEDICATION**

I would like to dedicate my thesis to Emma, Caity, and Audrey, my fellow graduate students who frequently listened to my complaints, concerns, and supported me throughout this process. To Dale Couch at the Georgia Museum of Art, whose counsel has been immeasurable and to my family.

## **ACKNOWLEDGMENTS**

I would like to acknowledge Professor Claudia Chang, my undergraduate archaeology professor, who has continued to offer her guidance after all these years and whole-heartedly edited this thesis. I would also like to thank Cari Goetcheus, Jack Crowley, and Vincent Michael for agreeing to be on my committee and Professor Reap, my thesis advisor, for doing what he does best.

## TABLE OF CONTENTS

ACKNOWLEDGMENTS .....	v
LIST OF FIGURES .....	x
CHAPTER I: INTRODUCTION.....	1
METHODOLOGY .....	4
LITERATURE REVIEW .....	5
CHAPTER SUMMARY.....	9
CHAPTER II: LEGAL FOUNDATION OF PROPERTY RIGHTS AND CASE LAW	12
EUCLID V. AMBLER REALTY .....	15
REGULATORY TAKINGS.....	16
<i>PENN CENTRAL</i> .....	18
<i>NOLLAN AND DOLAN</i> .....	20
<i>LORETTO</i> .....	20
<i>LUCAS</i> .....	21
CHAPTER III: INTRODUCTION TO LANDMARKING ORDINANCES.....	23
CHAPTER IV: NEW YORK CITY PRESERVATION ORDINANCE.....	27
THE LANDMARKS PRESERVATION COMMISSION.....	30
DESIGNATION PROCESS .....	31
OWNER RESPONSIBILITIES.....	31
WORK AND ALTERATIONS .....	32
AUTHORITY .....	33
ECONOMIC RETURNS AND HARDSHIP EXEMPTIONS.....	34

REMEDICATION OF DANGEROUS CONDITIONS .....	37
REMEDICATION FOR CITY-OWNED PROPERTY .....	37
ENFORCEMENT.....	38
INCENTIVES.....	40
INTERIOR LANDMARKING.....	43
CHAPTER V: HISTORY OF NEW YORK CASES AND INTERIOR LANDMARKING CHALLENGES .....	48
<i>WEINBERG V. BARRY</i> .....	48
<i>SAMERIC CORP. OF CHESTNUT STREET INC. V. CITY OF PHILADELPHIA</i> .....	49
<i>SHUBERT ORGANIZATION V. LANDMARKS</i> .....	50
FOUR SEASONS RESTAURANT ( <i>TEACHERS INS. &amp; ANNUITY V. NEW YORK</i> )	52
<i>SAVE AMERICA'S CLOCKS V. NEW YORK</i> .....	54
CHAPTER VI: AN INTRODUCTION TO EASEMENTS.....	59
WHAT ARE EASEMENTS?.....	59
HISTORY OF EASEMENTS .....	61
CONSERVATION EASEMENT ACT AND STATE EASEMENTS .....	61
OBLIGATIONS AND ENFORCEMENT .....	62
FEDERAL PRESERVATION EASEMENT REQUIREMENTS .....	64
GIFT AND BENEFIT .....	64
HISTORIC PROPERTY REQUIREMENT.....	66
PENSION PROTECTION ACT OF 2006 CHANGES.....	67
NATIONAL REGISTER QUALIFICATIONS .....	68
QUALIFIED ORGANIZATION.....	69



MONITORING.....	70
PUBLIC ACCESS .....	71
MAINTENANCE AND FEATURES .....	75
CONTRACTUAL STIPULATIONS .....	77
CHAPTER VII: FAILURES AND SUCCESSES WITH LANDMARKING AND EASEMENTS.....	80
SPACES.....	80
FLEXIBILITY AND GUIDELINES.....	81
INCENTIVES.....	86
PUBLIC ACCESS .....	89
CONSENT .....	91
PREVENTING LANDMARKING: DESTRUCTION .....	95
PREVENTING LANDMARKING: ENDING PUBLIC ACCESS .....	99
PREVENTING LANDMARKING: ACCOUNTABILITY AND POLITICAL INFLUENCE .....	102
WALKER THEATER .....	105
AFTER LANDMARKING: MONITORING.....	107
AFTER LANDMARKING: ENFORCEMENT.....	108
AFTER LANDMARKING: NEGLECT .....	110
MANEE-SEGUINE HOUSE .....	110
RKO KEITH’S FLUSHING THEATER .....	114
CHAPTER VIII: INTERIOR LANDMARKING ANALYSIS.....	121
CHAPTER IX: CURRENT ISSUES AND CONCLUSION.....	127

THE EASEMENT CRACKDOWN AND OTHER ISSUES..... 127

CONCLUSION..... 128

MODIFYING THE LANDMARKS LAW ..... 132

PRESERVATION EASEMENTS AND LANDMARKING TOGETHER..... 135

FUTURE RESEARCH..... 137

WORKS CITED ..... 140

APPENDIX..... 149

## LIST OF FIGURES

Figure 1: United States Supreme Court .....	15
Figure 2: Marcel Breuer’s Grand Central Tower.....	17
Figure 3: Pennsylvania Station, New York, before Demolition .....	27
Figure 4: Grand Central Terminal Lobby .....	43
Figure 5: The ceiling of the Metropolitan Opera, 1966 .....	44
Figure 6: Belasco Theater .....	50
Figure 7: The Pool Room at the Four Seasons Restaurant, 2015 .....	51
Figure 8: Historical Image of 346 Broadway .....	54
Figure 9: Clock Mechanism (left).....	56
Figure 10: Clocktower (formerly a gallery) (right).....	56
Figure 11: 1897 Photograph of East Elevation of Banking Hall and Historic Stair .....	85
Figure 12: Proposed Relocation of Marble Stair to Banking Hall (approved) .....	85
Figure 13: Waldorf Astoria lobby.....	93
Figure 14: UN Plaza Hotel Lobby .....	95
Figure 15: Hoffman Showroom, 1955 .....	96
Figure 16: Alvar Aalto interior from the Edgar J. Kaufmann Conference Center .....	99
Figure 17: Walker Theatre interior .....	105
Figure 18: The Manee-Seguine House .....	110
Figure 19: RKO Keith’s Theatre Grand Foyer after Decay.....	113
Figure 20: RKO Keith’s Theater Grand Foyer before Decay.....	113
Figure 21: Della Robbia Bar .....	139

## **CHAPTER I: INTRODUCTION**

Don't it always seem to go  
That you don't know what you've got  
Till it's gone  
They paved paradise  
And put up a parking lot

### **“Big Yellow Taxi” by Joni Mitchell**

Interior preservation is one of the last frontiers in historic preservation in America. Logically, the preservation of exteriors was first mandated, because the building exterior is usually visible to a significant number of people. Multitudes can enjoy important historic architecture as a part of their everyday lives in their cities and communities. The preservation of building exteriors is a cause many can rally around because of the visibility of exterior facades. This outward visibility, however, means that the preservation of interiors is a neglected subject. Other than the great public historic spaces, such as Independence Hall or Mount Vernon, far fewer people have had access to other historically-significant or artistically-important interior spaces, and even more so when these interior spaces are held by private owners. Thus, there have been fewer advocates for the protection and preservation of interiors. In contrast, exteriors of buildings are protected because their value is demonstrable as part of the larger built environment. Building exteriors are already visible public features and thus part of the greater American landscape.

While often overlooked, interior spaces are important to history. Many significant events such as important meetings, signings, and state or national ceremonies took place inside buildings. In fact, one could argue that the room where the Declaration

of Independence was signed is more iconic and inspirational to the public than the building itself. Additionally, the nature, size, height, color, shape, and function of a significant interior space influenced how people interacted with one another and revealed what was meaningful to display or hide from society during each era. Such interior decorations, architecture, and furniture also reveal the cultural traditions of the time. At the very least, an interior space can display the same degree of skill and craftsmanship as a building exterior, for example, the grandeur of a theater. Great museums, such as the Metropolitan Museum of Art, are filled with period rooms salvaged for their artistic value. However, these period rooms in the Metropolitan Museum have been removed from their original historical contexts and relocated across the country. The rooms no longer have the historical integrity and significance they once had in their original state.

Building interiors are more susceptible to modification than exterior facades. As society changes, the function and use of rooms may change in both size and decorative features. Trends in home interiors often follow changes in societal values. Small kitchens with large dining rooms popular in my grandparents' generation have now been replaced by large kitchens where the family can commune and cook, and the formal dining room is now an old-fashioned, under-utilized space. What happens when your home's historic woodwork leaves no place to mount your plasma television? The need to put in new wiring, plumbing, and other technological updates also make preserving interiors more difficult. It is often more economical or simply easier to gut an interior and start from scratch.

There are two common legal ways to protect and preserve building interiors: (1) local preservation ordinances and (2) the donation of preservation easements. In this

thesis, the argument is made that both legal means of preserving interiors are effective. However, either landmarking or preservation easements may be more effective depending upon the larger political, economic, and cultural context of an interior's significance. City preservation ordinances differ significantly from location to location. Therefore, a direct comparison with easements is not possible across diverse locations. Instead, this paper will specifically discuss the use of New York's landmark ordinance to protect interiors through designation. While New York City has enjoyed major successes with its interior landmarks program, the goal of this thesis is to examine if there might be a better way to protect interiors through interior preservation easements.

In order to make a recommendation, an analysis of New York City's interior ordinance and interior preservation easements in other locations will be undertaken. This analysis includes an examination of rules, procedures, and the successes and failures of each method used to preserve interior spaces. An examination of the current interior landmarks and their National Register status will determine which properties are eligible for interior preservation easements if they had not been landmarked. These data may then be used to ask whether the use of interior preservation easements could be a more effective approach to preserving building interiors and therefore a valuable preservation tool to further New York City's preservation policy. This thesis only discusses interior preservation easements that meet the qualifications for a charitable deduction under the Internal Revenue Code. The terms "preservation easement" or "interior easement" will be used to describe these qualifying interior easements. The questions asked to determine which method is most effective in accomplishing interior preservation include: What kind of interiors are protected? Is participation voluntary or involuntary? What is the

economic benefit to the property owner? What, if any, public access is required and if so, what degree of access is required? And finally, how do these factors enhance or impede the protection of historic interiors? Finally, this thesis will explore the question of whether the use of interior easements should replace interior landmarking or provide added benefit to the practice of interior preservation for the New York City Landmarks Preservation Commission.

## **METHODOLOGY**

I chose to study New York City's interior preservation ordinance because of the ordinance's extensive powers, the number of landmarked interiors available for study, and New York City's history of legal challenges concerning interior landmarks. Newspapers and online articles, as well as the Landmarks Preservation Commission's website and meetings, were studied in order to find examples of how New York City implements its interior ordinance. John Weiss, Deputy Counsel, and Mark Silberman, General Counsel at the Landmarks Commission, as well as Alex Herrera at the New York Landmarks Conservancy were interviewed for added insight and clarification. Data from the Landmarks Commission available through OpenData, along with State and National Register information, qualifying census tract data and USN survey results from the New York State Parks, Recreation and Historic Preservation Department, serve as primary sources. These are used to determine the eligibility of easements when applied to an interior space as well as provide a clearer understanding of interior landmarking in New York City. Various legal cases pertaining to ordinances have been presented as ways in which policies were promulgated in other cities. To do so, the legal foundation for these preservation ordinances and the process for designating significance of a historical

interior under an ordinance must be discussed. This legal information came from Google Scholar as well as Hiller, PC, the law firm for the ongoing 346 Broadway clocktower case discussed later, and the Landmarks Preservation Commission. The Landmarks Preservation Commission, the New York State Parks, Recreation, and Historic Preservation Department, and the New York Landmarks Conservancy were also consulted by phone and email for additional information and clarification.

There were no legal challenges to interior easements found. Since most articles regarding easements are not pertinent to this paper, this thesis relies mainly on primary documentation, specifically the United States Code, section 26 which concerns the Internal Revenue Service (26 CFR § 1.170A-14 – Qualified Conservation Contributions). Historic Charleston Foundation, the National Trust for Historic Preservation, and Landmarks Illinois were also consulted in order to understand how easements function in real life contexts. Historic Charleston Foundation was chosen because of its large number of interior easements; Landmarks Illinois because it holds interior easements in a large metropolitan city; the National Trust for Historic Preservation because of its encompassing national outlook on preservation. An informal conversation with a Special Counsel at the Internal Revenue Service provided additional information concerning preservation easements under the Internal Revenue Code.

## **LITERATURE REVIEW**

The most challenging task was discerning the most current information and if new legal precedents or policies have been established. Since the focus of this thesis topic is so specialized, only a few articles from the past thirty years address the issue of interior landmarks and interior easements. The most relevant article is a report published in 2009



by Anthony Robins for the Trust for Architectural Easements entitled “Historic Preservation Options in New York City: Similarities and Differences Between Landmarks Preservation Commission Regulation and Donation of a Preservation Easement.”<sup>1</sup> This study is concerned with the use of easements for building exteriors and landmarks of exteriors. The article is much broader in its scope and does not contain the level of detail or examples I present, especially concerning the landmark ordinance in New York City. Most information for this thesis came from news articles on the process of interior landmarking in New York City, precedent-setting preservation lawsuits, and interviews with officials in the Landmark Commission. In 2015, to celebrate the 50<sup>th</sup> anniversary of the creation of the Landmarks law, the New York School of Interior Design curated the exhibit *Rescued, Restored, Reimagined: New York’s Interior Landmarks*.<sup>2</sup> This exhibit brought more public attention to the existence of interior landmarks and, to a lesser extent, in academia. Also published for the 50<sup>th</sup> anniversary was a report by the City Council on the Landmarks Law concerning the history of preservation law, the current process required by the law, and possible future changes to the law, entitled “Landmarks for the Future: Learning from 50 Years of Preservation” (2016).<sup>3</sup>

---

<sup>1</sup> Anthony Robins, “Historic Preservation Options in New York City: Similarities and Differences between Landmarks Preservation Commission Regulation and Donation of a Preservation Easement,” Thomas & Columbus Inc., for the Trust for Architectural Easements (2009),

<https://architecturaltrust.org/~architec/wp-content/uploads/2013/06/1a-2009-0512-Robins-Report.pdf>.

<sup>2</sup> “Rescued Restored Reimagined: New York’s Landmark Interiors”, Exhibit, *New York School of Interior Design* (2015).

<sup>3</sup> New York City Council, *Landmarks for the Future: Learning from 50 Years of Preservation* (New York: New York City Council, 2016). <http://nycouncillabs.wpengine.com/press/wp-content/uploads/sites/56/2016/06/landmarks.pdf>.

To date, the academic literature on interior landmarks is sparse. The few articles concerning interior preservation related to takings jurisprudence, and often repeated the same facts, and the same legal procedures using legal cases and precedents already described in “Interior Preservation: In or Out?” by Johnathan Lloyd (2008).<sup>4</sup> The literature on landmarking is generally related to takings and demolition by neglect. The most recent and relevant source was the article “Interior Landmarks Preservation and Public Access” by Nicholas Caros published by the Columbia Law Review in 2016. This article focuses on interior landmarks in New York City and includes the most recent landmarking lawsuits.<sup>5</sup> “Avoiding the Disneyland Façade” by Robert Mallard (2002) examines architectural controls for interiors by analyzing interior easements in Charleston, South Carolina and contrasts the local historic district requirements in Long Island, New York used for landmarking .<sup>6</sup> This article concerns historic districts rather than interior landmarks and is not as detailed, stating similar information gained from my own research on Historic Charleston Foundation.

Another essential article is “Protecting Historic Interiors: A Survey of Preservation Practices and Their Implications for Philadelphia,” a 2007 study from the Preservation Alliance for Greater Philadelphia.<sup>7</sup> This study surveyed the interior preservation ordinance criteria of 20 cities including public access requirements, owner

---

<sup>4</sup> Johnathan Lloyd, "Interior Preservation: In or Out?," *Georgetown Law Historic Preservation Papers Series* (2008), [http://scholarship.law.georgetown.edu/hpps\\_papers/31](http://scholarship.law.georgetown.edu/hpps_papers/31).

<sup>5</sup> Nicholas Caros, “Interior Landmarks Preservation and Public Access,” *Columbia Law Review* 116, no. 7 (2016), <http://www.jstor.org/stable/44028177>.

<sup>6</sup> Robert W. Mallard, "Avoiding the Disneyland Facade: The Reach of Architectural Controls Exercised by Historic Districts over International Features of Structures," *Widener L. Symp. J.*, vol. 8, (2001).

<sup>7</sup> Preservation Alliance for Greater Philadelphia, “Protecting Historic Interiors: A Survey of Preservation Practices and Their Implications for Philadelphia.” *PreservationAlliance.com*, 2007, accessed January 2017. <http://www.preservationalliance.com/wp-content/uploads/2014/09/InteriorsFINAL.pdf>.

consent to landmarking, variations in the landmarking ordinance, and types of properties eligible for interior landmarking.

In addition to these scholarly articles, online news articles from the New York Times, CurbedNY, and other news organizations served as primary sources. Such journalistic articles provided specific case studies of landmarking involving the legal process. Specific details on certain legal cases included information on why certain properties were excluded or landmarked, and why certain spaces in a building were excluded from landmarking. The role of local politics, community involvement, and the opinions and reactions of property owners added multiple perspectives to the legal cases of interior landmarking. Landmarks Preservation Commission hearings, available online since 2012, often documented cases of properties put forth for nominations as interior landmarks and the process of calendaring such properties.

The academic literature was also lacking on how interior easements have been used for the preservation of properties. Since the government regulations concerning easements have changed over time, it is necessary to find the most updated procedures, making many articles obsolete. The primary guidance for preservation easements came from the National Park Service's *Easements to Protect Historic Properties: A Useful Historic Preservation Tool with Potential Tax Benefits* (2010)<sup>8</sup> and the National Trust for Historic Preservation's *Establishing and Operating an Easement Program to Protect Historic Resources* (2007).<sup>9</sup> Most academic articles on preservation easements involve

---

<sup>8</sup> Charles Fisher, "Easements to Protect Historic Properties: A Useful Preservation Tool with Potential Tax Benefits," *The National Park Service* (2010), <https://www.nps.gov/tps/tax-incentives/taxdocs/easements-historic-properties.pdf>.

<sup>9</sup> Elizabeth A. Watson and Stefan Nagel, updated by Julia H. Miller, Ross M. Bradford, and Thompson Mayes, *Establishing and Operating an Easement Program to Protect Historic Resources* (Washington,

properties with open land rather than historic structures. Some academic articles on historic preservation easements only address preservation easements on a building's exterior, valuing preservation easements, or demolition by neglect. Thus, this thesis relies on primary sources including the Pension Protection Act of 2006, the Uniform Conservation Easement Act, United States Code, Internal Revenue Code (26 CFR § 1.170A-14), interviews, and sample interior easement documents available online through the Charleston County Register of Deeds office.

Several relevant theses covered the topic of easements or landmarks. However, few related directly to either easements or landmarking on building interiors. The three most relevant theses, listed in order of similarity to this topic are: "An analysis of protection for historic interiors" by Karin Sidwell (2006), "The inside story: an analysis of the policies and laws governing the designation and protection of historic interiors" by Kelli A. Kellerhals (2012), and "An analysis of the use of preservation easements for historic interiors" by Julie Camille Morgan (1999). However, these theses were either not specific to my case study, covered only part of the topic, or were outdated.<sup>10</sup>

## CHAPTER SUMMARY

**Chapter Two** is dedicated to establishing the fundamental legal principles behind historic preservation. These include an explanation of property and the role of the United States Constitution in historic preservation as it relates to the Takings Clauses. This

---

D.C.: National Trust for Historic Preservation, 2007).  
<https://forum.savingplaces.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=dab89065-cb09-db4b-48a5-14032a72df14>.

<sup>10</sup> Karin Sidwell, "An analysis of protection for historic interiors" (master's thesis, Goucher College, 2006); Kelli A. Kellerhals, "The inside story: an analysis of the policies and laws governing the designation and protection of historic interiors" (master's thesis, Ball State University, 2012); Julie Camille Morgan, "An analysis of the use of preservation easements for historic interiors" (master's thesis, University of Georgia, 1999).

chapter will also briefly discuss the various legal cases which set the current precedents for the legality of zoning laws, historic preservation zoning, and how a government can implement a taking of private property.

**Chapter Three** is an introduction to interior preservation ordinances including examples of ordinances from across the United States.

**Chapter Four** begins the in-depth case study of New York's interior preservation ordinance. The history and terminology of this landmarking law are set forth by examining the types of interiors landmarked. The organization and functions of the Landmarks Commissions are considered. The responsibilities of landmarked property owners, its incentives for landmarking properties, and its methods of redress are also explained.

**Chapter Five** gives a history of precedent-setting interior property cases and the legal challenges faced by the property owners. This chapter defines the powers of various constituencies and the limits of the ordinances used in interior landmarking.

**Chapter Six** introduces the use of easements for preserving interiors of buildings. The legal basis for easements, the federal requirements, the duties of property owners, the enforcement of such easements and the incentives for using easements as a preservation tool are presented here. This introduction lays the foundation for comparison with the interior landmarks section of New York's Landmarks Law. Examples from Historic Charleston Foundation, The National Trust for Historic Preservation, and Landmarks Illinois illustrate these points including easement agreements, the process, problems, and the motivation behind donating an easement.

**Chapter Seven** examines the differences between the use of landmarking and preservation easements as well as the inherent limitations in each system. This comparison includes an analysis of the interior spaces preserved, the guiding regulations of each method, available incentives, enforcement policy, monitoring requirements, issues of public access and consent, as well as outside political influences. Examples of landmarking in New York City and preservation easements across the country support this comparison.

**Chapter Eight** takes an analytical approach in order to determine what interior landmarks could qualify for interior easements if they had not been previously landmarked. This will be used to identify a pattern and determine the applicability of interior preservation easements in New York City in the future.

**Chapter Nine** discusses current issues and trends with landmarking in New York City and the use of preservation easements. It then provides a summary of this research project and concludes with a recommendation and avenues for future studies.

## CHAPTER II: LEGAL FOUNDATION OF PROPERTY RIGHTS AND CASE LAW

Life, Liberty, and Property were the original principles outlined by John Locke as the foundation for a perfect, free society. Laws involving property come from three avenues: Common Law, statutes, and the United States Constitution.<sup>11</sup> Common Law, inherited from England, is derived from “judicial decisions based on custom and precedent...”<sup>12</sup> In contrast, Statutory Law comes from the formal creation of law by writ.<sup>13</sup> Finally, Constitutional Law interprets the fundamental rights given to citizens in the United States Constitution and is the foundational document for law in the United States.<sup>14</sup> Common Law and Statutory Law can vary from state-to-state, including those regulating property rights, but generally, share the same principles.<sup>15</sup>

To understand how private property rights are regulated, these rights must first be defined. The first principle is that of the *fee simple absolute*. This label applies to a piece of land owned without any restrictions or conditions to the use of that land, such as a life estate, or restrictive covenant which would allow or forbid certain uses of that land.<sup>16</sup> In this case, holding *fee simple absolute* means that all of the individual property rights are

---

<sup>11</sup> Denise R. Johnson, "Reflections on the Bundle of Rights." *Vt. L. Rev.* 32 (2007): 247-249. <https://lawreview.vermontlaw.edu/wp-content/uploads/2012/02/johnson2.pdf>.

<sup>12</sup> "Common Law," Merriam-Webster.com, accessed January 13, 2019. <https://www.merriam-webster.com/dictionary/common-law>.

<sup>13</sup> "Statute," Merriam-Webster.com, accessed January 13, 2019. <https://www.merriam-webster.com/dictionary/statute>.

<sup>14</sup> "Constitutional Law," Wex Cornell Law, accessed January 13, 2019. [https://www.law.cornell.edu/wex/constitutional\\_law](https://www.law.cornell.edu/wex/constitutional_law).

<sup>15</sup> Johnson, "Reflections on the Bundle of Rights," 248.

<sup>16</sup> "Fee Simple," Wex Cornell Law, accessed February 20, 2018. [https://www.law.cornell.edu/wex/fee\\_simple](https://www.law.cornell.edu/wex/fee_simple).

held by one individual or entity. However, an individual does not need to hold all the property rights to maintain legal ownership of a property. Private property rights are often described as a “Bundle of Sticks” or “Fasces,” with each stick representing a different right to the property. Property law is primarily derived from Common Law.<sup>17</sup> These include the right to: “possess, to use, to manage, to the income, to capital, to security, the power” along with “the power of transmissibility, the absence of term, the prohibition of harmful use, liability to execution, and residual character.”<sup>18</sup> With easements, the rights are sold or donated to allow someone else to control what can or cannot be done with one’s property, or to have access to it. According to Justice Brandeis in his dissenting opinion from 1918 “[a]n essential element of individual property is the legal right to exclude others from enjoying it.”<sup>19</sup> In *Kaiser Aetna v. United States* (1979), the United States Supreme Court defined “the right to exclude others” as “one of the most essential sticks in the bundle of rights...” turning Brandeis’ dissenting opinion into legal precedent.<sup>20</sup> This right of exclusion is a crucial point since it is frequently cited in several precedent-setting legal cases.

The much older principle of law known as *salus populi suprema lex esto* predates Locke and translates "the welfare of the people shall be the supreme law."<sup>21</sup> Under Article 1 Section 8 of the United States Constitution, Congress was given the ability to create and collect taxes “to pay the debts and provide for the common defense and general welfare of the United States.” Individual states are given the legal authority to

---

<sup>17</sup> Johnson, "Reflections on the Bundle of Rights," 248.

<sup>18</sup> Ibid, 253.

<sup>19</sup> *International News Service v. Associated Press*, 248 U.S. 215, in 250 (1918) (Brandeis, J., dissenting).

<sup>20</sup> *Kaiser Aetna v. United States*, 444 U.S. 164, in 176 (1979).

<sup>21</sup> "Salus Populi Suprema Lex Law and Legal Definition," USLegal.com, accessed February 20, 2018. <https://definitions.uslegal.com/s/salus-populi-suprema-lex/>.



create laws for the welfare of society through the 10<sup>th</sup> Amendment of the United States Constitution. According to the 10<sup>th</sup> Amendment, “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” This ability by states to make laws is known as the *police power* and is subsequently given to cities by the state to create local laws.<sup>22</sup> These laws are known as local ordinances and include zoning and preservation regulations.

The 14<sup>th</sup> Amendment establishes the right to *due process* and that all state laws must not infringe upon the rights designated by the Constitution. Under Section 1 of the 14<sup>th</sup> Amendment,

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

For example, the creation of real property covenants based on race has been established to be unenforceable under the Fourteenth Amendment as they deprive people of different races equal protection under the law. In that case, the United States Constitution supersedes the state’s authority to create and validate these land use laws.<sup>23</sup>

According to the Takings Clause of the 5<sup>th</sup> Amendment, “nor shall private property be taken for public use, without just compensation.” The 14<sup>th</sup> Amendment to the United States Constitution greatly influences zoning and preservation law by incorporating the *Takings Clause* of the 5<sup>th</sup> Amendment into state and local zoning law. Therefore, all state laws must give someone “their day in court” if a land regulation

---

<sup>22</sup> Sara C. Bronin and Ryan Rowberry, *Historic Preservation Law in a Nutshell*, (St. Paul, MN: West Academic Publishing, 2014), 21.

<sup>23</sup> John R. Nolon, Patricia E. Salkin, and Robert R. Wright, *Land Use in a Nutshell*, (St. Paul, MN: Thomson/West, 2006), 12.

deprives them of the beneficial use of their land and all states must pay compensation for depriving a person of their property. With the ability and legality of states to make laws established, it is important to define these rights as they pertain to private property.



**Figure 1: United States Supreme Court<sup>24</sup>**

## **EUCLID V. AMBLER REALTY**

One important case regarding the right of cities to regulate private property for the public welfare is *Village of Euclid v. Ambler Realty Co.*, (1926) in Ohio.<sup>25</sup> Before this lawsuit, there was a long history of cities policing public nuisances for the sake of the community as a whole.<sup>26</sup> In *Euclid*, a tract of vacant land was zoned by the city's

---

<sup>24</sup> Sunira Moses, "Façade and fountain of the United States Supreme Court Building," Wikimedia Commons. September 22, 2014, licensed under the [Creative Commons Attribution-Share Alike 3.0 Unported license](https://creativecommons.org/licenses/by-sa/3.0/), [https://commons.wikimedia.org/wiki/File:United\\_States\\_Supreme\\_Court\\_Building\\_on\\_a\\_Clear\\_Day.jpg](https://commons.wikimedia.org/wiki/File:United_States_Supreme_Court_Building_on_a_Clear_Day.jpg)

<sup>25</sup> *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

<sup>26</sup> Nolon, Salkin, and Wright, *Land Use in a Nutshell*, 12-15.

comprehensive plan into three different approved uses. One property owner, unsatisfied with the limit for industrial uses placed upon their property sued to have the ordinance declared unconstitutional under the Fourteenth Amendment,

in that it deprives appellee of liberty and property without due process of law and denies it the equal protection of the law, and that it offends against certain provisions of the Constitution of the State of Ohio.<sup>27</sup>

The United States Supreme Court agreed that the city could regulate private property uses, using the law of nuisances as a basis for the case. By limiting industries to certain areas, the city prevented industrial areas from developing around residential areas which would have created a nuisance.<sup>28</sup> In this way, the city was preventing “a pig in the parlor...” by stopping inappropriate industries in the same area, whether or not it was traditionally considered to be a nuisance.<sup>29</sup> As such, this zoning law was ruled to be a valid use of the *police power*.<sup>30</sup>

## REGULATORY TAKINGS

Regulatory taking claims have been the basis for challenges against interior preservation ordinances and are therefore important to understand. A *regulatory taking* involves “a public decision or rule which regulates a property in a way that deprives the owner of some of the hallmarks of ownership to such an extent that the regulation can be said to have effected a taking.”<sup>31</sup> Regulatory takings are difficult to establish and are frequently litigated because a taking can occur without a complete loss of value.<sup>32</sup> In order to establish that a taking has occurred, a property owner must first sue, claiming

---

<sup>27</sup> *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, in 384 (1926).

<sup>28</sup> Nolon, Salkin, and Wright, *Land Use in a Nutshell*, 13.

<sup>29</sup> *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, in 388 (1926).

<sup>30</sup> Nolon, Salkin, and Wright, *Land Use in a Nutshell*, 13.

<sup>31</sup> Bronin and Rowberry, *Historic Preservation Law*, 245.

<sup>32</sup> *Ibid*, 246.

through an *inverse condemnation* action that their property was taken without just compensation.<sup>33</sup> Inverse condemnation is defined as “The taking of a portion of property by a government agency which so greatly damages the use of a parcel of real property that it is the equivalent of condemnation of the entire property.”<sup>34</sup> *Lingle v. Chevron U.S.A. Inc.* (2005)<sup>35</sup> is important to mention since this case solidified the takings criteria and tests currently used in the United States when placing regulatory takings into four distinct categories: *Penn Central*, *Nollan/Dolan*, *Loretto*, and *Lucas*.<sup>36</sup>



**Figure 2: Marcel Breuer’s Grand Central Tower<sup>37</sup>**

<sup>33</sup> Bronin and Rowberry, *Historic Preservation Law*, 243.

<sup>34</sup> “Inverse Condemnation,” Wex Cornell Law, accessed February 20, 2018.

[https://www.law.cornell.edu/wex/inverse\\_condemnation](https://www.law.cornell.edu/wex/inverse_condemnation).

<sup>35</sup> *Lingle v. Chevron U. S. A. Inc.*, 544 U.S. 528 (2005).

<sup>36</sup> Nolon, Salkin, and Wright, *Land Use in a Nutshell*, 134-138; *Lingle v. Chevron U. S. A. Inc.*, 544 U.S. 528 (2005).

<sup>37</sup> *Proposed Marcel Breuer designs for Grand Central Tower*, New York Transit Museum, via Leanna Garfield, “New York City’s Grand Central station has had a stunning evolution over the last 50 years – take

## ***PENN CENTRAL***

The *Penn Central* case is foundational to preservation law, establishing the first type of regulatory taking and the test used when weighing preservation ordinances.<sup>38</sup> The historic Grand Central Terminal, a Beaux-Arts railroad terminal built from 1903 to 1913 by Reed & Stem became a designated landmark in 1967.<sup>39</sup> In 1968, the building owners applied for a Certificate of Appropriateness from the Landmarks Preservation Commission to create a 55-story office tower on top of the terminal building. A Certificate of Appropriateness is an authorization given by the New York Landmarks Preservation Commission to verify that the proposed modifications will not negatively affect the historic resource. The Commission ruled that the tower was incongruous with the Beaux-Arts building and rejected the application. The property owners then sued the city over what they believed to be an unconstitutional regulatory taking.<sup>40</sup> The case was initially settled in favor of the plaintiff, but this decision was reversed by the New York Supreme Court, Appellate Division, and affirmed by the New York Court of Appeals before coming before the United States Supreme Court.<sup>41</sup> There, the plaintiffs argued that disallowing the construction of the tower was a taking under the Fifth Amendment and as such, they were owed compensation. The United States Supreme Court evaluated the case using three factors:

---

a look,” *New York Time*, June 27, 2018. [https://www.businessinsider.com/new-york-city-grand-central-station-history-photos-2018-6?utm\\_source=email&utm\\_medium=referral&utm\\_content=topbar&utm\\_term=desktop&pt=385758&ct=SAilthru\\_BI\\_Newsletters&mt=8&utm\\_campaign=email\\_article](https://www.businessinsider.com/new-york-city-grand-central-station-history-photos-2018-6?utm_source=email&utm_medium=referral&utm_content=topbar&utm_term=desktop&pt=385758&ct=SAilthru_BI_Newsletters&mt=8&utm_campaign=email_article).

<sup>38</sup> Bronin and Rowberry, *Historic Preservation Law*, 246.

<sup>39</sup> Lloyd, “Interior Preservation: In or Out?,” 7-8.

<sup>40</sup> Bronin and Rowberry, *Historic Preservation Law*, 246.

<sup>41</sup> *SAVE AMERICA'S CLOCKS v. City*, 52 Misc. 3d 282, 28 N.Y.S.3d 571 (Sup. Ct. 2016); *SAVE AMERICA'S v. City of NY*, 157 A.D.3d 133, 66 N.Y.S.3d 252 (App. Div. 2017).

The economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations are, of course, relevant considerations... So, too, is the character of the governmental action.<sup>42</sup>

The court decided that the limitations placed upon the property were not so restrictive that they prevented a profitable use for the building. The air rights (which were transferable to other parcels) were a source of value and forbidding the tower did not stop the property owners from realizing a “reasonable return” on their investment.<sup>43</sup> This ruling legally established that a property owner should receive a reasonable economic return but is not entitled to the maximum economic use of that property if it interferes with the city’s goals of promoting the general welfare. The benefit of preserving the terminal’s beauty for the millions of New Yorkers and visiting tourists vastly outweighs the burden placed upon the property owner.

Of the four distinct types of regulatory takings identified and defined in *Lingle*, the takings test derived from the *Penn Central* case is most frequently used. When applying the *Penn Central* takings test, the court approaches the case with the presumption that the regulation is constitutional. They also defer to the expertise of the land-use body that created the controls. The plaintiff must, therefore, present substantial evidence to prove that a taking has occurred.<sup>44</sup> *Penn Central* cemented the legality of preservation ordinances in the United States. No court has ruled that the designation of a historic landmark is a taking since this case.<sup>45</sup>

---

<sup>42</sup> *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631, in 124 (1978).

<sup>43</sup> Bronin and Rowberry, *Historic Preservation Law*, 246-247; *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631, in 124-125 (1978).

<sup>44</sup> Nolon, Salkin, and Wright, *Land Use in a Nutshell*, 140.

<sup>45</sup> Bronin and Rowberry, *Historic Preservation Law*, 247-248.

## ***NOLLAN AND DOLAN***

*Nollan* and *Dolan* established the *forced-entry exactions* test for situations requiring public access. A forced-entry extraction is when a city requires that an easement is given, allowing public access to private property in exchange for permission to build or rezone their land. *Nollan v. California Coastal Commission* (1987) is an example of the *Doctrine of Unconstitutional Condition*. This doctrine describes when the government requires a person to relinquish a right, e.g., providing an easement, without fair compensation and when there is no “essential nexus.”<sup>46</sup> An essential nexus necessitates that the easement must directly relate to a condition being relieved by the easement. In that case, the property owner was required to donate a strip of land for public access to the beach in exchange for an unrelated building permit. In *Dolan v. City of Tigard* (1994),<sup>47</sup> it was established that there must also be a “roughly proportional” trade between the burden on the property owner and the benefit to the public.<sup>48</sup>

## ***LORETTO***

*Loretto v. Teleprompter Manhattan CATV Corp.* (1982)<sup>49</sup> is the basis for another precedent; that a permanent physical invasion of one’s property is a taking, requiring just compensation from the government. This case involved the installation of some minor cable equipment on private property without owner consent. Because of a state law allowing for utility installation over the objections of property owners, the United States Supreme Court ruled that this was, “a permanent physical occupation without regard to

---

<sup>46</sup> Nolon, Salkin, and Wright, *Land Use in a Nutshell*, 139-140, 143; *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).

<sup>47</sup> *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

<sup>48</sup> Nolon, Salkin, and Wright, *Land Use in a Nutshell*, 144.

<sup>49</sup> *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982).

the public interests that it may serve.”<sup>50</sup> *Loretto*’s applicability to preservation law was later reaffirmed in another Manhattan case, *Board of Managers of Soho Int’l Arts Condo v. City of New York* (2003-2005).<sup>51</sup> This case concerned a mandate to keep a privately-owned statue on the exterior of a landmarked building which was ruled as a permanent physical invasion.<sup>52</sup> *Lingle* summarized the *Loretto* decision and stated that in these cases “where government requires an owner to suffer a permanent physical invasion of her property – however minor – it must provide just compensation.”<sup>53</sup> A *per se* taking means “by or of itself.”<sup>54</sup>

### ***LUCAS***

*Lucas v. South Carolina Coastal Council* (1992) established the precedent for a “total taking.” In this case, the Lucases were not allowed to build a beach house, or any structure, on their beachfront lot as it was deemed a hazard to the public and other property during a hurricane.<sup>55</sup> The United States Supreme Court disagreed with the lower court, stating that the regulation forbidding any construction on the property stopped the plaintiffs from getting any economic use from their land and was, therefore, a *per se* regulatory taking. This links back to the concept of *general welfare*. Under the 5<sup>th</sup>

---

<sup>50</sup> Bronin and Rowberry, *Historic Preservation Law*, 244, citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 102 S. Ct. 3164, 73 L. Ed. 2d 868, in 426 (1982).

<sup>51</sup> *Bd. of Managers of Soho Int’l Arts Condo. v. City of New York*, 2003 W.L. 21403333 (2003); *Bd. of Managers of Soho Int’l Arts Condo. v. City of NY*, 2004 W.L. 1982520 (2004); *Bd. of Managers of Soho Int’l Arts Condo. v. City of New York*, 2005 W.L. 1153752 (2005).

<sup>52</sup> *BOARD OF MANAGERS OF SOHO INTERNATIONAL ARTS CONDOMINIUM v. City of New York*, No. 01 Civ. 1226 (DAB) (S.D.N.Y. Sept. 8, 2004).

<sup>53</sup> *Lingle v. Chevron USA Inc.*, 544 U.S. 528, 125 S. Ct. 2074, 161 L. Ed. 2d 876 (2005): 538.

<sup>54</sup> Nolon, Salkin, and Wright, *Land Use in a Nutshell*, 138; “Per Se,” Cambridge Dictionary Online, accessed January 13, 2019. <https://dictionary.cambridge.org/us/dictionary/english/per-se>.

<sup>55</sup> *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).



Amendment, the plaintiff's property was "taken" by the government for public benefit, and therefore the Lucases were owed compensation for their taken property.<sup>56</sup>

These four precedents form the basis by which a taking is defined and are vital to understanding New York City's landmarks ordinance. Most of the challenges against landmark designation are based upon claims of unconstitutionality and apply these tests. *Penn Central* is the most common test used.

