

## GSAPPNEW2011Recordingon201102050906part4

David: Folks in the back who are enjoying one last chat please do come back down to the auditorium so we can get started. We're going to move on to our last panelist presentation. This one is called Looking Ahead: Challenges and Opportunities. We're going to look at some of the things that are just that, that are both challenges and opportunities for preservation as we move forward. I have the pleasure of introducing to you our moderator for this final series of presentations, Kate Wood. Kate has a joint degree in historic preservation and urban planning from Columbia University. She is the executive director of Landmark West!. She is also an adjunct associate professor at the historic preservation program here at the graduate school of architecture, planning and preservation. Kate's full bio is on the website and on some of your course material. She is the recent recipient of the grassroots preservation awards from the Historic Districts Council and Kate is right here so Kate is going to introduce her panelists to you now as they come on up and get started.

Kate: Thank you all. So, welcome back to today's mind-blowing crash course in preservation law, theory and politics. Andrew Doklart I hope you're listening because I think all the Columbia students here today should just collect their master's degree on their way out the door. There are a few sadistic people who have suggested to me in the past that I go to law school given my various laps around the court room working for Landmark West! in the past 10 years and I hope I can collect a few credits on my way out too. So good afternoon. Again, my name is Kate Wood and I am the wanna-be lawyer asked to moderate the last set of panelists today. The purpose here is to begin pooling some of the ideas we heard today and look ahead towards the future and what a strong, comprehensive preservation tool kit might look like. We've got some great acts to follow but if there is anyone who deserves an honorary JD it is the wonderful Carol Clark. Carol's first semester preservation planning course in Columbia's historic preservation program is the moment that I can distinctly pinpoint I knew I was in exactly the right field. I had the luxury listening to her illuminating explanations of landmark designation, zoning and other planning tools for an entire semester and in a few minutes you'll have the pleasure of hearing about her latest research on new ways to protect historic neighborhoods.

Richard Roddewig is a lawyer and one of this country's foremost experts on land use, real estate and landmarks, a formidable combination if there ever was one. It says in his bio he has valued more than 500 historic properties. So given the fact that there are nearly 27000 designated landmarks in New York City I think we're going to have to clone you. Preservation easements will be the focus of Richard's presentation today. he is also the author of a very soon to be released text book on preservation easements and also, wearing a different hat responsible for the fact that this whole session is being filmed and will be turned into a film that we can all enjoy for many years to come and finally, John Weiss has the shortest written bio in the program that I saw but I think that's a testament to his quiet cool headed presence and persistence as deputy counsel of the New York City landmarks preservation commission. Since John came on board, he obviously has strongly increased its activism to defend landmarks from demolition by neglect, something that he'll tell us more about in his presentation. So this in many ways is the dream panel and not only because you're all so awesome but because here's where we get to contemplate not only what is but what could be. So you each have 15 minutes. I am going to be in the role of rigorous task master when it comes to the time so enforcement is

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the word of the day and then we'll have plenty of time for what I'm sure will be a very lively Q&A with the audience. So thank you all very much. Carol?

Carol: Thanks Kate, for that lovely introduction. It's a privilege to discuss approaches to conserving neighborhood character with you, but first my thanks to the National Trust John E. Streb Preservation Fund for New York and the New York State Council on the Arts for their support in my research and a special thank you to Ben Baccash whose skillful assistance with today's presentation is greatly appreciated by me. In New York City a wide variety of older residential neighborhoods are suffering stunning losses of distinctive character, whether through demolition and replacement of perfectly decent housing with McMansions, like this one in Brooklyn, or this gem in Queens, from unsympathetic alterations that compromise completely the original appearance of a building with bad siding, unfortunate windows or front yards paved over with parking. These changes undermine the character of neighborhoods. The problem is evident throughout New York City and it's a national issue. The Times decried the tear down epidemic, asserting that is a rapidly growing hazard. There is also an economic factor to consider, people prefer to reside in places that possess cohesiveness and feel comfortable to them. Add too many jarring juxtapositions and we risk reacting utterly unappealing environments. This could yield negative economic impacts. Today, New York is a thriving city with a growing population located in a wide variety of housing but the most common residential building type in New York City is the single family house. The majority of New Yorkers live in low density, suburban style settings. Understanding how they contribute to the city's vibrancy and bringing preservation tools to these neighborhoods is critical. Consider the difference between typical historic districts and another tool used to protect neighborhoods, conservation districts.

Julia Miller, the Trust's expert on this subject, has written 'neighborhood conservation districts are areas with distinct physical character that have conservation as their primarily goal. Although they tend not to merit designation a historic districts they warrant special land use attention to due their distinctive character and importance as viable contributing areas to the community at large. There are neighborhood conservation district ordinances in about 100 cities around the country. These can be tailored to a variety of local conditions not traditionally considered suitable for historic district designation. They seek to conserve the historic development patterns of the neighborhood, including its green spaces and predominately low density lot coverage. In New York City, concern about community appearance is not a new topic. A 1957 study was conducted by leading professional organizations. The report stated that beautiful communities can be created and maintained only through a deliberate search for beauty on the part of community leadership backed by a lively appreciation of a visual world by the public. The chapter on evolving legal concepts written by the venerable Albert S. Bard discusses the public's interest in the appearance of community appearances and concludes that appearance is value. The next chapter, excerpts and abstracts from existing legislation and court decisions, provides a roadmap to extending the administration of aesthetic regulation to the broadest possible context the report asserts that a new, more positive approach to planning for community appearance is needed. Remember, this is 1957. The authors note that the publication of this report is not intended to signify that the subject has been exhausted. Instead, after four years of meetings these professionals concluded that 'we are now making available

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materials and are thinking on the subject so that a larger number of persons may join the effort.' Here we are. While landmarks laws in the ensuing decades have been effective in protecting historic buildings, it's apparent that planning initiatives that involve aesthetics, community experience and neighborhood conservation have not advanced adequately, at least not in New York City. When considering aesthetic regulation of the built environment here, we think of course first of the landmarks preservation commission. Their impact is significant, as you've heard, approximately 27,000 properties are under its jurisdiction but there are about 900,000 tax lots in the five boroughs.

The landmark parcels in total, represent only about 3% of the property citywide. There are many neighborhoods with distinctive character that are quite unlikely to be found worthy of designation. The Times report on the construction of McMansions in Forest Hills by new residents whose houses with paved over front lawns and high fences are viewed by some as colliding in an appalling way with neighborhood character. The new comers see them as signs of welcomed prosperity and success. Many of the older neighborhoods in Queens were built with a cohesive community design which was enforced originally by covenants or easements. In recent years, these privately regulated mechanisms have often either lapsed or have been overlooked Douglaston is a case in point. Developed by Richert-Finlay Realty Company, it is characterized by fine houses such as these which dominate its sometimes narrow winding streets. Today we find new neighborhoods which look like this. Note that their construction is ongoing. In Kew Gardens, the original characters, sedate and charming, is being transformed by houses like this one. In Bayside there's another neighborhood with an attractive community character. With an abundance of detached houses, what is happening with their replacements is this. There's a pressing need to think in a comprehensive way about neighborhood preservation. Myra Morris describes conservation districts as a regulatory overlay used to protect an area from inappropriate development. In practice, a conservation district is a malleable legal tool that is shaped differently in each city and neighborhood where it applies. Some neighborhood conservation districts apply vigorous design reviews while others simply offer guidance for new construction and act as a vehicle for neighborhood level urban planning.

