

PERSUING AN OWNER FOR DEMOLITION-BY-NEGLECT: A TORTUOUS LEGAL PATH

John Weiss, Deputy Counsel, NYC Landmarks Preservation Commission

AT ANY GIVEN TIME there is a small universe of landmarks, either individual landmarks or buildings in historic districts, that are in disrepair. If the disrepair is serious, but localized, such as significant damage to a cornice, a Landmarks Preservation Commission (LPC) violation for failure to maintain the landmark is issued. In cases of extensive deterioration of multiple building elements, or severe damage that threatens a landmark's structural stability, like a partially collapsed roof, the Commission will bring what is commonly known as a demolition-by-neglect lawsuit. The Commission brings such litigation in New York State Supreme Court to obtain a court order compelling the owner to make immediate repairs and pay monetary fines. The legal basis for these lawsuits is the city's Landmarks Law requirement that designated properties be kept in a condition of good repair.



Bedell House, Tottenville, Staten Island

HDC



KATYA PRONIN, AM NEW YORK

Former Corn Exchange Bank, 125th Street and Park Avenue, Manhattan

The Commission has become much more assertive in bringing these lawsuits. During the Commission's first 35 years, only one demolition-by-neglect lawsuit was brought. (The owner of a decrepit row house in Brooklyn's Boerum Hill Historic District was sued, and, after she put a curse on the LPC general counsel, the property was sold and the new owner promptly restored it). In the next eight years (2000 through 2007) three more lawsuits were brought to court, and in 2008 alone the Commission filed three demolition-by-neglect lawsuits. All three are currently active. One concerns the individual Manhattan landmark known as The Windermere at Ninth Avenue and West 57th Street; another, the individual landmark of the former Corn Exchange Bank at 125th Street and Park Avenue, also in Manhattan; and the third, a row house in the Stuyvesant Heights Historic District in Brooklyn. At any given time the LPC has about 30 buildings in various stages of the demolition-by-neglect process. 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.

While the number of landmarks in disrepair is small in light of the agency's regulation of more than 25,000

buildings, deteriorating properties are understandably disturbing to neighbors and others and take on a heightened local significance because of not only the disrepair but also associated problems, such as the presence of rodents, accumulation of garbage and other blight conditions. Consequently, these buildings can become priorities for communities who want quick action. While the LPC also wants quick action, the Commission has discovered that it is the rare case where demolition-by-neglect is intentional or venal. More often than not, the cause for the neglect is due to benign reasons – elderly or ill property owners, estate disputes, foreclosures, and other problems.

The act of filing a demolition-by-neglect lawsuit is similar to seeing only the tip of an iceberg. Because the Commission is more concerned about the landmark itself and would rather see an owner spend funds on repairs than on legal fees, extensive efforts are made to have an owner voluntarily repair the property at issue. Additionally, giving owners repeated notice of the need to make repairs, and then an opportunity to do so, is not only fair but are key components of the cases that end up in court.

Unfortunately, demolition-by-neglect cases are frequently hard to

prosecute. For instance, it is often difficult even to contact the owner of a landmark in disrepair. In one case, after letters to the owner of a row house were returned as undeliverable, unsuccessful efforts to locate him included contacting a hospital where he was once a patient to learn who had checked him out, speaking with a contractor who had worked on his house, hiring a private investigator who visited his prior addresses and interviewed neighbors, and a search of death certificates to see if he had died. Eventually the owner contacted the LPC when he received a letter that the Social Security Administration delivered for the Commission after it realized that he might be receiving Social Security benefits. It turned out that the owner was living in a homeless shelter in midtown Manhattan. The property is now on the market with the expectation that a new owner will quickly make repairs.

Even after a lawsuit is filed, absentee ownership often creates problems. In the lawsuit against the owner of The Windermere complex, because the owner is a Japanese corporation, service issues arose when the Landmarks Commission wanted to file a motion that may have required the personal service to the owner in Tokyo of lengthy legal documents that would have had to be translated into Japanese pursuant to the Hague Convention. The current Brooklyn case involves a landmark that is controlled by an estate and was also foreclosed on, with one of the defendants a Texas-based financial institution.

These matters often take surprising turns before, or during, the course of litigation. For instance, in the Corn Exchange litigation the owner recently filed for bankruptcy. In another case every time the derelict landmark was about to be sold, a prior owner sued to stop the sale. Eventually the property was sold, and a new owner is now making extensive repairs. There have been staff people from multiple city agencies involved in an effort to have a landmark repaired, including attorneys from the Office of the Corporation Counsel, engineers from the Department

of Buildings and contractors from the Department of Housing Preservation and Development.

Many of the owners of deteriorated landmarks contacted by the Commission have their own, often sad, story that led them to the point of not being able, or willing, to maintain their historic buildings, often for many years.

Editor's Note - On May 21, 2009, the Windermere lawsuit was settled with the owner paying a record \$1.1 million financial penalty for violating the Landmarks Law, the largest financial penalty ever received under the Landmarks Law. In addition, the owner sold the Windermere and the new owner has entered into a legal stipulation requiring it to comply with the Landmarks Law and various orders issued by the judge in the lawsuit which mandate very extensive repairs to the Windermere. The new owner has already filed plans with Landmarks for shoring and bracing the Windermere and that work should be completed by mid-September. 🏠

SOUTH ST. SEAPORT

Continued from p. 1

ple architecture and large open spaces evocative of a working district. Rather than allowing the buildings to speak for themselves of the history and character of the neighborhood, these projects will hit the visitor and resident over the head with faux history and recreation.

Upon listing South Street Seaport as one of the "Seven to Save," the Preservation League cautioned that the Seaport "illustrates the need for careful planning and stewardship of New York State's waterfront, especially within waterfront historic districts." It is a dubious honor to be included on the "Seven to Save." We would much prefer that the district was safe from inappropriate development and additions, leaving no reason to place it on the list. Nonetheless, it is HDC's hope that the listing will draw attention to one of the city's oldest, most notable historic districts and encourage thoughtful, careful planning. 🏠

HDC Tackles Big Topics at 2009 Conference

THE HISTORIC DISTRICTS COUNCIL'S 2009 CONFERENCE, "**Communities & Cornices: Preservation in a Political World**," brought together preservation professionals and elected officials to examine how preservation ideology interfaces with the realities of politics and government. Conclusions drawn throughout the day's panel discussions made one thing incredibly clear: for better or worse, politics will directly affect the outcome of community-based campaigns.

On Friday, March 6, over 150 preservationists attended the Opening Night Reception to toast recent successes and strategize for future endeavors. Held at the Puffin Room, an art gallery within the SoHo Cast-Iron Historic District, the reception featured interactive science fair-style presentations by Neighborhood Partners from every borough. Partners were able to collect petition signatures and circulate their literature throughout the evening, while guests admired displays and feted recent preservation accomplishments.

The Museum of the City of New York co-hosted the full Conference on Saturday, March 7. **Dick Dadey**, executive director of the Citizens Union, delivered the keynote address, "Civic Engagement in New York: What Makes for Effective Issue Advocacy." Drawing on his experience as a longtime activist in the environmental and LGBT rights movements, Mr. Dadey presented five key steps for successful advocacy, called the "5 P's": Principles (one must remain true to one's principles), Purpose (one must seek a specific action), Pragmatism (one's goals should be realistic), Politics (an understanding of the political landscape is necessary) and People (issues

Continued on p. 6