### SUMMARY

- Laws are derived from legal precedent (Common Law), statutes (the creation of laws), and the United States Constitution.
- Property rights can be described as a "bundle of sticks," with some being able to be owned by others.
- Laws can be created limiting certain property rights for the general welfare of the people (*salus populi suprema lex esto*)
- The 10<sup>th</sup> Amendment allows for the states to create local laws (the *police power*) while the 14<sup>th</sup> Amendment establishes the right of *due process* and that all state laws must be legal under the Constitution.
- The Takings Clause of the 5<sup>th</sup> Amendment instituted that no private property could be taken for public use without just compensation.
- *Euclid v. Ambler Realty* (1926) allowed a city to limit the uses of private property.
- A Regulatory Taking is when a property owner is deprived of a hallmark of ownership through government regulation. The extent of the limitation is used as a test created by *Penn Central*, *Loretto*, *Nollan* and *Dolan*, and *Lucas*.
- *Penn Central* established the legality of historic preservation ordinances.
- *Loretto* argued that a permanent physical invasion of one's property is a taking, requiring compensation.
- *Nollan* and *Dolan* determined that required public access to a property (*forced-entry exactions*) in exchange for granting rezoning or a building permit unrelated to problems created by the project is unconstitutional and that the burden on the property owner and benefit to the public must be proportional.
- *Lucas* decided that preventing a property-owner from receiving any economic use from their land was a total taking and required compensation.

---

<sup>56</sup> Nolon, Salkin, and Wright, *Land Use in a Nutshell*, 21.

### **CHAPTER III: INTRODUCTION TO LANDMARKING ORDINANCES**

With a foundational understanding of the legality of preservation laws, property rights, and Constitutional limitations, preservation ordinances will now be discussed. The creation of local preservation ordinances appears to be a popular method of preservation. There are currently over 2,300 historic preservation ordinances of varying strengths in the United States.<sup>57</sup> The protection of a building, the façade, or the interior, are referred to as *landmarking* or as *landmarks*. However, interior preservation ordinances appear to occur infrequently, making them a rare phenomenon.<sup>58</sup> In 2007, the Preservation Alliance for Greater Philadelphia released a study, “Protecting Historic Interiors: A Survey of Preservation Practices and Their Implications for Philadelphia,” which examined the interior preservation ordinances of various major cities in the United States. This study was completed in order to create a better interior preservation ordinance, one that could withstand a legal challenge; twenty cities were surveyed as a part of this report.<sup>59</sup> (see Appendix A)

Since *Penn Central* validated the legality of preservation zoning and established the significant public benefit of preservation, there have been few successful legal challenges to the preservation of exteriors based on a claim of an unconstitutional taking. One only needs to explore the many small towns in America that have local historic districts to see the proliferation of preservation zoning. On the other hand, protective

---

<sup>57</sup> Caros, “Interior Landmarks Preservation and Public Access,” 1782.

<sup>58</sup> Preservation Alliance for Greater Philadelphia, “Protecting Historic Interiors...” 2-5.

<sup>59</sup> *Ibid*, 2.

interior ordinances have been the subject of several legal challenges because of their impact on private property rights. Some American cities with exterior preservation protections are in states which hold property rights with greater sanctity or where the political capital does not exist to enact such a law. The cities in this study protect interiors either as individual landmarks or as part of the building's overall designation.<sup>60</sup> As such, interior ordinances are rarer when compared to exterior ordinances. Of the twenty cities surveyed, eleven require an interior to be publicly accessible in law or practice. This requirement thus strengthens the reasons why interior regulation serves a public purpose under the police power. While some believe that preservation is a worthy endeavor on its own, many cities view public access as necessary to justify the legal preservation of interiors. San Francisco, CA, Chicago, IL, Oak Park, IL, Boston, MA, Detroit, MI, New York, NY, Rochester, NY, Portland OR, and El Paso, TX all require that the interior be publicly accessible while Telluride, CO, and Coral Gables, FL maintain access in practice with the properties they landmark rather than by law.<sup>61</sup>

Seven cities in this study require owner consent to designate properties while an additional seven do not need consent in law but seek it out as a standard for good practice. Tacoma, WA, Telluride, CO, Coral Gables, FL, Washington DC, Oak Park IL, Chicago, IL, and San Francisco, CA ask for permission to designate a property although not required by law. Requesting owner consent even when it is not required is a practical approach, therefore accounting for the fact that often local government decisions are

---

<sup>60</sup> Preservation Alliance for Greater Philadelphia, "Protecting Historic Interiors..." 5-7.

<sup>61</sup> Ibid, 6.

subject to political forces. Individuals can always attempt to challenge these laws in court. It is, therefore, better to ask for permission than to demand preservation.<sup>62</sup>

Boston, MA, and Chicago, IL, have the closest interior preservation ordinances to New York City as they are the three cities in this study which can designate an interior property for preservation without owner consent providing that there is some accessibility. However, while Chicago does not require owner consent in the law, the city seeks consent anyway.

Four cities (Seattle, WA, Long Beach, CA, Los Angeles, CA and Pasadena, CA) allow for the designation of privately-owned and residential interiors without owner consent but do not require public access. Asheville, NC, and Charlotte, NC are the most conscious of property rights, not requiring public access and requiring owner consent before a privately-owned interior can be landmarked. Thus, the preservation of interiors within private homes or buildings can exist, even when they are inaccessible to the public. In these two cities, the interior preservation ordinances preserve the exclusive property rights of owners. The benefits and drawbacks of requiring consent to determine the preservation of interiors require further study.<sup>63</sup>

Five of the 20 cities in the study allow designation for “public interiors” but not private ones. However, the definition of “public interior” is purposely vague, allowing for wiggle room by private owners. San Francisco, CA will only designate the interior of “quasi-public” buildings which is usually interpreted to mean the interiors of publicly-owned property.<sup>64</sup> Telluride, CO., does not designate private interiors. Nevertheless, the

---

<sup>62</sup> Preservation Alliance for Greater Philadelphia, “Protecting Historic Interiors,” 6.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid, 6, 39-40.

Sheridan Hotel and the Opera House (two of the city’s four interior landmarks as of 2007) are privately-owned.<sup>65</sup> In this case, a public interior seems to mean commonly open and accessible to the public, such as under the ordinances found in New York and Boston, which designate privately owned interiors to be preserved as long as the public is allowed inside.<sup>66</sup>

It is apparent from this study that there is great variety in the requirements for designating an interior for historic preservation among different cities. For this reason, I chose to examine one city for comparison with the use of interior preservation easements for historic preservation.

#### **SUMMARY**

- Interior preservation ordinances are rarer than exterior preservation ordinances.
- Private property rights can be contentious for interior preservation.
- A 2007 study for the Preservation Alliance of Greater Philadelphia examined the interior preservation ordinance of twenty cities.
- Eleven of the twenty cities required in law or in practice for interiors to be publicly accessible for interior landmarking.
- Seven cities required owner consent for designation while an additional seven sought owner consent as standard good practice.
- Five cities only allowed the designation of privately-owned interiors including residential property.
- These limitations to interior designations for preservation that required publicly-accessible spaces and consent are most likely to prevent legal challenges and to prevent any perceived infringement on property rights.

---

<sup>65</sup> Preservation Alliance for Greater Philadelphia, “Protecting Historic Interiors,” 40.

<sup>66</sup> Ibid, 44, 45, 47, 48.

It should be noted that while cities in California were included in the 2007 Philadelphia study, the state has additional state-level laws protecting interiors. This makes the presence or absence of interior preservation in California city ordinances inconsequential to the study. Ibid, 5.

## **CHAPTER IV: NEW YORK CITY PRESERVATION ORDINANCE**

New York City serves as the primary case study because the city has one of the strongest interior preservation ordinances in the country. It also adopted the first “comprehensive zoning ordinance” in the United States in 1916.<sup>67</sup> Currently, the Landmarks Preservation Commission is “the largest municipal preservation agency in the nation.”<sup>68</sup> Given the high-stakes environment of New York City real estate, the Landmarks Law has been the subject of several ground-breaking lawsuits and has established the majority of regulatory takings case law.



**Figure 3: Pennsylvania Station, New York, before Demolition<sup>69</sup>**

<sup>67</sup> Nolon, Salkin, and Wright, *Land Use in a Nutshell*, 5.

<sup>68</sup> “About LPC,” New York City Landmarks Preservation Commission, accessed January 7, 2018, <https://www1.nyc.gov/site/lpc/about/about-lpc.page>.

<sup>69</sup> Detroit Publishing Co., Publisher. *New Pennsylvania Station, New York, N.Y.*, cropped, New York New York State New York. United States, None. [Between 1904 and 1920] Photograph. <https://www.loc.gov/item/2016796017/>.

A history of New York City's preservation issues explains how and why the law was created. In 1956, the Bard Act was enacted by the New York State legislature, allowing for cities to create preservation ordinances.<sup>70</sup> The current state landmark ordinance-enabling statute is General Municipal Article 5K (119-AA – 119-DD).

It is hereby declared to be the purpose of this article to encourage local governmental programs for the preservation, restoration and maintenance of the historical, architectural, archeological and cultural environment by clarifying and amplifying existing authority and providing necessary tools for such purpose. The framework provided by this article is intended to maintain and encourage the opportunity and flexibility for the counties, cities, towns and villages of the state to manage the historic and cultural properties under their jurisdiction in a spirit of stewardship and trusteeship for future generations and to authorize local governments to conduct their activities, plans and programs in a manner consistent with the preservation and enhancement of historic and cultural properties.<sup>71</sup>

The General Municipal Article 5K continues by providing the right to use planning and zoning laws, the transfer of development rights, and other local laws and powers in order to ensure local historic preservation. It also establishes a preservation body with powers as deemed appropriate by the “local legislative body” to successfully function.<sup>72</sup>

The first Landmarks Preservation Commission was created in 1962 in New York City. However, lacking any power to protect landmarks, the commission was unable to prevent the famous Pennsylvania Central Station from being demolished in 1963.<sup>73</sup> The New York City Landmarks Law (also known as New York City's Landmarks Preservation Law) was established in 1965 in response to the critical loss of Penn Central

---

<sup>70</sup> “Bard Act (1956),” The New York Preservation Archive Project, 2016, accessed February 21, 2018. <http://www.nypap.org/preservation-history/bard-act/>.

<sup>71</sup> NY Gen Mun L § 119-AA (2014).

<sup>72</sup> NY Gen Mun L § 119-DD (2012).

<sup>73</sup> Caros, “Interior Landmarks Preservation and Public Access,” 1777-1778.

Station and to protect Grand Central Terminal from alteration.<sup>74</sup> The City Council discovered that many historic and architectural features had been destroyed or altered, damaging the city's historic and cultural heritage and harming New York's status as a cultural and economic center.<sup>75</sup> This law gave the Landmarks Preservation Commission greater authority and power to designate and regulate historic buildings.

The City Council articulated in New York's Landmarks Law (§ 25-301) the importance of the preservation of historic structures for the general welfare of the city.

The law states that,

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.<sup>76</sup>

The goals of the law serve the following purposes:

(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.<sup>77</sup>

The law defines a landmark as:

Any improvement, any part of which thirty years is 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

---

<sup>74</sup> "New York City Landmarks Law," The New York Preservation Archive Project, 2016, accessed February 18, 2018. <http://www.nypap.org/preservation-history/new-york-city-landmarks-law/>.

<sup>75</sup> N.Y.C. Admin. Code § 25-301a.

<sup>76</sup> N.Y.C. Admin. Code § 25-301b.

<sup>77</sup> Ibid.



which has been designated as a landmark pursuant to the provisions of this chapter.<sup>78</sup>

## THE LANDMARKS PRESERVATION COMMISSION

The Landmarks Preservation Commission is the governing body for New York City landmarks. The Commission comprises eleven individuals supported by around seventy staff members of varying expertise. The Mayor appoints the Commissioners.<sup>79</sup> It is required by law that the Landmark Commissioners consist of: “at least three architects, one historian qualified in the field, one city planner or landscape architect, and one realtor. The membership shall include at least one resident of each five boroughs who shall serve on staggered terms.”<sup>80</sup>

For 2019, the Landmarks Preservation Commission has a total preliminary budget of \$6.7 million (\$5.887 million from the City and \$857,000 from non-City funds). In 2018, the rounded adopted budget was \$6.3 million total, in 2017 it was \$5.5 million, and in 2016 it was \$5.35 million.<sup>81</sup> In 2015, the budget was 5.7 million.<sup>82</sup> The Commission manages over 36,000 landmarks in New York City dispersed in 142 local historic districts. There are 1,412 individual landmarks, 120 interior landmarks, and 11 scenic landmarks under its care.<sup>83</sup>

---

<sup>78</sup> N.Y.C. Admin. Code § 25-302n.

<sup>79</sup> New York City Landmarks Preservation Commission, “About LPC.”

<sup>80</sup> New York City Charter Chapter 74 § 3020(1-2).

<sup>81</sup> Report of the Finance Division on the Fiscal 2019 Preliminary Budget and the Fiscal 2018 Preliminary Mayor’s Management Report for the Landmarks Preservation Commission, March 15, 2019, accessed January 5, 2019. <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2018/03/FY19-Landmarks-Preservation-Commission.pdf>.

<sup>82</sup> The Editorial Board, “New York City’s Landmarks Law at 50,” *New York Times*, April 17, 2015, <https://www.nytimes.com/2015/04/18/opinion/new-york-citys-landmarks-law-at-50.html>.

<sup>83</sup> New York City Landmarks Preservation Commission, “About LPC.”

## DESIGNATION PROCESS

The designation process begins with an investigation of a historic resource that was either recommended to the Commission for designation or found by the Commission through its research. The Commission's Research Department investigates these resources before presenting them to the Commissioners. The Commissioners review the Research Department's findings before deciding whether to place the possible landmark on the calendar for debate. If the resource is calendared, there is a public hearing, an official designation report, a commission discussion, and an official vote. When the Landmarks Commissioners votes to designate the resource as a historic property, the City Planning Commission will review the landmark and submit a report to the City Council. The City Council has 120 days before voting to accept, deny, or modify the landmark designation. The Mayor can veto the vote of the City Council to either accept or reject a landmark designation, but a two-thirds majority vote by the City Council can overturn this veto.<sup>84</sup>

## OWNER RESPONSIBILITIES

Owners of a landmarked property are required to keep the landmark in "good repair." Property owners are also required to keep up any other portions of the building that could damage the landmarked interior.<sup>85</sup> What measures are required or what qualifies a building as being in "good repair" are not specifically listed in the Landmarks Law.

---

<sup>84</sup> "FAQ – The Designation Process," New York City Landmarks Preservation Commission, accessed January 7, 2018. <https://www1.nyc.gov/site/lpc/about/the-designation-process.page>.

<sup>85</sup> N.Y.C. Admin. Code § 25311b.

## WORK AND ALTERATIONS

The Landmarks Commission regulates work by requiring the approval of all proposed work through the issuance of certificates. The law restricts property owners from destroying or modifying a landmarked interior without this certificate,

... it shall be unlawful for any person in charge of a landmark site ... or any part of an improvement containing an interior landmark to alter, reconstruct or demolish any improvement constituting a part of such site ... or containing an interior landmark, or to construct any improvement ... 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.<sup>86</sup>

The three types of permissions given are a *Certificate of No Effect*, a *Permit for Minor Work*, and a *Certificate of Appropriateness*. The staff of the Landmarks Commission works with property owners to determine the necessary certificates, as well as what proposed alterations can be approved at the staff-level and which proposed plan is brought before the Landmarks Commissioners.<sup>87</sup>

The staff issues a Certificate of Appropriateness when “the proposed work affects the significant protected architectural features of the landmark property” or “the proposed work does not conform to the rules of the Landmarks Preservation Commission.”<sup>88</sup> The Landmark Commission staff dispenses the majority of the over 13,000 permit applications received and approved each year (over 90 percent). The eleven Landmarks Preservation Commissioners review the rest of these permit applications (around 10 percent). The Commission accepts or rejects a work proposal within 90 days of the

---

<sup>86</sup> N.Y.C. Admin. Code § 25-305.

<sup>87</sup> “Certificate of Appropriateness,” New York City Landmarks Preservation Commission, accessed January 11, 2019, <https://www1.nyc.gov/site/lpc/applications/certificate-of-appropriateness.page>. “Certificate of No Effect,” New York City Landmarks Preservation Commission, accessed January 11, 2019, <https://www1.nyc.gov/site/lpc/applications/certificate-of-no-effect.page>.

<sup>88</sup> New York City Landmarks Preservation Commission, “Certificate of Appropriateness.”

application. These applications are presented in a public hearing before their approval and must also be presented to the local community board. Those certificates issued by the staff do not require a hearing. As such, many Certificates of Appropriateness applications are tailored to qualify for approval at the staff-level. Applicants must present construction drawings to the Landmarks Commission for their project to be approved. Before issuing a permit, final drawings incorporating any Commission-mandated must be submitted.<sup>89</sup>

Any proposed construction which would require a building permit from the Department of Buildings but does not affect any of the landmarked features of the property needs a Certificate of No Effect. The staff authorizes these certificates which do not require a public hearing. These certificates can be approved within ten business days if no changes are needed and all the application materials are correct.<sup>90</sup>

## **AUTHORITY**

It is important to note that in New York City, the Landmarks Preservation Commission is given deference by the courts. The courts accept that the Commission has greater expertise in the area of preservation. The only avenue to challenge a ruling made by the Commission is through an Article 78 proceeding. For a lawsuit to qualify under these conditions, the suit must be based on a misinterpretation of the preservation statute or that the decision was “arbitrary and capricious.”<sup>91</sup>

Where the interpretation of a statute or its application involves knowledge and understanding of underlying operation practices or entails an evaluation of factual data and inferences to be drawn therefrom, the courts regularly defer to the

---

<sup>89</sup> New York City Landmarks Preservation Commission, “Certificate of Appropriateness.”

<sup>90</sup> New York City Landmarks Preservation Commission, “Certificate of No Effect.”

<sup>91</sup> New York Consolidated Laws, Civil Practice Laws and Rules (CPLR) § 7803.

governmental agency charged with the responsibility for administration of the statute.<sup>92</sup>

However, there are some limitations on the Commission's authority. According to the Landmarks Law, the Commission cannot use landmarking as a means "to regulate and restrict the locations of trades and industries or location of buildings designed for specific uses."<sup>93</sup>

## ECONOMIC RETURNS AND HARDSHIP EXEMPTIONS

There are few exemptions to the Landmarks Law available to property owners in order to prevent a landmark designation from becoming an undue burden. As part of the *Penn Central* ruling, the City created two exceptions to landmarking: (1) if a reasonable economic return cannot be met, and (2) if landmark status prevents a non-profit organization from carrying out its mission.

The second exemption is for property owners who can demonstrate that the current restrictions are causing economic hardship.<sup>94</sup> If a reasonable return is not achievable, then a *Certificate of Insufficient Return* will allow for remediation.<sup>95</sup> A *reasonable return* is defined as "a net annual return of six per centum of the valuation of an improvement parcel."<sup>96</sup> It is important to note that the economic value of the entire parcel is used to calculate the 6% return, not a specific section of the property.<sup>97</sup> It is

---

<sup>92</sup> *MATTER OF SAVE AMERICA'S CLOCKS, INC. v. City of New York*, 2017 N.Y. Slip Op 8457, in 13-14 (App. Div. 2017), citing *Kurcsics v Merchants Mut. Ins. Co.*, 49 NY2d 451, in 459 (1980).

<sup>93</sup> N.Y.C. Admin Code § 25-304a.

<sup>94</sup> Robins, "Historic Preservation Options in New York City...", 45.

<sup>95</sup> Joachim Beno Steinberg, "New York City's Landmarks Law and the Rescission Process," *NYU Ann. Surv. Am. L.* 66 (2010): 975. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1807996](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1807996).

<sup>96</sup> N.Y.C. Admin Code § 25-302v(1).

<sup>97</sup> Samantha Albanese, "UES Tenement Development To Keep Landmark Status Despite Owner's Lawsuit," *Cityland*, September 9, 2018, <https://www.citylandnyc.org/ues-tenement-development-to-keep-landmark-status-despite-owners-lawsuit/>.

highly doubtful that a landmarked interior would prevent an entire building from achieving a 6% economic return. Additionally, transferable air-rights are also a possible source of profit for all buildings in New York, contributing to the return rate calculation.<sup>98</sup>

One legal argument put forth in the *Penn Central* case against the tower project was that there was still some economic benefit from the structure including the sale of the air rights. In 2018, the owners of Grand Central Terminal were in negotiations to sell their almost 700,000 square feet of developmental air rights to JPMorgan Chase, for about \$300 per square foot. The building has approximately 1.35 million square feet of air rights total, some of which the owners of Grand Central had previously sold to investment firms.<sup>99</sup> Ultimately, JP Morgan Chase purchased the air rights for Grand Central Terminal for about \$240 million. The increase in the final price was a result of the Landmarks Commission re-zoning the area around the Terminal thus allowing for construction of taller buildings, and therefore granting more air rights for the Terminal.<sup>100</sup> In February 2018, St. Patrick's Cathedral was also in talks to sell its 30,000 square feet of development rights to an unknown buyer for at least \$7.2 million. Before the plan can be approved, a maintenance plan for the cathedral, including funding, must be approved by the Landmarks Commission. Also, the sale of air rights that will benefit the cathedral's

---

<sup>98</sup> Michelle Sinclair Colman, "Understanding the Power of Air Rights," *CityRealty*, December 18, 2017, <https://www.cityrealty.com/nyc/market-insight/features/future-nyc/understanding-power-air-rights/2923>.

<sup>99</sup> Daniel Geiger, "Grand Central's air rights could make new Park Avenue megatower possible," *Crain's New York Business*, February 26, 2018, [http://www.craigslist.com/article/20180226/REAL\\_ESTATE/180229916](http://www.craigslist.com/article/20180226/REAL_ESTATE/180229916).

<sup>100</sup> Charles V. Bagli, "With \$240 Million Deal, Floodgates Open for Air Rights in Midtown East," *New York Times*, March 2, 2018, <https://nyti.ms/2tbCisr>.

restoration efforts must be reviewed.<sup>101</sup> These examples illustrate the possible profits from selling air-rights.

The *statutory hardship exception* allows for the modification of landmarks owned by non-profit organizations. In order to aid non-profit organizations, the Landmarks Commission can change the landmark designation of property. Initially, this applied only for the sale or long-term lease of a landmarked property. The non-profit organization is required to prove that the property is no longer useable for the function for which it was originally obtained AND that they cannot obtain a reasonable rate of return (minimum 6%) as established earlier for for-profit entities.<sup>102</sup> The case of *Trustees of Sailor's Snug Harbor in the City of New York v. Platt* (29 A.D.2d 376 (1968)) challenged the sale or long-lease stipulation. The courts ruled that a non-profit organization could claim a taking if the "maintenance of the landmark either physically or financially prevents or seriously interferes with carrying out the charitable purpose."<sup>103</sup> According to John Weiss, Deputy Counsel for the Landmarks Commission, there have been very few hardship exemptions granted. Applications for hardship exemptions are received infrequently, once every three or four years. Only around 25 applications have been received in over 50 years. There has never been an accepted hardship application for a landmarked interior.<sup>104</sup>

---

<sup>101</sup> Joe Anuta, "St. Patrick's Cathedral to net \$7.2 million from air-rights sale," *Crain's New York Business*, February 28, [http://www.crainsnewyork.com/article/20180228/REAL\\_ESTATE/180229878/st-patricks-cathedral-to-net-7-2-million-from-air-rights-sale](http://www.crainsnewyork.com/article/20180228/REAL_ESTATE/180229878/st-patricks-cathedral-to-net-7-2-million-from-air-rights-sale).

<sup>102</sup> Steinberg, "New York City's Landmarks Law and the Rescission Process," 974.

<sup>103</sup> *Ibid*, 979; *MTR. OF SAILORS'SNUG HARBOR v. Platt*, 29 A.D.2d 376, 288 N.Y.S.2d 314, 288 N.Y.2d 314 (App. Div. 1968).

<sup>104</sup> John Weiss, Deputy Counsel for the Landmarks Commission, telephone interview by author, January 11 and 18, 2019.

## **REMEDICATION OF DANGEROUS CONDITIONS**

There is a remedy clause in the Landmarks Law for properties that are deemed to be beyond repair or hazardous. The Department of Buildings, The Fire Department, and the Department of Health and Mental Hygiene have the power to order work be performed without needing a certificate of no effect, a certificate of appropriateness, or a permit for minor work, in order to correct the issue.

the construction, reconstruction, alteration or demolition of any improvements on a landmark site or in an historic district or containing an interior landmark, or the performance of any minor work upon such improvements, 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.<sup>105</sup>

## **REMEDICATION FOR CITY-OWNED PROPERTY**

Another exemption exists for a city or federally-owned property. According to John Weiss, Deputy Counsel for the Landmarks Commission, the Landmarks Commission has the authority to regulate certain properties but in other instances, can only provide a non-binding advisory report. Attempts to determine which organizations were subject to the authority of the Landmarks Commission have not been fruitful. According to John Weiss, there is no official document he could provide as they are mainly in internal memos and that it is a complicated matter. The regulations governing which properties are under the purview of the Landmarks Commission are scattered through the statutes and municipal codes. However, for example, the School Construction Authority and other authorities do not have to comply with the Landmarks

---

<sup>105</sup> N.Y.C. Admin. Code § 25-312.



Commission.<sup>106</sup> For example, in 2015 the City of New York demolished P.S. 31, a Collegiate Gothic Style school from 1899 and landmarked in 1986.<sup>107</sup> The Landmarks Preservation Commission opposed the demolition of the building, issuing a non-binding negative advisory report but did not have the authority to prevent the demolition.<sup>108</sup>

## ENFORCEMENT

Despite the great number of landmarks that the Landmarks Commission administers, they have no monitoring process in place. Instead, the Commission receives notification when a permit is filed. However, a permit is not required for all types of interior work.<sup>109</sup> Each year, the Landmarks Commission receives around 800 notifications from the public concerning illegal work or landmarks in disrepair. The Landmarks Preservation Commission has an enforcement department whose job it is to begin an investigation of possible violations.<sup>110</sup> This investigation involves both a site visit and historical research.<sup>111</sup> If the landmarked property has any current building permits, the Commission will send an enforcement officer to confirm that the work conducted matches the permit requirements. If there is no permit on file, then a *Warning*

---

<sup>106</sup> John Weiss, Deputy Counsel for the Landmarks Commission, telephone interview by author, January 11 and 18, 2019.

<sup>107</sup> Joe Anuta, "After almost two decades of decay, the Bronx's 'Castle on the Concourse' will be torn down," *Crain's New York Business*, April 3, 2015, [https://www.crainsnewyork.com/article/20150403/REAL\\_ESTATE/150409970/after-almost-two-decades-of-decay-the-bronx-s-castle-on-the-concourse-will-be-torn-down](https://www.crainsnewyork.com/article/20150403/REAL_ESTATE/150409970/after-almost-two-decades-of-decay-the-bronx-s-castle-on-the-concourse-will-be-torn-down).

<sup>108</sup> Jesse Denno, "Emergency Demolition May Be Necessary for City-Owned Individual Landmark," *Cityland*, January 8, 2014, <https://www.citylandnyc.org/emergency-demolition-may-be-necessary-for-city-owned-individual-landmark/>.

<sup>109</sup> "Project Category: Renovations," New York City Buildings Department, accessed April 8, 2019, <https://www1.nyc.gov/site/buildings/business/project-categories-renovations.page>.

<sup>110</sup> Benjamin Baccash, "Enforcement and the New York City Landmarks Law: Past, Present, and Future" (master's thesis, Columbia University, 2010), 42, [http://www.nypap.org/wp-content/uploads/2016/03/Enforcement\\_and\\_the\\_New\\_York\\_City\\_Landmarks\\_Law\\_Ben\\_Baccash.pdf](http://www.nypap.org/wp-content/uploads/2016/03/Enforcement_and_the_New_York_City_Landmarks_Law_Ben_Baccash.pdf).

<sup>111</sup> "Complaints," New York City Landmarks Preservation Commission, accessed January 11, 2019, <https://www1.nyc.gov/site/lpc/violations/complaints.page>.

*Letter* is issued.<sup>112</sup> Once a violation is discovered, property owners are usually given a grace period to correct the violation without incurring a fine; the first grace period after the official Warning Letter and the final grace period after the *Notice of Violation*.<sup>113</sup> The reason that the Enforcement Department of the Landmarks Commission chooses to give a warning letter first before issuing violations is so that property owners will be encouraged to work with the Landmarks Commission to correct the condition of a property rather than immediately jumping to issuing fines.<sup>114</sup> Interior violations completed by a previous owner are the responsibility of the current property owner to correct and settle the fine.<sup>115</sup>

The Office of Administrative Trials and Hearings (OATH) currently hears violations of the Landmarks Law. The Landmarks Commission issues notices of violation; however, the judges at OATH determine the fines on behalf of the City.<sup>116</sup> If construction work is currently taking place which violates the integrity of the historic landmark, a *Stop Work Order* can be issued to stop construction immediately.<sup>117</sup> When a violation is flagged in the system, the Department of Buildings will not issue a construction permit except to correct critical safety issues.<sup>118</sup> In order to contest a violation, the Office of Administrative Trials and Hearings will listen to the property owner's appeal. If an appeal is unsuccessful, then a civil penalty is issued. If the

---

<sup>112</sup> Baccash, "Enforcement and the New York City Landmarks Law..." 46-47.

<sup>113</sup> "Violations," New York City Landmarks Preservation Commission, accessed October 3, 2018, <https://www1.nyc.gov/site/lpc/violations/violations.page>.

<sup>114</sup> Baccash, "Enforcement and the New York City Landmarks Law..." 48.

<sup>115</sup> New York City Landmarks Preservation Commission, "Violations."

<sup>116</sup> John Weiss, Deputy Counsel for the Landmarks Commission, telephone interview by author, January 11 and 18, 2019.

<sup>117</sup> New York City Landmarks Preservation Commission, "Violations."

<sup>118</sup> "FAQ: Enforcement Department," New York City Landmarks Preservation Commission, May 22, 2017, accessed December 20, 2018, [https://www1.nyc.gov/assets/lpc/downloads/pdf/pubs/fact%20sheet\\_Enforcement53017.pdf](https://www1.nyc.gov/assets/lpc/downloads/pdf/pubs/fact%20sheet_Enforcement53017.pdf).

problem persists, more Notices of Violation will be sent earning more civil penalties until the violation is corrected. There is no grace period after the first violation.<sup>119</sup> According to the NYC Admin. Code § 25–317, civil penalties can range from \$500 to \$5,000 a day until the violation is corrected.<sup>120</sup> In the opinion of John Weiss, Deputy Counsel for the Landmarks Commission, it has been unusual for fines to be levied against an interior landmark.<sup>121</sup>

## INCENTIVES

According to the *Penn Central* ruling,

The New York City law is typical of many urban landmark laws in that its primary method of achieving its goals is not by acquisitions of historic properties, but rather by involving public entities in land use decisions affecting these properties and providing services, standards, controls, and incentives that will encourage preservation by private owners and users.<sup>122</sup>

Currently, there are few incentives for landmarked property owners to protect interiors without explicit inclusion of the property in the National Register or National Register district. The Landmarks Preservation Commission does offer a historic preservation grant program, but interior landmarks have not qualified for such grant funds. The grants available are primarily for exterior work and are funded through the Community Development Block Grant Program through the U.S. Department of Housing and Urban Development. These \$10,000 to \$30,000 grants are for non-profit organizations and those with qualifying incomes as defined by HUD (Median income is \$64,604 per household).<sup>123</sup> Based on these regulations and the number of landmarked

---

<sup>119</sup> New York City Landmarks Preservation Commission, “Violations.”

<sup>120</sup> N.Y.C. Admin. Code § 25–317.

<sup>121</sup> John Weiss, Deputy Counsel for the Landmarks Commission, telephone interview by author, January 11 and 18, 2019.

<sup>122</sup> *Penn Central v. New York City*, 438 US 104, 109-110 (1978).

<sup>123</sup> “Historic Preservation Grant Program,” New York City Landmarks Preservation Commission, accessed January 13, 2019, <https://www1.nyc.gov/site/lpc/about/historic-preservation-grant-program.page>.

interiors in prominent buildings, it is highly unlikely for a landmarked interior to receive a grant.

Instead, owners of buildings with landmarked interiors need to rely on other state and federal programs for economic incentives. Currently, these incentives are available only to properties linked in some manner to the National Register of Historic Places. For the Federal credit, properties individually listed in the National Register of Historic Places or a contributing property in a registered district can receive an uncapped 20% federal tax credit for approved qualifying rehabilitation work on income-producing properties (Federal Investment Tax Credit Program for Income Producing Properties).<sup>124</sup> New York also has an additional 20% state-level tax credit for commercial properties valid until December 31, 2024. This tax credit can be used in addition to the Federal tax credit and is capped at \$5,000,000 (New York State Rehabilitation Tax Credit).<sup>125</sup> However, to receive this state tax credit, a property must also have received the Federal tax credit.<sup>126</sup>

To clarify, contributing property in a registered district means a property considered to be a “certified historic structure” within a National Register district or a certified state or local district.<sup>127</sup> A property can also be considered “eligible” for listing in the National Register in order to qualify for this tax credit but must be listed in the

---

<sup>124</sup> “Tax Credit Programs,” New York City Landmarks Preservation Commission, accessed January 12, 2018, <https://parks.ny.gov/shpo/tax-credit-programs/>.

<sup>125</sup> “New York State Commercial Rehabilitation Tax Credit – Frequently Asked Questions,” New York State Office of Parks, Recreation and Historic Preservation, accessed January 2, 2019, <https://parks.ny.gov/shpo/tax-credit-programs/documents/NYSITCCCommercialTaxCreditFAQ.pdf>.

<sup>126</sup> Daniel McEneny, New York State Office of Parks, Recreation and Historic Preservation, telephone interview by author, October 11-12, 2018.

<sup>127</sup> “New York State Historic Properties Tax Credits: Commercial and Homeowner Programs.” New York State Office of Parks, Recreation and Historic Preservation, accessed January 3, 2019, <https://parks.ny.gov/shpo/tax-credit-programs/documents/NYSTaxCreditPrograms.pdf>.

National Register within 30 months of the building being placed into service.<sup>128</sup> A building in a registered historic district that is outside of the period of significance of the district can attain a *preliminary determination of significance* in order to qualify for proposed rehabilitation work. The property must be income-producing which could exclude a property owner's private residence.<sup>129</sup> The fee for the Federal tax credit is between \$500 and \$2,500.<sup>130</sup> The work conducted must be a *certified rehabilitation* meaning that the rehabilitation must be:

consistent with the historic character of the property and, where applicable, the district in which it is located. The NPS assumes that some alteration of the historic building will occur to provide for an efficient use. However, the project must not damage, destroy, or cover materials of features, whether interior or exterior, that help define the building's historic character.<sup>131</sup>

Aside from the above requirements, to receive the New York State Commercial Rehabilitation Tax Credit, the building must be within an eligible census tract where the "median family income [is] at or below the State Family Median Income Level."<sup>132</sup> For the five counties which make up New York City, each county has the following number of eligible census tracts for this tax credit: Bronx Co. (the Bronx), 316 of 339, Queens

---

<sup>128</sup> "Comparison Chart: Federal and State Historic Preservation Tax Credits," New York State Office of Parks, Recreation and Historic Preservation, accessed January 4, 2019, <https://parks.ny.gov/shpo/tax-credit-programs/documents/TaxCreditComparisonChart.pdf>.

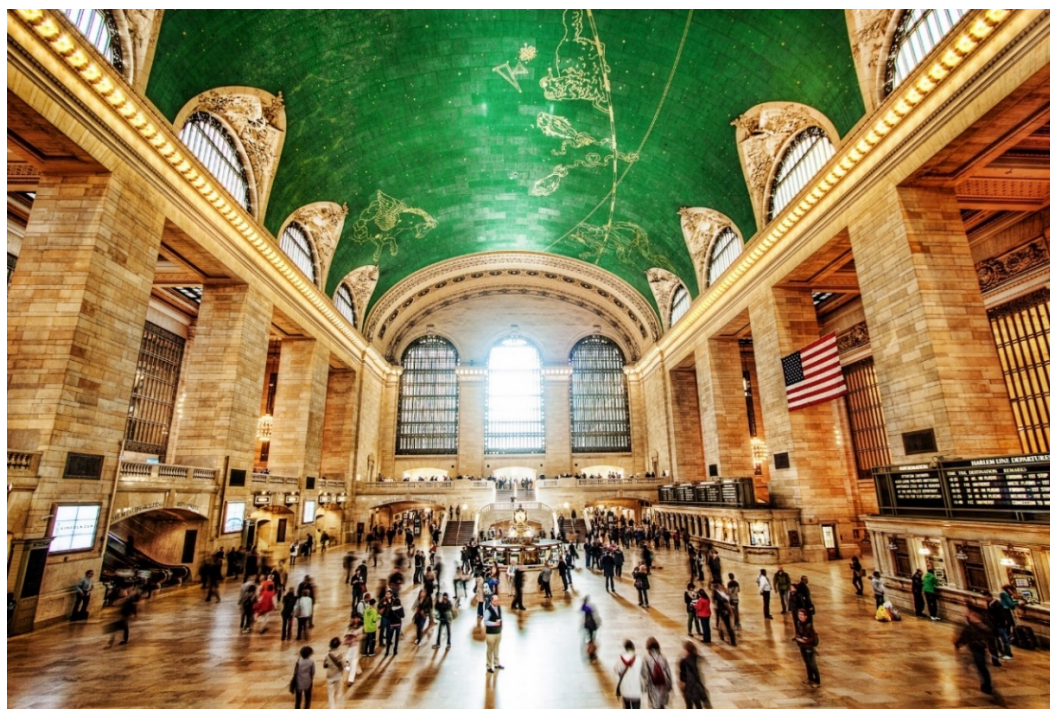
<sup>129</sup> "Historic Preservation Tax Incentives," National Park Service (2012), 5-6, <https://www.nps.gov/tps/tax-incentives/taxdocs/about-tax-incentives-2012.pdf>.

<sup>130</sup> "Comparison Chart: Federal and State Historic Preservation Tax Credits," New York State office of Parks, Recreation and Historic Preservation, accessed January 4, 2019, <https://parks.ny.gov/shpo/tax-credit-programs/documents/TaxCreditComparisonChart.pdf>.

<sup>131</sup> "Historic Preservation Tax Incentives", National Park Service (2012), 6, <https://www.nps.gov/tps/tax-incentives/taxdocs/about-tax-incentives-2012.pdf>.

<sup>132</sup> "New York State Historic Properties Tax Credits: Commercial and Homeowner Programs," New York State Office of Parks Recreation and Historic Preservation, accessed January 3, 2019, <https://parks.ny.gov/shpo/tax-credit-programs/documents/NYSTaxCreditPrograms.pdf>.

Co. (Queens), 561 of 668, Kings Co. (Brooklyn), 677 of 760, Richmond Co. (Staten Island) 63 of 109, and New York Co. (Manhattan) 159 of 287.<sup>133</sup>



**Figure 4: Grand Central Terminal Lobby<sup>134</sup>**

## INTERIOR LANDMARKING

In 1973, the Landmarks Law was amended to allow for the designation of interior and scenic landmarks.<sup>135</sup> The destruction of the original Metropolitan Opera house and the proposed interior destruction of the Grand Central Terminal spurred this law.<sup>136</sup> An interior landmark is defined by law as:

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

<sup>133</sup> “Determining Census Tracts,” New York State Office of Parks, Recreation and Preservation, July 15, 2013, <https://parks.ny.gov/shpo/tax-credit-programs/documents/ListofEligibleCensusTracts.pdf>.

