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August 28, 2019

Louisville Metro Historic Landmarks and Preservation Districts Commission
Metro Louisville Planning and Design
444 S. 5th Street
Louisville, KY 40202

Commission Members:

Based on the historic and architectural significance of the property as conveyed by its listing in the National Register of Historic Places, I am writing in support of local landmark designation for the Holy Name complex in South Louisville.

It is the Kentucky Heritage Council's mission to preserve and encourage rehabilitation of historic buildings and landscapes throughout the Commonwealth in partnership with local, state, and federal agencies as well as with elected officials, community leaders, and grassroots organizations and individuals interested in preserving historic resources, such as those advocating on behalf of Holy Name.

As you are aware, the Holy Name complex including church, rectory, convent, and school were listed in the National Register in 1982 for architectural significance. According to the nomination, "The Holy Name complex is one of Louisville's finest collections of religious structures. Included in the complex are excellent examples of the Romanesque, Gothic and Classical Revival styles. The church, designed by J.J. Gaffney, is the most outstanding of the four buildings, with interior Byzantine elements of the highest quality. Glazed brick is used on three of the structures, which aesthetically unites the complex."

Given similar design motifs, it is believed the rectory was also designed by Gaffney, a prominent local architect working from the early to mid-20th century, with the convent designed by architect Thomas J. Nolan assisted by contractors Sullivan and Cozart, all professionals and firms with a proud legacy associated with the history of development of Louisville.

The National Register is administered by the National Park Service and is the federal government's official list of historic places deemed worthy of preservation. The program was authorized by the National Historic Preservation Act of 1966 as a means to coordinate and support public and private efforts to identify, evaluate, and protect America's broad array of historic and archeological resources.

While designation is honorary, listing does offer some protections to these resources only when a historic site is potentially threatened by a federally funded project. Otherwise, the program imposes no restrictions on property owners.

As the state historic preservation office, we serve as a liaison with both federal and local governments to administer programs that assist communities and property owners with preserving Kentucky's built environment. In doing so, we also work with many religious, nonprofit, and community-based groups to promote and encourage the use of tools such as state and federal historic rehabilitation tax credit incentives, provide technical assistance, and bring other resources such as grant programs and mitigation agreements to bear in order to achieve positive outcomes.

As has been pointed out in various reports, because the Holy Name complex is National Register-listed, any investment by the church in rehabilitation could qualify for Kentucky Historic Preservation Tax Credits of up to 20% per project, an incentive that could be sold since the Archdiocese of Louisville is a nonprofit institution.

Should the Archdiocese of Louisville choose to sell these buildings and use the proceeds to invest in a new Catholic Charities site elsewhere, a new owner interested in converting these structurally solid buildings into some other community use could also additionally qualify for Federal Historic Rehabilitation Tax Credits of up to 20% of the total cost of rehabilitation, should any redevelopment be income-producing or commercial in nature.

I'd like to commend all those who worked to get enough signatures to bring this petition for landmarking before the Historic Landmarks and Preservation Districts Commission. This shows their dedication to not only preserving the history and historic fabric that makes your neighborhood unique, but also the stories these buildings have to tell. Most important, this process buys time to explore other potential options that we hope may result in some of the buildings being preserved.

If it is not possible for all three proposed for demolition to be saved, perhaps there is room for considering a revised plan where some of the structures could be redeveloped. Doing so could demonstrate another type of community service on the part of the church by maintaining the character and feel of the neighborhood, and meeting the needs of the faithful who live in close proximity and wish to see them preserved. Reuse also eliminates wastefulness and is a more environmentally responsible solution that would save natural materials such as glazed brick, stone and metal features, and old-growth wood from destruction.

The Kentucky Heritage Council has architects on staff whose role is to provide technical assistance to building owners seeking options for preservation and reuse. Please let us know how we can assist any efforts to preserve these buildings, and the legacy of the Holy Name church and church community, for future generations.

