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David: Welcome back folks, if you could find your seats, get that last cup of coffee, maybe some water. We're going to get started. Once again if everyone can take their seats we'll get started. The house lights are down.

Welcome back to the Fitch Forum, it looks like everybody stuck around for the afternoon session which we're very pleased for, we've got some important things to talk about. Our next panel is going to focus our conversation from the national level and then from the sort of looking around the national level right back in on New York City. This is a celebration of New York City's landmarks law and we're going to take some hard look at it, and ask some questions. What are some things we might want to think about improving our landmarks law, what are some of the problems that we're confronted with as preservation advocates.

Before we get to sort of tear down the landmarks law and take that vicious look, we're going to take a couple of minutes to talk about the landmarks law. One of the things that I think is really important that we heard from – not actually Mark and Margery are going to do, anything of the sort. One of the things that we've heard this morning that we hear all the time is people don't really know too much about their landmarks law, in New York, in other jurisdictions and municipalities that have ordinances that are modeled on New York. So I'm going to set myself a timer because I'm going to be really strict with me about the time, and we're going to take a look at the city's landmarks law.

Before we can ascribe to normative criteria to the landmarks law, it's probably important to look at some of the jurisprudential and philosophical underpinnings that brought us to having such a robust and celebrated landmarks law. I removed some slides, I'm really not going to duplicate to the extent possible the things that Jerold spoke about this morning during the keynote address for a couple of reasons. The first is that you've already heard it, the second is there's no way I could do it nearly as well and I don't want to embarrass myself. So where you see me start to be duplicative, I will retreat and I hope you understand.

The jurisprudential and philosophical underpinnings of the landmarks law are important. The notion that the government can regulate private property for purposes of health and safety, for purposes of the general welfare, it's something that we in this room all sort of hold as sacred and obvious. But actually it's pretty not obvious. Not to echo the calls of the property rights movement with whom I disagree on many things, it is a spectacular thing that we have a landmarks law that does allow us to regulate private property for this purpose. It is not an unreasonable thing, it is not something that we should question as preservationist, but it's something that we should really appreciate. It didn't just sort of happened, it evolved.

It evolved because the national legal landscape starting at the early 20th century was shifting to adopt what is sort of the modern understanding of the regulation of private property. In 1916, it's put on the impact of skyscrapers on light and air and it's put on by the real estate industry, and also because of the impact of an encroachment of factories on fashionable residential neighborhoods in New York City. New York City passed what is arguably the nation's first zoning ordinances, that's in 1916. There's a footnote there, LA beat us to the punch here too, in 1909 there was a zoning ordinance in Los Angeles. It wasn't as comprehensive as the city's zoning ordinance, but at least they deserve some recognition for getting us there, getting there first as they did with their landmarks law.

Again in 1916, we have the city's zoning ordinance. Then in 1921, Secretary of Commerce, Herbert Hoover convened the committee to consider the question of zoning. That group eventually promulgated what's known as the Standard Zoning Enabling Act. Out of nothing, sort

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of after 20th century we start to see stemming in part from the city beautiful movement and in part because of the modernization and urbanization of our cities. Because of urbanization, we see zoning has sort of come to be. Then in 1926, in a case called Village of Euclid, versus Ambler [00:06:28] Realty, the Supreme Court sustained the constitutionality of zoning and made clear that the government can regulate private property, notwithstanding the fact that the regulation might diminish the value of that property. You could do it without violating the due process or equal protection clauses of the United States Constitution, and this is really important.

As Jerold pointed out earlier, the court wasn't part of some grand movement, the court was doing this in part to protect private ownership. This was to protect the value of your property, the government could step in and regulate the way your neighbors use their own property. This is not new, this stems from nuisance of behaving and sort of a long line of cases that we won't get into, but it's significant. It's significant for our purposes because it came on the heel of another Supreme Court decision that has implications for our own landmarks law, and particularly Penn Central. That is the Pennsylvania Coal versus Mahon. This is the famous announcement of the court that the business of the government can't happen is a government can't regulate property without having to pay for everything it does.

So recognizing the need to regulate property, the court when on to say that while property can be regulated, if regulation goes too far it's going to be recognized as a taking, and that's impermissible. That's the big question that's subsequently answered, at least answered in part by Penn Central. That the void that a lot of our preservation jurisprudence is struggling with now, when does a regulation go too far? We can synthesize these cases, and what we see is that temporally by this point we know that the government is not considered to be the constitution when it regulates private property in the interest of health and safety. What's great is that health and safety is pretty broad and inclusive, and it's a short jump from health and safety to public welfare. Public welfare as we all know is a pretty broad and encompassing statement as well.

We see in subsequent Supreme Court decision that *** [00:08:31] which was also alluded to this morning, the concept of public welfare is broad and inclusive. This was in the context of a condemnation, but the issue here was absolutely on point for preservation purposes. We want to have a public welfare that encompasses the spiritual as well as the physical and the aesthetic as well as the monetary. Community should be beautiful as well healthy, spacious as well as clean, well balanced as well as carefully patrolled. The highest court in the land how now pretty much said that the government is in the business of regulating for the public welfare, and public welfare includes aesthetics. That is sort of the background to our landmarks law, Berman v. Parker was 1954.

The landmarks law didn't just sort of happened after 1954. Of course there have been people advocating for such a law in New York for many years. But it's unsurprising that with this sort of nationally evolving jurisprudence and the city beautiful movement and the sort of transformation of the city's art societies into what is essentially urban planning think-tanks early on, that we'd find a landmarks law that come out of this philosophy. That's precisely what happened, our landmarks law was passed shortly after Berman v. Parker, in 1965 it mirrored something called the Bard Act. It's interesting though that the Bard Act was sort of drafted in 1913 when some of these ideas about zoning were just being floated around. So the idea of aesthetic protection and the protection of historic resources has really been a passenger in the vehicle the whole time. It only sort of surface though really with the pass of New York City's law.

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But despite the fact that we have this underpinning, New York City is still losing buildings. It's important to remember that while we were talking about zoning and we were talking about early talks about historic preservation and we're talking about protecting aesthetics, this was a city that was losing buildings. That's not surprising. In the absence of a robust preservation law, New York City will demolish its historic resources. This is a city that's characterized and defined by two things, forward momentum and finite space. This is a recipe for demolition, and this is why New York City still badly needed a landmarks law.

Some of the buildings that very well might have been protected probably would have been protected in the landmarks law include the Astor Hotel which was demolished 1926, the Marble House was demolished in 1951, the Mark Twain house which was also demolished right around Berman v. Parker in 1954, and of course the all too familiar Penn Station which was demolished right before the passage of the landmarks law in 1963 – and the future Penn Station.