Commentators tend to split conservation districts into two types; the architectural or historic preservation model and the neighborhood planning model. Preservation model neighborhood conservation district ordinances are more focused on preventing tear downs than on preserving architectural details. In contrast with the preservation model, the planning style NCDs do not include design review but rely solely on standard zoning regulations like lot size, building orientation, is it in scale to maintain the neighborhood built form. Let's look at a few examples. In 1983 Cambridge Massachusetts adopted a legislation establishing neighborhood conservation districts, with it, groups of vernacular buildings vernacular building and their settings with particular design qualities are protected and maintained. One of the goals stated explicitly to enhance the pedestrian's visual enjoyment of the neighborhoods buildings, landscapes and structures. The ordinance supplements the traditional landmarks law in Cambridge. To establish a conservation district in Dallas Texas. First a feasibility study is conducted and the city's director of planning determines eligibility. The district must have the attributes seen on the screen. As a Dallas planning official notes, Dallas uses conservation districts to help

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neighborhoods determine what is important and writes guidelines based on what the neighborhood considers to be defining characteristics. An interesting example is the M Street conservation district which requires that all new homes be built in the Tudor revival style of architecture characteristic of the original buildings. The neighborhood conservation district requires the use of standard sized bricks, as opposed to the king size type often used in the building of newer homes, it forbids metal roofs and window air conditioning units and requires that porches be constructed with transparent glass. Even though requiring replacement homes to be neo-Tudor revival seems anti-preservationist in its strictest sense, this approach is entirely consistent with what the residents agree they wanted and it satisfies the local government official. In Nashville, neighborhood conservation zoning districts are implemented using zoning overlays; each district has its own design guidelines which have been developed by the local government in close consultation with neighborhood residents. The districts promote new development that's compatible with the neighborhood's existing character, as an example; look at how this new single family home fits comfortably into its surroundings.

Another example, is from the Hills Boro West End district, this new home is designed to comply with the design guidelines. The result is a building that relates successfully to the existing residential character. In Roanoke Virginia, neighborhood design districts provide design guidelines for a variety of residential structures. Here, a new single family house demonstrates the effectiveness of the guidelines. In Indianapolis, the neighborhood district conservation ordinance promotes compatible designs for additions and new construction. This new house in the cottage home district is clearly contemporary but also in keeping with the existing scale of the area. In addition to ordinances, Austin Texas relies on residential design and compatibility standards. This is also known as Austin's McMansion ordinance. It outlines acceptable set back lines, building lines and heights. The standards also mandate the articulation of side walls to encourage smaller scale and segmented appearance in construction to make it more compatible with its surroundings. In Boston, architectural conservation districts are used to recognize areas of local significance. The architectural conservation districts have dedicated commissions and design guidelines that most observers believe are more flexible than those traditional historic districts. Here, the rhythm of the row house facades is echoed in the design of this new building erected by Boston University. The architectural conservation districts work well and supplement the traditional historic districts in protecting the city's neighborhood character. These examples are but the tip of the iceberg.

There are numerous approaches to plan and safeguard community appearances to use round the country that are relevant to New York City. The future integrity of our neighborhoods requires us to learn from and adapt these approaches. The ongoing erosion of neighborhood character is a planning problem, not a landmarks preservation issue. Many practitioners agree that in New York City we have been treating zoning as planning, zoning is not planning, one case in point, to respond to the proliferation of McMansions in Queens, city planning created a new zoning district which now applies to some lots in Bayside. This limits the heights of the houses and governs the building placement on the lot, yielding houses like the two on the left seen here. The line up provision of the R2A zoning resulted in a better outcome than what might have happened without it but shouldn't we be thinking bigger than this? With a solid grasp of the

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multitude of planning and preservation challenges citywide, we need to consider creativity and a fresh outlook for us to respond to them. Our overarching goal in compiling a plan for both addition and development in every neighborhood is what is necessary to be before us. In New York City this plan has to balance the competing realities of a growing and changing population with conserving built fabric, while also enabling the very dynamism that is the city's core. Other cities from Miami to Boston, from San Francisco to Portland Oregon, are applying a verity of approaches to assess community character, inventory resources, articulate goals and set priorities. Shouldn't New York City aspire to be a leader? Bringing best practices from elsewhere into focus and adapting them into our needs? The bottom line is that New York needs to grow and thrive with enlightened leadership, a design community that embraces change and respects past along with an informed, engaged constituency that shows it cares about planning community appearance. The stakes are high. Right now the overall quality of the city's built environment is truly endangered. Together we need to rethink how we will perceive and to reinvent our approach. What better time to tackle this challenge than now, as we approach the 50<sup>th</sup> anniversary of New York City's landmark law in 2015. Thank you.

Richard: Thank you very much. It's appropriate to be talking about easements here in New York City because really the origins of the modern perseveration easement movement in this country comes out of the New York City's process and landmarks code in the '60s and '70s. The interesting transferable development rights and how they're valued led to a lot of creative discussion by John Costones, an attorney, and by real estate analysts in Chicago to come up with methods for valuing preservation easements. In the late '70s and early 1980s the focus of this easement movement was on either large historic easements that were threatened by a subdivision or smaller downtown income producing historic buildings in high density zones downtown such as New York, San Francisco or Chicago. In the mid to late 1980s the number of easement grew dramatically as real estate syndicators using the investment tax credit, the rehab of historic income buildings, included preservation easements as another way of boosting the tax returns. The number of historic preservation easements increased dramatically from the 1980s to mid 1980s. I'll talk in a bit about recent IRS review of easements. This isn't the first time that they had zero value in easement donations. They did it too in the early to mid 1980s, the Atlanta office of the IRS was particularly focused on zero evaluations. It led to a summit conference with preservation organizations in 1985 and the IRS agreed to back off on their zero evaluation position and go to a case by case review and analysis of the easement values. The recession of 1987 and 1988 combined with new depreciation rules really put a temporary, almost virtual halt, to the donation of historic perseveration easements in the United States. It wasn't as much real estate syndication going on involving tax projects, there weren't as many easements being donated as a result.

In the early 1990s there was little IRS focus on the easement area because there weren't very many easements being donated. In the late 1990's, the numbers started to come back as interest in rehabbing historic properties also came back and here are some of the statistics in the late 1990s and the number of part one certification that relate to preservation easements. Since 2000 however, there has been a dramatic surge in the number of preservation easements donated, especially for the first time on single family homes in urban markets, not a type of

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easement that was a focus on the first wave of easement donations in the 1970s and 1980s. There's also been a big surge in conservation easement donations since 2000 as well and here this chart shows on the right that a dramatic increase in acreage that had been protected by conservation easements in the last 20 years. Active promotion of preservation easements has been underway by a number of preservation organizations around the country including the Trust for Architectural Easements, once known as the National Architectural Trust. The landmarks preservation council of Illinois and the \*\*\*[00:23:17] trust among a few others. Since 2000 there's been a dramatic increase in the number of preservation easements. Here you can see the statistics on the right that show that by 2005 there were 842 part 1 certifications for easement donations nationally. Most of the increase since 2000 has been in three major cities; Washington DC, here in New York and in Chicago there has been approximately 500 easement donations between 2003 and 2008 in New York City. Now, the title of this presentation is called Preservation Easements Under Assault and I think in a way the assault is not only by the IRS in reaction to what has been going on but also in a way some of these preservation organizations that are promoting assessments have been assaulting the traditional concept of what a preservation easement should be and the types of properties that it should be on. The assault from the point of view of publicity about what was going on began in 2002 with some Philadelphia Enquirer newspaper stories about conservation easements alleged that these were benefits that were only helping very rich people; there were conflicts of interest among board members on the conservation groups that were accepting the easements.