Sincerely,

Craig A. Potts
Executive Director and State Historic Preservation Officer

TIPS FROM THE EXPERTS # 2

Effectively Addressing ECONOMIC HARDSHIP in Local Ordinances and Procedures

- Do not consider economic hardship arguments during the designation process. Economic impact is only speculative until a property owner makes a specific proposal. Further, it clouds the issue of significance, the primary concern for designation.
- In considering economic hardship, it is crucial that the preservation commission focus on the property and not the particular economic circumstances of the owner. While the impact on a "poor widow" may appear unreasonable, the inquiry should be whether the restrictions prevent the owner from putting the property to a reasonable economic use or realizing a reasonable profit.
- Put the burden of proof on the property owner, not the commission.
- Evidence of cost or expenditures alone, is not enough. The commission should require information that will assist it to determine whether application of the ordinance will deny reasonable use of the property or prevent reasonable economic return. The evidence should address the property "as is" and if rehabilitated (which may mean just bringing it up to code). Some other factors to consider include: purchase price, assessed value and taxes, revenue, vacancy rates, operating expenses, financing, current level of return, efforts to find alternative use of the property, recent efforts to rent or sell the property, availability of economic incentives or special financing (such as tax benefits, low-interest loans, grants, or transferable development rights).
- Additional consideration may be appropriate in assessing the impact on non-profit organizations such as the ability to carry out their charitable or religious purposes (although a non-profit is not entitled to relief simply because it could otherwise earn more money).
- Determine who caused the hardship. If the owner has neglected the building, paid too much for the property, or is just gambling on getting a permit in spite of knowing the ordinance provisions, he may have created his own hardship. Government isn't required to bail an owner out of a bad business decision or speculative investment.
- Commissions should consider bringing in their own expert witnesses where necessary. If the matter goes to court, the decision will be based on evidence in the record. Local government housing, engineering, and building inspection staff may provide useful testimony.

For a more detailed analysis of economic hardship provisions see Julia Miller 1996 and 1999 in the Sources of Information.

Assessing Economic Hardship Claims
under historic preservation ordinances

By Julia Miller

Historic preservation ordinances in effect around the country often include a process for administrative relief from preservation restriction in situations of "economic hardship." Under typical economic hardship procedures, an applicant may apply for a "certificate of economic hardship" after a preservation commission has denied his or her request to alter or demolish a historic property protected under a preservation ordinance. In support of an application for relief on economic hardship grounds, the applicant must submit evidence sufficient to enable the decision making body to render a decision. The type of evidence required is generally spelled out in preservation ordinances or interpreting regulations. The burden of proof is on the applicant.

The exact meaning of the term "economic hardship" depends on how the standard is defined in the ordinance. Under many preservation ordinances economic hardship is defined as consistent with the legal standard for an unconstitutional regulatory taking, which requires a property owner to establish that he or she has been denied all reasonable beneficial use or return on the property as a result of the commission's denial of a permit for alteration or demolition.

Requests for relief on economic hardship grounds are usually decided by historic preservation commissions, although some preservation ordinances allow the commission's decision to be appealed to the city council. In some jurisdictions, the commission may be assisted by a hearing officer. A few localities have established a special economic review panel, comprised of members representing both the development and preservation community.

Economic Impact

In acting upon an application for a certificate of economic hardship, a commission is required to determine whether the economic impact of a historic preservation law, as applied to the property owner, has risen to the level of economic hardship. Thus, the first and most critical step in understanding economic hardship is to understand how to evaluate economic impact.

Commissions should look at a variety of factors in evaluating the economic impact of a proposed action on a particular property. Consideration of expenditures alone will not provide a complete or accurate picture of economic impact, whether income-producing property or owner-occupied residential property. Revenue, vacancy rates, operating expenses, financing, tax incentives, and other issues are all relevant considerations. With respect to income-producing property, economic impact is generally measured by looking at the effect of a particular course of action on a property's overall value or return. This approach allows a commission to focus on the 'bottom line' of the transaction rather than on individual expenditures.

In addition to economic impact, the Supreme Court has said that "reasonable" or "beneficial use" of the property is also an important factor. Thus, in evaluating an economic hardship claim based on the constitutional standard for a regulatory taking, commissions will need to consider an owner's ability to continue to carry out the traditional use of the property, or whether another viable use for the property remains. In Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978), the landmark decision upholding the use of preservation ordinances to regulate historic property, the Supreme Court found that a taking did not arise because the owner could continue to use its property as a railroad station.

The Supreme Court has also said that the applicant's "reasonable investment-backed expectations" should be taken into consideration. Although the meaning of this phrase has not been delineated with precision, it is clear that "reasonable" expectations do not include those that are contrary to law. Thus, an applicant's expectation of demolishing a historic property subject to a preservation ordinance at the time of purchase (or subject to the likelihood of designation and regulation) may not be considered "reasonable." Also pertinent is whether the owner's objectives were realistic given the condition of the property at the time of purchase, or whether the owner simply overpaid for the property. Under takings law, government is not required to compensate property owners for bad business decisions. Nor is the government required to guarantee a return on a speculative investment.