(laughter)

David: That's unfortunate. One of the issues about being the coordinator for this conference and also speaking it is that I sent all of our participant really nasty e-mails, I said you had to have your slideshows done a week ago. Then I promptly ignored them, and this one by the way is going to come back because I used it twice. I pasted the wrong slide into the slideshow. Man, I wish I hadn't done that. So we're just going to keep going. This is the Brokaw I mentioned though which was demolished in 1965. Gosh, that is going to haunt me for the rest of my time in New York City. I am really unhappy about that.

So the Brokaw I mentioned was demolished just as the New York City's landmark law is passing. So let's talk about the landmarks law that came out of this incredible need and this pressure to save our historic resources and the jurisprudential underpinnings that we've discussed. When we talk about the city landmarks law, we're not really just talking about one law, we're talking about the city charter which governs the way we protect and preserve resources and the way our city commission works. We're talking about the city administrative code, which is when we talk about the landmarks law we're often talking just about the administrative code and the rules of the City of New York which are those rules are promulgated by the agency.

Today because of timeliness, we're not going to talk about the rules of the City of New York, we're going to briefly talk about the city charter, and we are going to talk about the purpose and declaration of policy that's in the New York City administrative code. If we understand what we wanted out of landmarks law, we might be able to sort of understand if we're getting that out of our landmarks law. I'm going to breeze through this.

The city charter does speak to what our commission can do. The first thing it does, it says that there shall be a landmarks preservation commission. It requires that that commission consists of 11 members – many of you are familiar with this, some of you are not so I'll go through it quickly. We have to have a minimum of three architects, one historian qualified in the field, a city planner or landscape architect and a realtor, all must be on the commission. The commission must have representation from each of the five boroughs. Members of the commission are appointed by the mayor, the mayor's permitted but not required to consult with the Fine Arts Federation or similar organizations from appointing members. The mayor is required to designate a chair, the chair is the only commissioner who is paid, all of the other commissioners are volunteered. Members serve for a three-year term, and they do so very generously because they're working for free. There's also the staff, the commission must

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appoint an executive director. There must be an annual report of these activities, and they're permitted to employ technical experts and employees as maybe required to perform *** [00:14:33]. Of course, agencies need to have and they need to have their staff do a lot of work.

Some of the powers and duties that are covered in the city charter, first of all it includes reference to the administrative code and says that commission shall have those powers and duties as are prescribed by law. There are a number of notice requirements that are included in our city charter. There's also a democratic check on our landmarks commission, and I think that's important to highlight that this commission does a check. So while the charter makes clear that landmarks sites, interior landmarks, historic districts are in full force and effect upon designation, some things can happen. The city council can modify or disapprove by a majority vote any designation of the LPC within 120 days of the filling of that designation with the council. That's sort of one safeguard who would sort of overlook the commission. The mayor can then disapprove a city council's decision within five days of the filling of its vote on the designation. Then if the city council really doesn't like what the mayor did, the city council can override the mayor's veto by a two-thirds majority vote so long as they do so within 10 days of the finding of that decision. Those are sort of the powers and duties of the commission that are in during the charter.

One of the things that's in the charter that make them up during this panel discussion, so I'll mention very briefly. After the decision in St. Bart's in 1989, the voter's of the City of New York by charter elected to create a Hardship Appeals Panel. This is a curious thing because this has never actually been convened, but Hardship Appeals Panel is independent of the commission, it consists of five members who are appointed by the mayor with the advice and consent of the council, and they review appeals from the terminations of the LPC denying applications for hardship for non profits. We're going to talk a little bit more about hardships in a minute, and this is just really a footnote to that conversation.

Now let's go to the meat of the conversation. The New York City administrative code, this is what we talk about when we talk about the landmarks law, it does a number of things. It states the purposes and declaration of policy underlying the law. It also speaks to the powers and duties of the commission, it details the degree in which we can regulate property subject to the jurisdiction of the commission, and this is that extraordinary power. The landmarks law has the authority to regulate privately on the property. It also established certain civil and criminal penalties for non-compliance. I'm not going to talk about those at all because we have an expert to talk about that later today.

Let's look at the declaration of public policy. The council finds that many improvements having a special character or special historic or aesthetic interest or value and many improvements representing the finest architectural products of distinct periods in the history had been uprooted. So, in some sense the landmarks law is very much in response to the phenomenon we were discussing where the city's most important buildings were being demolished. We can look to the architectural features, the Brokaw I mentioned, this is exactly what they're talking about. This is an architectural treasure that would have benefited the city but was lost. This is happening notwithstanding the fact that these buildings can be protected and they can be used, they can continue in their use.

In the public policy, this is sort of a lament, right? We've been demolishing these incredible buildings without adequate consideration of the irreplaceable loss to the people of the city of the aesthetic, cultural and historic values represented by such improvements and landscape features. This is something that Jerold brought up in his keynote, this is the sensitive place that

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comes from these buildings. When we talk about treasures that we've lost, we do look to Pennsylvania Station and we do look to the sense of place. Anyone take the train in today and come through the Penn Station? I'm pretty sure that this is better than what you walked through today. When we talk about an irreplaceable loss and we talk about a sense of place, we're talking about that feeling, that sense of pride that comes from our architectural treasures, and that's very much in the landmarks law. The landmarks law was very thoughtful in that regard.

Again, continuing with the declaration of public policy, this is cool, distinct areas are similarly operative. So we're not just going to protect buildings, but we are going to protect historic districts, and this is also in recognition of the sense of place that comes from the preservation of neighborhoods and neighborhood characters. We're going to look quickly through them, Brooklyn Heights and Greenwich Village are two of our most famous historic districts. Again, in the declaration of public policy, it's the sense of the council that the standing of this city as a worldwide tourist center and world capital of business culture and government cannot be maintained. This is a very, very passionate language for a run-of-the-mill ordinance, and it's important to remember that it's in there. When we as preservation advocates feel that we might be pushing too hard, let's remember that the purpose is in the law, the declaration of policy is in the law, and it's pretty bold and it's pretty ambitious – and that's sort of the “I love New York” part of the law.

I am way over time already. We're going to put aside the hardship conversation that I promised you. I'm actually just going to bring this up, when we talk about what the city can designate, we talk about landmarks. Of course we talk about Grand Central, Jerold covered that in great detail. This could have been Grand Central, it could have been really bad. But we designate landmarks and we protect them. We talk about interior landmarks when we talk about the landmarks law, we talk about scenic landmarks and historic districts.

I'm going to run through these number and then I'm actually going to stop. So this is a map that MAS provides, this looks at what we've designated. Just in terms of what we've got, what we've accomplished, the city has about 27,000 buildings under the jurisdiction of the LPC, 1,280 individual landmarks, 110 interior landmarks, 10 scenic landmarks, 102 in historic districts and 16 extensions of the historic districts. That's about 3% of the city.

I'm going to stop there so we can get to the conversation. I'll quickly introduce Tony who will be moderating our next panel. Tony is known to just about everyone in the room because he either invited you or strong-armed you to be here. Tony is founder of the New York Preservation Archive Project, he's a preservation activist, a writer, a teacher here on the faculty. He's going to moderate the conversation now, he'll introduce everyone on the panel.

