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Perspectives of a Landmark Owner

STEPHEN DITTMAN*

As a former attorney for the Penn Central Trustees, I would like to share with you the historical perspective leading up to the Supreme Court case, from the perspective of the owner of the real estate.¹ An understanding of the owner's viewpoint in this legal struggle may help create a better understanding of the position of any landowner faced with historical designation problems. I believe that our perspective is typical of the perspective of any owner of any historical property.

I have two preliminary remarks to make. First, it took a great deal of time for the controversy over use of the terminal to reach the point where we are today; it has been approximately eleven years since the designation was made, a significant length of time from a developer's standpoint. Second, the applicable New York City landmarks legislation² includes a concept of exchange, or *quid pro quo*, under which the air space an owner cannot use because of historical designation can be transferred to neighboring properties or perhaps sold for value. The terminal, in other words, gained "transferable development rights,"³ whose market value was never determined. Draw your own conclusions as to the reasonableness of this legislation in the context of a taking when the value of the property has been significantly impaired. Professor Stipe noted that in Europe, compensation or consideration is provided when the use of one's property is substantially modified by a designation.

A brief narrative of the history of Grand Central Terminal follows. The terminal opened in 1913, the product of a joint venture between the New York and Harlem Railroad Company and the New Haven Railroad Company. The sophisticated and innovative land use plan for the terminal also provided for office buildings over the railroad tracks at what is now the Pan Am and Grand Central area. The plan was made possible by the fact that the railroad owned a great deal of land along Park Avenue. It was only historical accident that the Grand Central Terminal

area was not developed, or realistically proposed for development, until the late 1960's.

The development contract involved in the landmark's litigation was signed in 1968, when the eastern railroads were suffering financially. The railroads had reached their boom, perhaps their last peak, in the World War II era when there was a gasoline shortage. At that time, as many as 186 intercity trains a day went through the New York portion of Grand Central. At the same time, substantial commuter service on the New Haven line shared the terminal space. After World War II, as long-distance travel dwindled, the commuter traffic became relatively more important. The demand for and the economic viability of office space development near a terminal hub became more apparent. With the decline in the financial condition of these large railroads and with the increased demand for development on the parcels owned by the railroads, the railroad companies became holding companies for many interests, including real estate.

This was the background that led Penn Central to the point of signing the development contract on January 22, 1968, with a British development company, UGP Properties, Incorporated. The contract provided for a considerable cash flow, a minimum amount of a million dollars a year, and, had the building been developed, a minimum amount of three million dollars a year. However, six months before this development contract was signed, the Landmarks Preservation Commission,⁴ on August 2, 1967, designated the terminal as a landmark.⁵ It has taken a great deal of time to resolve what this designation meant from the perspective of the owner. It is still not clear years later.

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STEPHEN DITTMAN

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1. Since a petition for certiorari is still pending before that Court, it would not be appropriate to comment on that decision at this time.

2. See *Preservation of Landmarks and Historical Districts*, NEW YORK, N.Y., ADMIN. CODE ANN. ch. 8-a, §§ 205-1.0 to 207.-21.0 (Williams 1976 & Supp. 1981). See also NEW YORK, N.Y., ZONING RESOLUTION, art. I, ch. 2, §12-10 & art. VII, ch. 4, §§ 74-79 to 74-793 (1981).

3. In essence, through the definition of a zoning lot, New York City has made it possible to sell the unused air space above an existing structure to the owner or lessor of a contiguous lot. Therefore, to the extent there is unused airspace above a landmark, the owners of the landmark can sell the right to build. As a result, the buyer of "transferable development rights" can increase the size of a building contiguous to the landmark. See 2 A. RATHKOPF, *THE LAW OF ZONING AND PLANNING* §34.0 (2) -.05 (3) (4th ed. 1981).

4. The Landmarks Preservation Commission is the entity with the power to enforce and police the laws relating to preservation of landmarks in New York City. NEW YORK, N.Y., ADMIN. CODE ANN., *supra* note 2; NEW YORK, N.Y., CHARTER ANN. § 534 (Williams 1976).

5. A landmark is defined as, "[a]ny improvement, any part of which is thirty years old or older, which has a special character or special historical or aesthetic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation and which has been designated as a landmark pursuant to the provisions of this chapter." NEW YORK, N.Y., ADMIN. CODE ANN., *supra* note 2 at § 207-1.0(n).