Commissions may also be able to take into account whether the alleged hardship is "self created." Clearly relevant is whether the value of the property declined or rehabilitation expenses increased because the owner allowed the building to deteriorate.

Application of the takings standard in the context of investment or income-producing property is usually fairly straightforward. The issue can be more complex, however, in situations involving hardship claims raised by homeowners. In the context of homeownership, it is extremely difficult for an applicant to meet the standard for a regulatory taking, that is, to establish that he or she has been denied all reasonable use of the property. When a commission insists that houses be painted rather than covered with vinyl siding, and windows be repaired rather than replaced, the applicant can still live in the house. The fact that these repairs may be more costly is not enough. Even if extensive rehabilitation is required, the applicant must show that the house cannot be sold "as is," or that the fair market value of the property in its current condition plus rehabilitation expenditures will exceed the fair market value of the house upon rehabilitation. See City of Pittsburgh v. Weinberg, 676 A.2d 207 (Pa.1996). It is also important to note that "investment-backed expectations" are different in the context of home ownership, owners often invest in home improvements or renovations without the expectation of recouping the full cost of the improvement in the form of increased property value.

In addressing hardship claims involving historic homes, commissions must be careful to be objective and consistent in their approach. Otherwise, a commission may undermine the integrity of its preservation program and raise due process concerns as well. Ideally, grant money, tax relief, and other programs should be made available to historic homeowners who need financial assistance.

Special standards for economic hardship may apply to nonprofit organizations. Because these entities serve charitable rather than commercial purposes, it is appropriate to focus on the beneficial use of their property, rather than rate of return, taking into account the particular circumstances of the owner (i.e., the obligation to serve a charitable purpose). In such situations, hardship analysis generally entails looking at a distinct set of questions, such as: the organization's charitable purpose, whether the regulation interferes with the organization's ability to carry out its charitable purpose, the condition of the building and the need and cost for repairs, and whether the organization can afford to pay for the repairs, if required. (Note, however, that while consideration of financial impact may be appropriate, a nonprofit organization is not entitled to relief simply on the basis that it could raise or retain more money without the restriction.)

The Proceeding

Under a typical hardship process, the applicant will be required to submit specific evidence in support of his or her claim. Once a completed application has been filed, a hearing will be scheduled, at which time the applicant generally presents expert testimony in support of the economic hardship claim on issues such as the structural integrity of the historic building, estimated costs of rehabilitation, and the projected market value of the property after rehabilitation. Once the applicant has presented its case, parties in opposition or others may then present their own evidence. The commission may also bring in its own expert witnesses to testify. As noted above, the burden of proof rests on the property owner.

In hearing economic hardship matters, commissions must be prepared to make a legally defensible decision based on all the evidence presented. In the event of conflicting expert testimony, which is often the case in economic hardship proceedings, the commission will need to weigh the evidence, making specific findings on the relative credibility or competency of expert witnesses.

In evaluating the evidence, the commission should ask itself five distinct questions:

1. Is the evidence sufficient? Does the commission have all the information it needs to understand the entire picture, or is something missing. The application is not complete unless all the required information has been submitted. If additional information is needed, ask for it.
2. Is the evidence relevant? Weed out any information that is not relevant to the issue of economic hardship in the case before you. Commissions may be given more information than they need or information that is not germane to the issues, such as how much money the project could make if the historic property were demolished. The property owner is not entitled to the highest and best use of the property.
3. Is the evidence competent? Make an assessment as to whether the evidence establishes what it purports to show.
4. Is the evidence credible? Consider whether the evidence is believable. For example, ask whether the figures make sense. A commission will need to take into consideration the source of the evidence and its reliability. (If the evidence is based on expert testimony, the commission should determine whether the expert is biased or qualified on the issue being addressed. For example, it may matter whether

a contractor testifying on rehabilitation expenditures actually has experience in doing historic rehabilitations.)
5. Is the evidence consistent? Look for inconsistencies in the testimony or the evidence submitted. Request that inconsistencies be explained. If there is contradictory evidence, the commission needs to determine which evidence is credible and why.

In many instances the applicant's own evidence will fail to establish economic hardship. However, in some situations, the question may be less clear. The participation of preservation organizations in economic hardship proceedings can be helpful in developing the record. Commissions should also be prepared to hire or obtain experts of their own. For example, if a property owner submits evidence from a structural engineer that the property is structurally unsound, the commission may need to make an independent determination, through the use of a governmental engineer or other qualified expert, as to the accuracy of that information. It may be impossible to evaluate the credibility or competency of information submitted without expert advice.