<sup>134</sup> Sracer357, “Grand Central Terminal main Lobby,” Wikimedia Commons, April 25, 2012, licensed under the [Creative Commons Attribution-Share Alike 3.0 Unported](https://creativecommons.org/licenses/by-sa/3.0/) license, [https://commons.wikimedia.org/wiki/File:Grand\\_Central\\_Terminal\\_Lobby.jpg](https://commons.wikimedia.org/wiki/File:Grand_Central_Terminal_Lobby.jpg)

<sup>135</sup> “New York City Landmarks Law,” The New York Preservation Archive Project, 2016, accessed February 18, 2018, <http://www.nypap.org/preservation-history/new-york-city-landmarks-law/>.

<sup>136</sup> Caros, “Interior Landmarks Preservation and Public Access,” 1779.

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.<sup>137</sup>

An interior landmark protects every aspect of the interior known as *Interior Architectural Features*. An *Interior Architectural Feature* is defined as,

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.<sup>138</sup>

According to the limitations of this law, residential interiors are not eligible for designation, creating a gap in the preservation of interiors. Because of the different qualifications between interior landmarking and an individual landmark, New York considers the two to be separate entities, even if located in the same building.



**Figure 5: The ceiling of the Metropolitan Opera, 1966<sup>139</sup>**

<sup>137</sup> N.Y.C. Admin. Code § 25-302m.

<sup>138</sup> N.Y.C. Admin. Code § 25-302l.

<sup>139</sup> Historic American Buildings Survey, Creator, J Cleveland Cady, E P Treadwell, and Carrere & Hastings. *Metropolitan Opera House, Broadway, New York County, NY*. New York New York County, 1933. Documentation Compiled After. Photograph. <https://www.loc.gov/item/ny0401/>.

While there are officially 120 interior landmarks, some include multiple locations as part of a single nomination. For example, the 14 subway stations are all listed under one designation. Additionally, some separate landmarks are in the same building, such as the Four Seasons restaurant and the lobby of the Seagram building. The total count of interior landmarks discussed in this paper is 133 landmarks to include the multi-property designations, as illustrated in Appendix B.

As of 2015, 27 percent of the buildings in Manhattan have been landmarked, though the percentage is far lower in the other boroughs.<sup>140</sup> In New York, there are 1,405 landmarked buildings (exteriors only). Interestingly, there are only 133 interior landmarks (officially 120 designations), indicating that there are over ten times more landmarked exteriors than interiors.<sup>141</sup> As of 2018, 8 of the 133 designated interiors are in Brooklyn (6%), 8 in the Bronx (6%), 4 in Queens (3%), 4 in Staten Island (3%), and 108 in Manhattan (81%).<sup>142</sup> Thus, there is a huge imbalance in the distribution of interior landmarks among all the different boroughs.

The first interior landmark is the New York Public Library and specifically, the main lobby, and the north and south staircases designated on November 12, 1974. From 1975 through 1977, the Landmarks Commission chose to designate public government interiors, such as City Hall, historic house museums, and the American Museum of Natural History. In the period 1978-1979, the Commission began to landmark theaters, business lobbies in skyscrapers, and several subway stations. There are currently 13 bank

---

<sup>140</sup> The Editorial Board, “New York City’s Landmarks at 50.”

<sup>141</sup> New York City Landmarks Preservation Commission, “About LPC.”

<sup>142</sup> Individual Landmarks, created March 11, 2015, downloaded November 2018, NYC OpenData, Landmarks Preservation Commission (LPC), <https://data.cityofnewyork.us/Housing-Development/Individual-Landmarks/ch5p-r223>.



buildings (or former bank buildings) with interior landmarks on the first floors. There are 26 business building interiors (lobby spaces) designated, such as the lobby of the Woolworth Building and the Empire State Building. The lobby spaces are of course eligible for landmarking as lobbies are open and are part of the public realm. Since 2005, the Commission has designated three hotel interiors: The Plaza Hotel (2005), the Waldorf-Astoria (2017), and the United Nations Hotel (2017). These hotel interiors include the lobbies, restaurants, and other public rooms for rent. There are ten interior landmarks of historic significance, seven of which are houses. These houses were eligible because of their ownership by the city or housing museums. The other three historic interiors are the main building at Ellis Island, the Seventh Regiment Armory (now an exhibit and cultural space), and Ulysses S. Grant's Tomb. Regarding municipal spaces specifically created as part of the public realm, there are eight designated government-building interiors, six library spaces, four museums, one post office, and two school interiors. Landmarked public transportation spaces include Grand Central Terminal's interiors, the Trans World Airlines Flight Center, the Marine Air Terminal, as well as several subway station interiors. As to interior spaces that are open to clientele and rely on public patronage, there are five restaurant and bar interiors, the three hotel interiors, and thirty-seven theaters.<sup>143</sup>

## SUMMARY

- New York City has one of the strongest interior preservation ordinances with 120 official interior landmark designations.
- Landmarks must be kept in good repair as defined by the Commission as there is no definition in the law.
- All work requires a certificate of either *No Effect*, *Minor Work*, or *Appropriateness*.

---

<sup>143</sup> Individual Landmarks, created March 11, 2015, updated Downloaded November. 2018, NYC OpenData, Landmarks Preservation Commission (LPC), <https://data.cityofnewyork.us/Housing-Development/Individual-Landmarks/ch5p-r223>.

- The Landmarks Commission has around 70 staff members and 11 Commissioners appointed by the mayor, from each of the 5 boroughs, serving staggered terms.
- The opinion of the Landmarks Commission supersedes the judgment of the courts unless in cases where the Commission misinterpreted the law, or the decision was “arbitrary and capricious.”
- Exemptions to the restrictions of landmarking exist for failure to make a reasonable return and for non-profits.
- Economic Returns: a reasonable return of 6% cannot be met for any use of the building.
- A non-profit is exempt if it can show that landmarking prevents it from attaining a reasonable return (under the guidelines for for-profit entities) and if the property is no longer used for the purpose for which it was purchased and is a burden to fulfilling its mission.
- Certain city departments relating to health and safety can order emergency safety work on a landmarked property without a certificate from the Commission.
- Certain government properties are exempt from the authority of the Landmarks Commission and will only receive non-binding reports, such as the school districts.
- Enforcement: The Commission issues a warning letter before a violation and fines. The Commission wants to work with property owners first to resolve violations. The Commission can order a *Stop Work Order*.
- Incentives: There are no incentives provided by the Landmarks Commission and used for interior landmarks. All incentives come from Federal and State rehabilitation tax credits relating to National Register properties.
- 1973, the Landmarks Law was amended to allow for interior designation.
- Interior Landmark must be 30 years old or older, customarily open or accessible to the public, and of historical or aesthetic value.
- 133 interior landmarks considered for this paper because some nominations include multiple geographic locations.

## **CHAPTER V: HISTORY OF NEW YORK CASES AND INTERIOR LANDMARKING CHALLENGES**

There have been numerous legal challenges to interior preservation ordinances across the United States because the criteria and language of preservation ordinances vary from city to city. The interior landmarking lawsuits which have established the current legal precedent were the result of individuals who attempted to stop the landmarking of their property. These lawsuits focus on issues of public access and private property rights. Some have argued that their city's interior preservation ordinance would require that the property continue to have public access although ownership may change thereby dictating or preventing future uses. Others claim that no public purpose need be served by landmarking an interior that does not allow public access, thus dictating public access and therefore by default creating a taking. However, these arguments have been proven to be unsuccessful in New York and other states.

### ***WEINBERG V. BARRY***

In *Weinberg v. Barry* (1986),<sup>144</sup> the constitutionality of interior landmarking was first tested against a 5th Amendment Takings claim in Washington D.C. by the United States District Court, District of Columbia. To stop an interior landmark designation, the owners of the Warner Theater maintained that there was no public benefit to landmarking the interior without also requiring public access to the space. They claimed that if the city then required public access, that it would be a 5<sup>th</sup> Amendment violation.

---

<sup>144</sup> *Weinberg v. Barry*, 634 F. Supp. 86 (D.C. 1986).

Specifically, this would be a regulatory taking under *Loretto* – requiring a permanent public easement to allow the public to view the interior.<sup>145</sup> The court ruled that the general public did not have to see an interior landmark since preservation serves a variety of purposes, including supporting the tourism and economic vitality of the city. Additionally, by the very nature of the building, a theater owner gains maximum economic profit from the building in terms of ticket sales by allowing the public inside.<sup>146</sup> The lawsuit established that in Washington D.C., a business based upon public patronage was unable to prevail on a takings claim during the landmarking process.<sup>147</sup> *Teachers Insurance and Annuity Association of America v. City of New York et al.* (1993) referenced this case in their decision.<sup>148</sup>

***SAMERIC CORP. OF CHESTNUT STREET INC. V. CITY OF PHILADELPHIA***

In 1986, the Landmarks Commission in Philadelphia sought to designate the interior and exterior of the Boyd Theater. However, there was no specific language in the city’s preservation ordinance allowing for the designation of interiors. The owners sued, claiming a taking. The court initially ruled that public access was not necessary to serve a public good and that the requirements for interior landmarking were not a taking, referring to *Weinberg v. Barry*.<sup>149</sup> This decision was overturned by the Supreme Court of Pennsylvania (*United Artists I* 1991)<sup>150</sup> citing a dissenting opinion in *Penn Central*. However, upon rehearing the case, the court ruled that an interior designation would be

---

<sup>145</sup> Lloyd, “Interior Preservation: In or Out?,” 12.

<sup>146</sup> *Ibid*, 13.

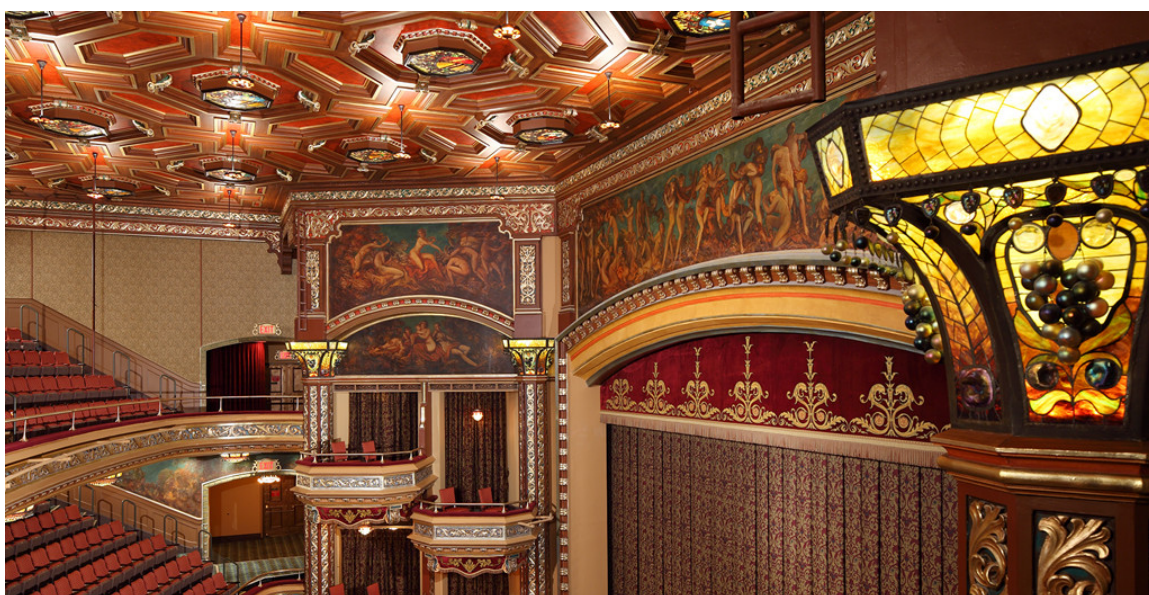
<sup>147</sup> Preservation Alliance for Greater Philadelphia, “Protecting Historic Interiors,” 16-17.

<sup>148</sup> *Teachers Insurance and Annuity v. City of New York et al*, 82 N.Y. 2d 35, in 43 (1993).

<sup>149</sup> *Sameric Corp. v. City of Phila.*, 558 A.2d 155, 125 Pa. Commonwealth Ct. 520, 125 Pa. Cmwlth. 520 (Commw. Ct. 1989).

<sup>150</sup> *United Artists Theater Circuit, Inc. v. City of Philadelphia*, 595 A.2d 6, 528 Pa. 12 (1991).

legal under the state constitution and not considered a taking if the preservation commission was granted the power to landmark interiors in the city's ordinance, which it was not (*United Artist II* 1993).<sup>151</sup> This case does not apply in any other jurisdictions and is not cited in any of the other cases mentioned here. Yet this case is crucial as it is one of the founding interior landmark challenges. It established the importance of explicitly addressing interior landmarking within the city ordinance in order to protect the legality of interior landmarking.



**Figure 6: Belasco Theater**<sup>152</sup>

### ***SHUBERT ORGANIZATION V. LANDMARKS***

In *Shubert Org. v. Landmarks* (1991),<sup>153</sup> the Landmarks Commission successfully challenged the claim that designating 22 theaters, including landmarking several interiors,

<sup>151</sup> Caros, "Interior Landmarks Preservation and Public Access," 1784; *United Artists v. Philadelphia*, 635 A.2d 612, 535 Pa. 370 (1993).

<sup>152</sup> T. Whiney Cox, "Belasco Theater," via Rescued Restored Reimagined: New York's Landmarked Interiors, 2016, Exhibit, New York School of Interior Design. [landmarkinteriors.nysid.net/gallery/belasco-theater/](http://landmarkinteriors.nysid.net/gallery/belasco-theater/)

<sup>153</sup> *Shubert Organization, Inc. v. Landmarks Preservation Comm'n*, 78 N.Y.2d 1006, 575 N.Y.S.2d 456, 580 N.E.2d 1059 (1991); *Shubert Org. v. LANDMARKS*, 166 A.D.2d 115, 570 N.Y.S.2d 504 (App. Div.

was tantamount to regulating an industry. Specifically, the Shubert Organization claimed that the Commission was using landmarking as a loophole for zoning purposes.<sup>154</sup> According to the city code, the Landmarks Commission is expressly forbidden “to regulate and restrict the locations of trades and industries or location of buildings designed for specific uses.”<sup>155</sup> The Commission won this case by confirming that the preservation of theaters did not constitute a regulation of an industry. The court dismissed the subsequent appeal.<sup>156</sup>



**Figure 7: The Pool Room at the Four Seasons Restaurant, 2015<sup>157</sup>**

---

1991); *Shubert Org. v. Landmarks Pres. Comm'n of NY*, 504 U.S. 946, 112 S. Ct. 2289, 119 L. Ed. 2d 213 (Supreme Court 1992).

<sup>154</sup> *TEACHERS INS & ANNUITY v. NYC*, 623 N.E.2d 526, 82 N.Y.2d 35, 603 N.Y.S.2d 399, in 41 (1993).

<sup>155</sup> N.Y.C. Admin. Code § 25-304a.

<sup>156</sup> *TEACHERS INS & ANNUITY v. NYC*, 623 N.E.2d 526, 82 N.Y.2d 35, 603 N.Y.S.2d 399, in 44 (1993).

<sup>157</sup> Image by Tony Cenicola and The New York Times, *The Pool Room at the Four Seasons Restaurant*, 2015, via Florence Fabricant, “Four Seasons Restaurant is Headed for New Space on Park Ave.,” *New York*

#### **FOUR SEASONS RESTAURANT (*TEACHERS INS. & ANNUITY V. NEW YORK*)**

*The Matter of Teachers Insurance and Annuity Association of America v. City of New York et al.* (1993)<sup>158</sup> is an essential case in New York Landmarks law. It is also one of the most important cases for interior landmarks in the country. This case affirms the right of the New York City Landmarks Commission to landmark interior private spaces without the consent of the owner. In 1980, the Teachers Insurance and Annuity Association of America (TIAA) purchased the Seagram Building at 375 Park Avenue in Manhattan, which contains the famous *Four Seasons* restaurant.<sup>159</sup> As a part of the 1980 sale contract, the TIAA agreed to propose the building for landmarking as soon as it reached its 30<sup>th</sup> birthday when it became eligible under New York law. The TIAA followed the contract's stipulations and proposed the building's exterior, outdoor plaza, and the lobby for landmarking. However, around the same time, the restaurant operators proposed the interior of the restaurant to the Landmarks Commission on their own.<sup>160</sup> While a building lobby may have seemed to be a safe interior space to designate, having no foreseeable future as anything other than a lobby, the restaurant interior was another matter.

The Landmarks Commission ultimately decided to landmark all four of the nominated interiors and the exterior. In the Commission's opinion, the restaurant was a space that was "customarily open and accessible to the public, and to which the public is

---

*Times*, May 28, 2016, <https://www.nytimes.com/2016/05/29/dining/four-seasons-restaurant-is-headed-for-new-space-on-park-ave.html>.

<sup>158</sup> *The Matter of Teachers Insurance and Annuity Association of America v. City of New York et al.*, (82 N.Y. 2d 35 (1993), 623 N.E. 2d 526, 603 N.Y.S. 2d 399).

<sup>159</sup> *Teachers Insurance and Annuity v. City of New York et al.*, 82 N.Y. 2d 35, in 39 (1993).

<sup>160</sup> *Ibid.*, 40.

customarily invited,” and possessed the “special character, special historical and aesthetic interest” necessary for interior landmarking in New York.<sup>161</sup>

The TIAA claimed that there was a distinct difference between a restaurant and interior spaces which are “inherently” public, such as railroad terminals, theaters, and lobbies. Those kinds of spaces are explicitly designed for “public assemblage purposes” as opposed to the restaurant which is readily transformed to serve another purpose.<sup>162</sup>

This argument was rejected by the court, stating that a restaurant must allow the public to enter in order to be a viable business. Even if the courts categorized the different types of interior spaces like the TIAA wanted, the law does not distinguish between them.<sup>163</sup>

TIAA’s other assertion was that while the space was currently a restaurant, it could become something else in the future which would not be open to the public and should, therefore, be ineligible for designation. The court ruled that the future was impossible to anticipate, “the simple answer is that any structure, even a railroad station, can be converted to private use in the future; that potential cannot preclude the landmarking of appropriate interiors.”<sup>164</sup> This case established the fact that in the eyes of the law there is no clear distinction between a wholly public space and a space in which the public enter as patrons. In addition, this lawsuit codified the fact that the possible future private use of an existing public space cannot be used as a reason for prohibiting an interior from becoming landmarked.

---

<sup>161</sup> Ibid

<sup>162</sup> Ibid, 42-43

<sup>163</sup> Ibid, 43

<sup>164</sup> Ibid, 44-45





**Figure 8: Historical Image of 346 Broadway<sup>165</sup>**

### ***SAVE AMERICA'S CLOCKS V. NEW YORK***

The case concerning the property at 346 Broadway brought by Save America's Clocks ruled that continued public access should not be a requirement for an interior landmark. Built in the late 19<sup>th</sup> century, 346 Broadway was first built to house the New York Life Insurance Company headquarters. The renowned architecture firm of McKim, Mead & White designed the monumental building.<sup>166</sup> The City purchased the building in

<sup>165</sup> "Depiction of the building when it was headquarters for New York Life Insurance," The New York Public Library/Picture Collection via Jane Margolies, "Act III for a Lower Manhattan Landmark," *New York Times*, November 23, 2018, <https://www.nytimes.com/2018/11/23/realestate/act-iii-for-a-lower-manhattan-landmark.html>.

<sup>166</sup> Evan Bindelglass, "Mixed Rulings for Conversion of 346 Broadway, TriBeCa," *New York Yimby*, April 4, 2016, <https://newyorkyimby.com/2016/04/mixed-rulings-for-conversion-of-346-broadway-tribeca.html>.

1968 and used as a courthouse and government offices. Additionally, there was an art gallery, a performance area, and a public radio station on the bottom floor.<sup>167</sup> In 1987, ten rooms totaling around 20,000 square feet were designated as interior landmarks.<sup>168</sup> Also included as an interior landmark were several rooms comprising the clocktower suite which includes a fully mechanical antique clock, machinery, pendulum, and a 5,000-pound bell and hammer.<sup>169</sup>

In 2013, the developers Elad Group and the Peebles Corp. purchased the building from the City to create 151 condos; this included a unique triplex penthouse in the building's landmarked clocktower. As a part of this conversion, the owners wished to electrify the landmarked mechanical clock.<sup>170</sup> When 346 Broadway sold, the deed of the building specifically included the Notice of Designation for the historic structure.<sup>171</sup> As such, the developers had to apply for a Certificate of Appropriateness for all work affecting the designated interiors and the landmarked exterior in August 2014.<sup>172</sup> The Commission approved the movement of a landmarked staircase, the movement of the designated interior on the 2nd floor to the ground floor, the enclosing of the 4<sup>th</sup> floor designated interior into a private apartment, the creation of a clocktower penthouse and the electrification of the mechanical clock.<sup>173</sup> The Certificate of Appropriateness was

---

<sup>167</sup> Nick Rummell, "Historic NYC Clocktower Saved on Appeal," *Courthouse News*, December 1, 2017, <https://www.courthousenews.com/historic-nyc-clocktower-saved-on-appeal/>.

<sup>168</sup> "LP-1513 Former New York Life Insurance Building Interior Designation," New York Landmarks Preservation Commission, February 10, 1987, 11-13, <http://s-media.nyc.gov/agencies/lpc/lp/1513.pdf>; *MATTER OF SAVE AMERICA'S CLOCKS, INC. v. City of New York*, 2019 N.Y. Slip Op 2385, in 5 (2019).

<sup>169</sup> *SAVE AMERICA'S CLOCKS v. City*, 52 Misc. 3d 282, 28 N.Y.S.3d 571, in 286 (Sup. Ct. 2016).

<sup>170</sup> Tanay Warkerkar, "Tribeca clocktower building's future as condos is in jeopardy," *CurbedNY*, August 11, 2017, <https://ny.curbed.com/2017/8/11/16131248/tribeca-clocktower-building-conversion-stalled>.

<sup>171</sup> *SAVE AMERICA'S CLOCKS, INC. v. City of New York*, 2017 N.Y. Slip Op 8457, in 4 (App. Div. 2017)

<sup>172</sup> *Ibid.*

<sup>173</sup> New York City Landmarks Preservation Commission, "Public Hearing, November 18, 2014 – Item 21: 346 Broadway", Filmed November 18, 2014, YouTube video, 2:35:16. Posted November 26, 2014, <https://www.youtube.com/watch?v=O-YuVUBrM7A&t=3446s>.

issued on May 29, 2015. A *restrictive declaration* was made by the developers to allow the Commission to access the now private landmarked interiors for inspection and protective enforcement.<sup>174</sup>



**Figure 9: Clock Mechanism (left)**  
**Figure 10: Clocktower (formerly a gallery) (right)**<sup>175</sup>

Save America’s Clocks, The Historic Districts Council, Inc., and the Tribeca Trust along with the City’s official Clock Master and other individuals filed a lawsuit against the developers and the City.<sup>176</sup> The lawsuit could proceed based on the premise that the Commissioners had misinterpreted the law.<sup>177</sup> The petitioners essentially sought to maintain public access to the landmarked clocktower and to stop the electrification of the mechanical clock. While there are other interiors in the building, the lawsuits were limited to only to the clocktower.<sup>178</sup>

<sup>174</sup> *SAVE AMERICA’S CLOCKS, INC. v. City of New York*, 2017 N.Y. Slip Op 8457, in 143 (App. Div. 2017).

<sup>175</sup> Images of Clock Mechanism and Clock tower staircase via Bindelglass, “Mixed Rulings for Conversion of 346 Broadway, TriBeCa.”

<sup>176</sup> Andrew Denney, “Court Halts Plans for Electrical Conversion of NYC Tower Clock,” *New York Law Journal*, April 4, 2016, <https://www.law.com/newyorklawjournal/almID/1202753944722>.

<sup>177</sup> *SAVE AMERICA’S CLOCKS v. City*, 52 Misc. 3d 282, 28 N.Y.S.3d 571, in 294-295 (Sup. Ct. 2016)

<sup>178</sup> *Ibid*, 284-285.

The Supreme Court of New York County ruled in favor of Save America's Clocks *et al.* on March 31, 2016. In their decision, the judges required that the clock remains in working order as a mechanical clock rather than an electrified clock and that the Landmarks Commission have the power to require continued public access.<sup>179</sup> The case was appealed by the City and the developers to the Supreme Court, Appellate Division. In a 3 to 2 decision, the court ruled in favor of Save America's Clocks, agreeing with the decision of the lower court.<sup>180</sup>

According to the majority opinion,

preserving the public's access to landmarked spaces furthers the statutory purpose. It is difficult to see how an interior landmark located in a private home can foster civic pride in the city's past, educate our citizens, enhance tourism and provide the stimulus to business and industry that tourism provides. Thus, the statutory purposes are thwarted if the public is denied access to the clocktower and the opportunity to view its historic mechanism.<sup>181</sup>

The lawsuit was argued in front of the New York Court of Appeals in mid-February 2019. The Court of Appeals overturned the rulings of the previous two courts on March 28, 2019. The ruling cited *Teachers Ins. & Annuity v. NYC* in their decision to overturn. This ruling stated that the requirement for public accessibility qualifies a property for designation, but that does not prevent a landmarked interior from becoming a private space in the future.<sup>182</sup>

As for the other designated interiors in the building and the previous agreement already in place, the main "banking hall" would remain permanently accessible, one

---

<sup>179</sup> Denney, "Court Halts Plans for Electrical Conversion of NYC Tower Clock."

<sup>180</sup> *SAVE AMERICA'S CLOCKS, INC. v. City of New York*, 2017 N.Y. Slip Op 8457, in 12 (App. Div. 2017).

<sup>181</sup> *Ibid*, in 149.

<sup>182</sup> *MATTER OF SAVE AMERICA'S CLOCKS, INC. v. City of New York*, 2019 N.Y. Slip Op 2385, in 10 (2019).

room was moved, and the remaining landmarked interiors were either converted to private apartments or were inaccessible to the public. There is also a 23-story internal staircase that is also landmarked that is not open. All remain regulated and designated under the city law.<sup>183</sup>

These lawsuits confirmed several founding principles and privileges concerning interior landmarking in New York and beyond. The idea that the preservation of interior spaces, like the preservation of Grand Central Terminal, is a public good was recognized. These cases also establish the legal authority of the Landmarks Commission to designate interiors open to the public, without owner consent, and the legal discretion extended to the Landmarks Commission.

## SUMMARY

- *Weinberg v. Barry* (1986), applicable only to Washington D.C., was the first test of a 5<sup>th</sup> Amendment Takings claim against the landmarking of a theater interior. A theater required the public to function, and so there was no taking.
- *Samerica Corp of Chestnut Street Inc. v. City of Philadelphia* (1989), applicable only to Philadelphia, stated that preservation was a good in and of itself. The case was overturned (see *United Artists I and II*) because the landmarks law in Philadelphia did not specifically give the Landmarks Commission the right to landmark interiors, showing the importance of specificity for interiors in the city preservation ordinance.
- *Shubert Org. v. Landmarks* (1991) in New York, where a theater organization challenged exterior and interior landmarking arguing that the Commission was attempting to regulate the location of industries. The theaters lost the case.
- *Teachers Insurance and Annuity Association of America v. New York* (1993), where the property owners fought interior landmarking of a restaurant on the grounds that the restaurant was not a commonly accessible space as required by the landmarks law. The court ruled that the restaurant relied on public patronage and that landmarking an interior did not prevent the interior from becoming private later.
- *Save America's Clocks* (2016) in New York was just recently settled. It affirms that a landmarked interior can become private and thus does not require that public access is maintained; only that public access is a necessary requirement in order to be eligible for landmarking.

---

<sup>183</sup> Mark Silberman, General Counsel for the Landmarks Commission, telephone interview by author, January 28, 2019.

## **CHAPTER VI: AN INTRODUCTION TO EASEMENTS**

Another avenue for the protection of historic interiors is the use of interior easements, which are voluntarily-entered legal agreements that offer an additional tax deduction. Easements are frequently used as a preservation tool. Many cities use easements in addition to a local preservation ordinance. Interior easements are common in Charleston, South Carolina which does not have an interior preservation ordinance.<sup>184</sup> Several easement-holding organizations have been consulted in order to provide a greater understanding of interior easements. My research indicates that few organizations hold interior easements.<sup>185</sup> The organizations contacted for this paper include the National Trust for Historic Preservation, Landmarks Illinois, and Historic Charleston Foundation.

### **WHAT ARE EASEMENTS?**

To understand the effectiveness of easements requires an understanding of the legal concept and the application of easements. The use of easements for historic interior preservation is a distinctive method since the historic interior is assessed as a commodity. A monetary value is placed on a historic interior as opposed to a preservation ordinance which views preservation as a public good. In legal parlance, an easement is known as a type of *servitude*. *Servitudes* comprise “all types of burdens that may be imposed on the lands of another” and are specifically “nonpossessory,” meaning that they do not require

---

<sup>184</sup> “The *Board of Architectural Review* shall not consider interior arrangement or interior design...”, Article 2, Part 6 (Old and Historic District and Old City District Regulations), Sec. 54-240(c), Charleston, South Carolina.

<sup>185</sup> Historic Preservation Easements: A Directory of Historic Preservation Easement Holding Organizations”, *National Park Service* (2003), <http://ohp.parks.ca.gov/pages/1074/files/easementsdirectory.pdf>.

that the property is physically occupied in order to maintain some control over the property.<sup>186</sup> Easements have existed for centuries under English Common Law.<sup>187</sup> While many easements begin as an agreement between two individuals or entities, they can be made or required to “run with the land.” If a property is sold, the existing restrictions or “nonpossessory” private property rights held by another are still valid and enforceable. Easements specifically give “third parties the right to enter and use land physically.”<sup>188</sup> An entity cannot hold an easement on property they own as there would be no nonproprietary entity or subservient land. In other terms, a property owner cannot receive a property right from the bundle of sticks if they already own all the sticks.

An easement can also fall into two categories: an *easement in gross* or an *easement appurtenant*. An *easement in gross* is not tied to the land. Instead, it is between two parties (or individuals) and is non-transferable.<sup>189</sup> An *easement appurtenant* runs with the land and is therefore transferable to the new property owner.<sup>190</sup> A preservation easement is an *easement in gross*, specifically permitted by law. Once this type of easement is granted, the easement is then recorded in the property records of the city or county and becomes part of the chain-of-title. The easement restriction becomes a part of the property’s documentation and is legally binding to all current and future property owners.<sup>191</sup>

---

<sup>186</sup> Nolon, Salkin, and Wright, *Land Use in a Nutshell*, 25.

<sup>187</sup> Watson and Nagel, *Establishing and Operating an Easement Program*, 1.

<sup>188</sup> Nolon, Salkin, and Wright, *Land Use in a Nutshell*, 25-26.

<sup>189</sup> “Easement in Gros Law and Legal Definition,” USLegal.com, accessed January 18, 2019, <https://definitions.uslegal.com/e/easement-in-gross/>; “Easements,” Justia.com, accessed January 18, 2019, <https://www.justia.com/real-estate/docs/easements/>.

<sup>190</sup> Easements,” Justia.com, accessed January 18, 2019, <https://www.justia.com/real-estate/docs/easements/>

<sup>191</sup> Robins, “Historic Preservation Options in New York City...” 4.

The provisions in an easement agreement can be affirmative or negative. An easement can be created as an “affirmative” easement, giving a third-party, such as certain members of the public, the legal right to enter or to require that the property is maintained in good repair. A negative easement allows the easement-holder to dictate certain restrictions on the other person’s property. An example of this would be prohibiting the renting of the property or its use as a bed and breakfast.<sup>192</sup>

## **HISTORY OF EASEMENTS**

While the National Park Service and other agencies have used easements for preservation since the 1930s, only from 1964 onward did they become a viable general preservation tool.<sup>193</sup> In 1964, the IRS ruled that the donation of a scenic easement was eligible for an income tax deduction. Interestingly, though it was still applied, this ruling was not codified into law until the Tax Reform Act of 1976.<sup>194</sup> Section 1.170A-14 of the Treasury Regulations (26 CFR § 1.170A-14 - Qualified conservation contributions) from 1986 established the regulations for acceptable preservation easements. The Pension Protection Act of 2006 amended the qualifications for a preservation easement.<sup>195</sup>

## **CONSERVATION EASEMENT ACT AND STATE EASEMENTS**

For an individual to gain the charitable deduction for their donation, preservation easements must first be legally permitted by a state preservation easement act. The state can add additional requirements and regulations to those already mandatory under the Internal Code. Approximately 24 states have adopted the Conservation Easement Act

---

<sup>192</sup> Nolon, Salkin, and Wright, *Land Use in a Nutshell*, 26-27.

<sup>193</sup> Watson and Nagel, *Establishing and Operating an Easement Program*, 2.

<sup>194</sup> Daniel Halperin, "Incentives for Conservation Easements: The Charitable Deduction or a Better Way," *Law and Contemporary Problems* 74, no. 4 (2011): 35, <https://scholarship.law.duke.edu/lcp/vol74/iss4/3>.

<sup>195</sup> Pension Protection Act of 2006, Pub. L. 109-280, 120 Stat. 780.



according to the Uniform Law Commission including South Carolina in 1991 while many others have accepted some form of the act.<sup>196</sup> The Uniform Conservation Easement Act defines a “Conservation Easement” as,

... a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or **preserving the historical, architectural, archaeological, or cultural aspects of real property.**<sup>197</sup>

Historic interiors qualify for preservation easements under the mission to preserve “historical, architectural, ... and cultural aspects of real property.” While preservation easements at the state-level only exist, this paper addresses only qualified preservation easements as described under 26 U.S. Code § 170(h)(1), which are eligible for a charitable tax deduction.

## **OBLIGATIONS AND ENFORCEMENT**

A preservation easement is an interest in a property granted through a legal document. With preservation easements, the Grantee organization acquires the right to control certain aspects of a person’s private property.<sup>198</sup> Vital to contract law, the parties exchange a consideration. *A consideration is:*

something bargained for and received by a promisor from a promisee. Common types of consideration include real or personal property, a return promise, some

---

<sup>196</sup> Watson and Nagel, *Establishing and Operating an Easement Program*, 4; “1981 Conservation Easement Act”, Uniform Law Commission, accessed March 2, 2019, <https://www.uniformlaws.org/committees/community-home?CommunityKey=4297dc67-1a90-4e43-b704-7b277c4a11bd>

<sup>197</sup> “Uniform Conservation Easement Act”, *National Conference of Commissioners on Uniform State Laws* (1981, last revised or amended in 2007), 4, <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=95e58042-e8d2-2051-1868-617b5d89a7f9>.

<sup>198</sup> Nolon, Salkin, and Wright, *Land Use in a Nutshell*, 24.

act, or a forbearance. Consideration or a valid substitute is required to have a contract.<sup>199</sup>

In the case of Historic Charleston Foundation, one dollar is paid by the Foundation to property owners upon receiving the preservation easement as a token. The real benefits lie in the limitations and concessions specified in the easement agreement, donated to the easement-holding organization,

NOW, THEREFORE, in consideration of the sum of One and no one-hundredths (\$1.00) Dollar, in hand paid by Grantee to Grantors, the receipt of which is hereby acknowledged, **and in consideration of the recitals and agreements contained herein**, Grantors hereby grant, sell and convey to Grantee, its heirs, administrators, successors and assigns, an exterior and interior conservation Easement as specifically provided hereinbelow, in perpetuity, in, on and over, and the right to restrict the use of, the Property.<sup>200</sup>

Because it is a legally-binding agreement, the easement-holding organization can legally enforce the document. The agreement can also stipulate the repayment of legal fees and binding arbitration.<sup>201</sup> The ability to enforce the agreement is necessary for an easement to function and required for easements seeking a charitable tax deduction:

... any interest in the property retained by the donor (and the donor's successors in interest) must be subject to legally enforceable restrictions... that will prevent use of the retained interest in consistence with the conservation purposes of the donation.<sup>202</sup>

After the easement document is fully executed between the property owner and the grantee organization, the property owner can claim a charitable contribution deduction based on the property's reduction in value. If the IRS challenges the

---

<sup>199</sup> "Consideration," Wex Cornell Law, accessed February 28, 2019, <https://www.law.cornell.edu/wex/consideration>.

<sup>200</sup> Charleston County, South Carolina, Deed Book 0277: 861; Herbert B. McGuire, Jr. and Diane B. McGuire & Historic Charleston Foundation, September 13, 2012; Office of the Recorder of Deeds, City of Charleston. 2.

<sup>201</sup> Charleston Co., SC., Deed Book 0277: 861. 7.

<sup>202</sup> 26 CFR § 1.170A-14(g)(1).

preservation easement deduction, the easement still exists in perpetuity. The property owner cannot terminate the easement, only appeal a rejection of the deduction for the easement through the Tax Court.<sup>203</sup>

## **FEDERAL PRESERVATION EASEMENT REQUIREMENTS**

In order to create a preservation easement, the Internal Revenue Service requires certain easement concessions specified in the document to be legally enforceable in perpetuity. The agreement cannot expire or be terminated except under specific circumstances relating to the destruction of the property.<sup>204</sup> As the donation of an easement is entered into voluntarily and receives a tax benefit, public access demonstrates a legitimate public purpose.<sup>205</sup> For an interior easement, the public must be allowed inside for a certain amount of time. Additionally, the organization holding the preservation easement must be allowed access to monitor the interior for violations described in the easement agreement.<sup>206</sup> The state easement laws may have additional requirements, but all qualifications listed in the Internal Revenue Code must be met for a preservation easement to be tax-deductible.<sup>207</sup>

## **GIFT AND BENEFIT**

One important feature of a preservation easement is that the taxpayer “must not expect to receive a substantial benefit as a *quid pro quo* in return for the donation of a gift.”<sup>208</sup> A deduction cannot be claimed for a preservation easement if the easement is

---

<sup>203</sup> A Special Counsel at the Internal Revenue Service, an informal telephone conversation with the author, January 19, 2018.

<sup>204</sup> 26 CFR § 1.170A-14(a); 26 CFR § 1.170A-14(g)(5)(ii); 26 CFR § 1.170A-14(g)(6).

<sup>205</sup> 26 CFR § 1.170A-14(5)(iv)(A).

<sup>206</sup> 26 CFR § 1.170A-14(g)(5)(ii).

<sup>207</sup> Watson and Nagel, *Establishing and Operating an Easement Program*, 4.

<sup>208</sup> Mallard, "Avoiding the Disneyland Façade....," 343; *Collman v. CIR*, 511 F.2d 1263 (9th Cir. 1975).

given in return for special zoning permissions or as a requirement for the sale of the property. This would instead be classified as an *exacted easement*.<sup>209</sup> The value of the donation cannot also give added value to the property. For example, if a property developer were to donate a land conservation easement on land adjacent to one of their new developments for a nature preserve, the nature preserve gives added value to their development. The added value to the other properties would either lower the charitable value of the donated easement or cancel the value entirely.<sup>210</sup>

In the opinion of April Wood from Historic Charleston Foundation, the IRS deduction for easements is the primary incentive for easement donations. However, the monetary benefit of the easement donation is not the sole motivating factor for property owners. The property owners who donate these preservation easements are proud of their historic properties and are preservation-minded individuals.<sup>211</sup> According to Suzanne Germann from Landmarks Illinois, the bulk of its easement donations were made between 2001-2005 when many donors sought the tax deduction. Easement donations “petered off” after the IRS began to apply greater scrutiny to donors of preservation easements. This caused Landmarks Illinois to stop promoting the program.<sup>212</sup> Based upon these statements, it appears that the easement tax deduction is the impetus for preservation-inclined owners to enter in the legally binding and perpetual agreement.

---

<sup>209</sup> Jessica Owley Lippmann, "The emergence of exacted conservation easements," *Neb. L. Rev.* 84 (2005): 1045, <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1249&context=nlr>.

<sup>210</sup> Charles J. Reichert, "Charitable contribution deduction denied for conservation easement", *Journal of Accountancy*, July 1, 2018, <https://www.journalofaccountancy.com/issues/2018/jul/conservation-easement-deduction-denied.html>.