The Philadelphia Enquirer article alleged that the easements enhanced rather than decreased property values and that they were being supported by an inflated appraisals. The IRS in June of 2009 began to address what they perceived as abuses, a press release issued in June said there were numerous instances where tax benefits of conservation and preservation easement donations have been twisted for inappropriate individual benefit and it warned that taxpayers who gain the system and the charities that assist them will be held accountable. The Washington post series of articles is really the ones that most people are aware of in terms of what it meant for new relationship by the IRS with the easement area. The Washington Post series focused on preservation easement donations and argued that donors of preservations were agreeing to change something they cannot change anyway. Owners were reaping a win-fall. The easements were bogus gifts that supply home owners with free money and that the promoters were promising tax deductions but quietly telling the donors that there would be no effect on their party values. The series even alleged that members of congress were taking advantage of what was called in some of the articles, a loophole. The IRS in February of 2005 included easements on their list of the dirty dozen tax scams and in a statement later in the year said in many cases local historic preservation laws already prohibit alterations of the homes façade making contributed easements superfluous. This led to senate finance committee hearings and investigation by the senate to finance staff, house ways and means committee hearings which led in turn to the Pension Protection Act of 2006 Preservation Easement Amendments. The IRS in ratcheting up its review of this whole area created a special issue management team, it also then as part of its what you could determine assault on the easement area, made changes to its audit manual, it conducted market studies in New York, Chicago and Washing ton DC, it's got behind the Pension Protection Act of 2006 changes, it adopted new

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regulations and it went into court to argue that easements have zero value and to challenge other aspects of easement donations. I want to talk about each of these briefly. The IRS audit manual was something that was being picked up on by appraisers who were being recommended by the more aggressive groups promoting assessments and the audit manual said that in Philadelphia a study done by the IRS said easements typically reduce value by 10 to 15%. Many appraisers began to simply reply on that percentage and apply it to the before easement value and give it to the tax payer the amount of the donation. The IRS as part of its review of the program removed the article from the audit manual and issued a chief council advice memo that said there never was an automatic fixed percentage that easement donors were entitled to. The market studies that the IRS conducted here in New York City was a comprehensive study of single family townhome easements, it calculated the number of easements that donated and it did some market studies and comparative analysis of sales prices for easement single family row houses non easement properties. The conclusion in the New York City market study was that preservation easements result in no discernible diminution in a fair market value of a brownstone property, and it went further. It even said that easements simply duplicate protection already provided by New York City's landmark laws. The study was not written by attorneys however, but by real estate analysts. Washington DC, similar kind of study, similar conclusions, Chicago where we were retained by the IRS to do the market study, found slightly different results. We did find some impacts from preservation easements on single family homes, we found 4 to 6% impacts on prices in two neighborhoods, no impact on prices in one, same to slightly higher values in one neighborhood and one sales data was inconclusive in the fifth neighborhood that we studied for the IRS.

The Pension Protection Act of 2006 has a number of provisions related to appraisers and what they must do now to be more rigorous in their analysis, new over evaluation penalties that have been put in place. There are also some new requirements for easement organizations, a filing fee every time they accept an easement for a charitable deduction, a new reporting requirement for them and also the requirement that preservation easements must protect all four sides and the roof in order to qualify as a conservation contribution. IRS transitional guidance and proposed regulations went further and reiterated some of the things in the Pension Protection Act, especially as it related to real estate appraisers and how they must perform their duties. The issue management team as of March of 2006 announced that they had about 500 easement donations under review including about 75 easements nationally. Conservation easements in Colorado were particularly subject to review. A Denver Post story in November 2007 said there were about 290 conservation easements in Colorado under review by the IRS. The precise number of easements the IRS is reviewing is reviewing is not really clear. There's probably now hundreds of them including dozens here in New York City that are under review. The IRS has file more than 35 conservation easement cases since 2005 in tax court and other courts. the issues raised in these court cases typically involve four things; challenges to the appraisals that's not meeting the qualified appraisal rules, challenges to the appraised values, challenges to the conservation purpose having been met or not met by the donation and then issues related to the subordination of mortgages. Now these are the six most significant of the cases. I'm going to talk about a couple of them and then maybe we can talk more about them when the panel convenes. \*\*\*[00:31:22] the case in which the appraiser simply multiplied 4% or

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5% , I forget what it was by the four sides of the building and said you get a 20% easement deduction. The IRS position was that not only was that improper but there were other things wrong with the appraisal as well that meant that the tax payer had not substantially complied with the requirements for a qualified appraisal and for a charitable donation. The district court agreed, said there's no substantial compliance in this case and said that the acknowledgment by the landmarks preservation council of Illinois was deficient. LPCI acknowledged the cash contribution but did not acknowledge the easement itself as required by tax court. There goes my machine, I have to turn off my cell phone. Sorry about that. Don't take that time away from me. There's interesting dicta in this district court in the decision of the \*\*\*[00:32:29] case involving the arbitrary percentage. The court concluded by saying it appears to call for careful scrutiny by someone who recognizes when an emperor has no clothes, the fact that there was an automatic percentage that the appraiser applied and then the district court also called into question the fact that landmarks preservation council based its cash contribution on 10% of the appraised value of the easement. That raises interesting issues about whether or not they were recommending friendly appraisers in order to boost the amount of the charitable gift deduction and boost the amount of their cash contribution. Simmons versus Townhouse in Washington DC, here's pictures of both of them. The claimed easement value was at 11% and 13% on these two road houses. The IRS zero valued this, said there was no value to the easement because both easements duplicated the protection already provided by DC preservation laws and that the appraisals were not qualified appraisals. IRS position also said there was no conservation purpose here because the Longfond trust 'can consent to changes in the façade' after review and has the right not to exercise nay of its obligations if it doesn't want to. IRS also challenged the mortgage subordination and acknowledgment was not paramount to subordination and that that meant the easement failed to meet the perpetuity requirements, more on that at question time.

Tax court disagreed with the IRS on virtually every single one of these points and pointed out that the preservation easements imposed a higher level of enforcement by then the then District of Columbia preservation laws and said a zero value appraisal is not credible. Shiloman, one of the cases here in New York, Hoffman which is mortgage subordination- So let's go to the lessons of the IRS court challenges. So as a result of these cases, here's what the lessons are; first, courts are not sympathetic to IRS claims that preservation easements do not impact value. They have been rejecting the IRS claims that there's no impact on value. The courts unanimously agree that preservation easements impose more legal restrictions than local preservation laws, strict compliance with qualified appraisal rules is essential, at least for tax payers and that's part of the White House case. It's improper to base value on fixed percentage value. Mortgage subordination issues remain open, deduction of cash contribution issues remain open but there are some inconsistencies between tax court decisions. There are many appraisal issues left to be resolved. The appraisal profession has responded with two courses on appraising conservation easements and easements on appraising historic conservation assessments. They also responded with a book that I authored that will be out in about a week and a half. The national trust is joined with the land trust alliance in these educational efforts and has filed an amicus briefs in a number of these cases. The IRS had an advisory council take a look at its own easement practices and the advisory council said that what was

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happening as a result of the IRS review of easements were that donees were believing that IRS policies have had a chilling effect and that owners were fearing to make any more donations because they were afraid they were fined and audit and they were absolutely right about the chilling effect. The number of easement donations has gone down dramatically. In 2009 the national park service certification only had 72 compared to 842 just four years earlier. So where are we today and what still needs to be done? IRS needs to adopt the recommendations of its advisory council, recommendation one is that you should be allowed to amend technically deficient appraisals during the audit process. The IRS needs to affirm that a non zero market value is possible, odd way of putting it but an effective way of telling the IRS that they shouldn't be zero valuing all easements. There should be a safe harbor rule where easements that are less than 10% and the IRS should make use of outside appraisal. So we're at a point where the IRS is continuing to review easements, so is the justice department but the focus will eventually wane given the decreased number of easement donations. Preservation movement needs to get back to the basics. Let's get back to the kinds of buildings that we were focused on early on. Easements should not be mass marketed, they should be focused on buildings threatened by high density subdivision and development and the amount of cash contribution should not be related to the value of the easement. It will continue to be an important tool. I think the book that's coming out, the documents, the whole history of this and the court cases as well as evaluation techniques will help a whole lot and you can order it from the appraisal institute. Thank you.