The record as a whole becomes exceedingly important if the case goes to court. Under most standards of judicial review, a decision will be upheld if it is supported by substantial evidence. Thus, in conducting administrative proceedings, it is important that evidence provides a true and accurate story of the facts and circumstances and that the commission's decision is based directly on that evidence.

EVIDENTIARY CHECKLIST

The following checklist may serve as a useful tool for local commissions and other regulatory agencies considering economic hardship claims:

1. Current level of economic return:
- Amount paid for the property, date of purchase, party from whom purchased, and relationship between the owner of record, the applicant, and person from whom property was purchased,
- Annual gross and net income from the property for the previous three years; itemized operating and maintenance expenses for the previous three years, and depreciation deduction and annual cash flow before and after debt service, if any, during the same period,
- Remaining balance on the mortgage or other financing secured by the property and annual debt-service, if any, during the prior three years,
- Real estate taxes for the previous four years and assessed value of the property according to the two most recent assessed valuations,
- All appraisals obtained within the last two years by the owner or applicant in connection with the purchase, financing, or ownership of the property,
- Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other,
- Any state or federal income tax returns relating to the property for the last two years.

2. Any listing of property for sale or rent, price asked, and offers received, if any within the previous two years, including testimony and relevant documents regarding:
- Any real estate broker or firm engaged to sell or lease the property,
- Reasonableness of price or rent sought by the applicant,
- Any advertisements placed for the sale or rent of the property.

3. Feasibility of alternative uses for the property that could earn a reasonable economic return:
- Report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any buildings on the property and their suitability for rehabilitation.
- Cost estimates for the proposed construction, alteration, demolition, or removal, and an estimate of any additional cost that would be incurred to comply with the requirements for a certificate of appropriateness,
- Estimated market value of the property: (a) in its current condition, (b) after completion of the proposed alteration or demolition, and (c) after renovation of the existing property for continued use,

4. Any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property.

5. Knowledge of landmark designation or potential designation at time of acquisition.

6. Economic incentives and/or funding available to the applicant through federal, state, city, or private programs. ■

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PRESERVATION LAW REPORTER

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Providing for Economic Hardship Relief in the Regulation of Historic Properties

by Julia H. Miller*

This article is the first in a three-part series on the issue of economic hardship. Part 1, published below, provides an overview on the economic hardship review process, highlighting basic questions such as why should economic hardship provisions be included in a historic preservation ordinance, and what does "economic hardship" mean. Part 2, to be published early next year, will discuss alternative standards for measuring economic hardship and offer guidance on how to evaluate those standards, with particular emphasis on the constitutional standard for a regulatory taking. Finally, Part 3, to be published in mid-1997, will focus on the process for considering economic hardship claims. It will explore fundamental issues such as who should consider economic hardship claims, the importance of building a record, and who has the burden of proof.

PART 1. Administrative Relief From Economic Hardship: An Overview

Preservation of historic resources, whether an individual building, historic neighborhood, or archaeological site, has come to be viewed as an important community objective. In an era marked by rapid change, the need to protect familiar buildings and other visual links to the past has never been more apparent. Historical, architectural, cultural and archaeological structures and sites play a key role in helping a community define what it is, and what it would like to be.

While alternative forms of preservation may exist, protection of historic resources is primarily achieved by regulating privately-owned property through local ordinances. These laws generally provide for the identification or designation of important resources, accompanied by specific controls limiting how those properties may be changed. Permission to alter or demolish designated resources is generally conferred by a historic preservation commission or other review board in the form of a

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"certificate of appropriateness."[1]

Protecting historic resources has consistently been upheld as a legitimate use of governmental authority, commonly referred to as "the police power."[2] In *Penn Central Transportation Co. v. City of New York*, the U.S. Supreme Court observed that protection of historic, architectural, and culturally significant structures and areas through historic preservation controls is "an entirely permissible governmental goal."[3] Numerous studies have shown that the regulation of historic properties through local ordinances often benefits individual communities through increased property values, tourism, and overall economic stability.[4]

On the other hand, historic preservation laws, as with other forms of land use regulation, directly affect individual property owners. Historic preservation laws generally impose restrictions on changes to property, which can result in increased expenditures or foregone opportunities. While many historic property owners benefit from local preservation laws, in some cases the impact of a specific action may be so severe that administrative relief should be provided. This is especially true when a constitutional "taking" might otherwise result.[5]

This article focuses on the situation where the impact of historic preservation controls on a particular piece of property is unfairly burdensome. It attempts to explain how local communities can address hardship claims, and at what point relief from historic preservation controls should be made available. It explores a range of issues such as: how to assess the economic impact of the regulation on the property; when does economic impact result in "economic hardship;" how should "economic hardship" be defined; how and when should economic hardship claims be considered; who has the burden of proving hardship; and what opportunities should be made available to the community to alleviate hardship once established.