<sup>211</sup> April Wood, Manager of Easements & Technical Outreach for Historic Charleston Foundation, telephone interview by author, February 3, 2017 and January 24, 2018.

<sup>212</sup> Suzanne Germann, Director of Grants & Easements at Landmarks Illinois, telephone interview by author, February 22, 2019.

## HISTORIC PROPERTY REQUIREMENT

The Internal Revenue Code regulations describe the type of historic property eligible for the tax deduction. Under 26 CFR §1.170A-14(5)(iii), the property must be a “certified historic structure” defined as,

...any building, structure or land area which is— (A) Listed in the National Register, or (B) Located in a registered historic district... and is certified by the Secretary of the Interior... to the Secretary of the Treasury as being of historic significance to the district. A structure for purposes of this section means any structure, whether or not it is depreciable. Accordingly, easements on private residences may qualify under this section. In addition, a structure would be considered to be a certified historic structure if it were certified either at the time the transfer was made or at the due date (including extensions) for filing the donor’s return for the taxable year in which the contribution was made.<sup>213</sup>

There is no limitation on the type of property that can receive an interior preservation easement (residential or commercial) as long as it is individually-listed in the National Register or is a contributing property in a National Register district.<sup>214</sup>

A third qualifying method for preservation easements is for a property to be listed as contributing to a local district certified by the Secretary of the Interior.<sup>215</sup> While National Register districts are considered to be registered historic districts, local districts can also become certified if the local district is:

(a) designated under a State or local statute which has been certified by the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of significance to the district, and (b) Certified by the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register.<sup>216</sup>

---

<sup>213</sup> 26 CFR §1.170A-14(5)(iii).

<sup>214</sup> Watson and Nagel, *Establishing and Operating an Easement Program*, 5.

<sup>215</sup> It is important to understand that while they have similar names, a certified historic structure in a registered historic district is not related to the Certified Local Government program. Guy Lapsley, Technical Preservation Services at the National Park Service, Email Correspondence, April 13, 2018.

<sup>216</sup> 36 CRF Ch. 1 67.2 – Registered Historic District.

Once a local district is certified, a historic property included in the district can become a *certified historic structure*.<sup>217</sup> A certified historic structure is another term for a building listed as contributing to a registered district. Some states cannot have certified local districts because the Secretary of the Interior has yet to certify the state-enabling legislation.<sup>218</sup> For example, South Carolina's state-enabling legislation has not been certified, meaning that there are no local ordinances that create historic districts eligible to be Secretary of the Interior-certified local historic district.<sup>219</sup> Other states, including New York, have received this certification from the Secretary of the Interior and have certified local districts.<sup>220</sup> However, according to Guy Lapsley from the National Park Service, the certified local district program is not heavily used.<sup>221</sup> If a property is not in a certified local historic district, a National Register district, or is not individually in the National Register, then the property is ineligible for a preservation easement.

### **PENSION PROTECTION ACT OF 2006 CHANGES**

Both residential and nonresidential income-producing properties are eligible to donate a preservation easement if they meet the restrictions listed above. However, there was an important change as a part of the Pension Protection Act of 2006. This new act requires that property owners seeking the tax-deduction must donate a preservation easement for the entire building's exterior if the property is in a historic district. However, the act does not apply to properties that are individually listed on the register,

---

<sup>217</sup> 36 CFR Ch. 1 67.2 – Certified Historic Structure.

<sup>218</sup> 36 CFR Ch. 1 67.9(a-b).

<sup>219</sup> Dan Elswick, Senior Historic Architecture Consultant at South Carolina Department of Archives and History, Email correspondence with author, March 28, 2018.

<sup>220</sup> New York State Cultural Resource Information System, New York State Office of Parks, Recreation and Historic Preservation, accessed December 1-21, 2018, <https://cris.parks.ny.gov/>.

<sup>221</sup> Guy Lapsley, Technical Preservation Services at the National Park Service, telephone interview by author, March 15, 2019.

only those located in National Register districts or located in a qualifying local or state historic district.<sup>222</sup>

## NATIONAL REGISTER QUALIFICATIONS

The National Register of Historic Places is a federal program established by the National Historic Preservation Act of 1966 in order to “identify, evaluate, and protect America’s historic and archeological resources.”<sup>223</sup> The listing of a property in the National Register requires owner consent and no public access. Additionally, there are no ramifications for unauthorized work or even demolition of a listed property apart from de-listing (unless Federal historic preservation funding or tax credits were taken).<sup>224</sup> However, the property must meet one of four criteria to be eligible for the National Register. These criteria include A) historical importance B) associated with a significant person, C) an important architectural or artistic work, or D) a property that has yielded or could yield important historical or prehistoric information.<sup>225</sup>

The easement-holding organization must approve all rehabilitation work according to the contracts consulted. There is no stipulation in the Internal Revenue Code requiring that rehabilitation work must comply with the *Secretary of the Interior’s Standards for the Treatment of Historic Properties*. However, the consulted

---

<sup>222</sup> Charles Fisher, "Easements to Protect Historic Properties...", 4; A Special Counsel at the Internal Revenue Service, an informal telephone conversation with the author, February 21, 2019.

<sup>223</sup> “National Register of Historic Places”, *National Park Service*, accessed January 6, 2019, <https://www.nps.gov/subjects/nationalregister/index.htm>.

<sup>224</sup> “The National Register of Historic Places”, *National Park Service* (2002), 6. <https://www.nps.gov/nr/publications/bulletins/pdfs/NRBroch.pdf>.

<sup>225</sup> “National Register Criteria for Evaluation”, *National Register Publications*, accessed November 20, 2018, [https://www.nps.gov/nr/publications/bulletins/nrb15/nrb15\\_2.htm](https://www.nps.gov/nr/publications/bulletins/nrb15/nrb15_2.htm).

organizations apply these standards when determining what work to approve.<sup>226</sup> An easement agreement from Historic Charleston Foundation confirms this,

All maintenance, rehabilitation or other work subject to the provisions of this Easement shall be performed according to *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*, issued and as may from time to time be amended, by the United States Secretary of the Interior, and by the *Exterior Preservation and Restoration Guidelines* and other written guidelines of Grantee issued, and as may from time to time, be amended, and must be consistent with the historic character of the exterior.<sup>227</sup>

So, while it appears that an easement-holding organization is not mandated to apply these standards, it is common practice.

## **QUALIFIED ORGANIZATION**

As part of the Internal Revenue requirements, a “qualified organization” must hold the preservation easement.<sup>228</sup> The “qualified organization” must be a 501(c)(3) charitable organization devoted to conservation and preservation as part of its mission, or an organization that receives most or all of its financial resources from a government agency and meets certain additional requirements (170A-14(b)(1)(A)(vi), or is a government unit (170A-14(b)(1)(A)(vi)).<sup>229</sup> A governmental unit is “a State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia...”<sup>230</sup> This “qualified organization” agrees that they are able and willing to monitor the property and enforce the terms of the easement.<sup>231</sup> A

---

<sup>226</sup> “Easements,” The New York Landmarks Conservancy, accessed April 5, 2019, [http://nylandmarks.org/programs\\_services/easements/](http://nylandmarks.org/programs_services/easements/). Also included in sample and public easement documents from Historic Charleston Foundation, Preservation Society of Charleston, the National Trust for Historic Preservation.

<sup>227</sup> Charleston Co., SC., Deed Book 0277: 861. 5.

<sup>228</sup> “have a commitment to protect the conservation purposes of the donation and have the resources to enforce the restrictions. A conservation group organized or operated primarily or substantially for one of the conservation purposes specified in section 170(h)(4)(A) will be considered to have the commitment required by the preceding sentence.” 26 CFR §1.170A-14(c)(1).

<sup>229</sup> 26 CFR §1.170A-14(c)(1)(i-iv).

<sup>230</sup> 26 U.S. Code §170(c)(1).

<sup>231</sup> 26 CFR §1.170A-14(c)(1).



governmental entity like the Landmarks Commission could theoretically hold an interior easement on a property. Indeed, New York has state-enabling legislation allowing for historic preservation easements. New York state law recognizes the importance of preservation, echoing New York City's Landmarks Law. According to Article 49 0301,

The legislature hereby finds and declares that in order to implement the state policy of conserving, preserving and protecting its environmental assets and natural and man-made resources... the preservation of areas which are significant because of their historical, archaeological, architectural or cultural amenities, is fundamental to the maintenance, enhancement and improvement of recreational opportunities, tourism, community attractiveness, balanced economic growth and the quality of life in all areas of the state.

The state grants certain rights to cities to further preservation including the ability to hold preservation easements,

... by purchase, gift, grant, bequest, devise, lease or otherwise, acquire the fee or any lesser interest, development right, **easement**, covenant or other contractual right necessary to achieve the purposes of this article, to historical or cultural property within its jurisdiction.<sup>232</sup>

## MONITORING

In order to maintain a preservation easement, all the organizations consulted monitored their easements every 12-18 months. The easement document stipulates the terms of the monitoring requirement.<sup>233</sup> The right to access the property for inspection purposes is also mandated in the federal regulations for preservation easements, “the terms of the donation must provide a right of the donee to enter the property a reasonable times for the purpose of inspecting the property to determine if there is compliance with

---

<sup>232</sup> NY Gen Mun L § 119-DD (2012).

<sup>233</sup> Charleston Co., SC., Deed Book 0277: 861. 7; April Wood, Manager of Easements & Technical Outreach for Historic Charleston Foundation, telephone interview by author, February 3, 2017 and January 24, 2018; Raina Regan, Senior Manager of Easements at National Trust for Historic Preservation, telephone interview by author, February 1, 2019; Suzanne Germann, Director of Grants & Easements at Landmarks Illinois, telephone interview by author, February 22, 2019; Watson and Nagel, *Establishing and Operating an Easement Program*, 19.

the terms of the donation.”<sup>234</sup> The response to monitoring varies between organizations. According to April Wood from Historic Charleston Foundation, people are more reluctant to donate interior easements because of the yearly monitoring requirement and potential impacts on resale.<sup>235</sup> Raina Regan from the National Trust stated that her organization has no problem gaining access to properties for inspections every 12-18 months. Most often monitoring does not cause any obvious obstacles. The main problem in gaining access to an interior is scheduling the site visit with the property owner. Ms. Regan put a strong emphasis on the importance of frequent communication with easement-holders in order to set expectations and arrange visits.<sup>236</sup>

## **PUBLIC ACCESS**

Public access is a requirement for a preservation easement to serve a public purpose. According to the IRS requirements for a preservation easement,

...some visual public access to the donated property is required. In the case of a historically important land area... the public benefit from the donation may be insufficient to qualify for a deduction if ... which is the subject of the donation is not visible from a public way (*e.g.*, ... interior characteristics and features of the structure are the subject of the easement), the terms of the easement must be such that the general public is given the opportunity on a regular basis to view the characteristics and features of the property which are preserved by the easement to the extent consistent with the nature and condition of the property.<sup>237</sup>

As stated by the Internal Revenue Service regulations, there are several factors to consider in determining whether an easement document requires the proper amount of public access. These factors include: (1) the historical significance of the property, (2) the “nature of the features” under easement restriction (3) the location of the site (ex. is it

---

<sup>234</sup> 26 CFR § 1.170A-14(g)(5)(ii).

<sup>235</sup> April Wood, Manager of Easements & Technical Outreach for Historic Charleston Foundation, telephone interview by author, February 3, 2017 and January 24, 2018.

<sup>236</sup> Raina Regan, Senior Manager of Easements at National Trust for Historic Preservation, telephone interview by author, February 1, 2019.

<sup>237</sup> 26 CFR §1.170A-14(d)(5)(iv)(A).

in a city or the middle of nowhere down a dirt road?), (4) public safety, (5) the owner's privacy and preventing an unreasonable intrusion (6) the impact of public access on the preservation of the site and (7) other opportunities that the public may have to view the property other than a site visit, for example, through photographs.<sup>238</sup>

In the first example taken from the preservation easement regulations (26 CFR §1.170A-14(d)(5)(v)), an owner-occupied Victorian house has interior and exterior easements. The public's view of the exterior is partially obscured, and the public does not see the interior. As such, the property owner, per the easement agreement, invites the public to view the exterior of the house and the rooms with interior easements two days a year from 10:00 am to 4:00 pm. The property owner gives guided tours and can charge a modest entrance fee. Photographs of significant features are also available at the grantee organization, and further appointments are available for educational reasons upon request.<sup>239</sup>

During an informal conversation, an IRS Chief Counsel Attorney stated that while two days are cited in example one (26 CFR §1.170A-14(d)(5)(v)), the amount of time required varies greatly depending on the property and its use. There are no exact parameters or tables at the IRS for a revenue agent to employ when deciding whether to disallow an IRS tax deduction.<sup>240</sup> Per the regulations, the amount of time required for public access is a requirement that needs to be worked out between the property holder and the charitable organization receiving the preservation easement.<sup>241</sup> This same IRS

---

<sup>238</sup> 26 CFR §1.170A-14(d)(5)(iv).

<sup>239</sup> 26 CFR §1.170A-14(d)(5)(v).

<sup>240</sup> A Special Counsel at the Internal Revenue Service, an informal telephone conversation with the author, January 19, 2018.

<sup>241</sup> 26 CFR §1.170A-14(d)(5)(iv)(A-C).

official explicitly stated that interior photographs are not a substitute for public access to the space under the terms of the preservation easement regulations.<sup>242</sup> The interior easements with Historic Charleston Foundation require two days of access per year upon request of the easement-holding organization. However, according to April Wood from Historic Charleston Foundation, the preservation easements they hold on plantations outside of Charleston require more than two days of access. The increased access to the plantation interiors held by Historic Charleston Foundation is in line with example two from the regulations.<sup>243</sup> In this example, an unoccupied farmhouse near a popular year-round tourist site, a Civil War Battlefield, is only open for four weekends a year from 8:30 am to 4:00 pm. The amount of access does not meet the public access requirement because the farmhouse is unoccupied, causing little burden on the property owner to allow for more public access. Additionally, it is near a popular tourist site, making it more likely to be visited.<sup>244</sup> Essentially, no firm regulations exist dictating the required amount of public access. Instead, the appropriate public access for each preservation easement is determined on a case-by-case basis influenced by such factors as the location, type, and function of the property.

During this same informal conversation, the IRS Chief Counsel Attorney mentioned that a property owner is not required to have an open day where everyone who purchases a ticket receives admittance. It is perfectly legal to limit access to certain groups like scholars and students.<sup>245</sup> Factors such as the ability to regulate who can view

---

<sup>242</sup> A Special Counsel at the Internal Revenue Service, an informal telephone conversation with the author, January 19, 2018.

<sup>243</sup> April Wood, Manager of Easements & Technical Outreach for Historic Charleston Foundation, telephone interview by author, February 3, 2017 and January 24, 2018.

<sup>244</sup> 26 CFR §1.170A-14(d)(5)(v).

<sup>245</sup> A Special Counsel at the Internal Revenue Service, an informal telephone conversation with the author, January 19, 2018.

a property and the flexibility to accommodate the property owner's schedule suggest that preservation easements are the perfect balance of private property rights and public benefit. The policy for public access concerning 5 Franklin Street in Charleston, SC (a Historic Charleston Foundation interior and exterior easement property) allows approved academics and students to tour the property upon request for up to two days during the year and to also request photographs from Historic Charleston Foundation.<sup>246</sup> If a qualified person requests access for educational purposes, then Historic Charleston Foundation may ask the property owner to arrange access. Ms. Wood also stated that some of the interior easements held by Historic Charleston Foundation are part of the annual Festival of Houses and Gardens (\$55 ticket price), fulfilling this requirement.<sup>247</sup> The IRS Special Counsel also stated that the homeowner did not have the right to limit access to their approved individuals. Additionally, access is not instantaneous. Property owners are not forced to open their homes at a moment's notice. At the same time, there needs to be reasonable accommodation for access to the property.<sup>248</sup> In reality, Historic Charleston Foundation does not receive many requests to access its interior easements in the downtown historic district, the burden on the property owner of a house downtown sometimes less than the contractual two days. Requests for access to plantation properties protected by interior easements are more frequent.<sup>249</sup> Landmarks Illinois considers the public access requirement fulfilled by the opening of commercial spaces to the public for business. While Landmarks Illinois does not organize a seasonal house

---

<sup>246</sup> Charleston Co., SC., Deed Book 0277: 861. 10.

<sup>247</sup> April Wood, Manager of Easements & Technical Outreach for Historic Charleston Foundation, telephone interview by author, February 3, 2017, January 24, 2018, and March 14, 2019.

<sup>248</sup> A Special Counsel at the Internal Revenue Service, an informal telephone conversation with the author, January 19, 2018.

<sup>249</sup> April Wood, Manager of Easements & Technical Outreach for Historic Charleston Foundation, telephone interview by author, February 3, 2017, January 24, 2018, and March 14, 2019.

tour like Historic Charleston Foundation, the two interior easements they hold in private residences can be open by other local house tours as well as to scholars upon request.

One residence converted from a private club is also opened for qualifying private events.<sup>250</sup>

## MAINTENANCE AND FEATURES

Most preservation easements allow for modifications and repairs to the interior with permission from the easement-holding organization. In a sample easement document from the Historic Charleston Foundation, the Foundation requires consent to all changes,

Without the prior, express, written consent of Grantee, Grantors will not undertake nor permit to be undertaken: (a) any removal of, modification or addition to any walls or partitions of the Interior (as defined below); (b) any modification, removal, abrasive cleaning or alteration to any woodwork, ornamental plaster or brickwork in the Interior (as defined below), including, without limitation, any ceilings, floors, cornices, millwork, moldings, paneling, mantels, doors, wainscoting, newels and balustrades, windows, built-in cabinets, fireplaces and stairs ... or (c) any removal, construction, alteration, remodeling, repainting, refinishing, abrasive cleaning, stripping, sanding, sealing, waterproofing or other action which would substantially alter the appearance of the Interior...<sup>251</sup>

While an easement-holding organization can apply their own standards, any work seeking a federal tax incentive must comply with the *Standards for Rehabilitation* by the United States Secretary of the Interior as articulated in 36 CFR § 67.7 Federal Historic Preservation Tax Incentives program.<sup>252</sup> They must also follow any other expressly written plans or procedures from the Grantee organization.<sup>253</sup>

---

<sup>250</sup> Suzanne Germann, Director of Grants & Easements at Landmarks Illinois, telephone interview by author, February 22, 2019.

<sup>251</sup> Charleston Co., SC., Deed Book 0277: 861. 4.

<sup>252</sup> 36 CFR § 67.7.

<sup>253</sup> Charleston Co., SC., Deed Book 0277: 861. 5.

The easement document specifically lists the protected features in the interior and describes them in the document. For example, the easement document relating to the interior easement on 5 Franklin Street (a Historic Charleston Foundation held easement) describes the following features:

**5 Franklin Street - Interior Features List\* 5.10.12**

**Entry Hall:** Floors, 2 doors, transoms, surrounds, and hardware, Front door surround

**Front Room:** Floors, Ceiling medallion, Crown molding, Baseboards, Fireplace and mantle, Windows and surrounds, Doors, transoms, surrounds, and hardware, Piazza doors, surrounds, and hardware, Pocket doors

**Dining Room:** Floors, Ceiling medallion, Crown molding, Baseboards, Fireplace and mantle, Windows and surrounds, Doors, transoms, surrounds, and hardware (one door is split vertically in half; replacement with a single solid door, per the original, shall be allowed), Piazza doors, surrounds, and hardware, Pocket doors

**Stair Halls and Stairs - Floors 1-3:** Treads, Risers, Spindles, Handrail, Chair rails, Baseboards, Windows and surrounds, Doors, surrounds, and hardware (note: one door is split vertically in half; replacement with a single solid door, as per the original, shall be allowed)

1st floor: 3 doors

2nd floor: 4 doors

3rd floor: 2 doors

\*Room configuration and location of door and window openings are also protected.<sup>254</sup>

This individual itemization appears on all the documents for interior easements from Historic Charleston Foundation along with photographs on file. This accurate description of the protected features provides the property owner with a clear understanding of the protected features and what can or cannot be modified or removed without the consent of the easement-holding organization.

---

<sup>254</sup> Charleston Co., SC., Deed Book 0277: 861. 25-26.

## CONTRACTUAL STIPULATIONS

The document is a legal agreement, and thus the regulations above the minimum Internal Revenue Code requirements can be negotiated between the property owner and the easement-holding organization and then can be written into the easement document. For instance, the amount of required public access is negotiable based on the factors described earlier. Other allowances include the right to limit the use or future development of the structure or parcel. A preservation easement can restrict the specific use of interior spaces of a structure. Many of Historic Charleston Foundation's preservation easements explicitly state that the property must remain residential or can operate as a bed & breakfast.

Except as otherwise provided herein, without the prior express written consent of Grantee, the type, use, configuration and density of the Property shall not be changed, subject to the provisions and limitations set forth in Paragraphs IX and X hereinbelow. Any subsequently developed structure shall be used either solely as a single-family residential dwelling unit or a use ancillary to the existing structure used solely for single family dwelling use... In no event shall any interval ownership interest, interval estate, time span estate, timeshare ownership interest or timeshare leasing interest in the Property be conveyed by Grantors... Except as otherwise provided herein, in no event shall the Property or any portion thereof be used as an Inn, Hotel, Bed and Breakfast or motel.<sup>255</sup>

These clauses can be subject to change (if stated in the easement), to allow for the property to be used in a different way if the current use is "economically insupportable."<sup>256</sup> Each requirement is explicitly stated so that both the property owner and the easement-holding organization understand their responsibilities.

Additionally, the easement-holding organization may include a clause to force the maintenance of the structure. According to the same preservation easement from Historic

---

<sup>255</sup> Charleston Co., SC., Deed Book 0277: 861. 6-7.

<sup>256</sup> Watson and Nagel, *Establishing and Operating an Easement Program*, 16.



Charleston Foundation, Historic Charleston Foundation has the legal right to undertake maintenance of a property themselves and then charge the property owner for reimbursement of the costs incurred.

Grantors shall keep the Property ... reasonably safe and reasonably clean... Grantors shall not deliberately or negligently destroy, deface, damage, impair or remove any part of the Property or the Premises that is covered by this Easement or knowingly permit any person to do so. If the terms and conditions of this paragraph are not complied with to the satisfaction of Grantee, Grantee may arrange to have the terms and conditions of this paragraph complied with, including, but not limited to, contracting with someone to bring the Property into compliance with applicable building and housing codes, place the Premises in reasonably safe and reasonably clean condition... **In the event Grantee exercises its right to bring the Premises into compliance with this paragraph, Grantors shall reimburse Grantee for the reasonable cost of doing so and Grantee shall have a lien against the Property as provided in Paragraph XII hereinbelow.**<sup>257</sup>

Landmarks Illinois includes a similar requirement in its contract but has only used it once. In that case, the organization stepped-in to seal-up a property under construction that was in foreclosure but did not put a lien on the property for the work.<sup>258</sup>

However, this clause is not in all easement contracts. According to Raina Regan from the National Trust for Historic Preservation, its easement contracts, along with some other organizations, do not include this type of language. The legality of this stipulation might also change depending on the state.<sup>259</sup> There is a clause in the easement agreements from the New York Landmarks Conservancy where a lien can be put on a property if maintenance work is not completed, but this has never been used.<sup>260</sup>

---

<sup>257</sup> Charleston Co., SC., Deed Book 0277: 861. 5-6.

<sup>258</sup> Suzanne Germann, Director of Grants & Easements at Landmarks Illinois, telephone interview by author, April 2, 2019.

<sup>259</sup> Raina Regan, Senior Manager of Easements at National Trust for Historic Preservation, telephone interview by author, April 2, 2019.

<sup>260</sup> Alex Herrera, Director of the Technical Services Center, The New York Landmarks Conservancy, Email Correspondence with author, April 5, 2019.

## SUMMARY

- An easement is a servitude, a nonpossessory right by another party to control or pass through another person's property.
- An easement has a legal agreement between the two parties and can include extra limitations on the property such as use.
- An interior preservation easement protects important features and is listed in a legal document.
- An *easement in gross* runs with the land, while an *easement appurtenant* is between people and non-transferable.
- Preservation easements were codified under the Tax Reform Act of 1976, allowing for a charitable contribution deduction (26 CFR § 1.170A-14) and amended by the Pension Protection Act of 2006.
- Qualifying properties are 1) listed in the National Register, 2) certified as contributing to a National Register district, or 3) certified as contributing to a local historic district which has been certified and registered by the Secretary of the Interior. The third option is not heavily used.
- Preservation easement must be: (1) held by a qualified organization with an interest in preservation; (2) allow some public access (3) the holding organization must be allowed access to monitor the easement and (4) it must exist in perpetuity.
- The public access requirement varies based on several factors including burden on the property owner, location, and if it is harmful to preservation efforts. It can also be limited to certain groups such as academics and scheduled in advance.
- The donor must not expect to receive a great benefit for the donation or use the donation as a *quid pro quo* to qualify for a charitable deduction.
- Preservation easements must follow IRS regulations but also must follow any extra easement requirements created by the state.
- 2006 Pension Protection Act requires the whole exterior of a building to have an easement if it is a property in a qualifying district (National Register or certified local)
- The primary reason for preservation easement donation is the charitable tax deduction.
- Additional limitations can be added in the contract by the holding organization including limiting the uses for the building or allowing for the organization to conduct maintenance and charge the property owner.
- All the organizations surveyed apply the Secretary of the Interior's standards for rehabilitation work.

## **CHAPTER VII: FAILURES AND SUCCESSES WITH LANDMARKING AND EASEMENTS**

Now that the legal and procedural foundations for landmarking in New York and the fundamentals for preservation easements in other states have been presented, a comparison can be drawn between these two systems. On the one hand, New York City's Landmarks Law is more lenient, but on the other hand, it is more restrictive than the national laws regulating interior easements. This chapter will begin with an explanation of the different sets of qualifications prescribed by the Landmarks Law and those dictated by the preservation easement regulations. Then the more significant questions concerning public access, the prevalence of outside influences and politics are addressed. Other aspects of this comparison include the nature of consent, monitoring, enforcement, and accountability. Real-world examples of the use of landmarked properties will illustrate both the successes and failures within this system. Because there are relatively few landmarked interiors, many examples have been taken from individual landmark cases in New York City. The procedures regarding the landmarking interiors of individual properties in New York City point to an overall pattern of preservation.

### **SPACES**

The most obvious difference between interior landmarking in New York City and the requirements for preservation easements is the small number of places that actually qualify for landmark status. The Landmarks Law does not require that a property is listed in the National Register or as a contributing property to a National Register or certified local district. Instead, the Landmarks Commission can designate an

interior if they determine it to be of value. The main limitation to the law is that only spaces “commonly open and accessible to the public, or to which the public is customarily invited” can be landmarked.<sup>261</sup> This requirement substantially limits the number of interiors available for designation. Since no private homes or restricted and exclusive commercial spaces can be landmarked, several important spaces do not qualify for this designation. The 50<sup>th</sup>-anniversary report commissioned by the City Council noted that there are many fewer interior landmarks compared with individual (exterior) landmarks because of this requirement which “disqualifies a large number of privately-owned buildings.”<sup>262</sup>

Interior preservation easements have their own distinct rules but can be applied to many more types of properties. Interior easements are available only for specific properties that meet the requirements; that they are listed in the National Register or are certified as contributing to a National Register district or certified local district. The common use of the space and whether the interior is commonly accessible to the public is not a requirement. Preservation easements can apply to both commercial and residential spaces. In this way, the use of preservation easements is superior to the Landmarks Law as it greatly increases the number of interiors eligible for protection.

## **FLEXIBILITY AND GUIDELINES**

One major difference between these two preservation tools lies with the source of authority and its power to enforce regulations. The Landmarks Preservation Commission has the authority and autonomy to examine and manage properties on a case-by-case basis. The discretion given to the Landmarks Commission by the courts prevents a

---

<sup>261</sup> N.Y.C. Admin. Code § 25-302m.

<sup>262</sup> New York City Council, *Landmarks for the Future...*, 18.

successful legal challenge as to its choice of which properties to designate, de-calendar, or approve work. Currently, there are no outside regulations to determine designation qualifications or approve work except for the regulations created by the Commission, which can be substituted at the discretion of the Commission. As such, the Commission has the flexibility to work with property owners and developers to modify landmarked buildings and interiors.<sup>263</sup> The Commission's flexibility is in stark contrast to preservation easements. The easement agreement dictates the requirements and, most likely, the easement-holding organization abides by the Secretary of the Interior's Standards. There is therefore little compromise.

*Save America's Clocks* is a perfect example of the authority and discretionary abilities that the Landmarks Commission possesses. Easement-holding organizations do not have this level of authority and discretionary abilities. In order to convert the building into apartments, additional elevator shafts were required, necessitating the movement of a landmarked interior. The Commissioners approved the movement of a landmarked staircase, the relocation of the designated marble anteroom interior on the 4th floor to the ground floor, the enclosure of a designated interior into a private apartment, along with the relocation of several other interior features.<sup>264</sup>

In the case of 346 Broadway, the strict regulations of the Secretary's Standards would most likely not allow for the modifications approved by the Commission.

According to 36 CFR § 67.4(h),

---

<sup>263</sup> Robins, "Historic Preservation Options in New York City..." 15; "Rules of the New York City Landmark Preservation Commission, Title 63, Rules of the City of New York," *New York City Landmarks Commission* (January 2013). <http://home2.nyc.gov/html/lpc/downloads/pdf/pubs/rules.pdf>

<sup>264</sup> "Permit: Certificate of Appropriateness for 346 Broadway, COFA# 16-8220, Docket # 167879," Landmarks Preservation Commission, May 29, 2015, <http://archive.citylaw.org/wp-content/uploads/sites/33/lpc/6-23-15/167879.pdf>; Landmarks Preservation Commission, "Public Hearing, November 18, 2014..." YouTube video.

The Secretary discourages the moving of historic buildings from their original sites. However, if a building is to be moved as part of a rehabilitation for which certification is sought, the owner must follow different procedures depending on whether the building is individually listed in the National Register or is within a registered historic district. When a building is moved, every effort should be made to re-establish its historic orientation, immediate setting, and general environment. Moving a building may result in removal of the property from the National Register or, for buildings within a registered historic district, denial or revocation of a certification of significance; consequently, a moved building may, in certain circumstances, be ineligible for rehabilitation certification.<sup>265</sup>

The National Park Service considers the relocation of historic properties to be a limiting factor when determining eligibility for the National Register, “significance is embodied in locations and settings as well as in the properties themselves.”<sup>266</sup> . Kathleen Howe of the New York State Office of Parks, Recreation and Historic Preservation stated that when applying the Secretary of the Interior’s Standards to a federal tax credit project, her office would most likely not approve any rehabilitation project which allowed for the movement of an important interior or interior features, “the moving or removal of a primary character-defining space would, most likely, not meet the Secretary of the Interior’s Standards for Rehabilitation.” For example, in the hypothetical case that the landmarked interiors of 346 Broadway contained preservation easements governed by a qualified organization following the Secretary of the Interior’s Standards, the Standards would most likely not allow for several of the changes permitted by the Landmarks Commission.<sup>267</sup>

---

<sup>265</sup> 36 CFR § 67.4(h).

<sup>266</sup> “VII. How To Apply The Criteria Considerations – Criteria Consideration B: Moved Properties,” *National Park Service*, accessed March 1, 2019, [https://www.nps.gov/nr/publications/bulletins/nrb15/nrb15\\_7.htm#crit%20con%20b](https://www.nps.gov/nr/publications/bulletins/nrb15/nrb15_7.htm#crit%20con%20b).

<sup>267</sup> Kathleen Howe, Survey Coordinator at New York State Office of Parks, Recreation & Historic Preservation, Email Correspondence and telephone interview by author, March 4, March 11, 2019; It should be noted again that a state historic preservation office does not review rehabilitation work on easement properties (that is up to the easement-holding organization). Ibid.

In order to determine which preservation tool, landmarking or easements, is more suited for the overall preservation of historic interiors depends on the specific nature of the building itself and its particular significance. The Landmarks Commission can provide flexibility to developers, but this flexibility may lead to the possibility of ill-formed decisions for the sake of compromise. This same discretion signifies that the Commission may approve work across many different projects and may do so in such a way as to be influenced by forces outside the preservation community. On the other hand, while following the Secretary of the Interior's Standards provides a clear protocol without the need for compromise, the lack of flexibility in this system might make developers unwilling to create an interior easement. The possible difficulty added to the modification or retrofitting of some buildings could scare off developers.

It is the opinion of this writer that preservation easements are slightly superior as all work must conform to clearly written regulations available to all for review and does not rely on the discretion of the Commissioners. Additionally, if substantial modifications are made to a historic interior, such as the movement or a staircase or the relocation of a room, the interior does lose historical significance. The question then becomes, will the loss of some integrity help the larger preservation effort of the building, or is it an unneeded compromise done for the sake of development and economic gain.



**Figure 11: 1897 Photograph of East Elevation of Banking Hall and Historic Stair<sup>268</sup>**



**Figure 12: Proposed Relocation of Marble Stair to Banking Hall (approved)<sup>269</sup>**

<sup>268</sup> “1897 Photograph of East Elevation of Banking Hall and Historic Stair,” taken from the March 22, 2016 submission to the NYC Landmarks Preservation Commission for Proposed Banking Hall Revisions for Restaurant Use, for 108 Leonard Street, by Beyer Blinder and Belle via Bindelglass, “Mixed Rulings for Conversion of 346 Broadway, TriBeCa.”

<sup>269</sup> “Proposed Relocation of Marble Stair to Banking Hall,” Ibid.



## INCENTIVES

Preservation easements are vastly superior in terms of providing incentives to individual property owners. While the Landmarks Commission has a small grant program for projects in certain qualifying census tracts, this grant program does not provide financial assistance for interior landmarks.<sup>270</sup> The 50<sup>th</sup>-anniversary report for the City Council recognized this lack of a financial incentive suggesting the possible addition of “grants, subsidies, tax benefits, and reforms to development rights transfers... to provide assistance for the upkeep and repair of designated properties with limited financial resources.”<sup>271</sup>

The main channels for financial incentives for historic preservation in New York are through the National Register. A property needs to be listed in the National Register (or be listed as contributing in a registered district) to earn the Federal Rehabilitation tax credit. If in a qualified census tract, the New York State Rehabilitation tax credit is also available to the property owner. A property containing a preservation easement is automatically in compliance with these requirements. A property in the National Register or contributing in a National Register district does not need to have a preservation easement in place to attain the Federal and State rehabilitation tax credits.<sup>272</sup>

---

<sup>270</sup> New York City Landmarks Preservation Commission, “Historic Preservation Grant Program.”; Mark Silberman, General Counsel for the Landmarks Commission, telephone interview by author, January 28, 2019.

<sup>271</sup> New York City Council, *Landmarks for the Future...*, 3.

<sup>272</sup> “Historic Preservation Grant Program,” New York City Landmarks Preservation Commission, accessed January 13, 2019, <https://www1.nyc.gov/site/lpc/about/historic-preservation-grant-program.page>; “Tax Credit Programs,” New York City Landmarks Preservation Commission, accessed January 12, 2018, <https://parks.ny.gov/shpo/tax-credit-programs/>; “New York State Commercial Rehabilitation Tax Credit – Frequently Asked Questions,” New York State Office of Parks, Recreation and Historic Preservation, accessed January 2, 2019, <https://parks.ny.gov/shpo/tax-credit-programs/documents/NYSITCCommercialTaxCreditFAQ.pdf>.

However, a preservation easement provides an extra opportunity to monetize historic preservation.

Additionally, the value of one's property decreases because of the limitations now placed on the property when a preservation easement is donated.<sup>273</sup> For determining the value of a preservation easement, a certified appraiser must be used. For exterior preservation easements, the value can vary significantly based on the location. The location of a property in a historic district with strict exterior preservation requirements in place gives little value to a preservation easement donation even though ordinances are subject to change and easements exist in perpetuity. Only the easement restrictions that go above all local ordinance restrictions are valued.<sup>274</sup> When valuing a preservation easement, an appraiser has to look at the best economic use of the property before and after the restriction including zoning restrictions and the likelihood of development.<sup>275</sup> If a Victorian home is demolished and the land is approved to build a skyscraper, then the price difference for the land is the deductible charitable value. However, if the property is in a historic district with height limitations (something prevalent in New York City), then the value could be less. That is where an interior easement can be used for added value. By placing an interior easement on a property, room reconfiguration is more difficult. If a whole floor is designated, putting in an elevator, for instance, is impossible and therefore could limit the resale value of the property. The restrictions on the property use and modification along with the public access requirement and monitoring are considered too much of a burden for some potential homeowners, thereby limiting the

---

<sup>273</sup> Fisher, "Easements to Protect Historic Properties...", 3-5.

<sup>274</sup> Ibid, 8-10.

<sup>275</sup> 26 CFR § 1.170A-14(h)(3)(ii).

pool of potential buyers, thus reducing the appraised value of the property.<sup>276</sup>

Unfortunately, there are no available examples specifying the value of interior easements in this paper, since property owners are unwilling to share their property appraisals. Even if some property owners were willing to participate, a small sample of appraisals would not be statistically valid.

One obstacle for using preservation easements is that the easement-holding organization usually requires an endowment. According to Raina Regan from the National Trust for Historic Preservation, most organizations require an endowment of sufficient funds to guarantee that a preservation easement can be administered in perpetuity. The National Trust uses a case-by-case calculation based on an estimate of staff time, travel time and cost, legal fees, and other administrative costs. This figure is then multiplied by twenty to generate a five percent return to provide for these costs in perpetuity. Some other organizations take a percentage of the fair market value, a flat fee, or apply a sliding fee scale. The donor also pays for the initial easement costs including preparing the documents, staff time, documentation and surveys, and recording costs, mostly around \$10,000-\$15,000. Ms. Regan estimates that a straight-forward preservation easement in New York City for a rowhouse or a similarly-sized property would cost between \$80,000-\$100,000.<sup>277</sup> Suzanne Germann from Landmarks Illinois confirmed that her organization used a similar model to the National Trust to calculate the initial preservation easement endowment gift along with a \$10,000 flat rate fee for

---

<sup>276</sup> A Special Counsel at the Internal Revenue Service, an informal telephone conversation with the author, January 19, 2018.

<sup>277</sup> Raina Regan, Senior Manager of Easements at National Trust for Historic Preservation, telephone interview by author, February 1, 2019.

future legal enforcement.<sup>278</sup> A comparison cannot be made between the amount of this endowment and the financial value of the preservation easement because of a lack of relevant confidential financial data for these transactions. However, this endowment for administrative fees is not required if the Landmarks Preservation Commission holds the preservation easement since the Commission receives funding from the city and there are so few interior landmarks to monitor.

## **PUBLIC ACCESS**

Public access is an important requirement that may deter many property owners from landmarking interior spaces. Not requiring continued public access was previously the long-held belief and policy of the Landmarks Commission before the first ruling in the *Save America's Clocks* case. While the Landmarks Law requires that a property be publicly accessible for designation, the recent Court of Appeals reversal (March 28, 2019) concerning *Save America's Clocks* stipulates that continued public access is not legally required for a landmarked interior.<sup>279</sup>

In the case of interior properties protected by preservation easements, continued public access is required to serve a public purpose. However, the amount of access can vary based on the location and type of property; therefore limiting the public's entry into an interior and the burden on the property owner. Hosting ticketed events or opening only to specific groups such as scholars is perfectly acceptable. While the Internal Revenue Code does not define the amount of public access required, the easement

---

<sup>278</sup> Landmarks Illinois currently holds around 550 easements, a handful of which contain interior easements. Suzanne Germann, Director of Grants & Easements at Landmarks Illinois, telephone interview by author, February 22, 2019.

