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My approach to preservation differs because I look at historic properties from the standpoint of a developer and an economic development specialist.

The starting point is the perception that the preservation of these historic properties can play a part in forming an economic development strategy. This means that techniques and resources available under economic development programs can be applied to saving, preserving, and increasing the use of, and income from, historic properties.

There has been a drastic, although subtle, shift in the last few years in the way historic properties are perceived, particularly by public officials. In the early days, the emphasis was on preserving what everyone perceived to be an important property of architectural and historic heritage. Now, public officials and planners realize that historic properties represent major economic development resources for the community.

Therefore, a good way to approach historic preservation is, first, to define the project from the perspective of economic development and, then, to present it for funding to government and other sources in that context. Of course, you cannot present every project this way because not every project is capable of being a Faneuil Hall.[1] Many projects should be museums or should be preserved just for their historic integrity; but there are enough other projects eligible for economic development to make it worthwhile to analyze them.

Four economic development programs have been used effectively for historic properties: 1) the Community Development Block Grant Program,[2] 2) an offshoot of the Community Development Act called UDAG, the Urban Development Action Grant,[3] 3) the Title IX Program of the Federal Economic Development Administration,[4] and 4) tax abatement programs that are local in nature.[5]

1) The Community Development Block Grant Program is the largest single source of funds to localities. The problem is that historic preservation, as an eligible activity under Community Development (CD), must compete for CD dollars against other CD activities such as slum clearance, code enforcement, acquisition of land for low-income housing, and street and sewer development. Most budgets, including that of New York City, give little CD money for strictly historic preservation activities.

In 1977, however, an amendment to the Community Development Act was enacted that allowed funds to be used for "economic development activities."[6] "Economic development" is defined broadly in the Act[7] and in the regulations,[8] leaving the use of the money open to a locality's judgment. For example, a municipality can use the money under the present facilities or of private commercial and industrial projects.[9] This is a major shift. The theory had always been that you could only use public monies for public projects, a theory which had forced economic development people to find a public component for each project. That is one reason why in New York City many private commercial projects are owned by the City or by other public agencies like the New York State Urban Development Corporation.[10] The result was to create the fiction of a public project, even though the project consisted of retail tenants, office buildings, and other private components. Under the new CD economic development category, that fiction is no longer required. Now, depending on the policies of the locality, CD funds can be used for a broad range of purposes: to buy property, to fix it up, and to sell it back to a private developer.

To the degree that an historic property is conceived as an economic development project, CD funds become available to historic preservationists. An example is the Loew's Kings Theater in Brooklyn, a 3,400-seat theater which is probably one of the best examples of the movie palace genre. It closed in October 1977, and there was little hope for its future use. The Flatbush Development Corporation,[11] a local community group, took over the sponsorship of that project. Part of their strategy was to build on the historic quality of the project, and, in conjunction with the New York Landmarks Conservancy,[12] they prepared an application to put the building on the National Register.[13]

The main strategy, however, was to conceptualize the Loew's Kings Theater as a component of an economic development plan. Using that strategy, the Flatbush Development Corporation made a proposal to the city officials for adaptive re-use of the theater as a mixed performing arts center and retail mall. The theater is equidistant between three major retailers along Flatbush Avenue: Macy's, Loehmann's and Sears. The theater connected the anchor stores in a classic shopping center pattern, and a reconstructed parking lot was proposed to serve all the retail uses in the area. The City Planning Commission accepted that concept and allocated 1.2 million dollars in that year's CD budget for acquisition of the Loew's Kings, for front-end planning, and for acquisition of other properties to increase the parking area.

2) The Urban Development Action Grant (UDAG) Program was developed a few years ago.[14] UDAG is a useful program only to the extent that private investment is a major part of the project. UDAG makes up the gap between what you can raise privately in mortgage and equity funds and your total development costs. The most important factors are leverage and economic development impact.[15] The amount of the UDAG grant depends on the private leverage, i.e., you would need around five or six million dollars of private money in order to get a UDAG grant of one million dollars.

3) A program unknown until recently, but which is a potentially important one for preservationists, is Title IX of the Economic Development Administration (EDA).[16] EDA used to restrict its activities to industrial development, particularly industrial parks in rural or semi-rural areas. It rarely made investments in the inner-city or in commercial areas. The strategy and thinkng of EDA has shifted drastically in the Carter Administration in two ways: first, to focus much more on inner-city areas, including small industrial towns, and, second, to focus on commercial and tourist-related activities. Officials at the highest levels of the EDA have recognized that cities thrive nowadays on tourism and commercial and retail activity, not only on industry. EDA officials have become creative in the types of projects that they will fund.