[1]*See, generally*, Tersh Boasberg, Thomas A. Coughlin and Julia H. Miller, *Historic Preservation Law and Taxation*, Ch. 7 (Matthew Bender 1986); Richard A. Roddewig, "Preparing a Historic Preservation Ordinance," *PAS Report No. 374* (American Planning Ass'n 1983).

[2]A survey of state court decisions in this area is set out at 10 PLR 1117 (1991).

[3]438 U.S. 104, 129 (1978).

[4]*See, generally*, Donovan D. Rypkema, *The Economics of Historic Preservation: A Community Leader's Guide* (National Trust for Historic Preservation 1994); Government Finance Research Center; *Government Finance Research Center, The Economic Benefits of Preserving Community Character: Case Studies from Fredericksburg, Virginia and Galveston, Texas* (National Trust for Historic Preservation 1991); and *Virginia's Economy and Historic Preservation: The Impact of Preservation on Jobs, Business and Community* (Preservation Alliance of Virginia 1995).

[5]Note, however, that the U.S. Supreme Court stated in *Penn Central* that the fact that a landmarks law may have "a more severe impact on some landowners than others" does not mean, "in itself . . . that the law effects a 'taking.'" 438 U.S. at 133.

I. Affording Administrative Relief

All property owners are protected from overly burdensome regulations through the Fifth Amendment to the U.S. Constitution, made applicable to the states under the Fourteenth Amendment (and through corresponding state provisions). The Fifth Amendment prohibits the taking of private property for public use without just compensation.[6] Commonly referred to as the "takings clause" or the "just compensation clause," this provision has been interpreted by the U.S. Supreme Court to require compensation when a regulation goes so far as to deny an owner the "economically viable use of his property."[7]

Economic hardship provisions provide assurance to property owners that relief is available in situations where the impact of a particular action proves to be especially harsh.

So why should relief from "economic hardship" be provided at the administrative level? Despite the protection afforded individual property owners through the federal and state constitutions, a steadily increasing number of jurisdictions are opting to incorporate "economic hardship procedures" into individual laws, including historic preservation ordinances. The reasons for this are fairly straightforward.

First, administrative proceedings addressing economic hardship concerns help to avoid litigation. They offer an opportunity for communities and property owners to hammer out the issues and resolve any differences in a less formal and inherently less expensive forum that is not hindered by rules of evidence and procedural limitations. Economic hardship provisions enable communities to address fundamental issues of fairness on an individual basis.

A second and related reason is that economic hardship review helps to assuage concerns expressed by property owners over the potentially adverse impact of historic preservation regulation. Economic hardship provisions provide assurance to property owners that relief is available in situations where the impact of a particular action proves to be especially harsh.

Economic hardship review also provides communities with the opportunity to put alternative plans together. In the event that a property owner is able to demonstrate economic hardship, a community can explore alternative actions to alleviate that hardship. A community may be able to provide relief through tax incentives, zoning variances, and other means. Demolition would proceed only if an acceptable alternative could not be

[6]The Fifth Amendment states: "[N]or shall private property be taken for public use, without just compensation."

[7]*Agins v. City of Tiburon*,447 U.S. 255, 260 (1980); *First English Evangelical Lutheran Church v. County of Los Angeles*, 107 S. Ct. 2378, 2388 (1987). For a detailed discussion of the takings standard articulated by the U.S. Supreme Court, see J. Kayden, "Historic Preservation and the New Takings Cases; Landmarks Preserved," 14 PLR 1235 (1995).

developed.[8]

Fourth, consideration of hardship concerns at the administrative level can enhance a local community's ability to protect individual properties if challenged in court. Courts generally afford review boards considerable deference in reviewing administrative decisions. Under most administrative review acts, judicial review is limited to the record made at the administrative hearing, and a decision must be upheld if supported by "substantial evidence."[9] If there is a reasonable basis in the record for the decision then it must be permitted to stand.[10]

Correspondingly, economic hardship review helps to limit the number of cases ultimately decided under constitutional grounds. The general rule of thumb is that takings claims may not be considered until a decision is final.[11] Thus, a property owner is required to utilize the economic hardship process before challenging the constitutionality of a particular action in court.[12]

This is important for at least two reasons. First, economic hardship review at the administrative level can help to avoid the payment of compensation, assuming that a taking would otherwise have been found if the issue had been litigated in court. Second, it allows reviewing courts to resolve challenged actions on statutory rather than constitutional grounds, thereby limiting the impact of potentially damaging decisions.[13]

II. Assessing Economic Impact

Assuming that a process for considering economic hardship should be made available, the question then becomes: at what point do the economic *impacts* of local preservation laws rise to the level of economic *hardship*? The first and most critical step in answering this question is to understand fully what is meant by "economic impact." In other words, how does one measure the true impact of a particular action on a particular piece of property in objective terms?