<sup>279</sup> *MATTER OF SAVE AMERICA'S CLOCKS, INC. v. City of New York*, 2019 N.Y. Slip Op 2385, in 5-10 (2019).

document states the required amount of time. At Historic Charleston Foundation, two days appears to be the standard amount of access based off an examination of its publicly-accessible easement documents. Example one of the Internal Revenue Code states the same two-day requirement.<sup>280</sup>

With the recent reversal in the *Save America's Clocks* case, landmarking would appear to be superior to the use of an interior easement because of the lack of a continued public access requirement. However, one could argue that since only publicly accessible spaces can become interior landmarks, that continued public access requirement is a consequence of the law. Aside from the closing of some lobby spaces to the general public after the September 11, 2001, terrorist attacks, 346 Broadway is the only case where an interior landmark has completely severed public access.<sup>281</sup> The majority of privately-owned interior landmarks depend on public patronage. While the decision in the Four Seasons restaurant case stated that landmarking a public space could not preclude a future use outside of the public realm, rarely have any interiors been transformed into private spaces.

In the grand scheme, accessibility is not a requirement for preservation. Preservation itself is a good, and public access to a landmarked interior could always be restored at a future time. The National Register does not require public access to properties for listing. Just like properties listed under Criterion D which are listed for the information they have or could yield in the future, a landmarked interior could become

---

<sup>280</sup> 26 CFR § 1.170A-14(d)(5)(v).

<sup>281</sup> David Dunlap, "So, You Think You Can See a Landmark?," *New York Times*, Jan. 20, 2006, <http://www.nytimes.com/2006/01/20/nyregion/so-you-think-you-can-see-a-landmark.html>.

public again, thereby regaining renewed significance.<sup>282</sup> In this author's opinion, the lack of a continued public access requirement is not a major benefit of interior landmarking over interior preservation because the goal of preservation is still accomplished and very few landmarked interiors actually benefit from severing public access.

## CONSENT

Consent involving private property rights is both a significant issue and a defining difference between interior landmarking and interior preservation easements. The New York Landmarks Law does not require owner consent for landmarking. However, requiring consent for landmarking appears to be a confusing matter. According to Robert Tierney, chairman of the Landmarks Preservation Commission (2002-2014), "Owner consent is not required, but I strongly try to obtain it whenever possible... It helps the process going forward. It's not a continually contentious relationship."<sup>283</sup> It appears to be the policy of the Commission to attempt to gain owner approval first. Matt Chaban, a writer for the New York Times, took this sentiment further when discussing the demolition of the Frank Lloyd Wright Car Showroom, stating that, "The commission is loath to designate a landmark without the owner's support, because the landlord, not the city, is ultimately the steward of the space. In the case of the auto dealership, the steward simply had other plans."<sup>284</sup> During a public hearing for an interior landmark in the National Society of the Colonial Dames of headquarters on December 12, 2017, one commissioner responded to a question concerning why the headquarters' interiors were

---

<sup>282</sup> "National Register Criteria for Evaluation", *National Register Publications*, accessed March 28, 2018, [https://www.nps.gov/nr/publications/bulletins/nrb15/nrb15\\_2.htm](https://www.nps.gov/nr/publications/bulletins/nrb15/nrb15_2.htm).

<sup>283</sup> Robin Pogrebin, "Preservationists See Bulldozers Charging Through a Loophole," *New York Times*, November 28, 2008, <https://www.nytimes.com/2008/11/29/arts/design/29landmarks.html>.

<sup>284</sup> Matt Chaban, "Frank Lloyd Wright Wronged on Park Avenue," *Crain's New York Business*, April 12, 2013, [https://www.craigslist.com/article/20130412/REAL\\_ESTATE/130419943/frank-lloyd-wright-wronged-on-park-avenue](https://www.craigslist.com/article/20130412/REAL_ESTATE/130419943/frank-lloyd-wright-wronged-on-park-avenue).

being nominated for landmarking rather than more impressive interiors in private clubs. In response, another Commissioner stated one reason was that the Colonial Dames were agreeable to the interior landmarking while the owners of these private clubs might not be favorable to landmarking.<sup>285</sup>

In 2017, three buildings had their interiors landmarked: the Waldorf-Astoria Hotel, the UN Plaza Hotel, and the New York Library. At the time, the Waldorf-Astoria was undergoing a massive refurbishment and condo conversion during which the developer was supposedly enthusiastic about the designation, working with the Landmarks Commission during the renovation process,

The Waldorf Astoria New York is a landmark and an iconic hotel with unparalleled history and beautiful, irreplaceable features... That is why we fully supported the Commission's recommendations for designation of the Waldorf Astoria's most important public spaces and applaud the Commission on achieving landmark status for them.<sup>286</sup>

According to Mark Silberman, General Counsel at the Landmarks Commission the interior is a selling point for the property. The added value of an important interior makes the preservation of the interior an asset to the property owner.<sup>287</sup> The Rose Main Reading Room and the Bill Bass Catalogue Room were also secure nominations as both are in the city-owned New York Public Library and thus less likely to create controversy or potential headaches for the Landmarks Commission.<sup>288</sup>

---

<sup>285</sup> New York City Landmarks Preservation Commission, "Public Hearing, December 12, 2017 – Item 3-4: 346 Broadway", Filmed December 12, 2017, YouTube video, 0:24:50. Posted December 14, 2017, <https://www.youtube.com/watch?v=bzTrzMPXLGo>.

<sup>286</sup> Tanay Warerkar, "Waldorf Astoria's iconic Art Deco interiors become an NYC interior landmark," *CurbedNY*, March 7, 2017, <https://ny.curbed.com/2017/3/7/14842212/waldorf-astoria-interior-landmark-art-deco>.

<sup>287</sup> Mark Silberman, General Counsel for the Landmarks Commission, telephone interview by author, January 28, 2019.

<sup>288</sup> The Editors, "The good, the bad and the ugly: Best preservation stories of 2017," *The Architects Newspaper*, December 15, 2017, <https://archpaper.com/2017/12/best-preservation-stories-2017/>.



**Figure 13: Waldorf Astoria lobby<sup>289</sup>**

However, according to Mark Silberman, the Commission has landmarked and continues to landmark properties without owner consent. There are certain interior spaces, such as lobbies, where the owner might not view landmarking an interior as an asset, wishing to reserve the right to refresh their building's image. In cases such as these, the Commission still acts.<sup>290</sup> The landmarking of theaters without owner consent illustrates this case. The properties included in the Shubert organization lawsuit discussed earlier include the following theaters: Barrymore, Martin Beck, Belasco, Booth, Brooks Atkinson, Broadhurst, Cort, Forty-Sixth, Majestic, Music Box, Golden,

<sup>289</sup> Alan Light, "Waldorf Astoria lobby," Flickr via Wikimedia Commons, May 2010, Waldorf Astoria, NY, CC BY 2.0, <https://commons.wikimedia.org/w/index.php?curid=33150363>.

<sup>290</sup> Mark Silberman, General Counsel for the Landmarks Commission, telephone interview by author, January 28, 2019.



Mark Hellinger, Imperial (interior only), Longacre, Lunt-Fontanne theater, Lyceum, Majestic, Eugene O'Neill (now the Forrest Theater, interior only), Plymouth, Royale, Saint James (Erlanger now), Shubert, and the Winter Garden Theater (interior Only).<sup>291</sup> Of all of these theaters, only the Lunt-Fontanne theater was not landmarked after the lawsuit was resolved. None of these theaters are listed on the National Register, most likely because of a desire to avoid additional regulation.<sup>292</sup> This case reveals the Commissions willingness to landmark in the face of owner objections. The fact that these are theaters and therefore a clear part of the public realm and that they rely on public patronage makes a clearer case for landmark status. This is not the case with all properties.

Despite these examples, how much owner consent weighs into a decision to landmark an interior (or any designation) is an internal judgment by the Commission. A variety of factors, including support from other stakeholders, such as the local Councilperson can tip the scale in one direction. Therefore, most potential landmarking decisions are reviewed on a case-by-case basis. The UN Plaza Hotel is an example of this individual review. The new owners of the property were interested in updating the interiors when preservationists brought the hotel to the attention of the Landmarks Commission. In the end, not all of the spaces championed by preservationists were landmarked, including the lobby.<sup>293</sup> It is unknown the extent to which owner consent

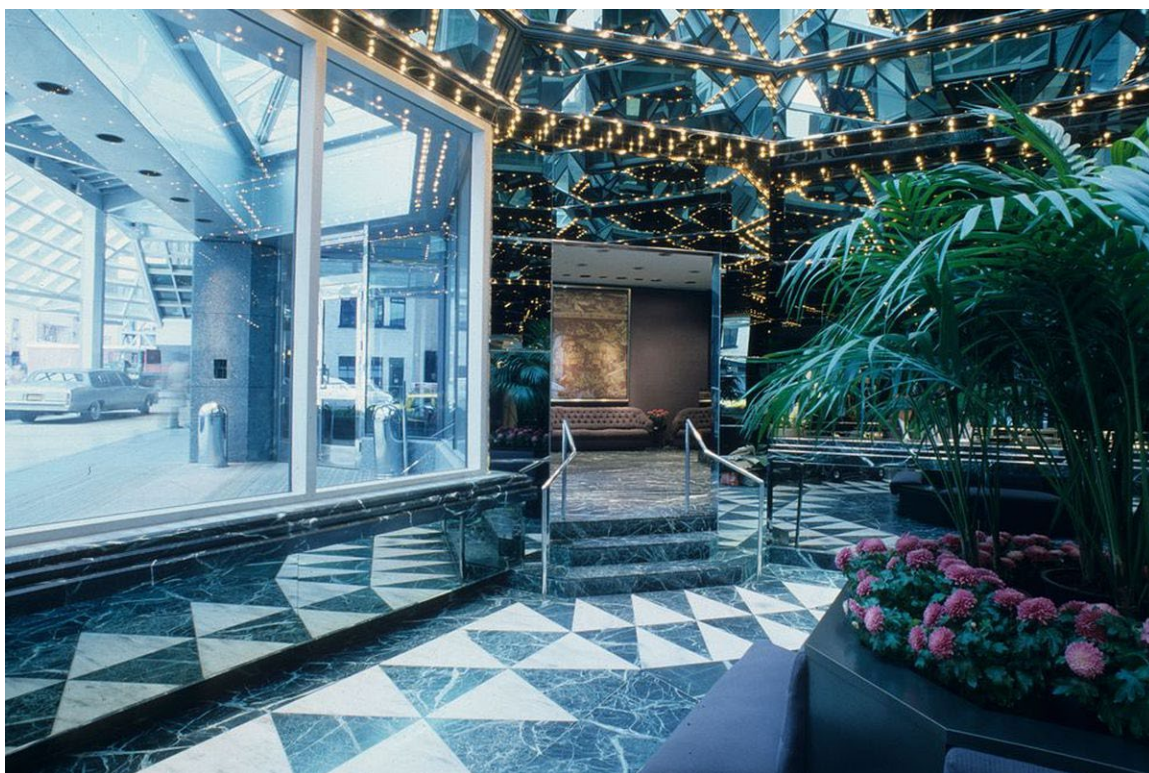
---

<sup>291</sup> Ronald Sullivan, "Theaters' Landmark Status Upheld," *New York Times*, December 8, 1989, <https://www.nytimes.com/1989/12/08/nyregion/theaters-landmark-status-upheld.html>.

<sup>292</sup> Individual Landmarks, created March 11, 2015, downloaded November 2018, NYC OpenData, Landmarks Preservation Commission (LPC), <https://data.cityofnewyork.us/Housing-Development/Individual-Landmarks/ch5p-r223>; New York State Cultural Resource Information System, New York State Office of Parks, Recreation and Historic Preservation, accessed December 1-21, 2018, <https://cris.parks.ny.gov/>.

<sup>293</sup> Audrey Wachs, "Kevin Roche and John Dinkeloo's Ambassador Grill is now a NYC Landmarks," *The Architects Newspaper*, January 17, 2017, <https://archpaper.com/2017/01/ambassador-grill-landmark/>.

factored into this nomination including the exclusion of interiors including the lobby deemed by certain preservation advocates to be of merit.



**Figure 14: UN Plaza Hotel Lobby**<sup>294</sup>

### **PREVENTING LANDMARKING: DESTRUCTION**

The ability to designate a property without owner consent has led to several instances of destruction and restricting public access in order to prevent landmarking. There is a willingness of property owners to alter or destroy historic interiors in order to prevent or delist a landmark. According to Andrew Berman in his article, Executive Director for the Greenwich Village Society for Historic Preservation,

a small but significant minority of developers and owners used this advance notice to secure demolition or alteration permits for their properties, making them ineligible for landmark status, or destroying some of the very characteristics

<sup>294</sup> “Ambassador Grill,” Kevin Roche John Dinkeloo and Associates via Audrey Wachs, “Kevin Roche and John Dinkeloo’s Ambassador Grill is now a NYC Landmarks.”

landmark designation was intended to preserve. In other cases, the LPC moved so slowly after calendaring that even with the 40-day window they are afforded, buildings under consideration for designation were demolished or compromised anyway.<sup>295</sup>

In 2000, the owners of 50 Madison Avenue removed the building's exterior Beaux Arts decoration to prevent inclusion in the proposed Madison Square North Historic District.

This inclusion would have prevented a desired building extension.<sup>296</sup>



**Figure 15: Hoffman Showroom, 1955<sup>297</sup>**

Another example, the Frank Lloyd Wright-designed car showroom is even more tragic. In 1954, Frank Lloyd Wright designed a spiral ramp and turntable car showroom

<sup>295</sup> Andrew Berman, "Protecting Landmarks and the Landmarking Process." *Cityland*, July 24, 2014, <https://www.citylandnyc.org/protecting-landmarks-and-the-landmarking-process/>.

<sup>296</sup> Chaban, "Frank Lloyd Wright wronged on Park Avenue".

<sup>297</sup> Ezra Stoller, *Hoffman Showroom, 1955*, Steinerag.com, accessed March 9, 2019. <http://www.steinerag.com/flw/Artifact%20Pages/PhRtS380.htm>

for Max Hoffman.<sup>298</sup> In March 2012 after the Mercedes dealership left, the property owners were notified of a possible exterior and interior landmarking. They immediately applied for a demolition permit.<sup>299</sup> The Landmarks Commission only discovered that the building had been demolished after the public reported the rubble.<sup>300</sup> Currently, the Landmarks Commission receives a notification from the Department of Buildings when a permit is requested on a calendared building. The permit is held for forty days, during which time Landmarks Commission then has 40 days to respond. The Commission's actions are not binding but this notification provides notice of impending changes should they need to expedite designation to prevent the destruction of important features.<sup>301</sup> A current issue is that some property owners apply for permits during the informal research and outreach process for landmarking interiors before calendaring, as was the case with the Frank Lloyd Wright showroom in 2012. These permits then allow owners to modify or demolish interiors before the official Department of Buildings notification period begins.<sup>302</sup>

Of the 25 interiors that were considered by the Landmarks Commission but ultimately not designated, a total of 5 potential interior landmarks were effectively decalendared because of demolition in the 1980s and 1990s.<sup>303</sup> These properties included

---

<sup>298</sup> Allison Meier, "The Shocking Demolition of Frank Lloyd Wright's Park Avenue Showroom", *Hyperallergic*, April 16, 2013. <https://hyperallergic.com/69023/the-shocking-demolition-of-frank-lloyd-wrights-park-avenue-showroom/>

<sup>299</sup> Chaban, "Frank Lloyd Wright wronged on Park Avenue".

<sup>300</sup> Phil Patton, "Wright's New York Showroom, Now Just a Memory," *New York Times*, June 21, 2013, <https://www.nytimes.com/2013/06/23/automobiles/wrights-new-york-showroom-now-just-a-memory.html>.

<sup>301</sup> Amanda Gruen, "New York City Designation Process: Closing the Loophole to protect potentially eligible buildings", *Pratt Historic Preservation Colloquium*, Fall 2014, 5-7. [https://www.academia.edu/11746902/New\\_York\\_City\\_Designation\\_Process\\_Closing\\_the\\_Loophole\\_to\\_Protect\\_Potentially\\_Eligible\\_Buildings](https://www.academia.edu/11746902/New_York_City_Designation_Process_Closing_the_Loophole_to_Protect_Potentially_Eligible_Buildings).

<sup>302</sup> *Ibid*, 8.

<sup>303</sup> Individual Landmarks, created March 11, 2015, downloaded November 2018, NYC OpenData, Landmarks Preservation Commission (LPC),

the Biltmore Hotel, Harris Theater, Liberty Theater, Empire Theater, and Luchow's Restaurant.<sup>304</sup> That is nearly a 20 percent destruction rate for properties officially discussed by the Commission that could qualify for landmark status. At another property, the owners of the Walker Theater destroyed their interiors after the landmark designation was overturned in order to convert the theater into a retail space.<sup>305</sup> Demolition during the long calendaring process illustrates one of the issues that the Commission has recently attempted to rectify through reducing its backlog of calendared properties. In 2016, the City Council passed a new law (Intro. 775) which requires that all individual and interior landmarks be designated within one year of being calendared, with the option for a one-year extension with owner consent. This law also requires that the backlog be cleared within 18 months.<sup>306</sup> Because the Commission is now determined to be more vigorous with the expediency of its calendaring process, the past lengthiness of this process will not be discussed. What these examples do reveal is a willingness to demolish significant interiors possibly to escape landmarking.

---

<https://data.cityofnewyork.us/Housing-Development/Individual-Landmarks/ch5p-r223>; John Weiss, April 5, 2019.

<sup>304</sup> Ibid.

<sup>305</sup> David Dunlap, "Fadeout for Movie Palace in Brooklyn," *New York Times*, March 30, 1988, <https://nyti.ms/2VwNEjX>.

<sup>306</sup> "City Council Approves Time Limits on Landmark Designations," New York Landmarks Conservancy, June 8, 2016, [http://www.nylandmarks.org/advocacy/preservation\\_issues/proposed\\_legislation\\_by\\_city\\_council\\_will\\_set\\_time\\_limits\\_on\\_landmark\\_desig/](http://www.nylandmarks.org/advocacy/preservation_issues/proposed_legislation_by_city_council_will_set_time_limits_on_landmark_desig/).



**Figure 16: Alvar Aalto interior from the Edgar J. Kaufmann Conference Center<sup>307</sup>**

### **PREVENTING LANDMARKING: ENDING PUBLIC ACCESS**

The exclusion of the public from spaces appears to be another method to avoid landmarking. In 2001, the Landmarks Commission sought to calendar the Alvar Aalto-designed Edgar J. Kaufman Conference Center at the Institute of International Education against owner objections.<sup>308</sup> Because of a calendaring of the property, the Institute closed the conference center to the public in 2008 in order to create a “private space”

<sup>307</sup> “Edgar J. Kaufmann conference rooms,” New York City Landmarks Preservation Commission, via Amy Plitt and Zoe Rosenberg, “the most beautiful interiors in New York City, mapped,” *CurbedNY*, July 11, 2017, <https://ny.curbed.com/maps/new-york-beautiful-interiors-landmarks>.

<sup>308</sup> Audrey Wachs, “Alvar Aalto’s U.N. interiors are in limbo-again,” *The Architects Newspaper*, December 13, 2016, <https://archpaper.com/2016/12/alvar-aalto-un-interiors-limbo/>.

which would preclude the room from becoming an interior landmark.<sup>309</sup> When the calendared interior was reviewed again in 2015, Damaris Olivo, the Commission's Communications Director, stated that "legal issues around public access to the space preclude the rooms from designation."<sup>310</sup> The interior has now been de-calendared because of lack of action.<sup>311</sup> According to lawyer Frank Chaney, the concern now is property owners who occasionally open their historic buildings might exclude the public in order to prevent interior landmarking.<sup>312</sup> The limitation in the city ordinance that an interior must be open to the public to qualify for designation can be doubly damaging. It prevents many interiors from being nominated but can also be used as a method by property owners to prevent designation by closing off their interiors. Therefore, these contested interiors end up unprotected.

Preservation easements are much less complicated in many respects because consent is a requirement. As a property owner enters into an easement agreement willingly, there is no conflict with the initial transaction. If a property owner does not wish to have a preservation easement on their property; they can decline to enter into the agreement. A future property owner might fight against a preservation easement already in place. However, as the preservation easement is written into the property deed and is a legally binding document, the new property owners will be held to it.

While the distinction between landmarking and preservation easements is clear concerning consent (one is not required, and one is needed), which is most effective

---

<sup>309</sup> Chaban, "Flank Lloyd Wright wronged on Park Avenue".

<sup>310</sup> Wachs, "Alvar Aalto's U.N. interiors are in limbo-again".

<sup>311</sup> Ibid.

<sup>312</sup> Rebecca Baird-Remba, "Tribeca Clock Tower Building Case Opens Up Potential for More Interior NYC Landmarks," *Commercial Observer*, December 1, 2017, <https://commercialobserver.com/2017/12/tribeca-clock-tower-building-case-opens-up-potential-for-more-interior-nyc-landmarks/>.

remains to be determined. Some suggest that the Commission is hesitant to landmark without owner consent. The Shubert theater lawsuit illustrates that the Commission will landmark without owner consent, but the distinctive circumstances surrounding each potential landmark makes each decision unique. The weight of a property owner's protest might tip the decision to landmark in one direction or the other. What is implied based on the examples presented is that the types of interior spaces factors into the Commission's willingness to override a property owner's objections. Unfortunately, the public is not privy to all the Commission's decision-making and therefore cannot fully know how much owner objections weighs when considering each potential interior landmark.

The consent requirement for preservation easements could have a limiting effect on the properties available for preservation easements. Property owners willing to enter into an interior easement might be already willing to protect their interiors if these interiors are considered to add value to the property. The fact that consent is not required for landmarking could be a boon to preservation as demonstrated by the landmarking of the Shubert theaters. Interesting, to this writer's knowledge, there was no destructive campaign to prevent landmarking at these theaters despite the wish to demolish some of these theaters to build bigger and better structures. Therefore, while some have destroyed both buildings and contributing features to prevent landmarking, others recognize the inability to overcome the legal precedents currently in support of landmarking and therefore acquiesce. In the case of consent, a combination of the two systems might be the best method for preventing the demolition of potential landmarks and creating incentives for property owners to preserve and protect historic interiors.



## PREVENTING LANDMARKING: ACCOUNTABILITY AND POLITICAL INFLUENCE

Preservation easements and interior landmarking differ in distinct ways in the areas of accountability and political influence. The Landmarks Commission is a department in the City government under the Deputy Mayor for Housing and Economic Development along with the Housing Authority, Parks and Recreation, City Planning, Economic Development Corporation, and others. This branch is under the authority of the Mayor, City Council, Comptroller, and other senior positions.<sup>313</sup> As one part of a larger entity, the Landmark Preservation Commission is subject to the influence of politics as well as the desires and programs of other city departments. A goal of current Mayor Bill de Blasio's administration is to increase density and building height to create more affordable housing and to increase "equality and diversity" within the city.<sup>314</sup> In this case, the goals of one city agency might influence the work of another. The fact that the Mayor appoints the Commission might also influence this decision-making.

Before a designation can become official, the City Council must first approve the designation. The final decision is therefore left to politicians who do not have expertise in the preservation field. Additionally, these City Council members also have their own agendas and must bend to political pressures from their constituents, including developers. According to Tony Avella, a Queens City Councilman,

The real estate industry controls the agenda in the city... If they don't want something to happen, it doesn't happen. They pull the strings from behind the

---

<sup>313</sup> Office of the Mayor, "New York City Organizational Chart", NYC.Gov, accessed February 23, 2019, <https://www1.nyc.gov/office-of-the-mayor/org-chart.page>.

<sup>314</sup> The Editorial Board, "New York City's Landmarks Law at 50," *New York Times*, April 17, 2015, <https://www.nytimes.com/2015/04/18/opinion/new-york-citys-landmarks-law-at-50.html>.

scenes, whether in rezoning reform or landmarking. It's just incredible how much influence they have.<sup>315</sup>

During the tenure of the Board of Estimate (disbanded in 1989), 21 of the nearly 1,000 landmarks that the Board considered were vetoed or modified according to the Society for the Architecture of the City. Many of these were later landmarked, but five were destroyed or modified beyond historical worth. It is interesting to note that two of these were interior landmarks. This could indicate that interior landmarking often creates a red flag for developers and others. There are so few interior landmarks compared to the 1,412 individual landmarks that exist.<sup>316</sup>

In 2009, the LPC did not landmark a building connected to the 100-year-old B. F. Goodrich Tire Company building because of pressure from the City Council. Four City Councilors implied that they would not give final approval on the landmark designation should the connected building be included as it would threaten a hotel development project. According to Robert B. Tierney, former Landmarks Commission Chairman, it would be impractical to landmark both buildings “in light of opposition to this designation from the City Council and certain members of the City Council and the likelihood that that body will overturn any designation.”<sup>317</sup> In 1993, the Jamaica Savings Bank in Queens was rejected by the City Council after being approved by the Landmarks Commission.<sup>318</sup> The property had already had its landmark status stripped by the Board

---

<sup>315</sup> Robin Pogrebin, “Preservation and Development, Engaged in a Delicate Dance,” *New York Times*, December 1, 2008, <https://www.nytimes.com/2008/12/02/arts/design/02landmarks.html>.

<sup>316</sup> Christopher Gray, “\$711,000 to Revive a Grand Stairway to Nowhere,” *New York Times*, April 08, 1990, <https://nyti.ms/2SKZBkr>.

<sup>317</sup> Pogrebin, Robin, “City Council Influences Landmarks Decision.” *New York Times*, November 18, 2009, <http://www.nytimes.com/2009/11/19/arts/design/19goodrich.html>.

<sup>318</sup> Steven Lee Myers, “Historic Preservation Comes of Age in Queens; Scarcity of Landmarks Reflects Distrust Within the Borough and Snobbery Outside It,” *New York Times*, February 3, 1993, <https://nyti.ms/2HbCt8I>.

of Estimates in 1975.<sup>319</sup> Mr. Kroessler of the Queensborough Preservation League called the situation “... political horse-trading of the highest caliber.”<sup>320</sup>

While the Landmarks Commission recently set about correcting a backlog of calendared properties stretching back years, many properties from this backlog never made it to a hearing and were essentially de-calendared. One New York Times article stated that “the commission is faulted for refusing to schedule public hearings on some of the most fiercely contested project...”<sup>321</sup> One such building, Ward’s Bakery, was eligible to be listed in the National Register of Historic Places in 2003 but was deemed to be ineligible for landmarking by the Commission. As a result, the bakery was demolished.<sup>322</sup> The Landmarks Commission also refused to consider the Gowanus Station building for landmarking, despite a letter of support for the building from the New York State Historic Preservation Office and the local community.<sup>323</sup>

---

<sup>319</sup> Christopher Gray, “Streetscapes: The Old Jamaica Savings Bank’ Beaux-Arts Building in Limbo,” *New York Times*, November 3, 1991, <https://www.nytimes.com/1991/11/03/realestate/streetscapes-the-old-jamaica-savings-bank-beaux-arts-building-in-limbo.html>; Jake Mooney, “Landmarks Says It’s a Landmark. The Council Begg to Differ,” *New York Times*, November 13, 2005, <https://nyti.ms/2XGBt61>.

<sup>320</sup> Myers, “Historic Preservation Comes of Age in Queens...”.

<sup>321</sup> Pogrebin, “Preservation and Development, Engaged in a Delicate Dance”.

<sup>322</sup> Ibid.

<sup>323</sup> Nathan Kensinger, “Visiting 10 historic NYC buildings slated for demolition”, *CurbedNY*, January 25, 2018, <https://ny.curbed.com/2018/1/25/16929870/new-york-historic-buildings-demolition-photo-essay>



**Figure 17: Walker Theatre interior<sup>324</sup>**

## **WALKER THEATER**

The Walker Theater is a definite example of a property where outside influences were able to reverse an interior landmark. Located in Brooklyn, the 1928 theater was landmarked in 1984 because of its importance as one of the last movie palaces in New York City. After the designation, United Artists (the tenants) sought permission to subdivide the auditorium into a quadraplex. Originally, this plan was rejected by the Landmarks Commission which stated that “the importance of the space was its totality.”<sup>325</sup> Howard Golden, the Brooklyn Borough President, responded that his office would immediately seek to overturn the designation to allow for the subdivision of the

<sup>324</sup> MarkW, “Walker Theater,” *Cinematreasures.com*, uploaded October 28, 2017, <http://cinematreasures.org/theaters/1597/photos/222233>

<sup>325</sup> Dunlap, “Fadeout for Movie Palace in Brooklyn”.

theater. Four months after landmarking, the Board of Estimate revoked the designation.

326

There are only a few circumstances in which a preservation easement may be terminated. According to Raina Regan from the National Trust, most preservation easements will have a clause or multiple clauses that will speak to the termination of a preservation easement through either extinguishment (if destroyed) or condemnation if taken under eminent domain. Individual states might have their own specific rules.<sup>327</sup> The only way an easement can be terminated (aside from destruction) in New York is through condemnation by eminent domain by the city or state government.<sup>328</sup>

Based on these examples, it is reasonable to assume that interior landmarking could be subjected to politicians who can deny landmark status and influence the Commission's decisions. The Landmarks Commission has the authority to revoke landmark-status for a landmarked interior pursuant to public hearings and notice requirements though they have not yet done so.<sup>329</sup> The City Council can also overturn a landmark within 120 days of the designation by the Landmarks Commission.<sup>330</sup> An interior easement is an agreement between a property owner and a qualified third-party organization and is therefore not susceptible to political influence. Because an interior

---

<sup>326</sup> Dunlap, "Fadeout for Movie Palace in Brooklyn".

<sup>327</sup> Raina Regan, Senior Manager of Easements at National Trust for Historic Preservation, telephone interview by author, February 1, 2019.

<sup>328</sup> Thomas Gang Inc. v. State, 19 A.D.3d. 861 (3d Dept 2005).

<sup>329</sup> Individual Landmarks, created March 11, 2015, downloaded November 2018, NYC OpenData, Landmarks Preservation Commission (LPC), <https://data.cityofnewyork.us/Housing-Development/Individual-Landmarks/ch5p-r223>; John Weiss, April 5, 2019.

<sup>330</sup> N.Y.C. Admin. Code § 25-303g; Individual Landmarks, created March 11, 2015, downloaded November 2018, NYC OpenData, Landmarks Preservation Commission (LPC), <https://data.cityofnewyork.us/Housing-Development/Individual-Landmarks/ch5p-r223>; New York City Charter Chapter 74 § 3020(9.)

easement can only be extinguished under a limited set of circumstances, the permanent protection provided by the perpetuity requirement for preservation easements is superior to the Landmarks Law by safeguarding the significant features of a property from human influence.

### **AFTER LANDMARKING: MONITORING**

Preservation easements are vastly superior to landmarking because of the monitoring requirement. Instead, the Commission investigates complaints rather than actively monitoring its landmarks.<sup>331</sup> There are 8,550,405 people in New York City making 800 complaints about 36,000 landmarked properties each year.<sup>332</sup> Interior landmarks are at greater risk from a lack of yearly monitoring since fewer people access these spaces compared to public streets. There are few people having drinks at Della Robbia Bar or eating at the Four Seasons Restaurant who will both **recognize** and **report** the possible violation to the Commission. The limited number of people with access to these interiors lowers the possible number of potential whistle-blowers. There are many interior landmarks, now closed to the general population, where the current owners or occupants might have an incentive to overlook any violations. Indeed, they might be committing the violations themselves and with no outside parties accessing the space, who will report a violation? According to John Weiss, the Landmarks Commission

---

<sup>331</sup> New York City Landmarks Preservation Commission, “Complaints”; Baccash, “Enforcement and the New York City Landmarks Law...,” 42-43.

<sup>332</sup> “New York City, New York Population 2019”, *World Population Review*, accessed January 7, 2019. <http://worldpopulationreview.com/us-cities/new-york-city-population/>; New York City Landmarks Preservation Commission, “About LPC.”; New York City Landmarks Preservation Commission, “Complaints.”

receives probably one complaint a year at most concerning a landmarked interior and most likely comes from a Landmarks Commission employee.<sup>333</sup>

Interior easements differ from New York's interior landmarking insofar as monitoring appears to be a standard requirement of preservation easements. Site visits are conducted every year to 18 months to check for changes to the protected features and their condition.<sup>334</sup> Additionally, the easement-holding organization initiates an investigation should any unapproved work be reported. According to Raina Regan from the National Trust, it is probable that if unapproved work has been started on a protected interior that simultaneous, unapproved work is also taking place on the exterior of the structure.<sup>335</sup> This proactive monitoring makes interior easements more likely to preserve interiors since the monitoring is entwined with its enforcement. Monitoring can signal to the preservation organization if a protected interior feature is in disrepair before any irreversible damage occurs.

#### **AFTER LANDMARKING: ENFORCEMENT**

Enforcement of the Landmarks Law using legal proceedings has become a more common occurrence, especially in cases of neglect. As the Landmark Commission is a city agency, the Administrative Law Division of the Corporation Counsel Office of the City of New York brings all lawsuits on behalf of the Commission.<sup>336</sup> According to John

---

<sup>333</sup> John Weiss, Deputy Counsel for the Landmarks Commission, telephone interview by author, January 11 and 18, 2019.

<sup>334</sup> April Wood, Manager of Easements & Technical Outreach for Historic Charleston Foundation, telephone interview by author, February 3, 2017 and January 24, 2018; Raina Regan, Senior Manager of Easements at National Trust for Historic Preservation, telephone interview by author, February 1, 2019; Suzanne Germann, Director of Grants & Easements at Landmarks Illinois, telephone interview by author, February 22, 2019; Watson and Nagel, *Establishing and Operating an Easement Program*, 19.

<sup>335</sup> Raina Regan, Senior Manager of Easements at National Trust for Historic Preservation, telephone interview by author, February 1, 2019.

<sup>336</sup> Baccash, "Enforcement and the New York City Landmarks Law..." 55-56.

Weiss, there was only one lawsuit for the first forty or so years of the Landmarks Law for neglect, but now such cases are quite common. The Landmarks Preservation Commission usually has from four to six affirmative lawsuits pending at any given time. The very threat of a lawsuit has been an effective means of encouraging property owners to comply with the landmark law.<sup>337</sup> “Although very time-consuming, bringing a lawsuit to compel repairs has shifted from being a rare occurrence to a mainstay of the Commission’s enforcement tools.”<sup>338</sup> There are currently five demolition-by-neglect lawsuits ongoing and another to be filed soon. Often, the papers for a lawsuit are drafted and sent to the delinquent property owners in order to prove that the Landmarks Commission is serious in its intent. In most cases, the property owner corrects the problem in order to avoid the lawsuit or sells the building. However, these cases can drag on. In an effort to work with property owners, the Landmarks Commission will stop a lawsuit against the property owners if they appear willing to comply. In the case of 346 Henry and 129 Congress Street, the lawsuit to order compliance has dragged on for nine years. In that case, the owner repeatedly agreed to make repairs, and a judge signed the order, then the lawsuit was put on hold when the property owner seemed to be willing to work with the Landmarks Commission. However, when the property owners did not complete the work, the lawsuit was drawn up again. However, it takes months to get before a judge. Overall, the property owner, in this case, has paid over \$450,000 in fines over nine years, and the work still has not been finished. Currently, the fines are at

---

<sup>337</sup> John Weiss, Deputy Counsel for the Landmarks Commission, telephone interview by author and email correspondence, January 11 and 18, 2019; March 29, 2019.

<sup>338</sup> Baccash, “Enforcement and the New York City Landmarks Law...” 55 quoting John Weiss, Deputy Counsel for the Landmarks Commission.



\$2,000 a week (the maximum is \$5000 a day). However, the amount of the fine is up to the judge. In this case, the Landmarks Commission asked for criminal contempt.

However, no case has ever led to criminal contempt charges.<sup>339</sup>

### AFTER LANDMARKING: NEGLECT



**Figure 18: The Manee-Seguine House<sup>340</sup>**

### MANEE-SEGUINE HOUSE

Neglect is a concern for landmarked properties and is arguably an even greater threat to landmarked interiors. Unlike a building's exterior, an unmonitored interior hidden from public view could fall into disrepair without anyone noticing or reporting an

<sup>339</sup> John Weiss, Deputy Counsel for the Landmarks Commission, telephone interview by author, January 11 and 18, 2019.

<sup>340</sup> "Manee-Seguine house," New York City Landmarks Preservation Commission, via Barbara Ross, "Judge orders repairs to Staten Island landmark house or else owners must pay \$8.5M fine," *New York Daily News*, January 5, 2017, <https://www.nydailynews.com/new-york/nyc-landmark-house-fixed-owners-face-8-5m-fine-article-1.2936464>.

issue. According to John Weiss, “at any given time the LPC has forty-five buildings in various stages of the demolition-by-neglect process.”<sup>341</sup> The Manee-Seguine Homestead, while not containing an interior landmark, has suffered as a result of neglect and the slow pace of enforcement.

The Manee-Seguine Homestead, located in Staten Island, is one of the oldest extant Dutch Colonial homes in the area.<sup>342</sup> Landmarked in 1984 Mr. Tallo and Seguine Bay Estates LLC purchased the house for \$450,000 in “as-is” condition in 2008.<sup>343</sup> The property owners did not utilize any of the remedies offered by the Landmarks Commission to restore the property and instead left the property to continue decaying.<sup>344</sup>

The City and the Landmarks Preservation Commission brought a lawsuit against the property owners in 2013 in order to force the maintenance of the property. In December of 2016, Judge Straniere ordered the defendants to “shore up” and “maintain” the structure and to pay the \$8.55 million in civil penalties levied against them by the Landmarks Commission. However, the fine amount was much less than the maximum fine. The landmarks statute caps the maximum fine at the fair market value of the derelict property.<sup>345</sup>

---

<sup>341</sup> Baccash, “Enforcement and the New York City Landmarks Law...,” 55 quoting John Weiss, Deputy Counsel for the Landmarks Commission.

<sup>342</sup> Frank Donnelly, “Judge Order Owners to Forfeit Landmark Home Once Occupied by Revolutionary War General,” *Staten Island South Shore*, May 25, 2017, [http://www.silive.com/southshore/index.ssf/2017/05/judge\\_orders\\_owner\\_to\\_turn\\_ove.html](http://www.silive.com/southshore/index.ssf/2017/05/judge_orders_owner_to_turn_ove.html).

<sup>343</sup> Virginia Sherry, “Historic landmark home is focus of ‘demolition by neglect’ lawsuit,” *Staten Island South Shore*, March 26, 2016, [https://www.silive.com/southshore/2016/03/demolition\\_by\\_neglect\\_on\\_the\\_s.html](https://www.silive.com/southshore/2016/03/demolition_by_neglect_on_the_s.html); Lore Croghan, “Homestead Under Siege develop or preserve S.I. landmark,” *New York Daily News*, October 27, 2003, <http://proxy-remote.galib.uga.edu:80/login?url=https://search-proquest-com.proxy-remote.galib.uga.edu/docview/305832452?accountid=14537>.

<sup>344</sup> Donnelly, “Judge Order Owners to Forfeit Landmark Home...”.

<sup>345</sup> *Ibid.*

After the hearing to calculate the fair market value of the property, Judge Straniere determined that the landmark designation, along with the zoning, wetlands, and flood regulations, along with the decayed state of the house had made the property unsaleable and “preclude any use... for which it is reasonably adapted other than that as a landmark.” The ruling stated that there had been a “taking” but that the outstanding fines dwarfed any compensation that was owed for the taking. To satisfy the fine, the judge ordered that the owner transfer the deed of the property to the City and the Landmarks Commission.<sup>346</sup>

Judge Straniere admonished the City for not completing the necessary repairs themselves already and charging the property owners as the City already had the authority to do so by the statutes. He questioned why the City had not done so, speculating,

Is that because the property really does not have the historic significance plaintiffs allege so as not to warrant the outlay of public money?"... Plaintiffs want the property maintained for its historic value and the public benefit that is recognized as a reason for preserving landmarks, but plaintiffs do not want to spend any money either.<sup>347</sup>

Had the City acted earlier, before 2012, the building could have been sealed to prevent much of the additional damage caused by Hurricane Sandy.

---

<sup>346</sup> Donnelly, “Judge Order Owners to Forfeit Landmark Home...”

<sup>347</sup> Donnelly, “Judge orders owner of landmarked South Shore home to repair it by Jan. 31”.