Title IX is an area redevelopment plan. You can go after a Title IX grant if you are in an area that has suffered long-term economic decline and if you have a plan to reverse that decline. The grant allows you to carry out a broad range of activities, including front-end planning. One limitation on EDA funds is that they are only available in a community where an Overall Economic Development Plan (OEDP)[17] has been adopted.

The lack of an OEDP plan has been a particular problem in New York City. Under the Koch administration, primarily at the initiative of the borough presidents, the boroughs have been preparing and adopting OEDP plans. We should now start to see major amounts of EDA money coming into New York City. Preservationists should look carefully at districts that could utilize EDA Title IX funds. The South Street Seaport district,[18] for example, which is being funded under UDAG, could also, conceivably, be funded under EDA Title IX.

The best example of a Title IX project for historic preservation is in Paterson, New Jersey. The historic district in that city, now a distressed area, consists of 119 acres, and has approximately 49 mill buildings. It was a major industrial area before industry started moving to the South. Most of these buildings, which were built by Alexander Hamilton as the country's first industrial park, had become obsolete. As industry moved out, the buildings emptied and started to deteriorate. The State of New Jersey decided to demolish these buildings to create an extension of Route 20. The New Jersey Department of Transportation acquired a number of buildings, demolished a few, and let the rest deteriorate. A group of preservationists organized the Greater Paterson Development Corporation to deal with this problem. First, they stopped the bulldozers and convinced the Department of Transportation to amend its highway plan. Next, the Corporation got a series of preservation and bicentennial grants to fix up the water raceways and to do basic structural renovation of the buildings. The grants, however, were not sufficient to carry the construction costs of the first building, the Rogers Mill. The City then re-thought the strategy. It proposed creating the Northeast's largest shopping center in an historic setting; not just an individual building, but many buildings combining the concepts found reflected in Soho, Faneuil Hall and Ghiradelli Square, all wrapped up into one package in an historic setting of raceways and waterfalls. It sold that concept to EDA. The historic element was important because it helped create the economic value of the properties. EDA was interested because the historic setting would allow Paterson to compete with suburban shopping centers by offering a product different from what the malls at Passaic or Paramus were offering.

Paterson received an EDA grant of 11.2 million dollars—which gives you an idea of the magnitude of the funds available if the project is properly packaged. That money was used primarily for four purposes: public infra-structure, streetscape, facade restoration, and mortgage loans to private developers. As these loans are repaid, the funds will go into a loan pool, to be used for other historic preservation and retail business purposes.

4) Tax abatement is a particular problem for preservation projects because assessment is based on criteria that do not relate to the value of historic property. Assessment is based on the highest and best use of the land. Because many historic properties are located in or near prime office districts of urban centers, they tend to have high assessments. It is difficult enough to preserve an historic property at a high tax level, but when you rehabilitate the property, even though you are not increasing its density, your taxes will go up because your property will be reassessed after it has been improved. This is on top of the additional debt service resulting from rehabilitation. Consequently, the ability to use programs to reduce taxes becomes important.

In New York State, we have a mechanism in the New York State Urban Development Corporation[19] (UDC) which can take property off the tax rolls. The City of New York has worked with the UDC under a program called the Mayor's Business Investment Incentives Program.[20] For projects that have a major economic development impact (new jobs, new revenues, new investments), the UDC can work with private developers to take the properties off the tax rolls and convert tax payments to a tax equivalency rental. This means that the UDC can negotiate the tax payments on the basis of project feasibility.

This can be done in other areas too, even without the UDC. The same technique can be used by having the city take title to the property. The developer donates the property to the city. The city then leases back the property to the developer, but, instead of charging full taxes, the city charges the developer a lease rental, which is a (negotiated) tax equivalency rental. Two problems can occur, however. One is public bidding. The ability of the city to lease back property to a private developer is limited in almost every jurisdiction by requirements of public bidding. One way to avoid this prohibition is by urban renewal. If the property is in an urban renewal area, the urban renewal statutes authorize the city to lease the property without public bidding.[21] Another way of avoiding it, at least in New York State, is to form a local development corporation (LDC). This is a not-for-profit corporation under § 1411 of the Not-for-Profit Corporation Law of the State of New York,[22] which authorizes a city to lease or sell property to a local development corporation without public bidding. The developer would donate the property to the city, the city would lease it to the LDC, and the LDC would lease it to the developer.

