

Pace Law Review

Volume 1
Issue 3 1981
Symposium on Historic Preservation Law

Article 5

April 1981

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Recommended Citation

Lynda C. Friedmann, *The Vieux Carre: The Administration of Municipal Laws*, 1 Pace L. Rev. 585 (1981)

DOI: <https://doi.org/10.58948/2331-3528.1700>

Available at: <https://digitalcommons.pace.edu/plr/vol1/iss3/5>

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The Vieux Carré: The Administration of Municipal Laws

LYNDA C. FRIEDMANN*

The Vieux Carré Commission¹ came into being at an unusual time and under unusual circumstances. The year was 1936, the peak of the Depression, when the United States was generally less than concerned about preservation. Moreover, in New Orleans, development pressures in the adjacent Central Business District had not been recently apparent. Yet romantic strivings outweighed economic arguments, and the somewhat unusual mechanism of an amendment to the Constitution of the State of Louisiana² was used to create the Vieux Carré Commission. Second only to the Charleston District in age, the Commission is now probably the most powerful commission of a major city historic district in the United States. The power stems both from the constitutional mandate³ and the tremendous importance of tourism to the economy of the City of New Orleans.

The Commission has been a leader in the preservation movement in many ways, perhaps the most significant being its role in the early legal battles: the legal history of the Vieux Carré read for a long time like the legal history of the preservation movement. Major Louisiana Supreme Court decisions have molded and clarified the purposes of the Commission and made the Commission's exacting requirements possible to sustain.⁴ This legal history, which I will comment on briefly, plays a major role in the day-to-day operations of the Commission and provides a background for understanding the level of persistent legal awareness that particularly characterizes this preservation agency.

The *Pergament* case⁵ provided preservationists with the very important term, "tout ensemble," which ascribes importance to the varied facets of the district "all together," as well as to the landmark. The case revolved around whether the Vieux Carré Commission had the right to regulate the installation of an oversized sign above a gas station of no architectural merit;

the courts ruled that the Commission did have jurisdiction and thus established a level of credibility for the entire district concept.⁶

The *Impastato* case⁷ involved the installation of a men's room on the patio of the Napoleon House bar; the structure, as proposed, could not have been seen from the public street, and the owners challenged the Vieux Carré Commission's jurisdiction over patio work. The City of New Orleans won the case and has since striven to regulate the complete exteriors of the buildings and not just the highly visible front facades. The Vieux Carré is not a stage front, but a highly valuable collection of complete buildings that have meaning far beyond their individual merit and certainly beyond the cash flow problems of the present occupants.

The first and only major case that New Orleans ever lost while representing the Vieux Carré dealt with an awning installed over a patio on Bourbon Street. In the *Levy* case⁸ the State Supreme Court ruled that the Vieux Carré Commission had not enforced the law equitably since other violations of the same sort existed and had not been prosecuted; the issue was not the appropriateness of the awning but due process.⁹ The courts have never required the Commission to have specific rules and standards and have consistently upheld the responsibility of the Commission to make subjective judgments on a building-by-building basis; but in this case, and in the famous *Maher* case,¹⁰ the courts have required that the Commission act in a reasonable fashion.¹¹

The *Maher* case, which took thirteen years to litigate, was finally settled by the United States Supreme Court's refusal to review the appellate court judgment which held that the Commission had the right to prohibit the demolition of a five-bay Victorian cottage that the owners sought to replace with a Spanish Colonial-style apartment building.¹² The court ruled that the prohibition was not a taking and that reasonable judgment had been used in reaching the decision for denial.¹³ The court, however, left open the possibility that the Commission could not prohibit demolition if there were no feasible economic use of the property in its pre-demolition state.¹⁴

Despite the extensive litigation which characterizes the Commission's history, lawsuits seem a lot more popular now

than they were a few years ago; the economic stakes in the Vieux Carré are higher than ever, making both the temptation to sue and the issues of due process and fair enforcement of the law increasingly important concerns. Seventy cases are taken to Municipal Court each year, and approximately five suits are filed in Civil District Court.

In response to the dictates of legal necessities, the Vieux Carré Commission's procedures and emphases have had to shift. Once the Commission could muddle along with a minimal staff, and meetings were characterized by pushing blue prints around a table and arguing over paint colors; it did not have to operate under commercial and real estate pressures, and the public conscience was not as insistent.