**Figure 19: RKO Keith's Theatre Grand Foyer after Decay<sup>348</sup>**



**Figure 20: RKO Keith's Theater Grand Foyer before Decay<sup>349</sup>**

<sup>348</sup> Alexander Severin and\_RAZUMMEDIA "RKO Keith's Theater Grand Foyer," via Rescued Restored Reimagined: New York's Landmarked Interiors, 2016, Exhibit, New York School of Interior Design. <http://landmarkinteriors.nysid.net/gallery/rko-keiths-flushing-theater/>

<sup>349</sup> "RKO Keith's Theater," *Theatre Historical Society of America*, via Rescued Restored Reimagined: New York's Landmarked Interiors, 2016, Exhibit, New York School of Interior Design. <http://landmarkinteriors.nysid.net/gallery/rko-keiths-flushing-theater/>

## RKO KEITH'S FLUSHING THEATER

No landmarked interior has been a victim of demolition by neglect; the RKO Keith Theater has come the closest. This theater has been the victim of political meddling, an uncooperative property owner, attempted destruction, and slow enforcement, even leading to a change in the Landmarks Law to allow fines. The RKO Keith's Theater is an exceptional landmark as it is one of the few landmarked interiors without a landmarked exterior. The Landmarks Commission designated the theater as it is one of the few surviving palatial movie palaces.<sup>350</sup>

Mr. Thomas Huang, one of Flushing's most prominent developers, purchased the property in 1986 for \$3.4 million.<sup>351</sup> Upon commencement of construction to convert the theater into a shopping atrium, he immediately destroyed part of the auditorium and damaged part of the landmarked foyer.<sup>352</sup> The Landmarks Commission estimated that between 1986 and 1987, Mr. Huang had caused \$160,000 in damage to the landmarked lobby.<sup>353</sup> As a result of this, the Commission had his construction permits pulled. It was only in 1998 that the LPC was authorized to seek civil fines or criminal penalties for violations.<sup>354</sup> However, the damage and blight continued. In 1999, Mr. Huang was convicted of letting 200 gallons of oil leak from the RKO Keith's Theater furnace and lying to city officials about a cleanup. Mr. Huang was fined \$5,000 and sentenced to five

---

<sup>350</sup> Christopher Gray, "A Magnificent, but Mutilated, Palatial Landmark," *New York Times*, April 1, 1990, <https://nyti.ms/2Vx3zPq>.

<sup>351</sup> Jim O'Grady, "A Reincarnation is Ahead for the RKO Keith's Theater" *New York Times*, Mar 03, 2002, <https://nyti.ms/2XE6sjf>.

<sup>352</sup> Gray, "A Magnificent, but Mutilated, Palatial Landmark".

<sup>353</sup> Jane H. Lii, "RKO Keith's Battle Drags on," *New York Times*, Jul 07, 1996, <https://nyti.ms/2SNVC6R>.

<sup>354</sup> Ingrid Gould Ellen, Brian J. McCabe, and Eric Edward Stern, "Fifty Years of Historic Preservation in New York City," *New York University Furman Center*. March 7. 2016. 9. [http://furmancenter.org/files/NYUFurmanCenter\\_50YearsHistoricPresNYC\\_7MAR2016.pdf](http://furmancenter.org/files/NYUFurmanCenter_50YearsHistoricPresNYC_7MAR2016.pdf)

years of probation. In order to settle with the Landmarks Commission, Mr. Huang agreed to put up a \$40,000 bond for repairs to the landmarked interior and auditorium and would quit his 39 million dollar lawsuit against the City and the Landmarks Commission.<sup>355</sup> In 2002, Mr. Huang sold the theater for \$12.1 million.<sup>356</sup> The building was later sold again in 2010, 2013 and 2016.<sup>357</sup>

Because of the previous problems with the theater, the newest owners were required to pay a \$10 million completion bond for the restoration work to the landmarked interior and are presently working with Landmark Commission staff towards the restoration, conducting regular site visits and meetings.<sup>358</sup> This case is one of the few examples concerning an interior landmark and demonstrates problems with negligent enforcement: unwilling property owners, attempted demolition-by-neglect, and the dangers of a lack of monitoring.

Legal enforcement of preservation easements does not appear to be a common occurrence for many of the organizations who instead chose to work directly with property owners in order to achieve a more peaceful solution. Additionally, some organizations also have the right in their contracts to perform maintenance or restoration work on a property and bill the owner though this appears to be rarely utilized or not at

---

<sup>355</sup> O'Grady, "A Reincarnation is Ahead for the RKO Keith's Theater".

<sup>356</sup> Robert Gearty and Brian Kates, "Queens developer is like one-man wrecking crew," *Daily News*, May 27, 2007, <https://www.nydailynews.com/news/queens-developer-one-man-wrecking-crew-article-1.252368>.

<sup>357</sup> Zoe Rosenberg and Tanay Warekar, "Flushing's landmarked RKO Keith's Theater will soon be engulfed by glassy condo." *CurbedNY*, May 16, 2017, <https://ny.curbed.com/2017/5/16/15643646/rko-keiths-theater-landmark-redevelopment-queens>

<sup>358</sup> John Weiss, Deputy Counsel for the Landmarks Commission, telephone interview by author, January 11 and 18, 2019.

all.<sup>359</sup> The interior easements held by Historic Charleston Foundation are typically in multi-million-dollar homes purchased by owners who “appreciate the interior historic finishes and share the desire to protect them.” Historic Charleston Foundation has not had to take legal measures to enforce an interior easement to Ms. Wood’s recollection but has had to tell property owners “no” to requested changes.<sup>360</sup>

Raina Regan, Senior Manager of Easements from the National Trust for Historic Preservation, was consulted concerning the over 130 preservation easements she manages. Forty percent of these easements have some amount of interior protection, ranging from a minimum of protecting the floorplan to protecting features including flooring, plaster walls, trim, doors, fireplaces, and structural framing members. Since her time in this position, she does not recall a time when the National Trust went to court to enforce an interior easement. Rarely has the National Trust gone to court to enforce any of its other preservation easements. The majority of its enforcement takes place outside of the court system through a process of violation known ‘an escalation process.’ After discovering a violation, the National Trust gives the property owner the opportunity to address the issue before escalating the situation. The Senior Manager of Easements sends a letter, then the head of the Department, then finally an outside attorney, before contemplating a legal remedy.<sup>361</sup> Built into Historic Charleston Foundation’s

---

<sup>359</sup> Suzanne Germann, Director of Grants & Easements at Landmarks Illinois, telephone interview by author, April 2, 2019; Raina Regan, Senior Manager of Easements at the National Trust for Historic Preservation, telephone interview by author, April 2, 2019; Charleston Co., SC., Deed Book 0277: 861. 5-6.

<sup>360</sup> April Wood, Manager of Easements & Technical Outreach for Historic Charleston Foundation, Email correspondence with author, January 30, 2019.

<sup>361</sup> Raina Regan, Senior Manager of Easements at National Trust for Historic Preservation, telephone interview by author, February 1, 2019.

preservation easement agreements and in other organization's easement documents is a provision to recover all legal fees in the event of litigation.<sup>362</sup>

According to Raina Regan from the National Trust, involving a recent violation concerning a small house with an interior landmark, an agreement was reached, and the interior features were fixed six months after the first letter of violation was sent. One of the longer cases began in 2015 and is still ongoing. However, in this case, the homeowners are working with the organization which has set benchmarks at each stage for a certain amount of work to be completed. While there are still outstanding exterior violations, as of December 2018, all the interior violations have been corrected. Even for longer violations, the National Trust does not levy fines. Most of the Trust's legal cases concern deferred maintenance on exteriors. While there is no fixed time limit on addressing violations, Ms. Regan responded that a particular case might take 8-10 years to address the specific violation. However, after a decade of noncompliance, the National Trust would explore the possibility of taking control of the property and reselling it before any cases of demolition-by-neglect occurred.<sup>363</sup>

According to Suzanne Germann from Landmarks Illinois, there have been around five enforcement issues in the past five years. The threat of a lawsuit was enough of a motivator to resolve all these cases except for one. In that instance, Landmarks Illinois did file suit and settled in court. The property owner had to undo all the work that would

---

<sup>362</sup> Charleston Co., SC., Deed Book 0277: 861. 7; Raina Regan, Senior Manager of Easements at National Trust for Historic Preservation, telephone interview by the author, February 1, 2019; April Wood, Manager of Easements & Technical Outreach for Historic Charleston Foundation, telephone interview by the author, February 3, 2017 and January 24, 2018.

<sup>363</sup> Raina Regan, Senior Manager of Easements at National Trust for Historic Preservation, telephone interview by author, February 1, 2019.



not have been approved had the property owner originally brought their plans to the organization.

Historic Charleston Foundation attempts to avoid lawsuits as “they are costly, lengthy, and don’t always result in the best end preservation result.” Usually, the Foundation comes into conflict with property owners 3-4 times a year but “the property owner complies quickly once legal action is initiated.” Ms. Wood did note that if there is a lawsuit, it could take years to complete the legal enforcement process.<sup>364</sup>

The need to sue for access to monitor the interior easement might also be a problem. While representatives from the National Trust and Historic Charleston Foundation have both stated that gaining public access is not a real difficulty which requires a legal remedy, this is not the case everywhere. Not all organizations seem to have property owners as amenable to monitoring as those who come under Historic Charleston Foundation and the National Trust. According to Suzanne Germann from Landmarks Illinois, while there have been no issues in terms of gaining access to a property’s interior for easement monitoring in recent years, one major issue did occur in the past. In a case concerning an interior easement, Landmarks Illinois could not get access for many years. While much of the difficulties in gaining access began before she arrived in 2004, the challenge to get access for monitoring was still ongoing at that time. A lawsuit was filed early during the conflict but dragged on for years. It was only when the property went into foreclosure that a Landmarks Illinois representative was able to gain access to the interior of the property. Surprisingly, when they inspected the interior, everything had been well-maintained. This example demonstrates the importance of a

---

<sup>364</sup> April Wood, Manager of Easements & Technical Outreach for Historic Charleston Foundation, Email correspondence with author, January 30, 2019.

willing donor who will work with the easement-holding organization, preferably someone preservation minded.<sup>365</sup> Someone who bought a property already containing an interior easement might not understand what sort of limitations they agreed to when they purchased the property and therefore be unwilling to provide access. For Alex Herrera from the New York Landmarks Conservancy, a concern is that an interior easement with an unwilling future property owner might require a court order, in order to ensure that the owner complies with scheduled monitoring. Too many lawsuits could make interior easements too expensive for the organization.<sup>366</sup>

Preservation easements and landmarks both use lawsuits for the final stage of enforcement of preservation regulations. The Landmarks Commission uses lawsuits to force property owners to correct modifications which violate the terms of the landmark designation and levy fines. An easement-holding organization uses lawsuits to correct interior modifications in violation of the easement document and, in some rare cases, to gain access to fulfill the monitoring requirement of the preservation easement. The punishment given to owners who violate the terms of preserving interiors is also limited to decisions made by the judge and the City Council which approved the fine schedule. If a violation occurs under a preservation easement, the legal repercussions are dictated in the easement document. The threat of a lawsuit is often enough in either case to compel compliance. Unfortunately, seeking legal action appears to be a necessary evil of preservation. However, based on conversations and observations, the use of interior easements appears to be less litigious because preservation easements involve contract

---

<sup>365</sup> Suzanne Germann, Director of Grants & Easements at Landmarks Illinois, telephone interview by author, February 22, 2019.

<sup>366</sup> Alex Herrera, Director of the Technical Services Center, The New York Landmarks Conservancy, Email Correspondence and telephone interview by author, January 2019.

enforcement rather than the constitutionality challenges that are mandated under the Landmarks law.

## SUMMARY

- Spaces: NYC interior landmarking requires the space be commonly open and accessible to the public while easements do not limit spaces but require that they are listed in the National Register, or as contributing to a National Register District or a certified local district.
- Flexibility and Guidelines: NYC landmarks are regulated by the Commission, which can substitute its own judgment and design the majority of the regulations. They decide which interiors to landmark and its decision-making is not regulated by the court, nor its internal decision-making. All easement organizations surveyed followed the Secretary of the Interior Standards, set nationally and not subject to compromise.
- Public Access: is required for easements to serve a public purpose but around 2-days. Landmarks do not have to maintain public access (as of March 28, 2019).
- Consent: Easements require consent as they are freely donated, but landmarking does not. However, there is a reluctance to designate without owner consent but to what extent is unknown.
- Preventing landmarking: closing off spaces: if not open to the public, becomes ineligible and prevents landmarking, ex. the Alvar Aalto interior.
- Preventing landmarking: accountability and political influence: easements are freely given and an agreement between donor and donee, so no outside influences. Landmarking does not require consent and can be vetoed by the City Council and mayor so highly influenced by politics. Many examples of political influence.
  - Walker Theater: designation was overturned because of political influence.
- After landmarking: monitoring: easements are monitored while landmarks are not, only investigating complaints. Interior landmarks are more at risk because of lack of monitoring as there are fewer people to notice and report violations.
- After landmarking: enforcement: both easements and landmarks are not immune to lawsuits. Easement lawsuits involve attaining access and enforcement, while landmark lawsuits are mostly based on claims of unconstitutionality.
- After landmarking: neglect: easements monitor to prevent neglect and some organizations can perform maintenance and bill the owner. Landmark lawsuits drag on, leading to additional decay.
  - Manee-Seguine House: was not monitored, so the property fell into disrepair. The lawsuit to force repairs also dragged on, leading to more decay. Eventually, a hurricane caused even greater damage since the house was open to the elements.
  - RKO Keith's Flushing Theater: unwilling property owner destroyed features and allowed the building to rot even after the Commission received the power to fine owners. Years after allowing fines, the property fell into greater decay and is only now being repaired. Some rooms left out of landmarking because of political influence.

## **CHAPTER VIII: INTERIOR LANDMARKING ANALYSIS**

Now that the benefits and drawbacks of the interior Landmarks Law and the interior easements have been discussed, an analysis should be made about which properties would be eligible to receive an interior easement (if these properties were not already landmarked). This analysis will examine those properties individually-listed in the National Register or listed as contributing to a National Register district, those properties eligible for inclusion, the property types, and any possible areas where interior landmarking would be more beneficial than interior easements.

Of the 133 interior landmarks (including 14 IRT Subway Stations landmarked as one designation), 78 interior landmarks are located within properties individually listed in the National Register, and three are listed as contributing in a National Register district. For a property to be individually listed in the National Register, the consent of the property owner is required. Properties listed as a National Historic Landmark are automatically listed in the National Register of Historic Places.<sup>367</sup>

Of the 133 interior landmarks, 52 properties are not listed as contributing in a National Register historic district (or in a certified local historic district) or individually-listed in the National Register. Twenty-five of these properties are eligible for listing by the New York State Office of Parks, Recreation & Historic Preservation according to its

---

<sup>367</sup> New York State Cultural Resource Information System, New York State Office of Parks, Recreation and Historic Preservation, accessed December 1-21, 2018, <https://cris.parks.ny.gov/>; Individual Landmarks, created March 11, 2015, downloaded November 2018, NYC OpenData, Landmarks Preservation Commission (LPC), <https://data.cityofnewyork.us/Housing-Development/Individual-Landmarks/ch5p-r223>.

online database. The remaining 27 interior landmarks were in properties that had not been surveyed or had undetermined eligibility.<sup>368</sup> Of these interiors: two are Banks, five are Businesses, one is a Hotel, one is a Public Government building, one is a Restaurant/Bar, two are Travel-Subway/Rail, and 15 are Theaters. Ten of these properties are interior landmarks only, without an existing individual (exterior) landmark designation, the majority of which are theaters.<sup>369</sup> Recall the lawsuit involving the Shubert Theaters which was unsuccessful.<sup>370</sup> In order for a property to be individually listed in the National Register, the consent of the property owner is required.<sup>371</sup> As a theater-owning company previously fought designation, it would make sense that most properties not listed in the National Register would be theaters.

At this moment, 106 of the 133 interior landmarks are listed or considered eligible to be listed in the National Register, making most properties eligible to receive an interior preservation easement if they did not currently have interior landmarking in place. The remaining properties (27) were only listed as “undetermined” or not yet surveyed rather than listed as ineligible, making their National Register listing also possible should further research be carried out.<sup>372</sup>

---

<sup>368</sup> New York State Cultural Resource Information System, New York State Office of Parks, Recreation and Historic Preservation, accessed December 1-21, 2018, <https://cris.parks.ny.gov/>.

<sup>369</sup> Individual Landmarks, created March 11, 2015, downloaded November 2018, NYC OpenData, Landmarks Preservation Commission (LPC), <https://data.cityofnewyork.us/Housing-Development/Individual-Landmarks/ch5p-r223>; New York State Cultural Resource Information System, New York State Office of Parks, Recreation and Historic Preservation, accessed December 1-21, 2018, <https://cris.parks.ny.gov/>.

<sup>370</sup> *Shubert Org. v. LANDMARKS*, 166 A.D.2d 115, 570 N.Y.S.2d 504 (App. Div. 1991); *Shubert Org. v. Landmarks Pres. Comm'n of NY*, 504 U.S. 946, 112 S. Ct. 2289, 119 L. Ed. 2d 213 (Supreme Court 1992).

<sup>371</sup> “If the owner or owners of any privately-owned property, or a majority of the owners of such properties within the district in the case of an historic district, object to such inclusion or designation, such property shall not be included on the National Register...” Paragraph (6) of Section 101(a) of the National Historic Preservation Act of 1966.

<sup>372</sup> New York State Cultural Resource Information System, New York State Office of Parks Recreation and Historic Preservation, accessed December 1-21, 2018, <https://cris.parks.ny.gov/>.

The next question concerns why these properties consented to National Register status. It is difficult, if not impossible, to determine without asking each original property holder (many of whom are deceased). Eighty-one out of the 133 (number includes subways stations) are individually listed in the National Register or certified as contributing in a National Register district. Of these 81 properties, 40 were listed in the National Register or as contributing before their designation as interior landmarks (41 were after). RKO Keith's Flushing Theater is the only interior landmark without a corresponding exterior landmark to be individually listed in the National Register before the interior landmark designation. However, because interior landmarking only became law in 1973, many of these National Register-listed landmarks are in buildings that were individually landmarked before their inclusion on the Register. There are 13 properties in total listed on the register before the individual landmarking (five public buildings, two historic, two theaters, two businesses, and two other buildings owned by the government at the time of designation). Over half of these buildings (7) were owned by the government at the time of designation along with a historic house museum (Morris-Jumel Mansion) and Grant's Tomb, revealing that consenting to list one's property in the National Register was not a popular choice at the time.<sup>373</sup>

Unfortunately, the process of landmarking or registering historic buildings has been influenced by other factors, such as economic development, political factors, and local constituencies, that it makes the task of determining the willingness of people to

---

<sup>373</sup> New York State Cultural Resource Information System, New York State Office of Parks, Recreation and Historic Preservation, accessed December 1-21, 2018, <https://cris.parks.ny.gov/>; Individual Landmarks, created March 11, 2015, downloaded November 2018, NYC OpenData, Landmarks Preservation Commission (LPC), <https://data.cityofnewyork.us/Housing-Development/Individual-Landmarks/ch5p-r223>.

enter into a preservation easement arrangement voluntarily nearly impossible. There are no concrete statistics to back up these observations. It is important to remember that the Landmarks Preservation Commission was created in 1965 while the National Register was formed as part of the National Historic Preservation Act of 1966. Nineteen individual landmarks were created in New York in 1965 and 1966 before the National Historic Preservation Act of 1966. Additionally, adoption of the National Register properties would have been slower as it is part of the federal government apparatus. Also, nomination to the National Register is voluntary, therefore many property owners might not have known about the benefits of nominating properties to the Register. Finally, another factor muddying the waters is that preservation easements were not codified into law until the Tax Reform Act of 1976 meaning that the added impetus to landmark was not there.<sup>374</sup> Only 23 of the 81 National Register properties were registered before the benefit of the 1976 easement charitable tax deduction began.<sup>375</sup>

Forty-eight properties were designated as individual landmarks before receiving an interior landmark while 54 properties received both designations at the same time. Only two properties, Radio City Music Hall and the Mark Hellinger Theater (former Hollywood Theater) received interior landmark status before the exterior and the time difference in these two cases was one week and two months respectively, meaning that the process for interior landmarking had already begun. This data reveals that the majority of properties were not listed in the National Register before individual

---

<sup>374</sup> Daniel Halperin, "Incentives for Conservation Easements: The Charitable Deduction or a Better Way," *Law and Contemporary Problems* 74, no. 4 (2011): 35, <https://scholarship.law.duke.edu/lcp/vol74/iss4/3>.

<sup>375</sup> New York State Cultural Resource Information System, New York State Office of Parks, Recreation and Historic Preservation, accessed December 1-21, 2018, <https://cris.parks.ny.gov/>; Individual Landmarks, created March 11, 2015, downloaded November 2018, NYC OpenData, Landmarks Preservation Commission (LPC), <https://data.cityofnewyork.us/Housing-Development/Individual-Landmarks/ch5p-r223>.

landmarking. Additionally, for 101 of the 104 properties having both interior and individual landmarks, individual landmark status directly influenced the decision to designate an interior landmark.

According to the Pension Protection Act of 2006, a property listed in the National Register is eligible to have a qualified interior easement without an easement on the exterior. To be included in the National Register, the whole structure is listed, with certain parts declared as contributing to the nomination. However, a property only certified as contributing within a certified local or National Register district must have an exterior easement on the property before placing a qualified interior easement. In New York City, there are 29 interior designations without a landmarked exterior. It should be noted that almost half of these are apart of one designation, LP-01096, which is composed of 14 IRT Subway System Underground stations. Of these stations, all but three are in the National Register. Eleven of these are theaters, one is a restaurant/bar in a former hotel, one is in the United Nations Hotel, and the other two are in business: The Time & Life Building and the Film Center Building. Of these 29 interior-only designations, only thirteen are not individually listed in the National Register, meaning that an interior-only easement for these thirteen properties would not be possible because of the 2006 Pension Protection Act mentioned earlier. Of course, many of these interiors (seven in total) belong to theaters whose organizations previously fought landmark status. The other properties include three subway stations, one restaurant/bar (Della Robbia Bar), one business (the Time & Life Building), and the first-floor interiors of the United Nations Hotel (a recent interior landmark). Two of the theaters (the Ambassador Theater and the Imperial Theater) are listed as being eligible for the National Register, possibly



revealing an unwillingness of the property holder to enter the National Register and by extension a preservation easement.

Overall, this analysis reveals that most properties, even those without landmarked exteriors, are eligible for National Register designation. If one extrapolates this pattern to predict future interior landmarks, the majority of potential interior landmarks may be eligible for an interior preservation easement, making these easements a successful preservation tool for New York City interiors.<sup>376</sup>

## SUMMARY

- 81 of 133 interior landmarks are individually listed or certified as contributing to a National Register district while 25 are eligible for listing.
- Of these 81, 29 were listed in the national register before becoming interior landmarks and 41 after. Only 13 were listed on the National Register before their individual landmark designation.
- 27 are undetermined for listing in the National Register, but no properties containing landmarked interiors are considered ineligible. 101 of the 104 interior landmarks in buildings with individual landmark status received their interior designation after the individual designation. The other two designations were within a month.
- 29 of 133 are interior designations without a landmarked exterior, 13 of which are not individually listed on the National Register. Seven belong to theaters that previously fought against landmarking. 14 are subway stations.
- Interior easements are a viable tool given the number of interior landmarked properties in the National Register.

---

<sup>376</sup> New York State Cultural Resource Information System, New York State Office of Parks, Recreation and Historic Preservation, accessed December 1-21, 2018, <https://cris.parks.ny.gov/>; Individual Landmarks, created March 11, 2015, downloaded November 2018, NYC OpenData, Landmarks Preservation Commission (LPC), <https://data.cityofnewyork.us/Housing-Development/Individual-Landmarks/ch5p-r223>.

## **CHAPTER IX: CURRENT ISSUES AND CONCLUSION**

### **THE EASEMENT CRACKDOWN AND OTHER ISSUES**

The Landmarks Law and preservation easements have recently experienced legal upheavals. Since 2016, whether a landmarked interior requires continued public access was an issue for the Landmarks Commission. The March 28, 2019 *Save America's Clocks* Court of Appeals reversal resolved this issue, establishing a new legal precedent that continued public accessibility is not a requirement of interior landmarks. Also, the Internal Revenue Service began placing preservation easement deductions under closer scrutiny in 2011 because of over-inflation of values.<sup>377</sup> The IRS found that some of these preservation easements did not exceed current local protections and therefore should not have had any value. Because of the higher scrutiny placed upon easement donation deductions by the IRS, there was a precipitous drop in the number of easement deductions claimed.<sup>378</sup>

This increased scrutiny has had a negative effect on preservation easements. According to Suzanne Germann from Landmarks Illinois, of the four preservation easements received in the last five years, two did not seek the tax deduction.<sup>379</sup> Additionally, the lack of appraisers currently valuing preservation easements is an additional difficulty for the promotion of preservation easements. This shortage of

---

<sup>377</sup>

<sup>378</sup> Phelps, Jess R., "Preserving Preservation Easements: Preservation Easements in an Uncertain Regulatory Future," *Neb. L. Rev.* 91 (2012): 126-127, <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1168&context=nlr>.

<sup>379</sup> Suzanne Germann, Director of Grants & Easements at Landmarks Illinois, telephone interview by author, February 22, 2019.

appraisers may be the result of the liability and risk that comes with the added scrutiny preservation easements receive from the IRS. Ms. Germann believes that someone could be found for large-scale commercial preservation easements in Chicago but not for residential property.<sup>380</sup> While preservation easements allow for the protection of residential property, the inability to find an appraiser for the valuation could be an issue. However, since the landmarks law in New York does not allow for residential interiors, nothing is lost by the possible exclusion of residential interior easements. There is still a net gain because preservation easements can protect the interiors of commercial buildings not commonly open and accessible to the public under the current landmarks law.

## **CONCLUSION**

This study describes two different processes used to protect historic interiors: 1) interior landmarking, and 2) the use of interior easements. As illustrated, there are many differences between these two preservation tools, each with their flaws. This thesis mainly explores issues concerning the types of interiors protected, property rights and consent, public access, financial incentives, political influence, monitoring, and enforcement.

The type of interiors protected by the Landmarks Law is more limited compared to easements as only certain qualifying business interiors qualify. The Landmarks Law leaves many interiors not commonly accessible to the public unprotected, including residential interiors. Preservation easements can protect both private and “public” interiors and are highly customizable, safeguarding a greater number and variety of spaces. While a property must be listed in the National Register or a National Register

---

<sup>380</sup> Ibid.

district, this requirement would not seem to be a problem in cities like New York which already has many buildings and districts on the register. Preservation easements are thus superior in this respect due to the increased number of interiors available for protection.

Consent is another major difference between these two protection methods. Since a preservation easement is an agreement entered into by both parties willingly, there are no injured parties. A willing property owner is going to be a better steward of a historic interior than a property owner that has landmarking forced upon them. However, the ability of the Landmarks Commission to protect important interiors against owner objections is a great boon to preservation and theoretically superior to interior preservation easements. Yet, in practice, the Landmarks Commission is hesitant to landmark properties without consent according to the former head of the Commission.<sup>381</sup> The Commissioners' decision-making process concerning which properties are put forth for landmarking is not public knowledge, making the weight of a property owner's objections against the Commission's desire to designate an interior landmark difficult to determine. The question of consent is one area in which it is difficult to make a determination concerning which preservation method is superior without first implementing an interior easement program in New York.

Public access is not required for interior landmarks and should remain so in order to avoid a takings claim from the lack of owner consent. Public access is required for a preservation easement, but the usual two-day obligation would not be a heavy burden, especially considering that the "public" can be limited to scholars. The Landmarks Commission does not require public access to be maintained but does require it to be

---

<sup>381</sup> Robin Pogrebin, "Preservationists See Bulldozers Charging Through a Loophole," *New York Times*, November 28, 2008, <https://www.nytimes.com/2008/11/29/arts/design/29landmarks.html>.

eligible for interior landmarking. Since nearly all interior landmarks are still publicly accessible under the Commission's definition, public access is not an issue. Preservation easements and interior landmarking are therefore equal in this respect.

The Landmarks Law also differs from preservation easements in that external regulations do not bind the Landmarks Commissioners. Instead, the Commission creates the majority of its regulations under Title 63 and has the discretion to substitute its judgment. While this ability provides more flexibility while working with developers, this discretion may or may not be beneficial to the preservation of historic interiors depending on the make-up of the Landmarks Commission and its current goals. Preservation easements do not have a required preservation regulation in the Internal Revenue Code meaning that preservation-holding organizations could have the ability to substitute their own judgment similar to the Landmarks Commission. However, the organizations analyzed appear to use the Secretary of the Interior's Standards as their guiding principles, providing greater transparency to their approval process and ending questions pertaining to outside influences. In this way, the use of preservation easements is superior to New York's interior landmarking.

Preservation easements are vastly superior to interior landmarking in New York City with respect to financially incentivizing preservation. Preservation easements provide a financial incentive to property owners in addition to altruism. These incentives include the charitable tax deduction, the accompanying lowering of property tax values, and the eligibility for state and federal rehabilitation tax credits. Currently, there are no financial benefits available from the Landmarks Commission for property owners even

though landmarking does not require owner consent. In this concern, interior landmarking in New York City provides no carrot.<sup>382</sup>

The influence of politics in preservation with the Landmarks Law is a distinct possibility which does not exist with preservation easements. The Walker Theater, one amongst many landmark examples, directly illustrates the influence of political forces on preservation in New York. The perpetual protection of an interior easement provides more protection than an interior landmark, which can be de-designated should the right pressure be placed.

Preservation easements are superior to landmarking in both monitoring and enforcement. The lack of monitoring with interior landmarks makes them more vulnerable than interior easements, which are typically inspected annually. The ability and duty to monitor an easement allows for problems to be detected much earlier to prevent serious cases of neglect. While preservation easements have a history of requiring court enforcement, the legal agreement removes the possibility of constitutional challenges which are more complex. Therefore, preservation easements may have less of an enforcement burden as the Landmarks Preservation Commission has frequently had to use legal remedies to enforce compliance as well as having to fend against takings claims.

If only one method were available, this author believes that interior preservation easements are the superior method of protection. They are an effective means for preserving private property rights while protecting historic interiors. The monitoring

---

<sup>382</sup> It should be noted that while there are no provided financial benefits to interior landmarking in New York City, theoretically, the assessed value of a building could be reduced to take landmarking into account and thus lowering property taxes.

requirement is especially important to the preservation of interior spaces. The use of interior easements would also prevent the headache of constitutional challenges to the Landmarks Law.<sup>383</sup> In support of this position, many other preservation scholars perceive preservation easements as a happy medium between full-ownership of properties and the use of preservation ordinances to protect historic interiors.<sup>384</sup>

### **MODIFYING THE LANDMARKS LAW**

Rewriting the Landmarks Law relating to interior landmarks is another available method for advancing the preservation of historic interiors in New York City. Since the introduction of interior landmarking in 1973, the City has not amended the Landmarks Law.<sup>385</sup> Currently, the Landmarks Law in New York contains some flaws that affect the protection of important interiors. There are several remedies which would strengthen this law and provide for more successful outcomes. It is possible that amending the law to combine the best benefits of a preservation easement and to provide more incentives would make the use of interior easements moot. These changes include a clarification and expansion of the law, providing incentives, and active monitoring.

Clarification of the interior clause of the Landmarks Law would be beneficial to the landmarking process by resolving the ambiguities that lead to confusion and legal challenges. The judges in the Four Seasons case stated that there was no distinction in the Landmarks Law between the types of properties considered to be wholly open to the public and those that allowed the public in but could be transformed into a different space later. The owners of the building containing the Alvar Aalto

---

<sup>384</sup> Watson and Nagel, *Establishing and Operating an Easement Program*, 3.

<sup>385</sup> New York City Council, *Landmarks for the Future...*, 8.

interior argued that holding lectures and renting the space did not rise to the definition of commonly open to the public. While the extent of interior landmarking has been better defined by the outcome of several legal cases, amending the statute to include a strict definition would likely prevent several legal challenges later. This clarification would also make the decisions of which properties do or do not become interior landmarks more transparent to the public. Having a clear definition should also embolden the Landmarks Commissioners to consider more interior landmarks by providing them with a clearer interpretation of which spaces qualify for landmarking, removing any concerns. The clarification of which spaces qualify for interior landmarking would also resign property owners to landmarking and remove their objections. Both changes would lead to fewer challenges from property owners and encourage the Landmarks Commission to designate interiors without owner consent. During the process, a greater restriction on demolition permits before the official calendaring process would be beneficial to protect interiors from combative property owners as suggested in “New York City Designation Process: Closing the Loophole to Protect Potentially Eligible Buildings.”<sup>386</sup>

The introduction of financial incentives tied to landmarking would be of immense benefit. As many easement-holding organizations stated, the charitable deduction was one of the primary motivations behind the donation of preservation easements. In my opinion, grants for interiors, tax credits, or property tax abatements facilitated by the Landmarks Commission would make property owners more inclined towards interior landmarking. Providing incentives would resolve two current issues

---

<sup>386</sup> Gruen, “New York City Designation Process: Closing the Loophole...”



standing in the way of expanding the protections of interior landmarking: owner consent and public access for private interiors.

One lingering issue with the Landmarks Law is the inability to protect spaces not commonly open to the public. The ability to landmark properties without owner consent is one of the benefits of interior landmarking over the use of interior easements. Legally, the ability to landmark interiors in private homes or other spaces not in the public realm would be unsupportable without owner consent. The only option for these interiors would be to require owner consent for their landmarking. However, what property owner would enter into such an agreement without an incentive?

As of March 28, 2019, continued public access is officially not considered to be a requirement of interior landmarking. In my opinion, public access should not be required. Requiring that a property maintain continued public access will lead to claims of a regulatory taking, most likely leading to several lawsuits against the Commission. Currently, nearly all interior landmarks remain open to the public in some fashion, thereby making the need for continued public access moot. If the Commission was willing and financially able, a financial incentive to maintain public access could possibly be arranged for the few properties which are no longer open to the public. I would suggest that if the Landmarks Law was modified, non-accessible interiors could become interior landmarks through financial incentives and with owner consent, like preservation easements. However, the preservation of private spaces with city funds could foreseeably be met with a negative reaction by the public and would have to be studied. Another option would be to institute similar public access obligations as required with

preservation easements. This would assuage some concerns relating to the use of city funds to preserve private interiors.

One of the most pressing faults with the current Landmarks Commission is the lack of monitoring. Interior violations are much less likely to be reported as they are not visible from the street. Monitoring would help prevent permanent damage from neglect. While building permits for a landmarked interior are flagged for review by the Commission, not all interior work requires a permit, thus creating a gap in protection. Monitoring will also aid enforcement by identifying issues early and applying pressure through the application of fines.

These are just a few of the recommended changes to the Landmarks Law and require further study. Some of these changes would be nearly impossible to pass, failing to receive political support for the expansion of the current powers of the Landmarks Commission and an unwillingness to finance incentives. A backlash from private property advocates and developers is also predicted. They will most likely take the opportunity presented with the modification of the Landmarks Law to narrow the amount and definition of eligible interiors.

### **PRESERVATION EASEMENTS AND LANDMARKING TOGETHER**

There is a third option available: the carrot and the stick. The New York City Council released a study of the history, successes, and possible avenues for improvements for the 50<sup>th</sup> anniversary of the Landmarks Law entitled, *Landmarks for the Future: Learning from 50 Years of Preservation*. One of the recommendations was to “create new mechanisms for protecting buildings” and to use some other “tools” in the

“preservation toolbox” used by other cities.<sup>387</sup> One of these tools would be the use of interior easements. It is possible that the use of the two systems might be beneficial insofar as they close the gaps in each other’s programs.

Having two mechanisms at play might serve to protect more interiors. The incentives from the use of preservation easements may entice many property owners to protect their interiors willingly. Since previous government restrictions protecting property diminish the value of a preservation easement, a property owner might be tempted to enter into the arrangement willingly in exchange for the additional tax deduction. For those interiors that are so unique that their loss would be a tragedy, the Landmarks Preservation Commission still could have the authority to designate without owner consent. The property owner could then apply for National Register status and gain the Federal and State rehabilitation tax credits. Additionally, the Landmarks Commission could allocate some resources towards the creation of National Register nominations to produce interior easements for properties not currently listed. Interiors that would not be customarily open and accessible to the public would still be protected by giving their owners the opportunity to participate in a preservation easement program.

It is important to note that most of the properties with interior easements are in buildings with individual landmark status, i.e., their exteriors are regulated. Because of this dual coverage, an exterior easement would have no value unless the restrictions in the easement document are more restrictive than those required by the Landmarks Preservation Commission. Therefore, creating an exterior easement which could add an interior easement to the property would place little burden upon the property owner. The

---

<sup>387</sup> New York City Council, *Landmarks for the Future...*, 3.

flexibility to landmark the interior while not landmarking the exterior should be a great advantage as a tool for landmarking. It may suggest that landmarked interiors in addition to listing with the National Register for preservation could help preserve both interior and important exteriors. However, the data shows that this flexible strategy is mainly utilized for the landmarking of theaters.

The utilization of both interior landmarking and preservation easements would solve the issue of protecting city property. An organization cannot hold a preservation easement on a property that they own. As such, New York City's government would most likely not be able to hold an easement on city property. A qualified third-party organization would, therefore, be required to hold the easement. It is extremely unlikely that a government organization would give such power to an outside force, making the use of interior easements for government property improbable. In these cases, the use of interior landmarking would be best, and there should be less difficulty in attaining an interior landmarked status when the city government commits to historic preservation as a goal.

## **FUTURE RESEARCH**

The subject matter discussed in this thesis is complicated. Further study is needed to definitively conclude whether preservation easements, New York's interior landmarking, or a combination of the two programs, are more effective for the protection of historic interiors. The theoretical usefulness of preservation easements has been assessed in this paper.

While other cities were discussed during the explanation of the variances in different city interior preservation ordinances, this thesis was concerned solely with

studying New York's policies. Comparison studies with other cities' interior preservation ordinances should be conducted to determine if their models are more successful without the use of interior easements. The benefits and drawbacks of requiring owner consent for the preservation of interiors require further study.<sup>388</sup> A modification of the specifications for what qualifies as landmarked interior spaces or the lack of owner consent over interior landmarks could become key factors in determining whether another type of ordinance approach would better preserve and protect historic interiors. A study of different landmark management policies and procedures would also be beneficial to explore.

Unfortunately, the IRS official consulted did not have any information concerning the number of interior easements for which a charitable tax deduction was claimed, making the prevalence and popularity of interior easements difficult to determine.<sup>389</sup> One of the most important avenues for further research is to determine the viability of easements in New York City by gauging the willingness of property owners to enter into an interior preservation easement. If no one is willing to consent to a preservation easement, the method is worthless.

If the New York City Landmarks Commission adopted a preservation easement program, the problems surrounding monitoring and enforcement discussed earlier pertaining to landmarking might be alleviated. If the Landmarks Commission (or another government entity) chose to hold preservation easements, it is possible that the monitoring and enforcement of these easements would be comparable to the current

---

<sup>388</sup> Preservation Alliance for Greater Philadelphia, "Protecting Historic Interiors," 6.

<sup>389</sup> A Special Counsel at the Internal Revenue Service, an informal telephone conversation with the author, January 19, 2018.

organization's burden with landmarked properties; not having as many legal challenges substituting for the added task of monitoring. Additional study is needed to make this determination. An investigation would also be needed to confirm that interior preservation easements are not compromised by the creation of a quid-pro-quo situation or that the easements have no value.

These examples are only a few avenues where further research is beneficial. Other areas of research include discerning the financial impact and workload of managing interior preservation easements on the Landmarks Commission, and the effectiveness of easement enforcement by a government agency.