The critical problem is that under current IRS criteria, you cannot get the five-year write off on a leasehold interest.[23] As noted, the developer has to convert his fee interest into a lease interest to get the real estate tax abatement. By doing that, however, he loses the historic write-off.[24]

In summary, there are important ways to preserve historic properties that are unrelated to the typical preservation funding programs. If the project is conceptualized and defined in terms of economic development, grants may be more readily forthcoming and the project more successful.

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1. Fanueil Hall Marketplace, Boston, Mass.

2. Housing and Community Development Act of 1974, 42 U.S.C. §§ 5301-5317 (1976 & Supp. III 1979).

3. 42 U.S.C. § 5318 (Supp. III 1979); 24 C.F.R. §§ 570.450-.466 (1981).

4. Economic Development Administration, 13 C.F.R. §§ 308.1-.51 (1981).

5. *See, e.g.*, New York City's Industrial Commercial Incentive Board, which exempts 95% of the increase in the assessed value on the completion of an industrial project or rehabilitation project, with a 5% decrease in the exemption each year for the next 19

years.

6. Housing and Community Development Act of 1977, Pub. L. 95-128, 91 Stat. 1111 (currently codified at 42 U.S.C. §§ 5301-5318 (Supp. III 1979)); 24 C.F.R. §§ 570.203-570.204 (1980).

7. *Id.*

8. *See* 24 C.F.R. §§ 570.1-.3, 570.200-.207 (1981).

9. *Id.* §§ 570.200-.207.

10. New York State Urban Development Corporation Act, N.Y. UNCONSOL. LAWS § 6251-6285 (McKinney 1979 & Supp. 1981).

> The New York State Urban Development Corporation is a public benefit corporation and corporate governmental agency of the State created by the State Legislature in 1968, (Chapter 174 of the Laws of 1968, as amended). The Corporation was established to help provide much-needed housing, industrial development, and civic improvements throughout the State. . . . UDC activities are coordinated through regional and local offices, subsidiary corporations, and a central office in New York City. Every project is also guided, as required by law, by a community advisory committee selected from the immediate locality. . . . The corporation is governed by nine directors, seven of whom are appointed by the Governor, with the consent of the senate. Two more, as stipulated by law, are the New York State Superintendent of Banks, and the New York State Superintendent of Insurance. . . .

THE NEW YORK RED BOOK 1004-1005 (84th ed. 1977).

11. The Flatbush Development Corporation is a community based non-profit organization which was formed in 1975 to address neighborhood issues and concerns. The corporation is dedicated to the physical rehabilitation of North Flatbush and to the preservation of the community's economic and racial balance.

12. The New York Landmarks Conservancy was formed in 1973 to preserve and find new uses for old buildings within New York State. It is presently headed by Brendan Gill.

13. *See* National Historic Preservation Act of 1966, 16 U.S.C. § 470a (1976 & Supp. III 1979).

14. *See supra* note 3.

15. *See* 42 U.S.C. § 5318(e)(1) (Supp. III 1979); 24 C.F.R. § 570.458(c) (1981).

16. *See supra* note 4.

17. 13 C.F.R. §§ 304.1-.8 (1981).

18. South Street Seaport District was designated an historic area in 1968. It covers an area made up of South St., John St., and Water St. up to Peck Slip. The South Street Seaport Museum, run by John Hightower, President, is the focal point of the area.

19. N.Y. UNCONSOL. LAWS §§ 6251-6285 (McKinney 1979 & Supp. 1981).

20. The Industrial Commercial Incentive Board provides tax abatements on a graduated basis to companies that undertake new construction or renovation on commercial or industrial property. Tax credits are provided to out-of-state companies which undertake such projects within New York State.

21. *See, e.g.*, N.Y. GEN. MUN. LAW § 506 (McKinney 1974 & Supp. 1981).

22. N.Y. NOT-FOR-PROFIT CORP. LAW § 1411 (McKinney Supp. 1981).

23. I.R.C. § 167(n) (1980).

24. *Id.*