Tony Wood: There will be a test on David's presentation. So I hope you all took notes on that. Today we've assembled a distinguished panel of lawyers with different backgrounds and different perspectives on preservation law on New York City. It spans the generations and it spans a wide range of viewpoints. Their longer resumes as we've said float virtually on our website, so I'm going to be very brief on the introductions, but some indeed are required. So raise your hand when I'm introducing you, and I'm doing this in alphabetic order.

Al Butzel is the principal of Al Butzel Law Offices. He practices law and led advocacy campaigns in New York City since 1965. From the Storm King Mountain power plant case to his legendary successful litigation against Westway, to more current legal efforts such as those on behalf of Albert Ledner's National Maritime Union headquarters, also known as the O'Toole Building to some of us in Greenwich Village Historic District. He's represented St. Vincent de

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Paul in an effort to scare landmark designation of that historic French church blessed by the presence of Edith Piaf, and he worked for the groups that were trying to downsize the Atlantic Yards project. So Al has become the go-to-lawyer for those unsatisfied with planning in the preservation status quo.

Otis Pearsall is truly a legendary person in the history of preservation in New York City, As a young lawyer – not to suggest he isn't a young lawyer still – new to Brooklyn Heights in the late 1950's, he was part of and came to lead the effort to secure landmark protection from Brooklyn Heights. In that process he actually drafted a landmarks ordinance prior to the city ordinance and then worked on getting the city ordinance secured. 102 historic districts ago, Brooklyn Heights became the first district designated after the passage of the law, and Otis has been active ever since.

Margery Perlmutter is a partner in the law firm of Bryan Cave specializing in zoning and land use building code and related environmental issues. She represents private developers, public institutions and non-profit groups before the New York City Planning Commission, the Board of Standard and Appeals, the Department of Buildings Community Boards, *** [00:24:02], all of our friends she's there. Margery is a member of the New York City Landmarks Preservation Commission, and until 2006 she was a member of Manhattan Community Board 8. Perhaps most importantly, this semester she's teaching here in the preservation program at Columbia.

David Schnakenberg, who we heard from is an attorney and a former Menapace fellow in Urban Land Use Planning at the Municipal Art Society. While in that position, he was involved with a variety of preservation and legal issues including the St. Vincent Hospital hardship hearing. He's also a guest lecturer in the Columbia Graduate School of Architecture, Planning and Preservation and the coordinator of today's event.

Mark Silberman is the general counsel for the New York City Landmarks Preservation Commission. Prior to working for the commission, he was a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison where he specialized in environmental and general commercial litigation. In the 1980's, he was a lobbyist, organizer, writer and editor in Washington DC for various environmental and public interest groups.

So your overriding question that our high-octane panel is going to address is New York City's landmarks law at 45. Perpetually young or showing its age? Based on year of observation I think one can say that most if not all of the rest of the country is envious of New York's landmarks law, New York is indeed blessed to have such a robust law. However, New Yorkers are not known for just sitting back and counting our blessings, they're always striving for more and better. Frankly, I think a few were in shock over lunch to realize that everybody thought our law was so terrific.

The conversations recently over charter reform, a variety of disappointments over the years, including losing a number of buildings, the failure of some legal challenges to achieve change have caused some to wonder if it's time to devote some serious thinking to the notion of tweaking or amending our landmarks law. The Preservation Vision Project, which involved close to 500 preservationists thinking about the future of preservation, came up with a list of 10 things that we needed to focus on to secure preservation in New York in the future, the fifth on that list in order of priority would strengthen the landmarks law.

So our law is almost 50 years old, the world is a different place. Arguably the law has only been substantially amended once in 1973. So the law has remained basically unchanged for 38

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years. So, is it perpetually young, [0:26:34] successful in creating a document that could evolve over time and successfully meet every changing need or is it showing its age? If it is showing its age, in what ways? If it is, is the prescription a little botox, is the description a facelift or is the prescription just to learn to live with it and love the wrinkles that it has? This panel will explore this and other questions.

I'm going to start by guiding our panel through a much briefer series of questions than I planned because I want to open this up to the audience to explore three areas of interest. First we're going to look at what's transpired since the passage of the law, talk a little bit about how we got here. Then we're going to look at some of the current challenges and opportunities that the law faces. Then we're going to be looking really at the future.

We're going to do this probably for about 15 minutes, we're then going to open it up for Q&A. I'm going to direct the question at a particular panelist just to start it, and then invite the other to comment. Everybody doesn't have to come on every question unless they want. I'm going to try and move us along, and I'm going to do this in a kind of a Charlie Rose style.

Trying to get an overview on the last 45 of the application of the law, the record is clear that in the early years the commission proceeded very gingerly, preserving the landmarks law was its greatest concern. Frank Gilbert, the executive secretary of the commission has a sign on this desk that time that read "this law raises grave constitutional questions." The first and second chairs of the landmarks committee maintained that indeed preserving the law was their top priority. Some suggest that after Penn Central, the commission was more aggressive in the application of the law leading to a period of creativity and activism but also of conflict and controversy. Since 1994 some have observed that the commission has become restrained in its application of the law. Is that a fair characterization of the last 45 years? If not, in broad terms how would you describe how the law's application has evolved in that period.

Notice that I'm going to ask you to start because you've been through the whole thing.

Otis Pearsall: Maybe I'm the only one in the room who's been here through the whole thing. It's been a great honor to be here through the whole thing. I have to say that I think if I have to vote between perpetually young and showing its age, I think it's perpetually young. This is the most remarkable success story that I can imagine. When we were envisioning a landmarks law starting in 1958, it took us seven years to get a landmarks law and to get Brooklyn Heights designated the first to start district. Nobody had in mind the 110 historic districts, we thought of maybe three or four.

In our discussion with Platt and Goldstone, it was always Brooklyn Height, Greenwich Village, Gramercy, and maybe two or three others. But no one had the foresight to envision the flexibility of this law and its utility not only to preserve buildings and districts but entire neighborhoods. The neighborhood preservation idea came into vogue with Beverly Spatt, she was the one who first saw the potential here to use it as a planning tool, which gets us a little bit over to one of the issues this morning.

With 110 going on to 250 historic districts, one has step back a little bit and wonder just what exactly it is we are trying to achieve and what we are doing. Are we cheapening the brand or is this the correct thing to be doing? Until there is a mechanism here in the city to preserve neighborhoods, other than the landmarks law, the landmarks law is the name of the game and we're going to have to go charging ahead with the preservation of valuable neighborhoods through the historic districting mechanism.