Economic impact is generally measured by looking at the effect of a particular course of action on a property's overall value or return.

Experts in this area most frequently look at the individual factors addressed by real estate developers, appraisers, and lenders in valuing property or a particular investment. Consideration of expenditures alone will not provide a complete or accurate picture of the overall impact of a specific course of action. Revenue, vacancy rates, operating expenses, financing, tax incentives and other issues are all relevant considerations.[14]

Economic impact is generally measured by looking at the effect of a particular course of action on a property's overall value or return.[15] Alternative courses of action are then evaluated by comparing anticipated "rates of return." This methodology allows the administrative review body to focus on the "bottom line" of a proposed transaction rather than individual expenditures. It also provides a useful gauge for measuring the appropriateness of a particular action by comparing the expected rate of return with long-term investment rates, such as the going rate for U.S.

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[8]In Chicago, for example, a finding of economic hardship must be accompanied by a plan to relieve economic hardship. Sections 21-88 through 92 of the Chicago Municipal ordinance provides that the plan—

> may include, but is not limited to, property tax relief, loans or grants from the City of Chicago or other public or private sources, acquisition by purchase or eminent domain, building code modifications, changes in applicable zoning regulations including a transfer of development rights, or relaxation of provisions of this ordinance sufficient to allow reasonable beneficial use or return from the property.

If the economic hardship relief plan developed by the Chicago Landmarks Commission, and reviewed and modified, as necessary, by the Finance Committee of the City Council, is not approved within 30 days, the plan will be deemed denied and the applicant's permit will be approved.

[9]Most jurisdictions require either the application of a "rational basis" or "substantial evidence" standard of review. However, in practice, the distinction between the two standards are often blurred.

[10]*See, e.g. International College of Surgeons v. City of College*, No. 91 C 1587 (N.D. Ill. Dec. 30, 1994)[14 PLR 1087 (1995)], in which a federal district court, addressing both a takings claim and economic hardship claim, reviewed the takings claim under a *de novo* standard of review and reviewed the economic hardship claim in accordance with the standard of review set forth under the Illinois Administrative Review Act. This standard asks whether the contested action was "arbitrary or capricious" or "against the manifest weight of the evidence." *See, also, Kalorama Heights Limited Partnership v. District of Columbia Department of Consumer and Regulatory Affairs*, 655 A.2d 865 (D.C. App. 1995)[substantial evidence supported the local agency's determination that the owner had failed to establish "unreasonable economic hardship."]

[11]"As applied" takings claims are not ripe for review until all avenues of administrative relief have been pursued. *See, e.g., Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985) and *MacDonald, Sommer and Frates v. County of Yolo*, 477 U.S. 340 (1986).

[12]Economic hardship provisions can also help to obviate facial challenges since a permit must be granted under the ordinance if the owner would be denied any viable economic use for his or her property.

[13]In *BSW Development Group v. Dayton Board of Zoning Appeals*, No. 13218 (Ohio Ct. App. May 7, 1993)[12 PLR 1065], the Ohio Court of Appeals elected to resolve a challenge to the denial of permission to demolish a historic warehouse on administrative rather than constitutional grounds, stating that "it is well established that a court is not permitted to pass upon the constitutionality of a statute unless such a determination is necessary to its decision."

[14]For a detailed discussion on the factors which are typically considered in evaluating real estate opportunities, *see* Donovan Rypkema, "The Economics of Rehabilitation," *Information Series* No. 53 (National Trust for Historic Preservation 1991).

[15]Property value is derived from four sources: cash (net proceeds from rents after expenses), appreciation (ability to sell property for amount greater than paid), amortization (reduction of debt/increased equity in property), and tax savings (through mortgage deductions, depreciation, deferred income, tax credits and other incentives available to historic property owners). *Id.* at 1.