John: Most of our enforcement action in New York concerns property owners who make changes either without a permit from landmarks or that's not in compliance. There are, however, a small number of property owners who failed to maintain their buildings and these are demolition by neglect cases. As you can see, some of these buildings are in pretty horrific conditions at the start of the process. I should note however that all three of these buildings have been extensively repaired and should be occupied soon. The basis for our demolition by neglect cases is a landmarks law requirement that landmarks be kept in the condition of good repair, which is very broadly defined in the law. We interpret that to mean a landmark must be structurally sound, it must be water tight and the significant architectural features must be kept intact. As Kate eluded, we've become much more aggressive with bringing these demolition by neglect law suits in the past eight or nine years. In the first 37 years, we had one case filed that we prevailed and we had eight more cases in eight or nine years with another case we're about to file in maybe three weeks or so. What's important to note is the majority of demolition by neglect buildings get resolved prior to landmarks filing a law suit. This is really the tip of the iceberg. Right now we have about 35 or 40 buildings which are in the pipeline where we're working with the owner to try to make repairs before we have to file a lawsuit, most of those efforts will be successful, if not we file a law suit. This is my first case study. It's an individual landmark in lower Manhattan. In 2002 we received a report that the roof had collapsed. The building in general was in disrepair. It was owned actually by a property owner who had another number of properties in Manhattan they were very well financed, they were very well off, they had deep pockets and there was no excuse for letting this landmark fall to this level of disrepair. We got access to the roof fairly quickly but you can see these buildings continued to get in worse and worse shape. We filed our demolition by neglect lawsuit in August of 2002 and we

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actually, here's some more shots showing the poor condition, we actually had a trial on this case and I was fairly confident we're going to prevail on the trial because the owner called me as their only defense witness. So we went to trial and what happened is we realized there was many more structural problems with the Skidmore house than just the roof collapsing, so most of the floors had to be replaced. In fact during the course of this litigation, there were two more interior collapses of the floors, luckily no one was hurt. Once the building was stabilized, here's the new roof going on, also the front façade had to be reattached to the side walls because it was pulling away and here's a before and after shot and you can see the current photograph shows actually all the restorative work is not quite done. The \*\*\*[00:41:30] needs to be put back which will be done this spring. So this is our demolition by neglect process, we document the condition of the building at issue. We've had a lot of help from the preservation groups, neighbors, elected officials other agencies, bringing to our attention buildings that are at risk of demolition by neglect. It's very hard sometimes to contact the owner, I'll talk about that a little bit more. We try to have voluntary repairs made. We have our hard working preservation staff prepare an existing conditions report. So they go out, do a site visit, they document the poor condition of the building and that is technically the basis of our law suit. The chair Bob Tierney then issues the order directing the owner to make repairs. It outlines how the building is in disrepair and it cites the provision of the landmarks law that allows us to impose a \$5000 a day fine for failure to maintain your building.

Our staff then drafts the legal documents and refers the matter to the New York City law department for prosecution, these cases we bring by order show cause so we can get by a judge very quickly. We often get before judge in three or four weeks as opposed to waiting five or six months to get before a judge and in court we are seeking a court order from a judge, ordering the parties responsible to bring the building up to good repair and then in perpetuity, keep it in that condition. Sometimes there are cases where we decide, not to bring a law suit and this is one of them. One of our concerns is this is still a new area of law in New York. We don't have a lot of case law so we are concerned about making a bad decision against us. Also, there is a concern that a home owner might want to file for hardship. If they're not getting a 6% return, we might be opening a can of worms by bringing a demolition by neglect law suit when turn around and file a demolition based on hardship. Also sometimes there are alternative solutions to the problem and sometimes we're just trying to do the right thing which is what happened in this building where the owner was actually born in this building in Brooklyn in the 1920s. Her parents had bought it I think in 1922 and when we reached out to her, she was in poor health, didn't have the financial resources to address the buildings condition. The rear wall had partially collapsed actually, so it was in worse shape than it looked like in this picture but when her parents bought it there was no record of the transaction, there was no title, there was no deed that anyone can locate, so technically the person that was born there and lived here her entire life, did not own it. So, a pro bono attorney brought an adverse possession case and I'm sure that lawyers will appreciate that. That's where you openly and notoriously live in a location for 10 years in New York State you can then, bring a proceeding to take title to that property. So I was very involved at that proceeding. The judge ruled in her favor, she got title, she sold it and the new owner understood it was a landmark and had to be prepared so he came to us and got permits and did that work and rebuilt the rear façade as well. We find that

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there's no specific type of building or owner that falls into the demolition by neglect category. We have seen here wood frame buildings , we have individual home owners, we brought actions against corporations, including one based in Tokyo, another one was based in Vermont. We have large buildings as well as single family buildings and this is a case actually, where we did not file a law suit. The owner after we met with him realized his obligations. He decided to sell the building which happens fairly regularly on these building and the new owner started to do repairs and that's what it looks like now. It still needs to be painted correctly but obviously it's in much better condition. There's some really simple problems we run into on these cases, for instance, once we actually get permission to go inside a building, I'll show up with the engineer from the department of buildings, someone from our hard working preservation staff, we put the key in the door, we try to open the door and it only opens about eight or nine inches and then we see the building can be filled with possession or debris. So we had three or four cases where it seems like it's a \*\*\*[00:46:23] syndrome involved. it's important to clean out the buildings because not only do we want to get in to do an inspection and make repairs but that's a lot of weight on a buildings floors and often these buildings have water damage, water is getting in and structural issues. So in a number of these cases we've had the owners spend literally months filling dumpster after dumpster after dumpster, to clean out their possessions. Now, making initial contact, with the owners can also be challenging. I was just going to go through that list of actions we took in one case to finally reach an owner but then I realized the story behind the image here of the house filled with debris, more interesting in terms of how we got in touch with the responsible parties. We were about to bring a law suit against the responsible parties then it turns out the two brothers that owned this building both died and the family members were completely unresponsive to letters and phone calls and efforts to get them into a dialogue to take some action on their building so I searched the finance records in New York for any other properties owned by this family and came up with some other properties and there had been a recent transaction on one of them and it was a lawyers name in the records from four or five years earlier. So I call up the lawyer and he agreed the family was very secretive and was not very responsive but he said one of the brothers who died had a business partner who he knew and I should contact her and she'd get me into the building and start the discussion with the surviving family members.

However, he didn't have a phone number, he didn't have an address. He just said her name is Bertha and she runs and owns a liquor store on Houston Street near avenue B. So I went there and sure enough there is a liquor store and it has its plexi-glass sheets coming down to the counter and there's this 85 year old woman behind the counter, and it's Bertha and I slid my card in where the cash goes and we had a lovely conversation explaining why we had to talk to the family of her deceased partner and sure enough next week the owners relatives did get in touch with me and they started making repairs to the building. This illustrates a person in charge, this is a building we brought a law suit against. the estate, there were two owners, they both died unfortunately, they were not related and then the bank that had one of the mortgages foreclosed so we actually named not only the state but the bank in Texas that had the mortgage and it got worked out and this is what the building looks like today. Some of the work is not compliant, I think some of the windows and cornice need some corrective action. We also sometimes piggy back onto existing litigations. The republican club is a \*\*\* [00:49:36] landmark

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in Queens. There was a lawsuit between a private owner and a current owner. I started showing up at the court conferences, the judge took judicial notice of the fact that this was a landmark. He ordered inspection by landmarks, the fire department and \*\*\*[00:48:52] buildings. So we went in and the judge was very cognitive of the landmark issues, so while we did not actually bring out own demolition neglect lawsuit, we used the existing litigation to achieve the objective. The building was sold and now it's being repaired. One issue I've discovered is that a lot of work that goes on behind the scenes, you might be working with an owner of a building which, on the left you can see looks terrible on the outside, that's a rear wall, but the neighbors and other interested parties are unaware of anything going on because the façade is not changing. Yet, during that time we're negotiating with the owner, the architect or engineer is drawing up plans, they're filing with us, we're issuing permits, the department of buildings is issuing permits, and as you can see in this case there's shoring and bracing going on inside the building in anticipation of exterior repairs proceeding.