Your question is a little broad. I think that some of the subtleties of were we going fast at one point or were going slow at another point I find very confusing. Everything has drifted into the mist of time in terms of the actual energy levels of the different commissions. Anyway, I certainly have my own pet thoughts as to what can be done to improve the landmarks law. I'm not going to give them, I'm not going to share them with anybody, I'm just telling you I have them. (laughter)

But I want to be optimistic when I think about the New York landmarks law when you consider what has been achieved. I mean we can carp and we can pick, but the fact of the matter is it has been a remarkable success. That's not to say it can't be improved both in the law and in its administration. This audience is filled with people who can go and particularize item by item what needs to be done to improve it. But the fact of the matter is it's not a bad instrument as it is right now.

Tony Wood: We will move to the carving and picking later. Other thoughts on whether that is a fair way of looking at the scope of the commission's work over time or not?

Al Butzel: Unlike Otis – you've been in it for 50 years – I've been in it for three years, so I have to look at it in a significantly different way. I didn't realize you were that old actually.

Otis Pearsall: We started in 1958.

Al Butzel: Well, so it's 60 years, I'm sorry, please forgive me. I agree though looking at it as an outsider to begin with and now more as an insider that it's a remarkable law and it's achieved remarkable things, and undoubtedly achieved things well beyond what anyone would have anticipated at that time. The law though – and Otis really have referred to this – depends a lot on the commission that's enforcing it and interpreting it. As at the beginning of the process, the greatest concern was to maintain and uphold the landmarks law which happened with the Grand Central decision and then was carried forward with the St. Bart's decision, both of which are extraordinary cases, extraordinary judicial law.

There are now issues now that are arising, the most recently in the St. Vincent case in which I was involved, where the commission itself in my judgment anyway diverged from the Grand Central and the St. Bart's decisions concluded that it was appropriate not to address a building as a building but rather to accumulate buildings on a campus, the so called "campus theory." The consequent of which could be that historic structures on a campus like Columbia for example might be subject to demolition, this within a hardship context, even though they are capable of being reused, even though they are capable of adaptive use. I think that we're never going to get a court decision on this because St. Vincent's conveniently went bankrupt, but it is one of the issues that people are going to have to grapple with. Whether there's a legislative solution or ultimately a legal decision, that issue will have to be addressed.

Tony Wood: Lots of things have gone on the table. So I started at kind of looking at the history, other things have been brought up. So go with it where you want.

Mark Silberman: Since I'm 52, I think of this as perpetually young, the law. I think that it's really useful for everyone in the audience to hear how important New York is to everybody and how just sort of critical the law that we take for granted here every day. The other thing that I think is important to remember is all of the people coming from the other jurisdiction, they're talking about the practical realities of actually administering a law is very complicated. One of the

dangers is to think that preservation is a vehicle for handling lots of urban problems.

For me I felt at home with the panel at the beginning, talking about the need of trying to separate out our impulses to make preservation be the sort of paradigm through which all good urban new ideas should be funneled and refracted out, and I think that's a mistake. I also think that as the commission becomes more mature and as they have more and more power over the economic welfare of the cities in which they are operating. To hear Otis say, "No one ever imagined this" I think is both great and it's also a cautionary note. What was it when all this discretion was granted to the commission in 1965 – I mean if you think about the sort of levels of discretion that happened in the law it's pretty remarkable.

You have great discretion being given to the commission, but at the same time if you will draft it, it maybe had a narrow review of what they were engaging, what was the kind of area of discretion. Then you have the courts who are saying, "I don't want to weigh into this, I'm going to leave it up to you guys." Then at the same time you have the law itself evolving as what counts as preservation gets broader and broader. So it gets more and more attenuated as time goes by. I think that what commissions have to do, and as our power over larger areas of the city grows, I think the danger is to think that preservation should this be incredibly – I don't want to use the word rigid – sort of formulaic thing when in fact it requires great degrees of discretion, which makes a lot of people uncomfortable.

My job as a counsel of the commission is to try to make sure that when the commissioner are debating something that the discussion is taking place within the legal framework of the law. But I do believe that the commission has to be able to have discretion, it has to be able to deal with new situations in new ways. Al and I are litigants in this case on St. Vincent's, we can talk about that case in more detail. But this is a case just to sort of remind everybody – the first time ever where the commission had to deal with this question of "we have a building, and for purposes of discussion now was decided could no longer function, for the purpose for which it was created as a hospital, but yet you couldn't use that building while you have to find a place for a new hospital." That's a situation commission had never had to deal with before.

What happens when if you found that this is a problem, you recognize the need for a new hospital but you can't just have them move and do something else? So I think the commission, not just New York, all of them are dealing with matters of first impression, real matters of how we regulate, and I think discretion is going to be an important thing to keep in mind as we discuss how do we want to change the law.

Margery Perlmutter: I just want to pick up on some of the things that Mark was saying. Like all laws, they develop as people use them. When a law sits there and no one actually touches it, you don't see how it affects your world or anyone else's world. For instance, in economic development times, in boom times, you see how the law is being implemented and how people are trying to use it.

I haven't been involved in historic preservation for decades, for me it's more like a few maybe 10 years, but what I have seen is that – as for an example as a member of a community board, I have seen how community activists use historic preservation as a way to limit development. That's not what historic preservation is for, that's called zoning. What I'm seeing more and more, which I think is a very unfortunate trend in sort of the historic preservation movement and therefore an imposition on the law is that people will see that designating a historic district or designating a building can actually be a speedier way to eliminating a development possibility than convincing the City Planning Commission that it would be a wise planning move.

So there's that that I think really needs to be looked at. I think one of the panelist from an earlier conversation was talking about – I think Chicago – the planning commission and landmarks commission now are somehow in the same agency. It's an interesting phenomenon because what I see from the perspective of my clients who I represent when I go to the City Planning Commission, that they're often surprised by the disconnect between the agencies. So you can actually be designing a building that the City Planning Commission is in favor of, and then it comes to landmarks and it's killed actually. We've actually had some of those experiences on the commission where there was a total disconnect between the agencies, and that's something where I really think the law needs to work, the two agencies need to work closer together.

The law itself needs to be blended because in fact historic preservation is planning, it's an urban planning process that needs to recognize the role of zoning and zoning needs to recognize the role of historic preservation. The other aspect of it is of course we see many time people coming in to add very large additions to their little, tiny townhouses. Why can they do that? Because they're located in zoning districts that allow them to quadruple the size of their house. So there's a total disconnect between the purpose of preservation and the zoning purpose there, and those things really need to be coordinated.

Tony Wood: David, I'm going to direct the next question to you to get a first shot at. We heard that our landmarks law was really the gold standard when it was passed, many wonderful limitations. But there have been now decades of law, decades of experience, we've heard about some other laws this morning. The question is have you observed anything or are there any aspects of other ordinances, have things evolved? That if we were doing our landmarks law over again today, is there something that we could see from others that you would like to incorporate into it?

I would just add that if indeed I understood correctly from Tersh, I really like the idea that you don't have to go to the city council for designations to be approved. But that's just me. So David, you start with this question and others can jump in.