**Figure 21: Della Robbia Bar<sup>390</sup>**

---

<sup>390</sup> Larry Lederman, "Della Robbia Bar," from the book, *Interior Landmarks: Treasures of New York*, by Judith Gura, Kate Wood, and Larry Lederman, image via Wendy Goodman, "See the Surprising, Majestic Interiors of 9 Landmarked New York Buildings," *The Cut*, [https://www.thecut.com/2015/03/new-york-landmark-interiors/slideshow/2015/03/04/new\\_york\\_s\\_landmarkinteriors/3/](https://www.thecut.com/2015/03/new-york-landmark-interiors/slideshow/2015/03/04/new_york_s_landmarkinteriors/3/).

## WORKS CITED

### **Books**

Bronin, Sara C. and Ryan Rowberry. *Historic Preservation Law in a Nutshell*. St. Paul, MN: West Academic Publishing, 2014.

McKinney, William M. *McKinney's Consolidated Laws of New York Annotated, Book 1*. St. Paul: West Group, 1916.

[https://play.google.com/store/books/details?id=\\_PMpAQAAMAAJ](https://play.google.com/store/books/details?id=_PMpAQAAMAAJ).

Nolon, John R., Patricia E. Salkin, and Robert R. Wright. *Land Use in a Nutshell*. St. Paul, MN: Thomson/West, 2006.

### **Newspaper and Online Articles**

“City Council Approves Time Limits on Landmark Designations,” New York Landmarks Conservancy, June 8, 2016.

[http://www.nylandmarks.org/advocacy/preservation\\_issues/proposed\\_legislation\\_by\\_city\\_council\\_will\\_set\\_time\\_limits\\_on\\_landmark\\_desig/](http://www.nylandmarks.org/advocacy/preservation_issues/proposed_legislation_by_city_council_will_set_time_limits_on_landmark_desig/).

Albanese, Samantha. “UES Tenement Development To Keep Landmark Status Despite Owner’s Lawsuit.” *Cityland*, September 9, 2018. <https://www.citylandnyc.org/ues-tenement-development-to-keep-landmark-status-despite-owners-lawsuit/>

Anuta, Joe. “St. Patrick’s Cathedral to net \$7.2 million from air-rights sale.” *Crain’s New York Business*, February 28, 2018.

[http://www.crainsnewyork.com/article/20180228/REAL\\_ESTATE/180229878/st-patricks-cathedral-to-net-7-2-million-from-air-rights-sale](http://www.crainsnewyork.com/article/20180228/REAL_ESTATE/180229878/st-patricks-cathedral-to-net-7-2-million-from-air-rights-sale).

Anuta, Joe. “After almost two decades of decay, the Bronx’s ‘Castle on the Concourse’ will be torn down.” *Crain’s New York Business*, April 3, 2015.

[https://www.crainsnewyork.com/article/20150403/REAL\\_ESTATE/150409970/after-almost-two-decades-of-decay-the-bronx-s-castle-on-the-concourse-will-be-torn-down](https://www.crainsnewyork.com/article/20150403/REAL_ESTATE/150409970/after-almost-two-decades-of-decay-the-bronx-s-castle-on-the-concourse-will-be-torn-down).

Bagli, Charles V. “With \$240 Million Deal, Floodgates Open for Air Rights in Midtown East.” *New York Times*, March 2, 2018. <https://nyti.ms/2tbCisr>

Baird-Remba, Rebecca. “Tribeca Clock Tower Building Case Opens Up Potential for More Interior NYC Landmarks.” *Commercial Observer*, December 1, 2017.

<https://commercialobserver.com/2017/12/tribeca-clock-tower-building-case-opens-up-potential-for-more-interior-nyc-landmarks/>.

Berman, Andrew. “Protecting Landmarks and the Landmarking Process.” *Cityland*, July 24, 2014. <https://www.citylandnyc.org/protecting-landmarks-and-the-landmarking-process/>.

Bindelglass, Evan. "Midtown East's Edgar J. Kaufman Conference Center Gets Landmarks Hearing." *New York Imby*, November 18, 2015. <https://newyorkimby.com/2015/11/midtown-easts-edgar-j-kaufman-conference-center-gets-landmarks-hearing.html>

Bindelglass, Evan. "Mixed Rulings for Conversion of 346 Broadway, TriBeCa." *New York Imby*, April 4, 2016. <https://newyorkimby.com/2016/04/mixed-rulings-for-conversion-of-346-broadway-tribeca.html>

Chaban, Matt. "Frank Lloyd Wright Wronged on Park Avenue." *Crain's New York Business*, April 12, 2013. [https://www.crainsnewyork.com/article/20130412/REAL\\_ESTATE/130419943/frank-lloyd-wright-wronged-on-park-avenue](https://www.crainsnewyork.com/article/20130412/REAL_ESTATE/130419943/frank-lloyd-wright-wronged-on-park-avenue).

Collins, Glenn. "A Place of Escape may Survive, Barely." *New York Times*, Feb 25, 2004. <https://nyti.ms/2XHsJN1>.

Colman, Michelle Sinclair. "Understanding the Power of Air Rights." *CityRealty*, December 18, 2017. <https://www.cityrealty.com/nyc/market-insight/features/future-nyc/understanding-power-air-rights/2923>

Croghan, Lore. "Homestead Under Siege develop or preserve S.I. landmark." *New York Daily News*, October 27, 2003. <http://proxy-remote.galib.uga.edu:80/login?url=https://search-proquest-com.proxy-remote.galib.uga.edu/docview/305832452?accountid=14537>.

Denney, Andrew. "Court Halts Plans for Electrical Conversion of NYC Tower Clock." *New York Law Journal*, April 4, 2016. <https://www.law.com/newyorklawjournal/almID/1202753944722>

Donnelly, Frank. "Judge Order Owners to Forfeit Landmark Home Once Occupied by Revolutionary War General." *Staten Island South Shore*, May 25, 2017. [http://www.silive.com/southshore/index.ssf/2017/05/judge\\_orders\\_owner\\_to\\_turn\\_ove.html](http://www.silive.com/southshore/index.ssf/2017/05/judge_orders_owner_to_turn_ove.html).

Donnelly, Frank. "Judge orders owner of landmarked South Shore home to repair it by Jan. 31." *Staten Island South Shore*, January 5, 2017. [https://www.silive.com/southshore/2017/01/judge\\_orders\\_south\\_shore\\_landm.html](https://www.silive.com/southshore/2017/01/judge_orders_south_shore_landm.html).

Denno, Jesse. "Emergency Demolition May Be Necessary for City-Owned Individual Landmark." *Cityland*, January 8, 2014. <https://www.citylandnyc.org/emergency-demolition-may-be-necessary-for-city-owned-individual-landmark/>.

Dunlap, David. "Fadeout for Movie Palace in Brooklyn." *New York Times*, March 30, 1988. <https://nyti.ms/2VwNEjX>



- Dunlap, David. "So, You Think You Can See a Landmark?" *New York Times*, Jan. 20, 2006. <http://www.nytimes.com/2006/01/20/nyregion/so-you-think-you-can-see-a-landmark.html>
- Gearty, Robert and Brian Kates. "Queens developer is like one-man wrecking crew." *Daily News*, May 27, 2007. <https://www.nydailynews.com/news/queens-developer-one-man-wrecking-crew-article-1.252368>.
- Geiger, Daniel. "Grand Central's air rights could make new Park Avenue megatower possible." *Crain's New York Business*, February 26, 2018. [http://www.crainsnewyork.com/article/20180226/REAL\\_ESTATE/180229916](http://www.crainsnewyork.com/article/20180226/REAL_ESTATE/180229916)
- Gray, Christopher. "\$711,000 to Revive a Grand Stairway to Nowhere." *New York Times*, April 08, 1990. <https://nyti.ms/2SKZBkr>
- Gray, Christopher. "A Magnificent, but Mutilated, Palatial Landmark." *New York Times*, April 1, 1990. <https://nyti.ms/2Vx3zPq>.
- Gray, Christopher. "Streetscapes: The Old Jamaica Savings Bank' Beaux-Arts Building in Limbo." *New York Times*, November 3, 1991. <https://www.nytimes.com/1991/11/03/realestate/streetscapes-the-old-jamaica-savings-bank-beaux-arts-building-in-limbo.html>;
- Guardino, Anthony. "Landmarks Preservation Law Given Broad Reading by Divided Court." *New York Law Journal*, January 23, 2018. <https://www.law.com/newyorklawjournal/sites/newyorklawjournal/2018/01/23/landmarks-preservation-law-given-broad-reading-by-divided-first-department/>
- Kensinger, Nathan. "Visiting 10 historic NYC buildings slated for demolition." *CurbedNY*, January 25, 2018. <https://ny.curbed.com/2018/1/25/16929870/new-york-historic-buildings-demolition-photo-essay>
- Lii, Jane H. "RKO Keith's Battle Drags on," *New York Times*, Jul 07, 1996. <https://nyti.ms/2SNVC6R>.
- Meier, Allison. "The Shocking Demolition of Frank Lloyd Wright's Park Avenue Showroom." *Hyperallergic*, April 16, 2013. <https://hyperallergic.com/69023/the-shocking-demolition-of-frank-lloyd-wrights-park-avenue-showroom/>
- Mooney, Jake. "Landmarks Says It's a Landmark. The Council Begg to Differ." *New York Times*, November 13, 2005. <https://nyti.ms/2XGBt61>.
- Myers, Steven Lee. "Historic Preservation Comes of Age in Queens; Scarcity of Landmarks Reflects Distrust Within the Borough and Snobbery Outside It." *New York Times*, February 3, 1993. <https://nyti.ms/2HbCt8I>.
- O'Grady, Jim. "A Reincarnation is Ahead for the RKO Keith's Theater." *New York Times*, Mar 03, 2002. <https://nyti.ms/2XE6sjf>.

Patton, Phil. "Wright's New York Showroom, Now Just a Memory." *New York Times*, June 21, 2013. <https://www.nytimes.com/2013/06/23/automobiles/wrights-new-york-showroom-now-just-a-memory.html>.

Pogrebin, Robin. "City Council Influences Landmarks Decision." *New York Times*, November 18, 2009. <http://www.nytimes.com/2009/11/19/arts/design/19goodrich.html>.

Pogrebin, Robin. "Preservation and Development, Engaged in a Delicate Dance." *New York Times*, December 1, 2008. <https://www.nytimes.com/2008/12/02/arts/design/02landmarks.html>.

Pogrebin, Robin. "Preservationists See Bulldozers Charging Through a Loophole." *New York Times*, November 28, 2008. <https://www.nytimes.com/2008/11/29/arts/design/29landmarks.html>.

Rosenberg, Zoe and Tanay Warkerkar. "Flushing's landmarked RKO Keith's Theater will soon be engulfed by glassy condo." *CurbedNY*, May 16, 2017. <https://ny.curbed.com/2017/5/16/15643646/rko-keiths-theater-landmark-redevelopment-queens>

Rummell, Nick. "Historic NYC Clocktower Saved on Appeal." *Courthouse News*, December 1, 2017. <https://www.courthousenews.com/historic-nyc-clocktower-saved-on-appeal/>

Sherry, Virginia. "Historic landmark home is focus of 'demolition by neglect' lawsuit." *Staten Island South Shore*, March 26, 2016. [https://www.silive.com/southshore/2016/03/demolition\\_by\\_neglect\\_on\\_the\\_s.html](https://www.silive.com/southshore/2016/03/demolition_by_neglect_on_the_s.html).

Sullivan, Ronald. "Theaters' Landmark Status Upheld." *New York Times*, December 8, 1989. <https://www.nytimes.com/1989/12/08/nyregion/theaters-landmark-status-upheld.html>.

The Editorial Board. "New York City's Landmarks Law at 50." *New York Times*, April 17, 2015. <https://www.nytimes.com/2015/04/18/opinion/new-york-citys-landmarks-law-at-50.html>

The Editors. "The good, the bad and the ugly: Best preservation stories of 2017." *The Architects Newspaper*, December 15, 2017. <https://archpaper.com/2017/12/best-preservation-stories-2017/>

Wachs, Audrey. "Alvar Aalto's U.N. interiors are in limbo-again." *The Architects Newspaper*, December 13, 2016. <https://archpaper.com/2016/12/alvar-aalto-un-interiors-limbo/>

Warkerkar, Tanay. "Tribeca clocktower building's future as condos is in jeopardy." *CurbedNY*, August 11, 2017. <https://ny.curbed.com/2017/8/11/16131248/tribeca-clocktower-building-conversion-stalled>

Warerkar, Tanay. "Waldorf Astoria's iconic Art Deco interiors become an NYC interior landmark." *CurbedNY*, March 7, 2017.

<https://ny.curbed.com/2017/3/7/14842212/waldorf-astoria-interior-landmark-art-deco>

### Journal Articles and Reports

"Uniform Conservation Easement Act," *National Conference of Commissioners on Uniform State Laws* (1981, last revised or amended in 2007).

<https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=95e58042-e8d2-2051-1868-617b5d89a7f9>

Gruen, Amanda. "New York City Designation Process: Closing the Loophole to protect potentially eligible buildings." *Pratt Historic Preservation Colloquium* (Fall 2014).

[https://www.academia.edu/11746902/New\\_York\\_City\\_Designation\\_Process\\_Closing\\_the\\_Loophole\\_to\\_Protect\\_Potentially\\_Eligible\\_Buildings](https://www.academia.edu/11746902/New_York_City_Designation_Process_Closing_the_Loophole_to_Protect_Potentially_Eligible_Buildings)

Robins, Anthony. "Historic Preservation Options in New York City: Similarities and Differences between Landmarks Preservation Commission Regulation and Donation of a Preservation Easement." (Thomas & Columbus Inc., for the Trust for Architectural Easements (2009).

<https://architecturaltrust.org/~architec/wp-content/uploads/2013/06/1a-2009-0512-Robins-Report.pdf>

Reichert, Charles J. "Charitable contribution deduction denied for conservation easement." *Journal of Accountancy* (July 1, 2018).

<https://www.journalofaccountancy.com/issues/2018/jul/conservation-easement-deduction-denied.html>

Halperin, Daniel. "Incentives for Conservation Easements: The Charitable Deduction or a Better Way." *Law and Contemporary Problems* 74, no. 4 (Fall 2011): 29-50.

<https://scholarship.law.duke.edu/lcp/vol74/iss4/3>

Watson, Elizabeth A. and Stefan Nagel, updated by Julia H. Miller, Ross M. Bradford, and Thompson Mayes, *Establishing and Operating an Easement Program to Protect Historic Resources* (Washington, D.C.: National Trust for Historic Preservation, 2007).

<https://forum.savingplaces.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=dab89065-cb09-db4b-48a5-14032a72df14>

Ellen, Ingrid Gould, Brian J. McCabe, and Eric Edward Stern. "Fifty Years of Historic Preservation in New York City." *New York University Furman Center* (March 7, 2016).

[http://furmancenter.org/files/NYUFurmanCenter\\_50YearsHistoricPresNYC\\_7MAR2016.pdf](http://furmancenter.org/files/NYUFurmanCenter_50YearsHistoricPresNYC_7MAR2016.pdf)

Lippmann, Jessica O. "The emergence of exacted conservation easements." *Neb. L. Rev.* 84 (2006): 1044-1112.

<http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1249&context=nlr>

Steinberg, Joachim Beno. "New York City's Landmarks Law and the Rescission Process." *NYU Ann. Surv. Am. L.* 66 (2011): 951-1000.

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1807996](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1807996)

Johnson, Denise R. "Reflections on the Bundle of Rights." *Vt. L. Rev.* 32 (2007): 247-272. <https://lawreview.vermontlaw.edu/wp-content/uploads/2012/02/johnson2.pdf>

Lloyd, Johnathan. "Interior Preservation: In or Out?" *Georgetown Law Historic Preservation Papers Series* (2008).  
[http://scholarship.law.georgetown.edu/hpps\\_papers/31](http://scholarship.law.georgetown.edu/hpps_papers/31)

Mallard, Robert W. "Avoiding the Disneyland Facade: The Reach of Architectural Controls Exercised by Historic Districts over International Features of Structures." *Widener L. Symp. J.*, vol. 8, (2001): 323-346.

New York City Council, *Landmarks for the Future: Learning from 50 Years of Preservation* (New York: New York City Council, 2016).  
<http://nyccouncil.labs.wpengine.com/press/wp-content/uploads/sites/56/2016/06/landmarks.pdf>

Caros, Nicholas. "Interior Landmarks Preservation and Public Access." *Columbia Law Review* 116, no. 7 (November 2016): 1773-1805. <http://www.jstor.org/stable/44028177>

Phelps, Jess R. "Preserving Preservation Easements: Preservation Easements in an Uncertain Regulatory Future." *Neb. L. Rev.* 91 (2012): 121-169.  
<https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1168&context=nlr>

Preservation Alliance for Greater Philadelphia, "Protecting Historic Interiors: A Survey of Preservation Practices and Their Implications for Philadelphia." PreservationAlliance.com, 2007, accessed January 2017.  
<http://www.preservationalliance.com/wp-content/uploads/2014/09/InteriorsFINAL.pdf>

### **Legal Precedent**

*Bd. of Managers of Soho Int'l Arts Condo. v. City of New York*, 2003 W.L. 21403333 (2003).

*Bd. of Managers of Soho Int'l Arts Condo. v. City of New York*, 2005 W.L. 1153752 (2005).

*Bd. of Managers of Soho Int'l Arts Condo. v. City of NY*, 2004 W.L. 1982520 (2004).

*Collman v. CIR*, 511 F.2d 1263 (9th Cir. 1975).

*Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994).

*Internat'l News Serv. v. Asso. Press*, 248 U.S. 215, 39 S. Ct. 68, 63 L. Ed. 211 (1918) (Brandeis, J., dissenting).

*Kaiser Aetna v. United States*, 444 U.S. 164, 100 S. Ct. 383, 62 L. Ed. 2d 332 (1979).

*Lingle v. Chevron USA Inc.*, 544 U.S. 528, 125 S. Ct. 2074, 161 L. Ed. 2d 876 (2005).

*Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 102 S. Ct. 3164, 73 L. Ed. 2d 868 (1982).

*Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798 (1992).

*MTR. OF SAILORS'SNUG HARBOR v. Platt*, 29 A.D.2d 376, 288 N.Y.S.2d 314, 288 N.Y.2d 314 (App. Div. 1968).

*Nollan v. California Coastal Comm'n*, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987).

*Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978).

*Samerica Corp. v. City of Phila.*, 558 A.2d 155, 125 Pa. Commonwealth Ct. 520, 125 Pa. Cmwlth. 520 (Commw. Ct. 1989).

*SAVE AMERICA'S CLOCKS v. City of New York*, 52 Misc. 3d 282, 28 N.Y.S.3d 571 (Sup. Ct. 2016)

*SAVE AMERICA'S CLOCKS, INC. v. City of New York*, 2017 N.Y. Slip Op 8457 (App. Div. 2017).

*SAVE AMERICA'S v. City of NY*, 157 A.D.3d 133, 66 N.Y.S.3d 252 (App. Div. 2017).

*MATTER OF SAVE AMERICA'S CLOCKS, INC. v. City of New York*, 2019 N.Y. Slip Op 2385 (2019).

*Shubert Organization, Inc. v. Landmarks Preservation Comm'n*, 78 N.Y.2d 1006, 575 N.Y.S.2d 456, 580 N.E.2d 1059 (1991).

*Shubert Org. v. LANDMARKS*, 166 A.D.2d 115, 570 N.Y.S.2d 504 (App. Div. 1991)

*Shubert Org. v. Landmarks Pres. Comm'n of NY*, 504 U.S. 946, 112 S. Ct. 2289, 119 L. Ed. 2d 213 (Supreme Court 1992).

*TEACHERS INS & ANNUITY v. NYC*, 623 N.E.2d 526, 82 N.Y.2d 35, 603 N.Y.S.2d 399 (1993).

*Thomas Gang Inc. v. State*, 19 A.D.3d. 861 (3d Dept 2005)

*United Artists Theater Circuit, Inc. v. City of Philadelphia*, 595 A.2d 6, 528 Pa. 12 (1991)

*United Artists v. Philadelphia*, 635 A.2d 612, 535 Pa. 370 (1993)

*Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926)

*Weinberg v. Barry*, 634 F. Supp. 86 (D.C. 1986)

### State and Federal Information

“Comparison Chart: Federal and State Historic Preservation Tax Credits,” *New York State Office of Parks, Recreation and Historic Preservation*, accessed January 4, 2019. <https://parks.ny.gov/shpo/tax-credit-programs/documents/TaxCreditComparisonChart.pdf>

“Determining Census Tracts,” *New York State Office of Parks, Recreation and Preservation*, July 15, 2013. <https://parks.ny.gov/shpo/tax-credit-programs/documents/ListofEligibleCensusTracts.pdf>

“Historic Preservation Tax Incentives,” National Park Service (2012), 5-6. <https://www.nps.gov/tps/tax-incentives/taxdocs/about-tax-incentives-2012.pdf>

“LP-1513 Former New York Life Insurance Building Interior Designation,” New York Landmarks Preservation Commission, February 10, 1987. <http://s-media.nyc.gov/agencies/lpc/lp/1513.pdf>

“Museum Retailing—UBIT Issues,” Internal Revenue Service, accessed March 1, 2019. [www.irs.gov/pub/irs-tege/eotopicu79.pdf](http://www.irs.gov/pub/irs-tege/eotopicu79.pdf)

“National Register Criteria for Evaluation,” *National Register Publications*, accessed November 20, 2018. [https://www.nps.gov/nr/publications/bulletins/nrb15/nrb15\\_2.htm](https://www.nps.gov/nr/publications/bulletins/nrb15/nrb15_2.htm)

“National Register of Historic Places,” *National Park Service*, accessed January 6, 2019. <https://www.nps.gov/subjects/nationalregister/index.htm>

“New York State Commercial Rehabilitation Tax Credit – Frequently Asked Questions,” New York State Parks, Recreation and Historic Preservation, accessed January 2, 2019. <https://parks.ny.gov/shpo/tax-credit-programs/documents/NYSITCCCommercialTaxCreditFAQ.pdf>

“New York State Historic Properties Tax Credits: Commercial and Homeowner Programs.” *New York State Office of Parks Recreation and Historic Preservation* accessed January 3, 2019. <https://parks.ny.gov/shpo/tax-credit-programs/documents/NYSTaxCreditPrograms.pdf>

“Rules of the New York City Landmark Preservation Commission, Title 63, Rules of the City of New York,” *New York City Landmarks Commission* (January 2013). <http://home2.nyc.gov/html/lpc/downloads/pdf/pubs/rules.pdf>

“Tax Credit Programs,” New York City Landmarks Preservation Commission, accessed January 12, 2018. <https://parks.ny.gov/shpo/tax-credit-programs/>

“The National Register of Historic Places,” *National Park Service* (2002). <https://www.nps.gov/nr/publications/bulletins/pdfs/NRBroch.pdf>

“VII. How To Apply The Criteria Considerations – Criteria Consideration B: Moved Properties,” *National Park Service*, Accessed March 1, 2019. [https://www.nps.gov/nr/publications/bulletins/nrb15/nrb15\\_7.htm#crit%20con%20b](https://www.nps.gov/nr/publications/bulletins/nrb15/nrb15_7.htm#crit%20con%20b)

Charles Fisher, "Easements to Protect Historic Properties: A Useful Preservation Tool with Potential Tax Benefits," *The National Park Service* (2010), <https://www.nps.gov/tps/tax-incentives/taxdocs/easements-historic-properties.pdf>

Charleston County, South Carolina, Deed Book 0277: 861; Herbert B. McGuire, Jr. and Diane B. McGuire & Historic Charleston Foundation, September 13, 2012; Office of the Recorder of Deeds, City of Charleston. 2.

Historic Preservation Easements: A Directory of Historic Preservation Easement Holding Organizations”, *National Park Service* (2003). <http://ohp.parks.ca.gov/pages/1074/files/easementsdirectory.pdf>

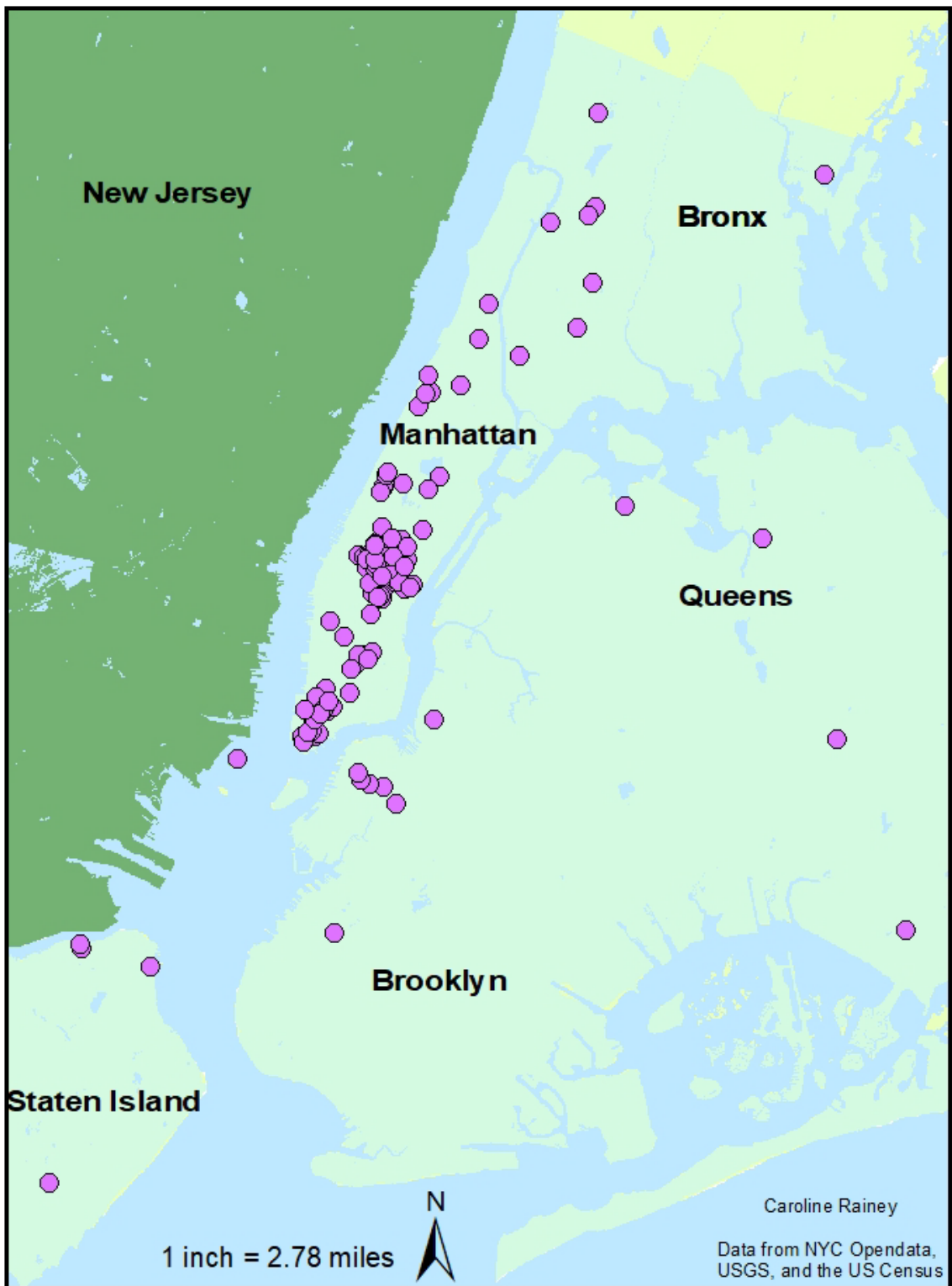
Report of the Finance Division on the Fiscal 2019 Preliminary Budget and the Fiscal 2018 Preliminary Mayor’s Management Report for the Landmarks Preservation Commission, March 15, 2019, accessed January 5, 2019. <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2018/03/FY19-Landmarks-Preservation-Commission.pdf>

### **Thesis**

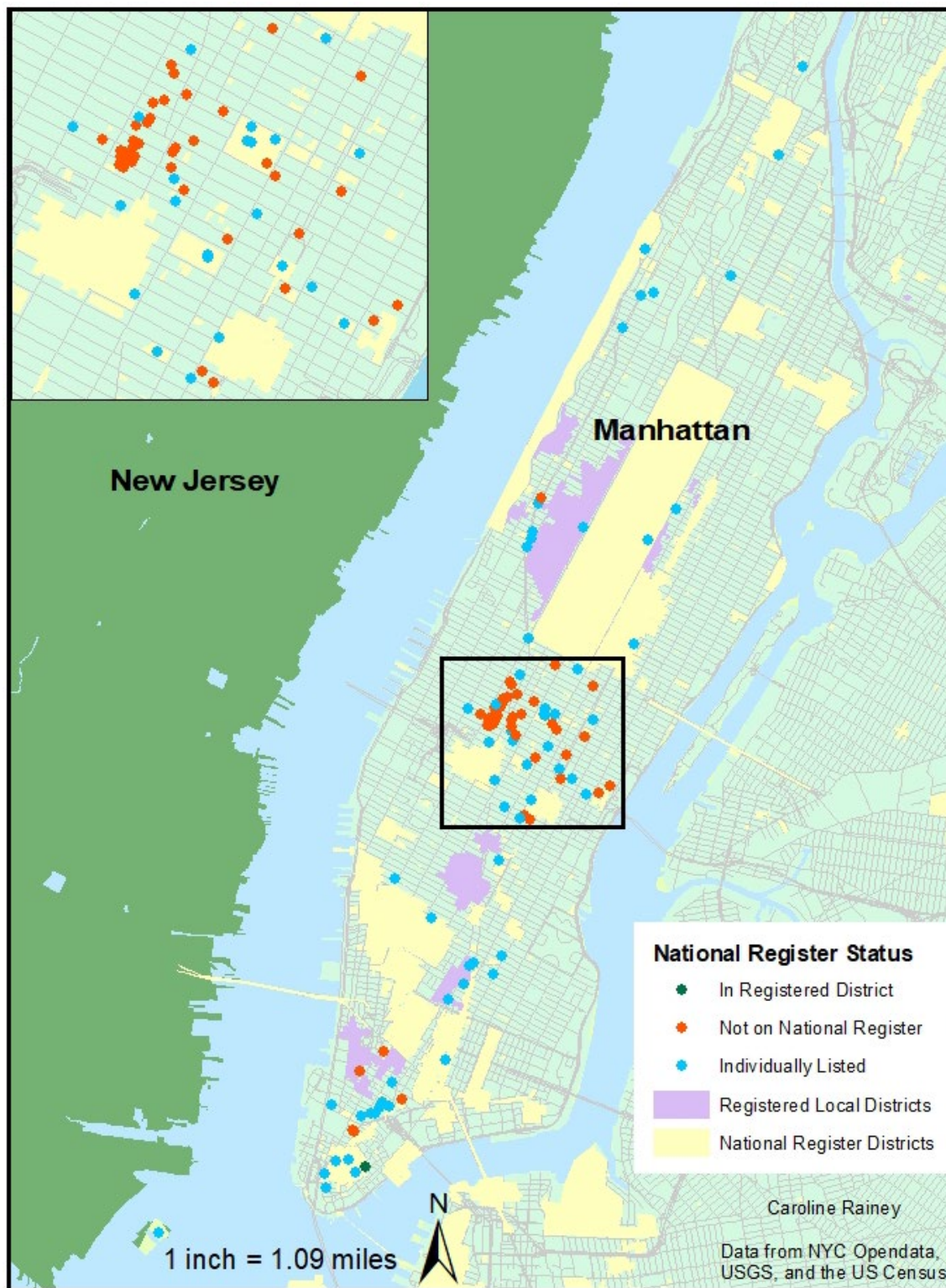
Baccash, Benjamin. “Enforcement and the New York City Landmarks Law: Past, Present, and Future.” Master’s thesis, Columbia University, 2010. [http://www.nypap.org/wp-content/uploads/2016/03/Enforcement\\_and\\_the\\_New\\_York\\_City\\_Landmarks\\_Law\\_Ben\\_Baccash.pdf](http://www.nypap.org/wp-content/uploads/2016/03/Enforcement_and_the_New_York_City_Landmarks_Law_Ben_Baccash.pdf).

APPENDIX

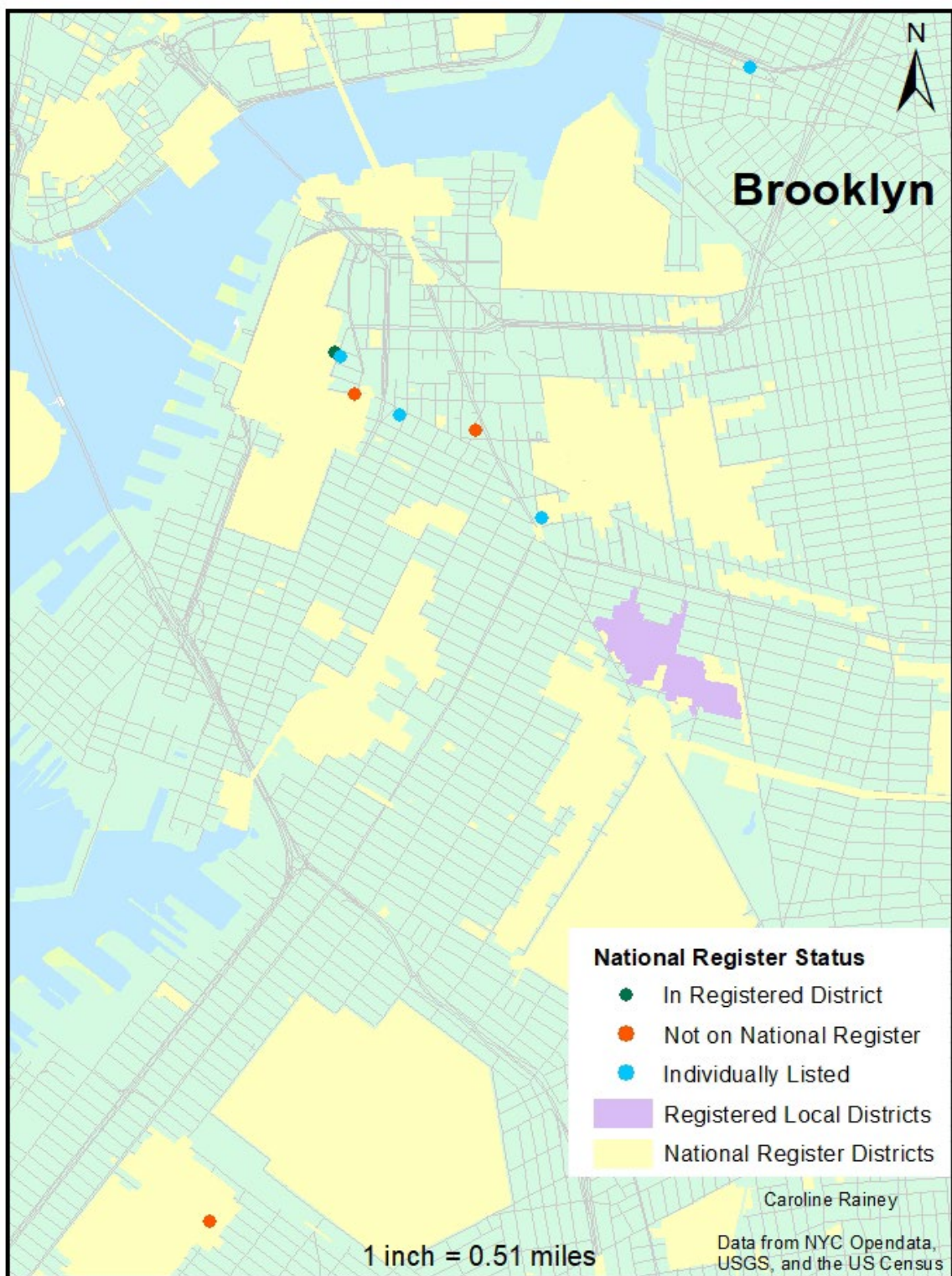
Appendix A: All Interior Landmarks in New York