So sometimes a lot of work is going on but it's all behind the scenes. I should note the fellow wearing the hard hat is Tim Lynch. He's the head of the forensic engineering unit of the department of buildings. We work with him and his engineers on almost a daily basis with making site visits or conservations about these buildings so the sister agencies are tremendous help to landmarks. Here's my last case study, the Windermere. It was designated in 2005. It had been owned by the Toa Corporation based in Tokyo for 20 years. It was in pretty horrific condition at the time of designation and that was the argument of why they said it should not even be designated. Nevertheless, the commissioned designated it, we filed the law suit. We had a terrific judge Justice Smith, she ruled in our favor. We thought this is terrific, \$1.1 million fine was paid by the owner, and landmarks did not get the money by the way. The new owner signed the extensive agreement to make repairs over the next year or so and he had inspections on a regular basis by engineers and landmarks and requires buildings. So we thought this is perfect. Unfortunately, this is again another before and after shot. That's \*\*\*[00:52:09] terrific staff walking through. So you can see a lot of work has been done to stabilize the Windermere but we spent the past year still working with the new owner and their team on working out the additional work that has to get done, when it's going to be done and how it's going to be done. So even though we might prevail in court, the work does not end with the victory. This is some of the exterior grip work that has been cleaned up, they're about half way done with the exterior façade work and will resume in the spring. So just to sum up, these cases are complex. They involve a lot of human stories with owners who are elderly, sometimes they don't have the financial wear with all, they might be ill. We have the estates that we have to deal with, we have corporations that are overseas or out of New York City which cause problems but nonetheless the commission is dedicated to continuing to take these demolition by neglect actions and we are steadily moving forward and this just one last image, so you're not worried, the image on the left was on the first slide I showed you and I can see what the building looks like after its been restored, so it came out pretty nice. So just to go back to the analogy that came up this morning about landmarks being middle aged. I think when you're middle aged you need to exercise and flex your muscles to stay in shape. So I think the demolition by neglect actions and the work on issuing of permits and other post designation aspect of historic

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preservation is becoming more and more important as landmarks in New York age and as we almost hit our 50th anniversary. Thank you.

Kate: Thank you. So while our presenters come up to the panel I want to open this immediately to the audience just because I want to have as much time as possible for questions but while they're gathering I just want to evoke one of my favorite Tony Woodisms which is when all you have is hammer everything looks like a nail and maybe that's one of the question that weaves together these three presentations is the question of using the right tools in the right situation and how do you determine when a strong application of the landmarks law is the right approach and in what cases other approaches might be more effective. So with that kind of as a question that might we've through some of the conversation I just want to open it up to questions from the audience. Way in the back there.

Audience member: Carol what do you think it would take to get a neighborhood conservation ordinance?

Carol: It would take legislation by the city council and I think it's not necessarily essential to have legislation to achieve the results that a neighborhood conservation ordinance might be able to achieve here but I think if you had the appropriate political will at the top and enough of us spoke about how we felt it was important that we had this additional kind of a aesthetic, not regulation, because I know Margery doesn't want any more regulation, but certainly guide lines and schools and tools and ways of providing members of neighborhoods to get better guidance about what they could do. We could probably achieve this without legislation and politically that might be a more sensible way to attempt to do it.

Audience Member 2: John, \*\*\*[00:56:05] if the commission had the power, to get access to the interior of buildings \*\*\*[00:56:26] frequently know what the \*\*\*[00:56:29] and, would it also be helpful \*\*\*[00:56:36] does your enforcement staff have\*\*\*[56:41] demolition by neglect team basically \*\*\* [00:56:45] structural engineer be helpful? and thirdly, \*\*\*[00:56:57] solving a troublesome problem like demolishing the building, would it be helpful to work out now, a protocol between the landmarks commission and buildings that would eliminate the possibility of overnight \*\*\*[00:57:21]

John: Yes, yes and yes. we actually, in terms of the structural engineer, yes it would be terrific for us to have a structural engineer on staff, however we use the engineers at the department of building all the time and they've been incredibly accommodating. Tim Lynch, as I mentioned, has 25 years experience as a structural engineer. I've known Robert Silberman for a couple of years, I talked to him or emailed him at least three or four times a day so, we've managed to leverage the existing city resources to meet our needs. In terms of getting access, yes that would be terrific, we need to get commission from the owners and sometimes that can be time consuming but as it is the law does not allow us to enter without he permission of the owner. finally, in terms of the issue of when a sister agency might take some action that might be harmful to a landmark, there have been cases as you well know, in the past, I think over the last few years our communications gotten much better and at this point \*\*\*[00:58:35] know who to contact at the department of buildings, we know who to contact at landmarks, we know who to

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contact there, and there's a lot more communication back and forth between the agencies so hopefully we will avoid any unfortunate incidents.

Audience member: \*\*\*[00:58:53] been a really great mechanism for doing two things. one is, in areas where they're not in historic districts already, obviously it's the owner being willing or a predecessor being willing to restrict future changes for the building so it's kind of opting for land marking and in the situation where its historic property within a historic district, provided that the not for profit that is monitoring the easement hold to its mandate which is to monitor and enforce its own regulation, you've got another entity who is functioning, sitting in the role of landmarks commission and we did have some experience where the entity was stricter than the commission was about certain changes that were made. So you had made a comment that you thought there should be fewer of those easements that they should be directed at a particular type of building where they had been before but I don't see how that helps us.

Richard: You're absolutely right, that easements, when they're enforced properly, are much stronger than preservation ordinance and I disagree completely with the IRS position on that and the new book that's coming out disagrees completely with the IRS position on that. the point that I'm making about the single family homes is that when you go in and you appraise easements of the property before and after, most of the time on these single family homes, you don't find any significant impacts and so as a result, what we really should be focused on are those properties where we know there would be a significant value to the easement and we should be encouraging the easement to be donated on those properties rather than encourage single family home owners to donate easements on situations when all that they really might buying themselves is a bunch of trouble with the IRS because the appraisals won't stand up.

audience member 4:\*\*\*[01:01:06] but if an easement is going to have a significant value on a property isn't that going to lead to then higher real estate taxes and also, doesn't landmark protection apply only to the visible portions of a building or property from a public street and so, the easement therefore offers protection on all four sides whereas the landmark protection doesn't?

Richard: If I understand the New York City landmark law you can protect all parts of the building including the interior.

Audience member 4: and the building which is not even visible from the street as well?

John: Yes. The landmarks law in New York, we designate the site and so it will include, in most cases the entire tax lot, so it's not only the front façade, it's a side façade, a rear façade and even the back yard sometimes.

Audience member 4: That's very helpful because we're \*\*\*[01:02:00] some of these properties.

Audience member 5: Quick question for John, were there at least one or two people still living in the Windermere?

John: Yes.

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Audience member 5: What happened to them?

John: They were actually vacated by the fire department. I think there were six or seven tenants, the Windermere hadn't been SRO or many years and the prior owners before the Telo corporation in Japan had bought it, the prior owners had \*\*\*[01:02:28] tenants and so there was a felony conviction with the former property owner ort clearing out the Windermere except for the six or seven tenants. The condition as so bad that the fire department did evacuate the building and I'm not sure where they are but there was a settlement made to them.

Kate: We just have time for \*\*\*[01:02:53] does anybody have a question about the \*\*\*[01:02;56]

Audience member 6: Yes, I had one on that.

Kate: Alright, go ahead.

Roberta Gratz: I'm very impressed by that presentation Carol because you pointed out a lot of things that I really think are so on the marks and it seems to pull in that grey area between landmarks commission and the planning commission but I seem to- some of the images that you showed seem to be either just outside on the edge of already some historic districts and I wondered if that were true and is there not something now that short of designating historic districts everywhere, although I know people who would love that, that could be done now either between the planning commission or landmarks. Is historic designation the only alternative to those conservation areas? Because you're focused on scale, materials, which are also part of the consideration in the historic district or on the planning right?

Carol: Right, my primary point is that there is there are so many areas of the city that do have quality architecture that is being eaten away at now and the city planning department's response to it, and the planning commission response has been to adopt certain zoning districts like the R2A, that I showed at the end that applies in certain areas in Queens, in bayside it's been mapped. It also applies to 40 foot lots. so, bit , by bit there's another piece of zoning that applies in Forest Hills to 60 foot lots but my point is that it's a very incremental and I think inadequate approach and that we need a much broader approach and of course we get into that larger question of planning and zoning and we don't unfortunately have zoning police. so once we even have the plans in place people are able to not follow them and I think that we would really need, again, \*\*\*[01:05:10] we need the political will and all of us voicing out of concern about community character and planning, and community appearance throughout the five boroughs of New York City.