David: One of the things that's interesting is we talk about Penn Central all the time when we talk about our landmarks law, but Penn Central sort of fundamentally changed the way we think of the ability to regulate property. It set a standard, it did address to the degree that it addressed when a regulation goes too far, it arguably ratcheted it up, the government's property shy of a taking. I think that some of the underpinning of our landmarks law, particularly the hardship area – my slideshow went a little bit long but as a very brief aside, we have a hardship variance built into our landmarks law for for-profit entities as well as for certain non-profit entities, but not for no-profit entities who wish to demolish or alter in an inappropriate way their historic resources. This is sort of the underpinning of the St. Vincent's issue.

One of the things that we've seen is when the landmarks law was enacted and when some of the case law that address the question of what do we do in the absence of statutory answer to the question an non-profit owner who wants to demolish a building, we've seen that the takings law, the underpinnings or landmarks law has been wretched up. The problem I think at St. Vincent's was that our own ordinance arguably was very desirable to have some flexibility built in to the way that landmarks commission would have been able to deal with what was a very difficult set of facts. But the law that underpins our landmarks law has sort of outgrown the landmarks the law.

We have Penn Central, we have St. Bart's, but the case law and ordinance themselves didn't

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really do the work. I would say that one thing we could think about doing is taking a look at where we would like our statute to deviate from its underpinning law and actually co-define some of those things. Some of the things that have changed throughout case law, it might be legally true and we certainly have a federal floor of the Supreme Court says that it is so. But we have some freedom to nuance the way our landmarks commission can deal with some of the law. I think to that extent, that's something that would be desirable.

A lot of landmarks law that was passed subsequent to St. Bart's, for instance, have statutorily incorporated some of the holdings in the St. Bart's decision, which is really just a great attempt at bring the for-profit Penn Central analysis into the non-profit world, and it's really difficult. I think it's hard to figure out when a regulation divests an owner of its monetary value, it's even harder to find out if a non-profit owner has been divested of its ability to further *** [00:45:36]. This is tough stuff, it's heavy lifting. With all respect all the commission and the commission staff, I think rather than let them figure out on an adhoc basis, we might want to co-define some of the things that we think should in there.

Al Butzel: I'd sort of like to make a case. I think we were extremely fortunate to have the landmarks law amended in 1973 adapted law, I think it's remarkable. While I agree that there are some aspects of it that might be legislatively improved, one is designation – maybe we'll talk about that a little later. The landmarks law was created I suppose mostly because people thought about Greenwich Village and people thought about Grand Central and the likes. But the reality is, it has emerged as one of the preeminent ways was trying to protect neighborhoods, and neighborhood is a place, that's where people live.

I have to descend a little bit from what Margery had to say because why it shouldn't be the zoning, maybe it should be zoning but it isn't zoning in this political atmosphere. Zoning in this atmosphere – I shouldn't make an across the board condemnation because the City Planning Commission had down-zoned a lot of neighborhoods and is trying to protect neighborhoods. But the landmarks law is absolutely the best mechanism to protect neighborhoods for those areas that have been designated historic districts. If they had been, they presumably deserved to be, and I think we're fortunate to be able to take advantage of the landmarks law.

I think that Mark's comments are reflective of what often happens with agencies that are entrusted to carry out a particular mission. The mission of the landmarks law agency is to protect historic resources. When Mark talks about discretion, there's a lot of discretion in the law. In terms of designation, the city council had the opportunity to veto, and has done so in particular situations. In the case of hardship, there's a hardship panel that's never been invoked, and presumably the council can the change the situation if they want. I think the agency should be doing everything it can to implement the landmarks law and not to worry about the other considerations of policy, those are for the legislature to determine if they want to revisit the law. The landmarks commission which is distinct from the planning commission ought to be upholding the landmarks law and using it to the broadest possible extent now that it has been established as legal.

Otis Pearsall: Let me just pan a thought on that. One of the things that's missing from landmarks law is a mechanism to reconcile conflicting city policy. The landmarks commission has taken into account on various occasions, I'll give you one example which is the demolition of the purchase building under the Brooklyn Bridge. They're the compelling desire of those interested in Brooklyn Bridge part to open a *** [00:49:17]. It was a parks and recreation policy. That policy overwhelmed the public interest and preservation. One would think that a conflict in policy of that sort should be resolved by the city council through a political process instead of

internally at the landmarks commission decided whether it will defer to the policy of a different agency.

There had been other sites of example, and indeed the St. Vincent's in its own way represents a conflict of policy in the city, obviously a great desire to do good things for the hospital at the same time we have the public interest in preservation. Interestingly, the landmarks law on its face does not provide any mechanism for reconciling, compromising or otherwise dealing with conflicts of city policy. Now when the purchase building came along, I made an argument that the landmarks commission has no business taking into account the public policy having to do with the park. If you go to look at the terms of the landmarks law and the definition of what could be considered on the issue of demolition, you don't find in there anywhere the idea that if another agency has a compelling policy need you can defer to that. That's not one of the listed items that you take into account when you are deciding under the landmarks law whether demolition is appropriate. I just give that as an example.

I think the St. Vincent's thing involves another example. Another example that's going to come along is the conflict between preservation policy on the one hand in connection with a landmark building and the desire of a large number of people in the city to convert it into a theater. We're constantly being confronted by these kinds of policy choices and nowhere is there a mechanism specific politically to resolve those kinds of things.

Tony Wood: Mark, last few words on this one?

Mark Silberman: Yes, there's a couple of things. With respect to the purchase building I think it's important that there's two things to know. One is there is a provision in the law that the drafters created to deal with conflicts between the agencies, and that was originally that the landmarks commission was advisory. So that when we came up with city owned projects and city owned property, all we could do was issues an advisory report on theory that every city agency has its own mandate, new housing for the poor, parks, whatever it might be, and the landmarks commission would be part of that process. They would come to us, we would say our opinion out loud in the political worlds and then it could be disregarded, unless the public then organize and defended it.

That's changed, I think ironically it changed inadvertently with the passage of the amendment to the art commission law so that now the commission landmark is binding in certain respects. It's very complicated, streamlining things maybe doesn't work that well. But now we're in fact binding in some cases where we were never binding before. So I think there was a very explicit political calculus in the original law, but you're correct it wasn't a face-to-face debate. It would happen sort of seriatim and the agency that wanted to do something could sort of do it afterwards and after the hub-dub died down if it did.

I do want to go back briefly to the question of amending the law because we're all talking about this in preparation for this. Should we amend the law, is it a good time, and Otis pointed out as someone who's been around for the longest that there's no answer to that question, it all depends on circumstances. It will depends on where we are at a particular moment with particular council and a particular issue, and where the public is at the particular moment, and I think that's particularly true. It's easy for me to say you can amend the law because that's why I was brought to the landmarks commission in 1995. I was brought specifically because I had a lobbying background to help the then chair Jennifer Raab amend the law, which we did successfully, to get the commission real enforcement power, which has had real impacts on the landmarks law in New York City – and John Weis is going to talk about it a little later.