The legal climate in which the Vieux Carré Commission operates today is costly in money, effort and politics. The budget of the Commission has tripled in six years. This is due in great measure to the need for a conscientious integration of information into the decision-making process: architectural histories are written for every single major decision; memos and letters confirm every major action or discussion; all demolition applications lay over for thirty days. Staff and Commission commitment to the time-consuming court and enforcement processes are further evidence of the Commission's self-conscious guarantee of integrity through which it preserves the special status it wields.

This integrity has its political costs: individual property owners often dislike us intensely — the members of the Vieux Carré Commission have been sued personally in federal court — but the Commission is collectively protected by the political, judicial, and administrative structures. The Commission may be tough and extraordinary in its conservatism, but it is consistent and fair.

Perhaps other communities have not and will not experience the same level of pressure, but one thing seems to be true: in the past, the Vieux Carré Commission has been a precursor of both the problems and successes of younger historic districts.¹⁵ As a nonlawyer addressing legal issues, I'd like to focus on the administrative process and the implications of the law for day-to-day operations.

The Vieux Carré Commission itself is a nine-member citizen board appointed by the Mayor for four year terms;¹⁶ a nomina-

tion process limits the selection of six members, but the other three are chosen at large.¹⁷ The Commissioners serve without pay and are compensated only by the considerable prestige attached to membership on the Commission. The Commission meets once a month in a public forum and the public is asked to comment before any decision is made. The press attends all meetings of the Commission and most of the meetings of its professional sub-committee of architects. Public scrutiny of the operation is intense, requiring close attention to legal as well as architectural issues. It is not at all unusual for the Commission to refuse to issue a permit because of the precedent it sets.

Approximately 600 permits are issued each year, ranging from the simplest for painting and repair to the more complex for new construction. Most of the permits are issued by the staff but, depending on the degree of complexity and the importance of the building, some decisions are made by the Architectural Committee or the full Commission. A rather thorough policy entitled "Decision Making — Levels of Authority" has been adopted by the Commission, and makes it fairly clear who does what and when. Other policies guide the actions of the staff and the Commission. Whenever it is possible to set general guidelines, the Commission does so. At the present time, we have policies on awnings, lighting, masonry finishes, tree planting, paint colors, roofing material, and sky lights. Conspicuously absent are design criteria, which are not available in the Vieux Carré because of the variety of architectural styles which characterize its physical makeup. Standard detail sheets for different period styles of windows, doors, gates, and other components are available. The policies are developed as guidelines, which may be waived by the Commission in its case-by-case review of each individual application.

The permit issuing process may take from one hour to three months depending on the complexity, quality of design and depth of architectural research. An applicant who wishes to achieve variances to standards or who suggests inappropriate solutions may find the review process costly. But the Commission is constantly aware of the thin line between a careful review and harassment. The necessity of a stringent review process, requiring the submission of millwork details, mechanical and electrical plans, and complete working drawings, stemmed from the expe-

rience that attractive elevations do not insure an attractive final product. Certainly the fact that review continues through each phase of the design process costs the property owner money and time, but the resulting overall increase in property values in the Vieux Carré more than compensates.

The review process is only one part of the task performed by the Vieux Carré Commission; policing the Vieux Carré for violations is as expensive a process as issuing permits. The Commission staff includes two full-time building inspectors who walk every street in the French Quarter each week and issue approximately 200 violation notices a year for offenses ranging from deterioration by neglect to major work undertaken without a permit. The staff will go to whatever lengths are necessary to prove a point and to prepare a case for court. We regularly march down the street to the offices of the industrial photographer and review his collection of aerial photographs for information they might provide about work done on a roof or in the patio. We keep a file of over 12,000 slides documenting existing conditions. Unfortunately, we are not able to depend very much on neighbors, although irate tenants have sometimes proved to be very helpful.

The ability to be effective, both from a legal and political standpoint, depends on our court successes which in turn depend on our ability to prepare a suitable case. We now have a sympathetic judge in Municipal Court and an extremely cooperative city attorney who files suit in Civil District Court on major violations. Judge Sapir regularly issues \$500 attachments for people who fail to show up for our cases, and, in one case, sentenced a gentleman to thirty days in jail to be served one day a week for thirty weeks until a roof structure erected without a permit was removed. The city attorney assigned to the Vieux Carré Commission, Caryl Vesy, always responds in a timely and professional manner to any issue requiring his advice or to any suit requiring his attention. Even the Police Department is very helpful in assisting the staff with the enforcement of Stop Work orders.