Kate: Unfortunately I'm being told we have to cut off this panel but we're going to shift gears and continue the conversation in a slightly different format but thank you all so much.

David: Would the moderators from our previous panel come and join Kate for our final sort of moderator's round table?

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Kate: So I'm being joined up here by, again, Tom Mayes, Ann Van Ingen and Tony Wood and this is an opportunity to get the moderators from the various panels of the day together for a few more minutes to gather our thoughts and to gather thoughts from you after this full day of contemplation and really ask ourselves, okay, what have we really learned? I just want to set the stage for a minute because I believe there are a lot of different reasons we're having this conversation today and one of them is because of the calendar and it is the 45<sup>th</sup> anniversary of New York's landmarks law and that is an important milestone to recognize but I also want to say that we shouldn't minimize that there is a real sense of crisis in this city, that no one in this room believes that everything is going just terrific and we succeeded and it's time to close up shop and dedicate ourselves to other worthy missions. There's a lot left to do and it's that sense that triggers this conversation. Some of the specific issues that have come up or maybe not come up yet that I just want to get out there in New York City where there has been a strong sense that the process is not working and needs reflection and fine tuning, Two Columbus Circle, a classic failure of due process, the Cathedral Saint John divine and the BF Goodrich building, both cases where there was a clear development agenda influencing the designation process. Saint Vincent's Hospital came up and the alarming interpretation of hardship in that case, the mayor's perennial failure to reappoint or appoint landmarks commissioners in a timely way or at all and the influence that has on the process. The fact that nominations for designation languish for years without action, the loss of buildings that could have and should have been saved. An issue that led at least one New York State Supreme Justice to hold the landmarks commission hand on its failure to carry out the law and that was a case carried litigated by the priceless Whitney North Seymour Junior by being carried on by both Mike Seymour and Al \*\*\*[01:08:37] and others. The landmarks commission's minuscule budget. It is a rounding error in the city's overall budget. If there are 3% of the properties in New York City designated as landmarks, 27,000 buildings an astounding number, what does it say that it's .0000 something percent of the city's budget is actually dedicated to regulating and preserving them? So, with those thoughts on the table and many others I'm sure bouncing around in people's heads I just want to bring it back to the question that was the core of the keynote speech which was is the glass half full, is it half empty, is it broken and really, why should we care? What's at stake here? Aren't most of the buildings, the landmarks in New York City, aren't most of them preserved most of the time? Why it is these cases where it goes wrong so important and why are we having this conversation?

Tom: Wow. Well, may I jump in with something. It's funny that you began by saying \*\*\* [01:10:07] because I actually was going to begin my remarks by saying, okay let's take a deep breath. We're all in the trenches with these issues, everyday, all the time and that was an amazing list of issues and problems that are out there but I think we also have to acknowledge that New York, Los Angeles Chicago, Seattle, and 2600 other communities throughout the country are more livable, more stable, more pleasant, more meaningful places because of New York's landmark laws and other laws around the country so I think we have to acknowledge that at the offset and say there is a success story here too. That doesn't mean we have to stop. So, I wanted to say that first.

Kate: So that's a glass half full.

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Tom: Half full.

Tony: It's important to do a victory lap but I think perhaps we've taken a victory lap too long and become complacent, maybe that's more about the movement than it is about the law. I mean it strikes me that today was the beginning of a very necessary conversation and one that really needs to go on and be seriously joined. There really does seem to be a tension and at the moment were told that we got a very strong national law and we do. it's had a great impact here, it's had a huge impact, but at the same time and not surprisingly, most of our lawyers tell us to be cautious about using this great law and we got it and its terrific but if we really use it aggressively we could be getting ourselves into trouble so there's kind of this lest hold back on this wonderful law. As Kate points out we're still losing buildings which is a great frustration among the core community of preservationists, who I think are actually beginning to wonder if it's all worthwhile still. Maybe the law is good, it does what it can do we just have to suck it up or take up another hobby because we're just not going to be able to save Two Columbus Circle. I mean, who cares about a building like that? We are losing buildings that the landmarks law was basically passed to allow us to have a process to save. It's an interesting tension we're in and the political climate is not exactly a great one. We have people like Ed Glaeser out there, who's for the first time I can remember, not only questioning whether we should have more historic districts but questioning if we should undo the 102 districts we presently have. So the politics aren't great. So there's a lot to be thankful for but those of us who've been kind of serious and been in the trenches we need to figure out our way out of this moment. There's a phrase in the landmarks law somewhere that says preservation is a necessity and maybe now it's just being perceived as a nicety. When it gets tough and you have to go up against the churches, and it's tough when you got to go up against the mayor, okay it's a nicety, we'll do what we can do. We're doing more designation, the designation numbers are great but are we designating stuff that's really threatened?

So there's tough questions. but I think you're absolutely right, we should all leave this room realizing that what this law has accomplished, what it continues to accomplish is phenomenal but this isn't a room of underachievers . This is a room of people who are here because they want to have the patrimony of this wonderful city. so I think it incumbent on us the question, can we do better and there have been some ideas today in which we might improve the law, but then there's another question of discussion which is can we do better, politically because everybody has stressed the context and the context law happens in context. So we may end up, if it's at the end of a very thoughtful conversation saying yea, there's some ways we can make our law better but we cannot pull it off in this political climate so we got to continue to basically love the wrinkles of the face of the landmarks law and hope for a better day when we can do plastic surgery and I think we haven't had yet, as a community, that conversation and now's the time to have that conversation.

Anne: I'm going to assume Kate for the purposes of this discussion, both Kate and Tony that you're being flip to a certain extent, we care, of course we care. Preservation is not a fixed activity. It's not a job you do and walk away from, it's not like baking a cake. You don't bake it, eat it, it's done, who has the plate, go away, it is a constant process. It is a constant process of

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making the places we care about better places and it's not only about patrimony and about protecting the physical place, it's about protecting the places people care about. I think Jerald Kayden said it incredibly well and I won't dare to try to paraphrase but I think that's what it's about, it's about creating places that people want to live in, where their families are, where they create spaces where they're comfortable, where they raise their kids, where they have jobs, they live and work in the same place and that's what it's about and preservation is part of a bigger issue and we can talk all we want, we can talk ourselves blue in the face. We can talk about law, about tweaking, certainly one of the take aways I learned today and certainly agree with, that if we're going to tackle our law, let's take it off in a small piece. I think we are in danger. The climate is difficult. We're in a very difficult political and economic time. We don't have the political clout, we don't have the economic clout for wholesale change and I think that should be a starting point for any discussion, but the bigger issue, and I've been harping about this for years. If this is a movement, this is a profession that hasn't clearly defined itself. We don't speak with enough passion to the people we need to speak to.

We are extraordinary, we're very bright but every one of us has a Facebook page, every one of us twitters- well, maybe not everyone, I don't but many of you tweet. We have the availability through new media, through communication technology to finally, we have the tools to get the message out. Think of all the crazy things that we hear every day on the radio that we know are patently not true but they get traction because somebody's figured out how to use a social media. We need to be able to do that those of you that are in the back row that are going to be getting degrees from Columbia bless your hearts, your minds work differently than ours do. You communicate differently and you communicate differently everyday and I'll bet every one of you who are current students have been sitting there multi-tasking all day and texting with your friends. Put that to use for this field. You must have passion or you wouldn't be paying the tuition, think about it. It's not for the salaries, trust me. Put that passion to good use, convert the people who continue to make studio comments about this field the just bone headed wrong thinking about what preservation is and what it means. We operate in the bigger context lest we move the game plan forward, finally we have the new technology to do it and a new generation of people who understand how to use it. That's your job.