So, it can be done. But it was done in a way that is a very specific issue, is very narrowly drawn, and you had a very strong chair with very strong ties to the mayor. You had a very strong head of the landmarks sub-committee in the city council. So it was a way to be controlled. At no time during that process having been a participant in it was there any risk that was going to spiral out of control. That said, guess what happened? We didn't get everything that we wanted. The religious organizations came in, and basically we got the message from the speaker's office, if you don't cut out the religious organizations the whole bill is dead. So guess what we did? We cut out the religious organizations. Later we got it back in, so we have demolition by neglect for non-profits, but we still had to do it.

I think that when you start talking about amending the hardship provision, I think it would be very, very difficult to control that debate and to control what's open at any given time. That would be my biggest concern. If you look at what the Real Estate Board of New York was proposing to the charter, they want lots of limits at what the landmark commission can do, some having to do with hardships. It is exactly a vehicle to bring all those in. I think that's the danger is that to amend it, it has to be something very specific, very narrow, and a hardship is not one of those issues.

Tony Wood: Okay, I'm going to reconvene the panel over a bottle of wine to have them answer the other 10 questions I had. But we are going to turn to the audience. So if the people carrying the microphones would positive themselves, we'd open it to the audience.

I would want to just leave with the thought kind of building on what Mark said. For years no card carrying preservationist could even raise the question of whether we would try and amend the law to make it stronger without being voted off the island. So I think that it's healthy that we're finally in a place where we could have a conversation about whether indeed there are ways to improve the law and whether it's politically wise to try and move on those. So I think it's a wonderfully healthy conversation, people have extremely strong opinions on it. So let's open it up for some questions from the audience to the panel on our large issue of perpetually young or looking for botox.

Simeon Bankoff: Just picking up on what Brian had said earlier from learning lessons from other municipalities, the notion of thematic districts. Could you sort of discuss – I know what the upsides of it are – your feelings about that, what might be possible disadvantages or why it would not work currently?

Tony Wood: In the context of New York City?

Simeon Bankoff: In the context of New York City please. Thematic districts, where for example – and Brian can answer this better – you were to look at a series of African-American historical sites and kind of create a thematic district of that as he did with neighborhood banks.

Tony Wood: Before the panels answer that, I'm now going to go into the strict moderator mode and I don't want every panelist to answer. So if you really want to answer, signal, otherwise hold your fire for the question you really do want to answer because everyone's not going to get to respond to every question. That being said, who would like to respond?

Mark Silberman: I think that it's a good idea. I think we have to be careful about words though. It's not a district as we use the word district in New York. Brian and Lisa *** [00:58:01] and Margery, we're all talking about this afterwards. It's a way to create a milieu and a rationale and

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a basis for designating lots of different things, all of which we take too much time individually. Also you might be able to throw into the mix things that on its face would be more difficult to get. So I think that that's a great idea. I mean the commission, the closest we've done is this sort of federals, sort of looking at federals and trying to do more federal buildings. But it's not been done all at once, it's been done *** [00:58:32]. I think it's an interesting idea and one that certainly we're going to look at.

Tony Wood: Okay, questions? I've got my list of 12, I'm happy to go to them. Roberta Gratz here in front.

Roberta Gratz: I can't say I've been around as long as Otis, but I maybe the second longest in the house. I'm not sure if whether this is an observation, challenge, question or a comment. But I'm always a little concerned about this need to separate the planning from the landmarks and zoning from landmarks, all of which obviously is clear in the law, but let's remember that the law was an outgrowth of urban renewal overkill. So from day one there has been a blurring of what the use of the landmarks law was for, it was reactive. Yes, Margery, a lot of people do respond to threats in their neighborhood through landmark. However, it's often that threat that prompts them to care about what is of preservation value.

I have not seen in our history any neighborhood using the landmarks law inappropriately. It may have been spurred by what you described, but its use was not inappropriate in that they weren't fighting for something that had historic value. So I think we have to also remember that history has blended it from day one. As was just often said, said before and said over and over again, the Grand Central case didn't just change historic preservation. It changed land use, planning and policy nationwide. But that's land use, that's not just historic preservation.

I also want to add though that I think I totally agree with Mark on needing to keep any attempt to refine the law to a narrow opportunity. There was a time where there was an attempt to change the law when they were ready to drive a mac truck through it, and the whole thing was squelched just for that reason. That's very important to keep in mind.

That was a comment, I don't think there was a question there. This was another thing that I think again was raised in the subject of Chicago. I mean I don't know what the building count now is with all of the – currently 27,000 within the historic districts. So there's this landmarks staff of 60, and I don't know which percentage of them are the ones who actually review the applications. What is it, 30 review the application? Okay, so there's 15 people who review the applications for potentially close to 30,000 buildings, and as we move ahead there will be more than 30,000 buildings.

So you have to ask then, what is it that we're doing here? You have a property owner who wants to change windows and they want to do it in a way that let's just say it's staff level approval. Nevertheless, it's staff level approval and the staff has thousands and thousand and thousands of applications. I guess the question is, when there was a move to expand the upper west side historic district to encompass another I don't know how many thousands of buildings, are we really getting at historic preservation or is it something that's zoning like because what we're trying to do is retain something about the character? What's attracting us to the neighborhood has to do with scale, it has to do with materials, it has to do with much broader things than maybe that person's windows.

Maybe what's missing either from the landmarks law or from zoning mechanisms is a mechanism that's somewhere in there – it's conversation I've had before – that I call landmarks

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light. It's not the same kind of a regulation that we're currently imposing on every property owner. There needs to be much more of arranged so that maybe another agency can manage it. Maybe it's something that's very clearly in a set of guidelines or a building code or something. But I'm imagining 300,000 building that 15 people...

Tony Wood: I think a presentation in the next session maybe floating some ideas around that.

Al Butzel: I think that zoning doesn't affect a character. I think that's one of the limits of zoning. I mean it can keep things smaller, it can keep things big even contextually where you have existing neighborhood, brownstones or whatever that can help there. What distinguishes the landmark law? The landmark law takes the community, which is what people are really talking about, and tries to maintain the character of that community by preserving mainly the structures that exist. If we're in Europe no one would be thinking twice about this because that's the way Hamlet's are, that's the way cities are and the like. Well, I shouldn't say all of them but certainly the best of them.

I think with regard to the issue of how do you enforce all this, there are lots of possibilities including self certification, including giving neighbors the rights of private action in order to enforce the regulations and the like. I don't think it's an endless process of bureaucracy that has to go on.

Otis Pearsall: May I jump in on that note just for a moment? For 20 years I've been trying to make this point, I might as well...

Tony Wood: The time is right.