Treasury bonds.[16]

"Reasonable" or "beneficial" use is also a critical factor. Historically, economic impact has been measured in such situations by looking at the owner's ability to continue and carry out the traditional use of the property[17] or whether a "viable use" for the property remains.[18] Thus, for example, it may be difficult to establish economic hardship in situations where a house may continue to serve as a personal residence, or be converted into office space.[19]

A number of other factors frequently are taken into consideration in addressing the issue of economic impact in the context of historic property regulation. It may be appropriate to consider what efforts have been undertaken to sell or rent the property at issue or the feasibility of alternative uses.[20] The owner's prior knowledge of the restrictions[21] (actual or constructive) are sometimes factored in along with the reasonableness of the owner's "investment-backed expectations."[22] The fact that the hardship alleged has been "self-created" may also be deemed relevant.[23]

Special considerations also come into play in assessing the impact of a particular regulatory action on non-profit organizations. Because these entities serve charitable rather than commercial purposes, it becomes appropriate to look at beneficial use rather than reasonable return and to take into consideration the individual circumstances of the property owner. For example, a hardship analysis will generally entail looking at a distinct set of factors such as: what is the organization's charitable purpose, does landmark designation interfere with the organization's ability to carry out that purpose, what is the condition of the building and the need and cost for repairs, and finally, can the organization afford to pay for the repairs, if required.[24] Note, however, that while consideration of the financial impact of a particular action on a non-profit organization may be appropriate, a non-profit organization is not entitled to relief simply on the basis that it would otherwise earn more money.[25]

Economic hardship is not synonymous with economic impact.

III. Defining Economic Hardship

Once the nature and degree of the impact is understood, the next step is to determine whether that impact is so severe that it amounts to "economic hardship." Economic hardship is not synonymous with economic impact. The term economic hardship is purely legal. Its meaning is derived from statutes and cases interpreting those statutes. In some jurisdictions the term "economic hardship" may be the equivalent of the

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[16]Richard J. Roddewig, "Responding to the Takings Challenge," *PAS Report No. 416* (National Trust for Historic Preservation/American Planning Ass'n 1989), pp. 16-17.

[17]In *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 136 (1978), the fact that the owner could continue to use the property as a railroad terminal weighed heavily in the court's analysis on the issue of whether New York's denial of permission to construct an office tower on the landmarked building resulted in an unlawful taking.

[18]*See, e.g., Shubert Organization, Inc. v. Landmarks Preservation Commission*, 570 N.Y.S.2d 504 (1991), *appeal dismissed*, 78 N.Y.2d 1006 (1991), *cert. denied*, 112 S.Ct. 2289 (1992)[11 PLR 1071]("no prohibition against [the owners] receiving economic benefit from continuing use of the buildings as theaters.")

[19]The issue can become more complicated, for example, in situations where the condition of the property is so poor that extensive renovations are required to make the property habitable. In such instances, it may be necessary to consider both "economic feasibility" and "viable use" in evaluating a hardship claim. For example, in *City of Pittsburgh Historic Review Commission v. Weinberg*, 676 A.2d 207 (Pa. 1996)[15 PLR 1086], the owners (albeit unsuccessfully) had sought to overturn a commission decision denying permission to demolish a historic house on the grounds that the cost of renovation would exceed the fair market value of the house.

Note also that some communities have been successful in alleviating potential economic hardship concerns by rezoning historic residential property to allow limited office use or by preventing property from falling into disrepair through "demolition by neglect" provisions. For further discussion on this issue, see "Oliver Pollard, "Minimum Maintenance Provisions: Preventing Demolition by Neglect," 8 PLR 2001 (1989).

[20]*See, e.g., Maher v. City of New Orleans*, 516 F.2d 1051 (5th Cir. 1975); *Pittsburgh Historic Review Commission v. Weinberg*, 676 A.2d 207 (Pa. 1996)[15 PLR 1086].

[21]*Pittsburgh Historic Review Commission v. Weinberg*, 676 A.2d 207 (Pa. 1996)[15 PLR 1080]; *Kalorama Heights Limited Partnership v. District of Columbia Department of Consumer and Regulatory Affairs*, 655 A.2d 865 (D.C. App. 1995)[14 PLR 1197].

[22]*Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124 (1978).

[23]*Pittsburgh Historic Review Commission v. Weinberg*, 676 A.2d 207 (Pa. 1996)[15 PLR 1085](owner paid more than fair market value for property and failed to obtain estimate for renovation costs prior to purchase.)