Tom: Well I'll agree with that without any question but I want to tie back to something Jerald raised also which is this idea about whether preservation is a universal human right. That's the way I began the discussion for my preservation law class of Maryland every year and this year, we had this long expansive discussion about rights; property rights, religious rights, environmental rights, right to clean air, right to clean water. There are preservation students, not one of the 18 students in my class thought they could define these cultural rights and preservation related rights as a universal human right, even in the context of things like the \*\*\*[01:18:25] sculpture. Even something as universally recognized as that, they said yes, we think this is an important interest but they didn't really define it as a right and I think one of the things that we have not done as a movement is the hard work of looking at what are the underlying public policy rationale for historic preservation. There are a lot of them. There are about 12 in the list that I keep on my computer, fundamental reasons for why historic

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preservation is important for public policy but we don't continually talk about them and articulate them and continue to do research on them.

Tony: I want to build on that, I think one of the things that Jerald Kayden said was terrific. Really talking about the importance of preservation, the psychic preservation through change and the like. For years, preservation has been trying to wear the camouflage of the economic issue, we're about economic development. Well, I don't think we are that's why most of us are here.

Tom: That's one of the 12.

Tony: yea, it's one of the 12 but one I don't think we've been as good trying to do is develop language around the point that Jerald raised. I mean that could reach a different audience. we don't have the language perfected on that but I think we need to spend some energy, because that's really why many of us do preservation it's this larger value to society and it's great that we're trying to put our own cents on it but I think also, society is reaching a point where dollars and cents is one conversation but I think particularly in the new generation and how people are looking at liberty and what's important in life, that's where we can win, if we actually tell people that's why we do this.

Anne: Messaging again, the endless conversation we have that comes up between the Green Movement and preservation? Why are they discussed as two separate issues? We need to work on the language. I'm not going to beat this one but that's a really silly one. You know, Jim Fitch wrote articles in the 1930s that were all about Green design, all about sustainability. Martica Sawain just edited his collective writings. I recommend it to anyone who hasn't read it. He was an extraordinary forward thinker, this is not new stuff but the Green movement has been hijacked by products basically so, you have this complete disconnect. We didn't get ahead of that story. We need to be doing that. The best, most sustainable thing you do is save the building, it's obvious to us.

Kate: Can I ask to what extent is it different today than it was 45 years ago? I mean is this a conversation that's just been ongoing for the past four decades or are there things that are really new and different about today that inspired these questions and new questions?

Tony: Do we really look like we were involved 45 years ago? Thanks a lot. Based on historical research, some things actually I think have changed quite interestingly within New York. I do remember in the early '80s that you could never get any public populant support for a historic district in what were then called the outer boroughs, now our sister boroughs or whatever we call them to be politically correct. and today what's interesting is you go political support in places like Staten island and Brooklyn and Queens because those neighborhoods have realized instead of preservation taking away their ability to take control of their lives, preservation is all wrong them to actually have a say in their neighborhood. So all of a sudden there's this constituency that wasn't there in the '80s that's realizing they have something important and this is a tool that can help them with that. So that's a very interesting political change.

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Tom: I think that's interesting because there's a larger headcount of people who care about preservation in New York City and in other parts of the country than there has ever been, people who think of it as important to their daily lives, whether they're trying to achieve historic designation or trying to stop their neighbor from doing something that that would undermine the character of the neighborhood or anything else. Does that suggest that the messaging has worked?

Anne: I think most of them wouldn't call that historic preservation. I think there's a disconnect what people want in their communities what they say they want and what we say we're doing.

: But does it matter what you call it?

Anne: I think we haven't figure out how to- all those people you're talking about, should be members of all the nonprofit organizations across the city and I'm not sure they are because they don't understand that we're all working for the same-

: We know they aren't

: It would be great

: Look at the membership roles, they're not.

Anne: right.

Tom: I'm not sure it matters what we call it. The phrase that I keep hearing makes a lot of sense to me is that preservation is a widely held ethic but it is not a deeply held ethic for most people. Most people assume that preservation tools that we have are in place in fact, most people assume their strong than they are. Most people assume if something is listed on the national registry it can't be torn down. it sure ca it's not a very deeply held belief so when it bumps up against property rights or this fundamental ordinance or our own incapacity to articulate what our standards are then it doesn't fair very well and that's a fundamental problem we have to work on. That was cheerful.

Kate: Well, I'm sure there are lots of questions in the audience that will bring out more so I just want to open it up to you all so if people want to raise their hands and we can cue up the mics, maybe start right there and then go over to Lisa.

Audience Member: So first of all, for the record, in my application to admission at Columbia in 1984, I wrote something about sustainability, although I didn't call it that then because I didn't know what it was but I'm totally on board with the we did it first theme. earlier I think it was Margery who mentioned something about there is no master plan in the city of New York and I'm really curious about hat because I came across the whole state zone and enabling act business form the 1902s, that came out of the department commerce and one of the key elements was that you must or should have a master plan and most of us out there in the rest of the country deal with these problems every 10, 20 years even revising our master plans and it's a painful process and at one point. We had one of our preservationists saying we should get all

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of our surveyed historic properties designated in this round of our master plan revision, because after all, they're surveyed historic and so they should be designated and the rest of us went...that should never happen. but anyway, long way of asking, should that be one of the things you all do to improve these issues that you're talking about with the disconnect between agencies and would a master plan make it all better or not?

: Carol can join the family.

: I think Carol can handle that one.

Carol: No, New York City does not have a master plan and I don't think it contemplated ever having one. It has a zoning resolution and some very good planning that does take place but as I was presenting today it's probably inadequate for those of us that are concerned with the built fabric throughout the city that is unlikely to reach the designation landmarks preservation commission.

; The reality of planning an effort like that would take many years, it would not be doable accomplishment within a four year administration.

Anne: The question does raise another point that I think is important which is the preservation law is only one of the tools we use and there are planning tools zoning tools, tax incentives, preservation easements all of these other tools. there are also tools that we don't necessarily think of as preservation tools and one of the things Jerald just mentioned very briefly was we need to make sure that the people who are applying those other tools have preservation built in and it's a value there and we need to do the hard work to make sure that message is carried through and I don't think we can emphasize that enough because it really takes a whole quiver of arrows to make a project work.

Tony: And I think that's really an important particular observation especially for New York City. Because of our love affair with our law, because of how long it took us to get the law, because of the sacrifices mad, when we got the law, it became the name of the game for doing preservation in New York City. Other cities that didn't have laws, had to develop other arrows in their quiver. They didn't have the give arrow, maybe they had darts but we've always played with the big arrow and I think we need to deliver, we need to look at other cities that had to develop a variety of other techniques so that we can employ all of them. I think back to Kate's reference earlier, we do tend to see everything in everything in New York as a nail and a hammer. I mean that's how we initially think and we got to break out of that. no matter what we feel about the law and its condition today, the law, even if it were law were the laws best law, the law could not accomplish what we s preservationist would like to achieve for our city and so we need those other tools.

Kate: Lisa, you had a question?

Lisa: Yea, \*\*\*[01:28:40] green building issue, there was a conference here a couple of months ago, where Emily Wattons , is a keynote speaker for the National Trust and she said she actually believes there's a great crisis in terms of the preservation community and really the sort

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of general lack of engagement in sustainability and green issues and I think that people like Jim Fitch really laid out why keeping a building is green, but I do think the landscape largely because the recession has changed and there's a much greater focus on improving efficiency of buildings, developing of metrics and I don't think the preservation community is nearly engaged in those conservations. Things are moving quickly and I think if more people are involved, we are at risk. I guess that's more of a comment than a question but if anybody would like to respond.

Tony: I know the Municipal Arts Society has a strong interest in sustainability and its intersection with other planning and preservation issues and it would be great to see that kind of leadership on that specific issue filter down into the neighborhoods and real collaboration with the organizations that are doing preservation work in all five boroughs so that we could really get up to speed on those issues.

Anne: I'll just respond and say this, in addition to the work Emily has been doing has been trying to do additional research on all of these topics and continue to look for more information that should be forth coming but it is a big issue and I want to second something that Ann said, so much of the current green movement and lead certification in particular is built around self product and one of the things that's interesting about preservation is that it's to some degree, anti-consumerist, I don't really want to be quoted saying that but-

: Speak into the mic.