Otis Pearsall: Twenty years ago, I proposed in something called the historic city committee report. The idea that we could solve our enforcement issues here – I should say, nearly 30,000 buildings, I think we've got three active enforcement people for 110 historic districts and close to 30,000. So the idea that we are closely monitoring what's going on in all of these historic district, I think is pretty self evident. But if we could with a very simple change in a few words adopt what the federal environmental law adopt, what the federal securities laws include, what the federal any trust laws include, a private right of action, the private attorney general. Not everybody would be able to do this.

But organizations that have been around for awhile, you can spend a lot of time in trying to define exactly what the criteria is – but take it from me, it would be possible to identify criteria that would eliminate the pranks and the people who have grudge matches. You could open to responsible organization the ability to assist in policing the enforcement of the landmarks law by creating a private right of action. You would only be entitled to get adjunctive relief, this is not going to be for damages. Now the landmarks commission has never liked this idea which is why nothing has ever happened. Dorothy Minor hated this idea. She hated this idea, we had the most terrible fights about this because the landmark is perfectly understandable. I know where Mark is going to come from, he doesn't even need to bother. (laughter)

They want to keep control of the process, understandably. If they keep control of the process they can determine what's going to be pursued, what isn't going to be pursued, all the subtleties and the litigation that pursues it. I agree that something would be lost. The landmarks commission could obviously always intervene in such proceedings and make it felt through that means. I think there's an answer to all of the objections, and one should just step back and understand the incredible benefits that enforcement would achieve by having a private right of

action.

Tony Wood: Mark, would you like to expand on his statement of your position just a little?

Mark Silberman: Well, it was stated. I want to move, take the conversation a little bit further on. I would say that everything that Otis had said is certainly the position of the landmarks commission. But in addition, I think it is very difficult to weed out the cranks. We deal with this every day. Again, it's one of those things where people who think about preservation sort of from on high need to come back down to the hearing once in awhile. People come into hearing, they propose something, and it's routine for preservationists and neighborhoods to basically try to humiliate and demonize their neighbors. It is a very unpleasant forum. Somebody bought a house they want to put on an addition and they're told, "The house you have is a piece of crap. Even if it's a piece of crap, we think what you're proposing makes it worse. So you're a piece of crap." People cry at these things. (laughter)

Don't underestimate the sort of power of neighbors to get involved in their neighbor's lives in a non-productive way. I also want to raise though a different question which I think there's a lot of conversation that happened all the time in New York about preservation with the public wants, and I think it all takes place with an incredible lack of information about what the public really thinks about and values about what I and the rest of the people at the commission do every day.

Sort of following a little bit on what Margery said. For instance, windows, materiality, one of the cornerstones of historic preservation as we now know it and certainly the way the landmarks law in New York City is created, how important is that for neighbors and these communities that want to preserve themselves? Maybe it is just a question of size, maybe that really is. I think that we need real metrics. We need to go out and talk to people about what it is that they value and like about what they do, how well are we doing it and what they hate, and what it is that they don't value and think is intrusive so that we can be an actual discussion. What does preservation mean to New Yorkers?

This conversation happens up here, and I'm telling you, the rest of us are down here dealing with people who bought in to the violation. There's a case that we're dealing with now, this people bought a house and guess what happened? Twenty years ago, because there was no private right acts according to Otis, someone changed the curved parlor floor windows on the brown stone. This people bought it, there's no violation on the property, there's nothing. We now find out about it, through whatever means, and guess what? What do we do, do we say you now have to come up with \$50,000 – that's not a made up number – to change curve windows? That's what the commission has to do every day. I think that's when we talk about preservation, when you say what is it people value in New York about what we do.

Tony Wood: Frank your next. But before you start to talk, raise hands again because I want to tee up the next few questions. I just want to point out for the record, I see no cranks in this audience. (laughter)

Frank Sanchis: My question is about making the landmarks process more easily understood by the public. Landmarks regulation through the commission is about regulating private property. But Mark just talked about a change where the commission has now binding authority over properties owned by the city, which are governmentally owned in public property. It's always been confusing to me, and I can't imagine there isn't to others that the commission's decision about state and federally owned property in the city are also advisory. In fact, the commission spends time considering proposed alterations to some of our most important and physical public

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buildings that the public would probably assume the commission had authority over. Then those agencies completely ignore the finding of the landmarks commission, and all the time that was invested in that is more or less down the tubes.

So, my question is, is there any way that you think that relationship between the findings of a municipal authority having any sort of more binding constraints upon governmentally owned building can be sort of addressed?

Tony Wood: Okay, a couple of people wants to take that on or nobody wants to take it on?

Otis Pearsall: I have an opinion on everything. I say the legislature ought to decide, when you get to public properties there's a public government. I agree with Mark said, maybe the provision that restricts the landmark commission so its decision are obligatory rather than just advisory is a mistake. When it's in the public realm, the political process basically in my view appropriately decides what should happen there.

Tony Wood: Okay, we have a question here. I want to line up the next question. Did I see a hand in the back?

Female Speaker: Hi. I'm wondering, and the opinion probably of Mark and Al probably are more suitable in answering this, in your opinion to what extent are not-for-profit organizations such as the St. Vincent's or a city agency like Parks really delaying a building actually having a hearing or even ever getting a hearing or actually ever being calendared? Not-for-profit organizations, it can be something that will take years and years and years to ever see a hearing, so I guess the threat of something not-for-profit owned, the ramifications of actually having a property like that ever designated or being managed by historic preservation.

Tony Wood: We get it.

Mark Silberman: The issue you raised is not just about non-profits, it's about the designation process. The landmarks law, I think it was referred to a couple of different times during the course of the day, there's been some litigation in New York about that process and the commission has prevailed in all those cases because the landmark law itself is silent on how things are brought forward. Once a decision is made to consider something formally for a landmark, a lot of due process kicks in, and there's hearings and reports and things go on. That process before then is the process that takes place at the staff level, and David slide was talking about sort of the importance of the staff.

The short answer to your question is there's been some criticism about the sort of lack of communication about what happened, where is something in the process in sort of the review process for potential landmarks. The commission's work is – we keep saying that it keeps getting delayed, but there is a big capital project to bring all the computer stuff together in the city soon, now it's June of this year. People will be able to look online at a property and see every permit, every violation, designation information, staff level permits, commission level permits, the whole thing. In addition, RFE, the Request For Evaluation, the status of those will be there on the website so you can actually see something has been submitted on this date and it's under consideration.

That internal process, I think it's very important, it's not an answer that preservationists like to hear. But there's a lot of priority setting and decision making that happens at the level of the chair and the staff to deal with the fact that we get 200 requests for evaluation every year. A

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request is for one individual building or for a huge district. We have to deal with priority issues, sort of budget issues, there's a lot of decisions that go on in terms of whether something should go forward or not. That decision making I think is appropriately currently resides with the chair and sort of that internal process because I think it's inevitable.