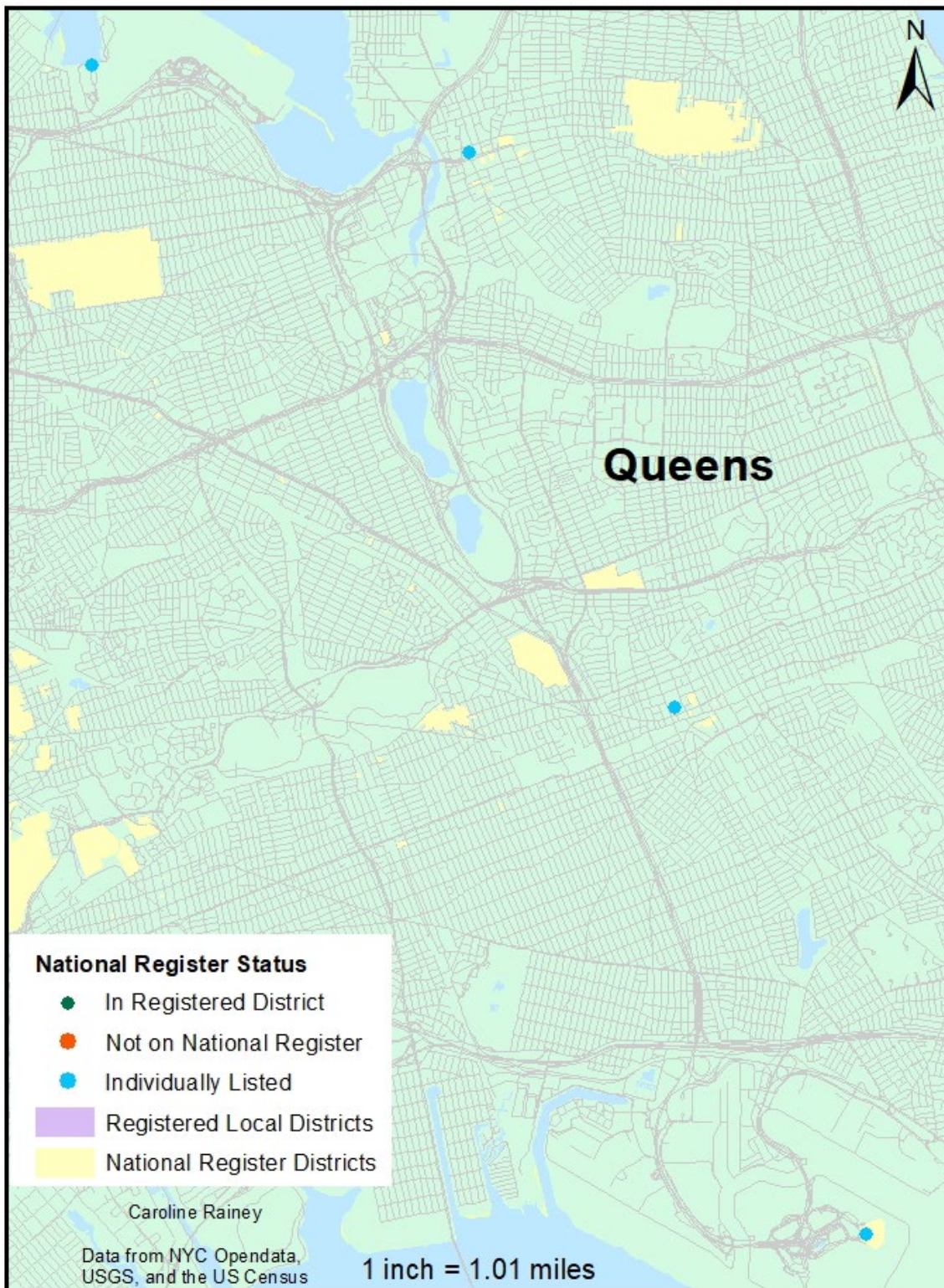


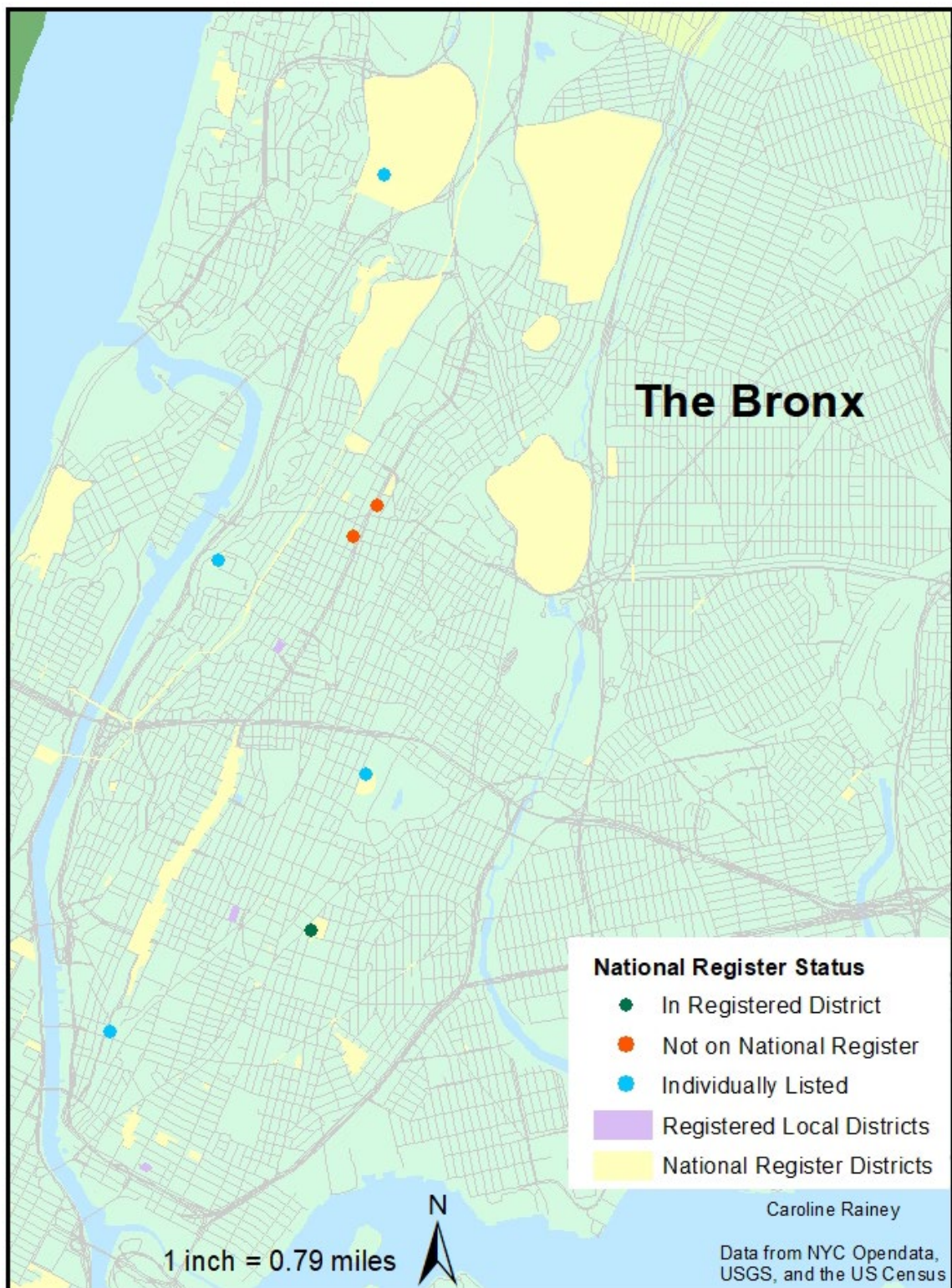


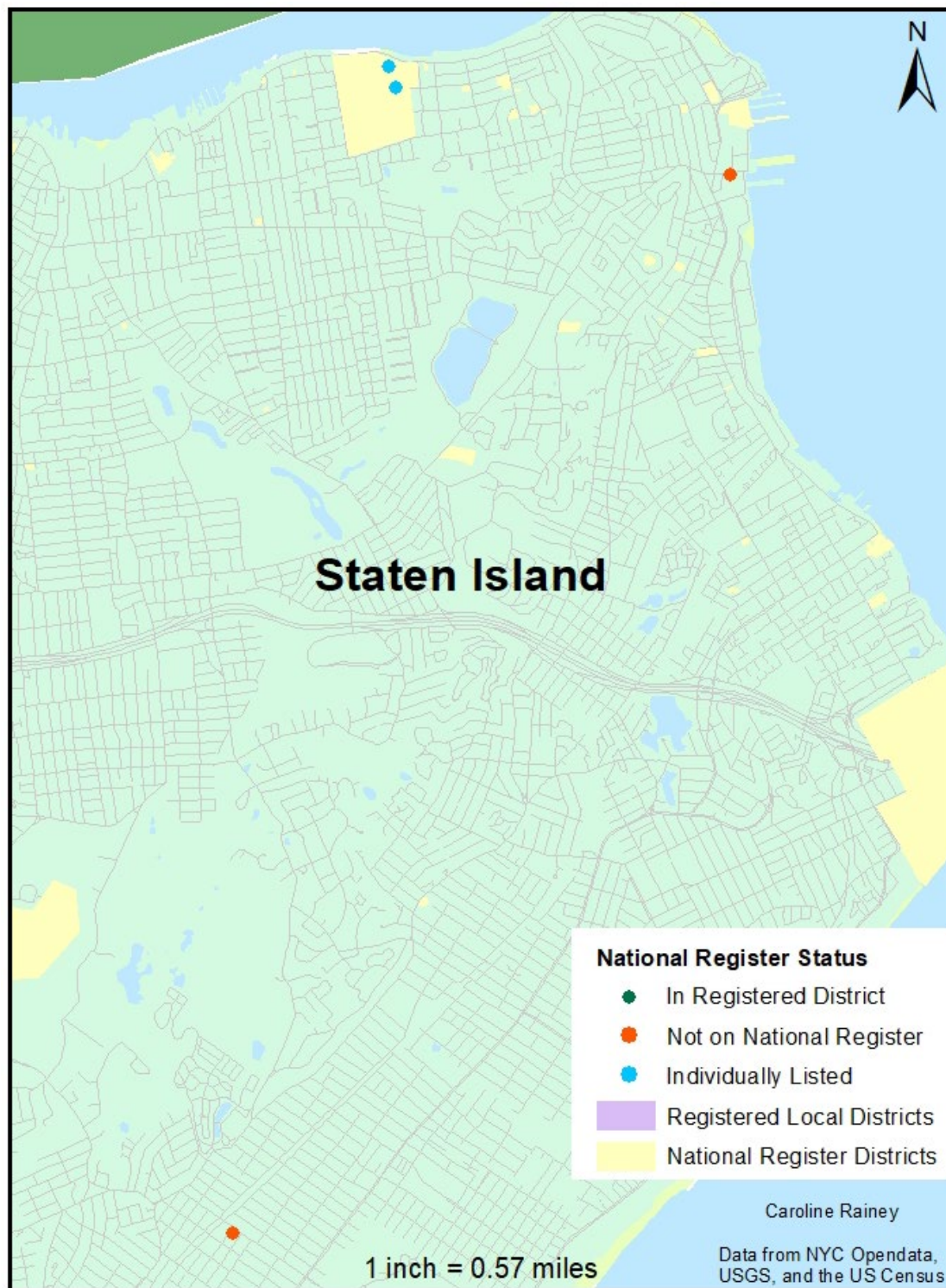
**Appendix B: The National Register Status of Interior Landmarks in Manhattan**

### Appendix C: The National Register Status of Interior Landmarks in Brooklyn



**Appendix D: The National Register Status of Interior Landmarks in Queens**

**Appendix E: The National Register Status of Interior Landmarks in The Bronx**

**Appendix F: The National Register Status of Interior Landmarks in Staten Island**

Appendix G: Chart of Cities with Interior Ordinances from 2007 Philadelphia Study (page 6)

City	Interior Designations in Ordinance	Interior Landmarks or Features	Public Access Requirement	Private Interiors Designated	Owner Consent Required
Long Beach, CA	No	Features	No	Yes	No
Los Angeles, CA	No	Features	No	Yes	No
Pasadena, CA	Yes	Landmarks & Features	No	Yes	No
San Francisco, CA	Yes	Landmarks & Features	Yes	No	No, seek it anyway
Telluride, CO	Yes	Landmarks	No, but required in practice	No	No, seek it anyway
Coral Gables, FL	Yes	Landmarks & Features	No, but required in practice	Yes, owner request	No, seek it anyway
Delray Beach, FL	No	Landmarks	Not Known	Not Known	Yes
Chicago, IL	No	Landmarks & Features	Yes	Yes	No, seek it anyway
Oak Park, IL	Yes	Landmarks & Features	Yes	No	No, seek it anyway
Boston, MA	Yes	Landmarks & Features	Yes	Yes, if accessible	No
Detroit, MI	Yes	Features	Yes	No	Yes

Ashville, NC	Yes	Features	No	Yes	Yes
Charlotte, NC	Yes	Features	No	Yes	Yes
New York, NY	Yes	Landmarks	Yes	Yes	No
Rochester, NY	Yes	Landmarks	Yes	Yes	Yes
Portland, OR	Yes	Landmarks & Features	Yes	Yes	Yes
El Paso, TX	Yes	Landmarks	Yes	Yes	Yes
Seattle, WA	No	Features	No	Yes	No
Tacoma, WA	No	Features	No	Yes	No, seek it anyway
Washington DC	Yes	Landmarks & Features	No	Yes	No, seek it anyway

**Appendix H: List of Interior Landmarks in New York**

<b>LP NUMBER</b>	<b>BR</b>	<b>LANDMARK NAME</b>	<b>ADDRESS</b>	<b>CATEGORY</b>	<b>SUBCAT</b>
LP-01635	MN	(Former) New York Bank for Savings	81 8 AVENUE	BANK	
LP-01911	MN	Bowery Savings Bank	130 BOWERY	BANK	
LP-01913	MN	Bowery Savings Bank	120 EAST 42 STREET	BANK	
LP-01804	MN	Central Savings Bank, now Apple Bank for Savings	2100 BROADWAY	BANK	
LP-01908	BK	Dime Savings Bank	9 DE KALB AVENUE	BANK	
LP-01890	BX	Dollar Savings Bank	2518 GRAND CONCOURSE	BANK	
LP-01123	MN	Former Emigrant Industrial Savings Bank Building	51 CHAMBERS	BANK	
LP-01767	MN	Greenwich Savings Bank	1352 BROADWAY	BANK	
LP-01979	MN	National City Bank Building	53 WALL STREET	BANK	
LP-01910	BK	Williamsburgh Savings Bank (Broadway)	175 BROADWAY	BANK	
LP-01909	BK	Williamsburgh Savings Bank (Hanson Place)	1 HANSON PLACE	BANK	
LP-02199	MN	American Telephone & Telegraph Company Building	195 BROADWAY	BUSINESS	



LP-01746	MN	Barclay-Vesey Building	140 WEST STREET	BUSINESS	
LP-01906	BK	Brooklyn Trust Company Building	177 MONTAGUE STREET	BUSINESS	
LP-01698	MN	Charles Scribner's Sons Building	597 5 AVENUE	BUSINESS	
LP-00996	MN	Chrysler Building	395 LEXINGTON AVENUE	BUSINESS	
LP-02442	MN	Cities Service Building	70 PINE STREET	BUSINESS	
LP-01929	MN	Cunard Building	13 BROADWAY	BUSINESS	
LP-01982	MN	Daily News Building	777 2 AVENUE	BUSINESS	
LP-02001	MN	Empire State Building	338 5 AVENUE	BUSINESS	
LP-01220	MN	Film Center Building	622 9 AVENUE	BUSINESS	
LP-01970	MN	Ford Foundation Building	303 EAST 42 STREET	BUSINESS	
LP-01513	MN	Former New York Life Insurance Building	346 BROADWAY	BUSINESS	
LP-01416	MN	Fred F. French Building	547 5 AVENUE	BUSINESS	
LP-01461	MN	Fuller Building	597 MADISON AVENUE	BUSINESS	
LP-01811	MN	Goelet Building	608 5 AVENUE	BUSINESS	
LP-01449	MN	International Building (Rockefeller Center)	630 5 AVENUE	BUSINESS	
LP-01748	MN	Long Distance Building of the American Telephone and Telegraph Company	16 WALKER STREET	BUSINESS	

LP-02426	MN	Madison Belmont Building	181 MADISON AVENUE	BUSINESS	
LP-02467	MN	Manufacturers Trust Company Building	510 FIFTH AVENUE	BUSINESS	
LP-01298	MN	New York Central Building, now Helmsley Building	230 PARK AVENUE	BUSINESS	
LP-01448	MN	RCA Building (Rockefeller Center)	30 ROCKEFELLER PLAZA	BUSINESS	
LP-01665	MN	Seagram Building	375 PARK AVENUE	BUSINESS	
LP-02551	MN	Steinway & Sons Reception Room and Hallway	109-113 WEST 57TH STREET	BUSINESS	
LP-02119	MN	Time & Life Building	1271 6 AVENUE	BUSINESS	
LP-01750	MN	Western Union Building	56 HUDSON STREET	BUSINESS	
LP-01121	MN	Woolworth Building (Interior)	229 BROADWAY	BUSINESS	
LP-00886	BX	Bartow-Pell Mansion	PELHAM BAY PARK	HISTORIC	HOUSE/MUSEUM
LP-00901	MN	General Grant National Memorial (Grant's Tomb)	RIVERSIDE PARK AND RIVERSIDE DRIVE	HISTORIC	MONUMENT
LP-00888	MN	Morris-Jumel Mansion	65 JUMEL TERRACE	HISTORIC	HOUSE/MUSEUM
LP-01244	MN	Old Merchant's House (Seabury Tredwell House)	29 EAST 4 STREET	HISTORIC	HOUSE/MUSEUM
LP-00923	QN	Rufus King House	150-05 JAMAICA AVENUE	HISTORIC	HOUSE/MUSEUM

LP-01204	SI	Sailors' Snug Harbor - Administration Building	982 RICHMOND TERRACE	HISTORIC	HOUSE/MUSEUM
LP-01205	SI	Sailors' Snug Harbor - Chapel	912 RICHMOND TERRACE	HISTORIC	HOUSE/MUSEUM
LP-01884	MN	Seventh Regiment Armory	641 PARK AVENUE	HISTORIC	MUSEUM
LP-00890	BX	Van Cortlandt Mansion	BROADWAY	HISTORIC	HOUSE/MUSEUM
LP-02174	MN	Plaza Hotel Interiors	768 5 AVENUE	HOTEL	
LP-02588	MN	United Nations Hotel	1 AND 2 UNITED NATIONS PLAZA	HOTEL	
LP-02590	MN	Waldorf-Astoria Hotel	301 PARK AVENUE	HOTEL	
LP-00889	MN	American Museum of Natural History	200 CENTRAL PARK WEST	PUBLIC	MUSEUM
LP-01098	MN	Appellate Division Courthouse, New York State Supreme Court	27 MADISON AVENUE	PUBLIC	GOVERNMENT
LP-02552	BX	Bronx General Post Office Lobby	560 GRAND CONCOURSE	PUBLIC	POST OFFICE
LP-00916	MN	City Hall	52 CHAMBERS STREET	PUBLIC	GOVERNMENT
LP-02233	BX	Crotona Play Center Bath House Interior	1700 FULTON AVENUE	PUBLIC	RECREATION
LP-01903	MN	Ellis Island, Main Building	1 ELLIS ISLAND	PUBLIC	GOVERNMENT/MUSEUM
LP-00887	MN	Federal Hall	26 WALL STREET	PUBLIC	GOVERNMENT

LP-01087	BX	Gould Memorial Library, New York University (Bronx Community College)	2060 SEDGWICK AVENUE	PUBLIC	LIBRARY
LP-02239	MN	Jackie Robinson (Colonial Park) Play Center Bath House	319 WEST 145 STREET	PUBLIC	RECREATION
LP-01131	BK	Long Island Historical Society Building	128 PIERREPONT STREET	PUBLIC	MUSEUM
LP-01118	MN	Low Memorial Library	530 WEST 120 STREET	PUBLIC	LIBRARY
LP-00972	MN	Metropolitan Museum of Art	1000 5 AVENUE	PUBLIC	MUSEUM
LP-01271	BX	Morris High School Auditorium	1096 BOSTON ROAD	PUBLIC	SCHOOL
LP-01917	MN	New School for Social Research	66 WEST 12 STREET	PUBLIC	SCHOOL
LP-01124	MN	New York County Courthouse	474 PEARL STREET	PUBLIC	GOVERNMENT
LP-01122	MN	New York County Courthouse (Tweed Courthouse)	52 CHAMBERS STREET	PUBLIC	GOVERNMENT
LP-00880	MN	New York Public Library	476 5 AVENUE	PUBLIC	LIBRARY
LP-02592	MN	New York Public Library (Stephen A. Schwarzman Building) Interiors, Main Reading Room and Catalog Room	476 5 AVENUE	PUBLIC	LIBRARY

LP-01168	MN	New York Public Library, Ottendorfer Branch	135 2 AVENUE	PUBLIC	LIBRARY
LP-01119	MN	Pierpont Morgan Library	219 MADISON AVENUE	PUBLIC	LIBRARY
LP-01775	MN	Solomon R. Guggenheim Museum	1070 5 AVENUE	PUBLIC	MUSEUM
LP-02243	BK	Sunset Play Center Bath House	4200 5 AVENUE	PUBLIC	RECREATION
LP-00926	MN	Surrogate's Court (Hall of Records)	23 CHAMBERS STREET	PUBLIC	GOVERNMENT
LP-02235	SI	Tompkinsville (Joseph H. Lyons) Pool Bath House	6 VICTORY BLVD	PUBLIC	RECREATION
LP-01012	MN	Town Hall	113 WEST 43 STREET	PUBLIC	GOVERNMENT
LP-01022	MN	United States Custom House	2 WHITEHALL STREET	PUBLIC	GOVERNMENT
LP-01904	MN	Della Robbia Bar	66 EAST 34 STREET	RESTAURANT/BAR	
LP-01666	MN	Four Seasons Restaurant	375 PARK AVENUE	RESTAURANT/BAR	
LP-00885	BK	Gage & Tollner Restaurant	372 FULTON STREET	RESTAURANT/BAR	
LP-02505	MN	Rainbow Room	30 ROCKEFELLER PLAZA	RESTAURANT/BAR	
LP-01306	MN	Alvin Theater (now Neil Simon Theater)	244 WEST 52 STREET	THEATER	
LP-01308	MN	Ambassador Theater	215 WEST 49 STREET	THEATER	

LP-01300	MN	Apollo Theater (originally Hurtig & Seamon's New (Burlesque) Theater)	253 WEST 125 STREET	THEATER	
LP-01314	MN	Barrymore Theater	243 WEST 47 STREET	THEATER	
LP-01097	MN	Beacon Theater	2126 BROADWAY	THEATER	
LP-01318	MN	Belasco's Stuyvesant Theater	111 WEST 44 STREET	THEATER	
LP-01320	MN	Biltmore Theater	261 WEST 47 STREET	THEATER	
LP-01322	MN	Booth Theater	221 WEST 44 STREET	THEATER	
LP-01324	MN	Broadhurst Theater	235 WEST 44 STREET	THEATER	
LP-01329	MN	Cort Theater	138 WEST 48 STREET	THEATER	
LP-01330	MN	Embassy Theater	1560 BROADWAY	THEATER	
LP-01375	MN	Erlanger Theater (Saint James Theater)	246 WEST 44 STREET	THEATER	
LP-01365	MN	Forrest Theater, later the Coronet Theater, now the Eugene O'Neill Theater	230 WEST 49 STREET	THEATER	
LP-01334	MN	Forty-Sixth Street Theater	226 WEST 46 STREET	THEATER	
LP-01381	MN	Hammerstein's Theater, now the Ed Sullivan Theater	1697 BROADWAY	THEATER	
LP-01341	MN	Hudson Theater	153 WEST 44 STREET	THEATER	
LP-01343	MN	Imperial Theater	249 WEST 45 STREET	THEATER	

LP-01696	SI	Lane Theater	168 NEW DORP LANE	THEATER	
LP-01347	MN	Little Theater (now Helen Hayes Theater)	240 WEST 44 STREET	THEATER	
LP-02193	BX	Loew's Paradise Theater Interior	2405-2419 GRAND CONCOURSE	THEATER	
LP-01349	MN	Longacre Theater	220 WEST 48 STREET	THEATER	
LP-01765	MN	Louis N. Jaffe Art Theater	181 2 AVENUE	THEATER	
LP-01352	MN	Lyceum Theater	149 WEST 45 STREET	THEATER	
LP-01356	MN	Majestic Theater	245 WEST 44 STREET	THEATER	
LP-01312	MN	Mansfield Theater, now the Brooks Atkinson Theater	256 WEST 47 STREET	THEATER	
LP-01339	MN	Mark Hellinger Theater (former Hollywood Theater)	217 WEST 51 STREET	THEATER	
LP-01316	MN	Martin Beck Theater	302 WEST 45 STREET	THEATER	
LP-01360	MN	Music Box Theater	239 WEST 45 STREET	THEATER	
LP-01027	MN	New Amsterdam Theater	214 WEST 42 STREET	THEATER	
LP-01367	MN	Palace Theater	1564 BROADWAY	THEATER	
LP-01369	MN	Plymouth Theater	234 WEST 45 STREET	THEATER	
LP-00995	MN	Radio City Music Hall (Rockefeller Center)	1260 6 AVENUE	THEATER	
LP-01257	QN	RKO Keith's Flushing Theater	135-27 NORTHERN BOULEVARD	THEATER	

LP-01373	MN	Royale Theater	242 WEST 45 STREET	THEATER	
LP-01379	MN	Shubert Theater	221 WEST 44 STREET	THEATER	
LP-01336	MN	Theater Masque, now the Golden Theater	252 WEST 45 STREET	THEATER	
LP-01387	MN	Winter Garden Theater	1634 BROADWAY	THEATER	
LP-01099	MN	Grand Central Terminal	77 EAST 42 STREET	TRAVEL	SUBWAY/RAIL
LP-01096	BK	IRT Subway System Underground Interior	JORALEMON STREET & COURT STREET	TRAVEL	SUBWAY/RAIL
LP-01096	MN	IRT Subway System Underground Interior	FULTON STREET & BROADWAY	TRAVEL	SUBWAY/RAIL
LP-01096	MN	IRT Subway System Underground Interior	WEST END AVENUE	TRAVEL	SUBWAY/RAIL
LP-01096	MN	IRT Subway System Underground Interior	4 AVENUE, LAFAYETTE STREET & 8 AVENUE (BELOW GROUND)	TRAVEL	SUBWAY/RAIL
LP-01096	MN	IRT Subway System Underground Interior	ASTOR PLACE AT LAFAYETTE STREET (BELOW GROUND)	TRAVEL	SUBWAY/RAIL
LP-01096	MN	IRT Subway System Underground Interior	WALL STREET & BROADWAY	TRAVEL	SUBWAY/RAIL
LP-01096	MN	IRT Subway System Underground Interior	BROADWAY & 110 STREET / CATHEDRAL PARKWAY	TRAVEL	SUBWAY/RAIL



LP-01096	MN	IRT Subway System Underground Interior	BROADWAY, AMSTERDAM AVENUE & WEST 72 STREET	TRAVEL	SUBWAY/RAIL
LP-01096	MN	IRT Subway System Underground Interior	BROADWAY & WEST 116 STREET	TRAVEL	SUBWAY/RAIL
LP-01096	MN	IRT Subway System Underground Interior	BLEEKER STREET & LAFAYETTE STREET	TRAVEL	SUBWAY/RAIL
LP-01096	MN	IRT Subway System Underground Interior	CITY HALL PARK	TRAVEL	SUBWAY/RAIL
LP-01096	MN	IRT Subway System Underground Interior	BROADWAY & WEST 79 STREET	TRAVEL	SUBWAY/RAIL
LP-01096	MN	IRT Subway System Underground Interior	PARK AVENUE & EAST 33 STREET	TRAVEL	SUBWAY/RAIL
LP-01096	MN	IRT Subway System Underground Interior	COLUMBUS CIRCLE	TRAVEL	SUBWAY/RAIL
LP-01110	QN	Marine Air Terminal	GRAND CENTRAL PKWY	TRAVEL	AIR
LP-01916	QN	Trans World Airlines (TWA) Flight Center	154-68 BROOKVILLE BOULEVARD	TRAVEL	AIR

**Appendix I: National Register Status and Landmarking Status of Interior Landmarks**

<b>LP NUMBER</b>	<b>LANDMARK NAME</b>	<b>NR</b>	<b>NR DESIG.</b>	<b>USN</b>	<b>INT. LNDMRK</b>	<b>EXT. LNDMRK</b>
LP-01635	(Former) New York Bank for Savings	YES	1/7/2000	N/A	6/21/1988	6/8/1988
LP-01911	Bowery Savings Bank	YES	4/23/1980, 02/20/2013	N/A	8/23/1994	4/19/1966
LP-01913	Bowery Savings Bank Building	NO	N/A	ELIG	9/17/1996	9/17/1996
LP-01804	Central Savings Bank, now Apple Bank for Savings	YES	9/8/1983	N/A	12/12/1993	1/28/1975
LP-01908	Dime Savings Bank	NO	N/A	?	7/19/1994	7/19/1994
LP-01890	Dollar Savings Bank	NO	N/A	UND	7/19/1994	7/19/1994
LP-01123	Former Emigrant Industrial Savings Bank Building	YES	9/25/1974	N/A	7/9/1985	7/9/1985
LP-01767	Greenwich Savings Bank	YES	11/16/2005	N/A	3/3/1992	3/3/1992
LP-01979	National City Bank Building	YES	8/18/1972, 02/20/2007	N/A	1/12/1999	12/21/1965
LP-01910	Williamsburgh Savings Bank (Broadway)	YES	4/9/1980	N/A	6/25/1996	5/17/1966
LP-01909	Williamsburgh Savings Bank (Hanson Place)	YES	9/7/1984	N/A	6/25/1996	11/15/1977
LP-02199	American Telephone & Telegraph Company Building	NO	N/A	ELIG	7/25/2006	7/25/2006
LP-01746	Barclay-Vesey Building	YES	4/30/2009	N/A	10/1/1991	10/1/1991

LP-01906	Brooklyn Trust Company Building	YES	8/20/2009	N/A	6/25/1996	6/25/1996
LP-01698	Charles Scribner's Sons Building	NO	N/A	ELIG	7/11/1989	3/23/1982
LP-00996	Chrysler Building	YES	12/8/1976	N/A	9/12/1978	9/12/1978
LP-02442	Cities Service Building, First Floor Interior	DIST	2/20/2008	N/A	6/21/2011	6/21/2011
LP-01929	Cunard Building	YES	2/20/2007	N/A	9/19/1995	9/19/1995
LP-01982	Daily News Building	YES	11/14/1982	N/A	3/10/1998	7/28/1981
LP-02001	Empire State Building	YES	11/17/1982	N/A	5/19/1981	5/19/1981
LP-01220	Film Center Building	YES	9/7/1984	N/A	11/9/1982	INTERIOR ONLY
LP-01970	Ford Foundation Building	NO	N/A	ELIG	10/21/1997	10/21/1997
LP-01513	Former New York Life Insurance Building Interior	YES	6/28/1982	N/A	2/10/1987	2/10/1987
LP-01416	Fred F. French Building	YES	1/28/2004	N/A	3/18/1986	3/18/1986
LP-01461	Fuller Building	NO	N/A	ELIG	3/18/1986	3/18/1986
LP-01811	Goelet Building (Interior)	NO	N/A	ELIG	1/14/1992	1/14/1992
LP-01449	International Building (Rockefeller Center)	YES	12/23/1987	N/A	4/23/1985	4/23/1985
LP-01748	Long Distance Building of the American Telephone and Telegraph Company	NO	N/A	?	10/1/1991	10/1/1991
LP-02426	Madison Belmont Building	NO	N/A	?	9/20/2011	9/20/2011
LP-02467	Manufacturers Trust Company Building	NO	N/A	ELIG	2/15/2011	10/21/1997

LP-01298	New York Central Building, now Helmsley Building	NO	N/A	ELIG	3/31/1987	3/31/1987
LP-01448	RCA Building (Rockefeller Center)	YES	12/23/1987	N/A	4/23/1985	4/23/1985
LP-01665	Seagram Building	YES	2/24/2006	N/A	10/3/1989	10/3/1989
LP-02551	Steinway & Sons Reception Room and Hallway	NO	N/A	UND	9/10/2013	11/13/2001
LP-02119	Time & Life Building	NO	N/A	UND	7/16/2002	INTERIOR ONLY
LP-01750	Western Union Building	NO	N/A	UND	10/1/1991	10/1/1991
LP-01121	Woolworth Building	YES	11/13/1966	N/A	4/12/1983	4/12/1983
LP-00886	Bartow-Pell Mansion	YES	12/30/1974	N/A	5/27/1975	2/15/1966
LP-00901	General Grant National Memorial (Grant's Tomb)	YES	10/15/1966	N/A	1/28/1975	11/25/1975
LP-00888	Morris-Jumel Mansion	YES	10/15/1966	N/A	5/27/1975	7/12/1967
LP-01244	Old Merchant's House (Seabury Tredwell House)	YES	10/15/1966	N/A	12/22/1981	10/14/1965
LP-00923	Rufus King House	YES	12/2/1974	N/A	3/23/1976	4/19/1966
LP-01204	Sailors' Snug Harbor - Administration Building	YES	3/16/1972	N/A	10/12/1982	10/14/1965
LP-01205	Sailors' Snug Harbor - Chapel	YES	3/16/1972	N/A	10/12/1982	10/14/1965
LP-01884	Seventh Regiment Armory	YES	4/14/1975	N/A	7/19/1994	6/9/1967
LP-00890	Van Cortlandt Mansion	YES	12/24/1967	N/A	7/22/1975	3/15/1966
LP-02174	Plaza Hotel Interiors	YES	11/17/1982	N/A	7/12/2005	12/9/1969
LP-02588	United Nations Hotel	NO	N/A	?	1/17/2017	INTERIOR ONLY

LP-02590	Waldorf-Astoria Hotel Interiors	NO	N/A	ELIG	3/7/2017	1/5/1993
LP-00889	American Museum of Natural History	YES	6/24/1976, 11/09/1982	N/A	7/22/1975	8/24/1967
LP-01098	Appellate Division Courthouse, New York State Supreme Court	YES	7/26/1982	N/A	9/22/1981	6/7/1966
LP-02552	Bronx General Post Office Lobby	YES	5/6/1980	N/A	12/17/2013	11/25/1975
LP-00916	City Hall	YES	10/15/1966	N/A	1/27/1976	2/1/1966
LP-02233	Crotona Play Center Bath House	YES	4/28/2015	N/A	6/26/2007	6/26/2007
LP-01903	Ellis Island, Main Building	YES	10/15/1966	N/A	11/16/1993	11/16/1993
LP-00887	Federal Hall	YES	10/15/1966, 2/20/2007	N/A	5/27/1975	12/21/1965
LP-01087	Gould Memorial Library, New York University (Bronx Community College)	YES	9/7/1979	N/A	8/11/1981	2/15/1966
LP-02239	Jackie Robinson (Colonial Park) Play Center Bath House	YES	4/11/2002	N/A	4/10/2007	4/10/2007
LP-01131	Long Island Historical Society Building	DIST	10/15/1966	N/A	3/23/1982	11/23/1965
LP-01118	Low Memorial Library	YES	12/23/1987	N/A	2/3/1981	9/20/1966
LP-00972	Metropolitan Museum of Art	YES	6/24/1986, 10/15/1966	N/A	11/15/1977	6/9/1967
LP-01271	Morris High School Auditorium	DIST	9/15/1983	N/A	12/21/1982	11/21/1982
LP-01917	New School for Social Research	YES	6/19/1979	N/A	6/3/1997	4/29/1969
LP-01124	New York County Courthouse	NO	N/A	?	3/24/1981	2/1/1966

LP-01122	New York County Courthouse (Tweed Courthouse)	YES	9/25/1974	N/A	10/16/1984	10/16/1984
LP-00880	New York Public Library	YES	10/15/1966, 05/06/1980	N/A	11/12/1974	1/11/1967
LP-02592	New York Public Library (Stephen A. Schwarzman Building), Main Reading Room and Catalog Room	YES	10/15/1966, 05/06/1980	N/A	8/8/2017	1/11/1967
LP-01168	New York Public Library, Ottendorfer Branch	YES	7/22/1979	N/A	8/11/1981	9/20/1977
LP-01119	Pierpont Morgan Library	YES	11/13/1966	N/A	3/23/1982	5/17/1966
LP-01775	Solomon R. Guggenheim Museum	YES	5/19/2005	N/A	8/14/1990	8/14/1990
LP-02243	Sunset Play Center Bath House	NO	N/A	ELIG	7/24/2007	7/24/2007
LP-00926	Surrogate's Court (Hall of Records)	YES	1/29/1972	N/A	5/11/1976	2/15/1966
LP-02235	Tompkinsville (Joseph H. Lyons) Pool Bath House	NO	N/A	ELIG	9/16/2008	9/16/2008
LP-01012	Town Hall	YES	4/23/1980	N/A	11/28/1978	11/28/1978
LP-01022	United States Custom House	YES	1/31/1972, 02/20/2007	N/A	1/9/1979	10/14/1965
LP-01904	Della Robbia Bar	NO	N/A	UND	4/5/1994	INTERIOR ONLY
LP-01666	Four Seasons Restaurant	YES	2/24/2006	N/A	10/3/1989	10/3/1989
LP-00885	Gage & Tollner Restaurant	YES	6/3/1982	N/A	3/25/1975	11/12/1974
LP-02505	Rainbow Room	YES	12/23/1987	N/A	10/16/2012	4/23/1985

LP-01306	Alvin Theater (now Neil Simon Theater)	NO	N/A	ELIG	8/6/1985	8/6/1985
LP-01308	Ambassador Theater	NO	N/A	ELIG	8/6/1985	INTERIOR ONLY
LP-01300	Apollo Theater (originally Hurtig & Seamon's New (Burlesque) Theater)	YES	11/17/1983	N/A	6/28/1983	6/28/1983
LP-01314	Barrymore Theater	NO	N/A	UND	11/10/1987	11/4/1987
LP-01097	Beacon Theater	YES	11/4/1982	N/A	12/11/1979	INTERIOR ONLY
LP-01318	Belasco's Stuyvesant Theater	NO	N/A	ELIG	11/4/1987	11/4/1987
LP-01320	Biltmore Theater	YES	10/27/2004	N/A	11/10/1987	INTERIOR ONLY
LP-01322	Booth Theater	NO	N/A	ELIG	11/4/1987	11/4/1987
LP-01324	Broadhurst Theater	NO	N/A	UND	12/15/1987	11/10/1987
LP-01329	Cort Theater	NO	N/A	ELIG	11/17/1987	11/17/1987
LP-01330	Embassy Theater	NO	N/A	?	11/17/1987	INTERIOR ONLY
LP-01375	Erlanger Theater (Saint James Theater)	NO	N/A	ELIG	12/15/1987	12/15/1987
LP-01365	Forrest Theater, later the Coronet Theater, now the Eugene O'Neill Theater	NO	N/A	?	12/8/1987	INTERIOR ONLY
LP-01334	Forty-Sixth Street Theater	NO	N/A	ELIG	11/17/1987	11/17/1987
LP-01381	Hammerstein's Theater, now the Ed Sullivan Theater	YES	11/17/1997	N/A	1/5/1988	INTERIOR ONLY
LP-01341	Hudson Theater	YES	11/15/2016	N/A	11/17/1987	11/17/1987
LP-01343	Imperial Theater	NO	N/A	ELIG	11/17/1987	INTERIOR ONLY
LP-01696	Lane Theater	NO	N/A	UND	11/1/1988	INTERIOR ONLY

LP-01347	Little Theater (now Helen Hayes Theater)	NO	N/A	ELIG	11/17/1987	11/17/1987
LP-02193	Loew's Paradise Theater Interior	NO	N/A	ELIG	5/16/2006	4/15/1997
LP-01349	Longacre Theater	NO	N/A	UND	12/8/1987	12/8/1987
LP-01765	Louis N. Jaffe Art Theater	YES	9/19/1985	N/A	2/9/1993	2/9/1993
LP-01352	Lyceum Theater	NO	N/A	ELIG	12/8/1987	11/26/1974
LP-01356	Majestic Theater	NO	N/A	UND	12/8/1987	12/8/1987
LP-01312	Mansfield Theater, now the Brooks Atkinson Theater	NO	N/A	?	11/4/1987	11/4/1987
LP-01339	Mark Hellinger Theater (former Hollywood Theater)	NO	N/A	UND	11/17/1987	1/5/1988
LP-01316	Martin Beck Theater	NO	N/A	UND	11/4/1987	11/4/1987
LP-01360	Music Box Theater	NO	N/A	UND	12/8/1987	12/8/1987
LP-01027	New Amsterdam Theater	YES	1/10/1980	N/A	10/23/1979	10/23/1979
LP-01367	Palace Theater	NO	N/A	?	7/14/1987	INTERIOR ONLY
LP-01369	Plymouth Theater	NO	N/A	UND	12/15/1987	12/8/1987
LP-00995	Radio City Music Hall (Rockefeller Center)	YES	05/08/1978, 12/23/1987	N/A	3/28/1978	4/23/1985
LP-01257	RKO Keith's Flushing Theater	YES	10/29/1982	N/A	2/28/1984	INTERIOR ONLY
LP-01373	Royale Theater	NO	N/A	UND	12/15/1987	12/15/1987
LP-01379	Shubert Theater	NO	N/A	ELIG	12/15/1987	12/15/1987
LP-01336	Theater Masque, now the Golden Theater	NO	N/A	ELIG	11/17/1987	11/17/1987
LP-01387	Winter Garden Theater	NO	N/A	UND	1/5/1988	INTERIOR ONLY



LP-01099	Grand Central Terminal	YES	01/17/1975, 08/11/1983	N/A	9/23/1980	8/2/1967
LP-01096	IRT Subway System Underground	NO	N/A	ELIG	10/23/1979	INTERIOR ONLY
LP-01096	IRT Subway System Underground	NO	N/A	?	10/23/1979	INTERIOR ONLY
LP-01096	IRT Subway System Underground	NO	N/A	?	10/23/1979	INTERIOR ONLY
LP-01096	IRT Subway System Underground	YES	9/17/2004	N/A	10/23/1979	INTERIOR ONLY
LP-01096	IRT Subway System Underground	YES	9/17/2004	N/A	10/23/1979	INTERIOR ONLY
LP-01096	IRT Subway System Underground	YES	9/17/2004	N/A	10/23/1979	INTERIOR ONLY
LP-01096	IRT Subway System Underground	YES	9/17/2004	N/A	10/23/1979	INTERIOR ONLY
LP-01096	IRT Subway System Underground	YES	9/17/2004	N/A	10/23/1979	INTERIOR ONLY
LP-01096	IRT Subway System Underground	YES	9/17/2004	N/A	10/23/1979	INTERIOR ONLY
LP-01096	IRT Subway System Underground	YES	9/17/2004	N/A	10/23/1979	INTERIOR ONLY
LP-01096	IRT Subway System Underground	YES	7/6/2005	N/A	10/23/1979	INTERIOR ONLY
LP-01096	IRT Subway System Underground	YES	9/17/2004	N/A	10/23/1979	INTERIOR ONLY
LP-01096	IRT Subway System Underground	YES	9/17/2004	N/A	10/23/1979	INTERIOR ONLY
LP-01096	IRT Subway System Underground	YES	9/17/2004	N/A	10/23/1979	INTERIOR ONLY
LP-01110	Marine Air Terminal	YES	7/9/1982	N/A	11/25/1980	11/25/1980
LP-01916	Trans World Airlines (TWA) Flight Center	YES	9/7/2005	N/A	7/19/1994	7/19/1994