: Preservation doesn't necessarily-

: It's labor intensive so that's good.

: Right, the money goes to a different place, it stays locally, because the labor and all of that but it's fundamentally not about product.

: I see Simeon has a question back there.

Simeon Bankoff: One thing that has been touched on throughout a lot of the presentations today but actually hasn't been elaborated is the role of community activists within this, obviously we're talking about underlying law and that was the focus, it was a terrific focus but the interaction between the actual residents and constituents can somewhat talk to in implementing the law. I mean a law is great but it creates a bureaucracy that in many times doesn't actually serve the constituents that brought it there.

Tom: Well, I'll jump in because I think Karen on the panel or perhaps Linda did mention it briefly and just said its critically important for there to be an active engage, perseveration activist community because first of all, they have to go to those hearing and present evidence so the landmarks commission can have some other body that presents evidence for them other than the property owner. It's important for them to be able to develop the record it's important for them to be able to do things that the commissions can't necessarily do, so I don't think I can over emphasize the importance of the nonprofit community.

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: No, I think that underscores- the history of the law, we have the law because neighborhood didn't give up and kept fighting. So, the role of the community advocates is essential. I think one thing that has to be done is we look at the 50<sup>th</sup> anniversary is really have our advocacy community take a look at itself. We probably never have had more preservation groups in New York City on the ground in our history, probably more perseverance groups in New York City than combined in other parts of the country. I think fair to ask whether we've got that community as well organized, as well networked as well in sync as it needs to be to take on the challenges in the future. Some of our organizations have evolved and changed over the years. the landmarks law may be middle aged but some of our long standing preservation groups are well beyond middle aged so I think it's time to get more conversations going there. The landmarks law is at a point in preservation where it looks like it's something that is being administered so the commission kind of is run more as motivated by the administration. The early leaders of the landmarks commission were preservationists. Recently, we've had good managers that's been running it. I think we can look at the preservation community itself, we need leadership, we need passion and we've got terrific people, we've got terrific energy. I question whether we've got it all aligned as elegantly as it needs to be to take on the challenges in the future.

Audience member 8: Just parodying off that, there was talk about how the political and economic capital is just not there right now to do what we want to do, any thoughts on changing that? I would just like to say that I don't think it's a fore gone conclusion just because the political will isn't there, I mean that's what are democracies for, let's change it let's get pissed and change it, right? Lets vote new people and you know, be pushing for exactly what we want and during recession, ideally, when there's less building wouldn't this be the time to mobilize and say alright, when the developers start knocking down the door we've got people that are going to support the people's agenda about this?

Anne I agree with you and I think one thing that can happen, speaking of the nonprofit sector is that this is a moment I think for every organization, every nonprofit that cares about these issues to really start building membership because foundation money is dropping off. Foundation money is moving to other more what they would consider perhaps more vital causes, so the sort of larger grant systems for the nonprofit infrastructure in the historic preservation movement in the city is shrinking. So membership though, is where you can build dollars so I think that speaks again to broadening our outreach, getting people engaged in this very, very important sector of movement which is that nonprofit sector. I think what we're having to do at this moment is build membership.

Tony: And I agree with your sentiment but I'd tweak it a different way. I think membership is a phenomena of my generation. It is not a phenomenon of the millennial. If you look at what's going on in terms what's going on in terms of membership with groups, so I think it's perhaps less about traditional membership and more about engagement, engaging as many people as possible and then accessing funds from those people in new and creative ways that we're beginning to see around particular causes. So if you look at what people are writing about, social networking and use of the internet, books like \*\*\*[01:36:10] With Our Organizations". The

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way social change is beginning to happen by mastering those tools and engaging large numbers of people which is what we would have to do to have the political clout we need in the city. That's a generational challenge, I'd be the last one that should be planning that but I know it's needed and I think there is great hope and a reason for optimism. You know, in the old days, how could you find likeminded people who cared about wanting to save Brooklyn Heights ? Otis corralled neighbors and they met in church basements and that still happens but today you go on the internet and you're going to have a 1,000 people all of a sudden responding if you start reaching out and you start articulating what we care about and offer people an opportunity to get engaged in a way that meets them where they are in our lives.

Anne: As long as we make sure that each of those people gives \$5.

: Absolutely, twitter \$5 to Ann Van Ingen, what's your number Ann?

: We still need to pay the rent, still need to pay staff, a professional preservation community is still an incredibly important piece of this conversation.

: But all for money.

Tom: And don't forget that the national trust is a membership organization.

Tony: There was an article in the New Yorker recently by the always interesting \*\* \*[01:37:34] about how social networking, social media has changed or not changed the face of advocacy and it's a tool that can be used effectively especially , he was arguing, in cases where you're trying to reach a large number of people and ask them not to do very much and there's certain things that can be solved very effectively by that, all you need is the numbers, petition signing is sort of the traditional mechanism but if you can reach people and ask them or \$5 or their name on a petition or something else t, to like you on Facebook, that can send a strong message. It doesn't work for every problem but I think it's an interesting thing. I think going back to the question about all of these problems and how to do you handle them and the word was brought up earlier about priorities? What are our priorities and it is a conversation that we need to have as a community, not just the advocates but our colleagues in government and other non profits to figure out how does all this work together? What is the low hanging fruit that we might be able to accomplish this year given the political and economic realities and what are the things that we need to start working on now knowing that things will change in five to ten years. Steve, right here in the front row?

Steve: A lot of sort of battle metaphors have come up about mobilization and connecting and I think that's natural for a relatively small community of likeminded people that are trying to organize something but Jerald referred to this notion of popular understanding that really is what you have to have in front of you as this field. So I'm wondering how one enlarges or gets to changes and that popular understanding and get more diversity in our community?

Anne: May I? I just want to respond to some degree to say that's a fundamental issue. One of the themes throughout today has been that first, we're a professional community, we have professional standards. we apply these relatively complicated laws , we make decisions in a

contextual manner where we're applying standards where the boards part of the procedural due process protection bears that the boards have certain types of qualifications. Well, what's missing there is that popular understanding of what preservation is and I think one of the great opportunities of the new social media changes that are happening, whether we want them to happen or not, is that dynamic is going to change regardless. I think the opportunity that's there is to figure out what does the public want? What is this widely held belief of perseverance and hear and let us listen to what that is. I'm not sure what the mechanism for that is, the trust has some ideas that the ideas that we're working on because that's the core of our mission but I think that's a fundamental thing facing us and something we need to have on the list of key things to work on.

: Laurie, right there in the black.

Laurie: A number of the people who have spoken today about other cities have been talking about tax incentives that were available to the owners of historic properties. they didn't go into detail but I know that's something in New York City ,aside from the tax act project which is not really available to most private people, we've never really had those kinds of fundamental incentives for historic property owners and I think politically and probably economically it wouldn't probably not be the right moment in New York City. However, that seems to me something that would be extraordinarily attractive and might sway those who are not so excited about being historic preservation owners to- on our side, is there any thought about that?

Anne: Well the Preservation league of New York State has struggled for years to get a state level tax credit, exactly as you're discussing and in fact, one was enacted a year and a half ago, the Historic Homeowners Tax Credit. it only applies in certain census tracks so it's not a perfect tool but it does apply to certain areas of New York City, within the five boroughs and certainly, I agree with you Laurie that what makes people do the right thing in this town is money its real simple. It's all about the real estate, it's all about the tax incentives and I think we are getting in the right direction. We've taken a big step forward in that New York State law and I think the Preservation league deserves a lot of credit for sticking with that one for about eight years that it took to get it. It's not perfect but its better and there's room to expand its applicability.

: Laurie I think that's a perfect example of tools and the perseverance toolbox here. Those tools do take years to happen but now is exactly the right time to be thinking of those things, designing them beginning to build the constituency and three, four, five years down the road, we'll have them but not if we don't start on them today.

Anne: I know we're done with questions and we're just about to wrap up. I just wanted to say that this has been an extraordinary day. I think Jim Fitch would've been thrilled. I think this is a Fitch Forum worthy of the name and I thank all of you for coming very much.

[End of transcription]