All of this vigilance may sound unreasonably harsh, but the laws are by necessity strict and their status dependent on equal and even-handed enforcement. The City protects the legal status of the Commission in other ways outside of the normal regula-

tion of architectural changes to private property. The City has successfully taken two state agencies to court: the State Fire Marshall and the Orleans Parish Levee Board both sought to control physical change within the Vieux Carré without prior approval from the Vieux Carré Commission. The City also argued a case that dealt with the regulation of hot dog vendors in the Vieux Carré to the United States Supreme Court,¹⁸ because the City felt that the case called into question the greater issue of the City's ability to regulate the Vieux Carré in a special fashion. The legal authority of the City to enforce architectural regulation of the Vieux Carré is a top priority, and that prerogative is carefully protected.

The upcoming, and probably precedent-setting, legal battle will revolve around the development of a large scale project adjacent to the Mississippi River in the Vieux Carré and Central Business District. The relationship of this largely vacant, formerly industrial, riverfront property to the Vieux Carré and the standards which will be imposed on this project are of concern to all of New Orleans, with impact on both the Vieux Carré and the Central Business District. Although the site proposed for development is unique in many ways, it also creates tremendous concern over the issue of precedent. The project calls for a departure from the zoning restrictions in height, open space, and permitted uses, and has generated considerable public opposition. It rekindles concern over the need for a riverfront roadway; but perhaps most importantly, New Orleans's approach to the project will set a precedent for the control of the edges of historic districts across the country. The loss of inner city railroad, industrial and waterfront businesses is not unique to New Orleans, and as these areas located adjacent to historic districts become available for redevelopment, they raise a new set of legal as well as philosophical and design problems. No city has had a good experience in weighing the complex issues of economics, transportation impacts, and design relationships between incompatible adjacent zoning districts.

In general, the legal lessons to be learned from the Vieux Carré Commission are those to be learned from the intense clarity of an extreme situation. The intensity of problems, pressures and powers which both plague and sustain the Commission are generally not experienced elsewhere. The cautious and conserva-

tive administration of the Commission is just a part of the consistent protection of the legal status of this constitutionally empowered body. The experience may be unique, but the lessons have long term validity for other communities.

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1. The Vieux Carré Commission was formed pursuant to NEW ORLEANS, LA., CODE, ch. 65, Ordinance No. 14,538 (1936).

2. LA. CONST. OF 1921, art. XIV, § 22A (1936) cites as that amendment's purpose:

[T]he preservation of such buildings in the Vieux Carre section of the City of New Orleans as, in the opinion of said Commission, shall be deemed to have architectural and historical value, and which buildings should be preserved for the benefit of the people of the City of New Orleans and the State of Louisiana, and to that end the Commission shall be given such powers and duties as the . . . City of New Orleans shall deem fit and necessary.

Id. The present constitution has reenacted this provision by reference: "Existing constitutional authority [i.e. La. Const. of 1921, art XIV, § 22A] for historic preservation commissions is retained." LA. CONST. art. VI, § 17.

3. *Id.*

4. See *infra* notes 5, 7 and 8 and accompanying text.

5. City of New Orleans v. Pergament, 198 La. 852, 5 So.2d 129 (1941).

6. *Id.* at 858, 5 So.2d at 131. The court stated, "The purpose of the ordinance is not only to preserve the old buildings themselves, but to preserve the antiquity of the whole French and Spanish quarter. . . ." *Id.*

7. City of New Orleans v. Impastato, 198 La. 206, 3 So.2d 559 (1941).

8. City of New Orleans v. Levy, 233 La. 844, 98 So.2d 210 (1957).

9. *Id.*

10. Maher v. City of New Orleans, 516 F.2d 1051 (5th Cir. 1975), *cert. denied*, 426 U.S. 905 (1976).

11. See, e.g., *id.* at 1067 where the court states that its decision regarding the requirement to reasonably maintain property B is narrow, and warns, "even a generally constitutional regulation may become a taking in an isolated application if 'unduly oppressive' to a property owner." *Id.* (quoting Goldblatt v. Hempstead, 369 U.S. 590, 595 (1975)).

12. Maher v. City of New Orleans, 516 F.2d at 1054.

13. *Id.* at 1066.

14. *Id.* at 1067.

15. See, e.g., City of New Orleans v. Pergament, 198 La. at 855, 5 So.2d at 130.

16. LA. CONST. OF 1921, art. XIV, § 22A (1936), *reenacted by reference*, LA. CONST., art. VI, § 17.

17. *Id.*

18. City of New Orleans v. Dukes, 427 U.S. 297 (1976).