For example, the current chair, Bob Tierney, designations to the outer boroughs was something he has talked a lot about since he was first appointed in 2003 since he's been there. Guess what? Half of all of the designations in Queens now, he's doubled that in Queens. He's increased designations in Brooklyn, 15%. That's a priority. Now should he be able to say that that takes priority over everything else? There is a process that the commissioners, not that he sets every single thing, but those kinds of priorities are important because we have limited resources. Working on one thing means we're not working on another.

So in that sense, I think that's the process. It's a practical process given a volunteer commission that meets three times a month, 15% of Margery's professional life is donated to the City of New York, 15%. We can't make up more of their time, the staff has to make these decisions.

Al Butzel: I represent a group called Save St. Vincent de Paul which is not-for-profit trying to save – actually, the first integrated church in New York by more than 70 years, it's called St. Vincent de Paul, it's on 23rd Street, between 6th and 7th Avenue. It's a French speaking church. It's been found eligible by the State Historic Preservation Office and it's actually a very attractive little church. Edith Piaf was married in it, so I mean she's only been married 17 times. (laughter) Not that many places where you have this. It fits every possible criteria of structure that ought to be considered for designation in EAF or EAS or whatever they're called, and we're denied on the grounds that it doesn't meet the criteria, the usual three-line letter that tells you it doesn't meet the criteria.

I brought a lawsuit saying that landmarks law said that commission is supposed to designate or determine, and that implies the commission should determine what is heard or not heard rather than just the chairman. We lost that. We think that there needs to be – if there's any amendment to the landmarks law that's ever proposed given this climate that that's one that ought to be made. In Boston, citizens can nominate instructions for designations or districts for designation or districts for designation, and we're suggesting a proposal which will allow that happen.

But if a citizen does it in order to get rid of the cookies that Mark's talking about, they have to bring with them a report from a qualified historic preservation expert laying out what the reasons are for designation. Then the full commission hears that only in a preliminary way. If they decide it needs to go on then it goes on. If they decide it doesn't need to go on it stops. So that way you avoid increasing the workload geometrically but you provide a process for the public or important people in the public to make. Whether that happens or not, I don't know.

Tony Wood: Okay, back there?

Frank Sanchis: Just wondering whether the LPC of the greatest city in the world should be at this point with the workload be composed of full-time commissioners. Why is it that just the chair is full-time? Of course there are budget problems and so on, but we're at the point where we could do so much more and we have the full attention of X number of commissioners. Is that outrageous?

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Tony Wood: We still have 85% of Margery's time to take advantage of.

Al Butzel: It's the board of standards and appeals, it's not as important as the landmarks commission.

Mark Silberman: One could imagine there is a philosophy that is still adhered to by – I don't really know, like I said we have no metric – some percentage of the preservation world that believes that volunteer commissions are very important, that you need to have people that are not doing the job of landmark commission as a paid job, that you'll get better people if it's not paid. I think it's problematic because I think there are structural issues that follow from having a non-paid commission, and I think it's probably something that should be looked at.

Margery Perlmutter: I just want to speak to that. The city planning commissioners are paid, but they're also working full-time in their other jobs. They're paid because their time spent is recognized. I don't believe that them being paid has an impact on their decision making, it just recognizes their time. I think it's very important personally that the commissioners on all of these agencies be professionals, that they're full-time government employees. For instance, for me I'm everyday on the days that I'm not on the commission representing property owners who are confronted with the various regulatory processes. So as a result I can be empathetic to that property owner who owns a house that's got a window that was replaced 20 year ago, and how do we address the realities of it's not historically correct replacement but at the same time it's a person with limited income and so on.

I can be sympathetic also because I understand as a professional – I'm also an architect – how it is to modify a building in what's entailed and can read plans, and the other architects in the commission it's important that they do that, and the person who's in the real estate business understands what kinds of impact in real estate. It's very important that you have active working professionals who listen to working professionals make the presentations and can kind of weigh reality checks.

Tony Wood: We're down to the final round of Jeopardy here, we have about seven minutes left. So anyone who is dying to ask a question, please demonstrate vociferously so we give you a chance to do so. I see a hand at the back?

Male Speaker: To go back to Frank Sanchis's question, the City of Los Angeles uses the California Environmental Quality Act as a tool to enhance landmark review. We could have in New York, under state and federal law and city law, a memorandum of understanding as how to use to the Environmental Impact Assessment Procedures so that state and federal agencies would have to listen to the landmark commission's advice as a matter of expertise not as a matter of a mandatory decision. I've always wondered by the city doesn't choose to engage – the city adopted an environmental impact assessment law before any other entity after Congress before the State of New York. We copied the California law when we adopted our law in 1978.

You could integrate each of this environmental impact assessment reviews through a memorandum of understanding, and we'll just take a little inter-agency negotiation. You might get to Otis' point that you could have some judicial review of that. If the citizens thought the reviews were inadequate, because there's a large body of case law on that. That's a soft question for Al Butzel.

Al Butzel: I believe – and Mark has to talk to this – that the LPC does not regard itself as

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subject to the environmental impact, environmental EIS laws, and therefore maybe would be difficult for them to integrate anyone into the present.

Mark Silberman: Yes, the commission has taken the position legally and had been adopted that the commission is not subject to environmental quality review acts because as Professor Kayden mentioned earlier, we view our decision making on very narrow grounds. It's set forth in the statues, it's about architecture, it's about the things that make a particular designation significant, and that has been upheld. So we are deemed to be ministerial in our review.

Al Butzel: Which is just making my case when he starts talking about outside considerations like equity and that sort of thing, it must be illegal, right?

Mark Silberman: I don't believe I've used equity today.

Al Butzel: I used the word equity to give you credit. (laughter)

Male Speaker: In this discussion that Nick and I are asking about, if you are taking the position or if the position is that is not subject to this, is it worth taking time of the commission and commissioners in talking about federal and state buildings if in the end nothing comes to?

Mark Silberman: Absolutely it is because I think that the process, just as it was with the original landmarks law where we were advisory on city owned projects, politics matters. These are meaningful interaction. That doesn't mean they agree with everything that we say or we do, which is fine. But I think that when we deal with the federal, the parks department or the park service, or when we deal with sort of larger state authorities and stuff, they do listen and they do sometimes adopt, not every time, and sometimes it's a problem. But I think dragging them before the landmarks commission and having them sort of explain what they want, hearing the questions and the criticisms can have a salutary impact on some of these things.

I mean I think the TWA Terminal example was I think – again, is it the outcome everyone wanted? No. But I think the fact that they have to come to the landmarks commission and defend their view and explain it mattered and the project that resulted was better for it.

Tony Wood: I think on that note we should all thank this panel, it's been really terrific, even the commentary. We are in to our second coffee break, I think they just pulled it. We'll start again promptly in 12 minutes.

- End of Recording -