[24]Section 25-309a(2)[c] of New York City's landmark preservation ordinance, for example, provides that hardship may be established by demonstrating, among other things, that the structure at issue "has ceased to be adequate, suitable, or appropriate for use for carrying out both (1) the purposes to which it had been devoted and (2) those purposes to which it had been devoted when acquired unless such owner is no longer engaged in pursuing such purposes." The judicial equivalent of this statutory standard was upheld by the U.S. District Court for the Southern District of New York in *Rector, Wardens, and Members of the Vestry of St. Bartholomew's Church v. City of New York*, 728 F. Supp. 958 (S.D.N.Y.), *aff'd*, 914 F.2d 348 (2nd Cir. 1990), *cert. denied*, 111 S.Ct. 1103 (1991).

[25]*See, e.g. Rector, Warden, and Members of the Vestry of St. Bartholomew's Church v. City of New York*, 914 F.2d 348 (2nd Cir. 1990)[10 PLR 1041].

constitutional standard for a regulatory taking.[26] In other jurisdictions, the term may mean something entirely different.[27] In a few jurisdictions, a term other than "economic hardship" may be used,[28] but in all situations it is important to understand that economic hardship applies to the property not the property owner.[29] The particular circumstances of the owner independent of the property in question should be irrelevant to the question of whether the property at issue can realize a reasonable return on investment, or whether a viable use of the property remains.[30]

The term "economic hardship," or its equivalent, can mean whatever a local jurisdiction has prescribed it to mean, subject to state enabling law.[31] As a general rule, however, a high showing of hardship is required

[26]In Chicago, for example, an applicant may apply for an economic hardship exception on the basis that the denial of the permit to construct, alter or demolish property protected under the ordinance will result in "the loss of all reasonable and beneficial use of or return from the property." Chicago, Ill. Municipal Code § 21-68.

[27]In New York City, the term "reasonable return" is defined as "a net annual return of six per centum of the valuation of an improvement parcel" where "net annual return" includes "the amount by which the earned income yielded by the improvement parcel during a test year exceeds the operating expenses of such parcel during such year." Mortgage interest and amortization is specifically excluded from the calculation, but a 2 percent allowance for depreciation of the assessed value of the property may be included, unless the property in question has already been fully depreciated. The test year is generally the most recent full calendar or fiscal year. *See generally*, New York City Landmarks Preservation Ordinance § 25-302v.

[28]For example, Portland, Maine, provides relief from "economic hardship" (Portland City Code, ch. 14, art. IX § 14-660), while St. Louis, Missouri, affords protection against "unreasonable beneficial use or return." St. Louis, Mo. Ordinance § 24.12.440.

[29]Note, however, that with respect to non-profit organizations, an alternative standard may apply, making it appropriate to look at the special circumstances of the property owner.

[30]Local jurisdictions may provide alternative forms of relief, unrelated to "economic hardship" claims, to assist property owners in individual cases where maintenance of historic properties imposes exceptional burdens on a property owner with special needs or economic circumstances. Relief, for example, may be provided through direct financial aid, "in kind" assistance, or income or property tax abatement. For example, it may be appropriate to provide an elderly historic homeowner with assistance in painting or otherwise maintaining his or her property.

[31]The enabling statute for local landmark ordinances in Illinois provides, for example:

> The denial of an application for a building demolition permit by reason of the operation of this Division, or the denial of an application for a building permit to add to, modify, or remove a portion of any building by reason of the operation of this Division, or the imposition of any regulation solely by reason of the provisions of this Division . . . shall not constitute a taking or damage for a public use of such property for which just compensation shall be ascertained and paid, unless the denial of a permit application or imposition of a regulation, as the case may be, deprives the owner of all reasonable beneficial use or return. 24 Ill. Rev. Stat. § 11-48.2-5.

to justify overriding a commission determination. The impact must be substantial.[32] Otherwise, the application of the historic preservation ordinance could become administratively infeasible, and the underlying objectives of the preservation ordinance—to save historic resources—would not be met.

As a result, hardship claims generally arise only when permission for major alterations or the demolition of historic property has been denied.[33] While lesser alterations may have an economic impact on a property owner (aluminum siding, rear addition, re-roofing), it is unlikely that the resulting impact will rise to the level of a legally cognizable economic hardship.

IV. Other Miscellaneous Issues

A number of other issues relate to the question of economic hardship, apart from the issue of what constitutes economic hardship. For example, when should economic hardship claims be considered and upon which party should the burden of proof lie? Set forth below is a brief overview of some of the concerns raised in addressing these issues. Further discussion will follow under Part 3 of this article, to be published in 1997.

While property owners often raise economic issues at the time of designation, communities should resist the temptation to consider economic hardship at that time.

Timing. Economic hardship claims may arise at any time, but when should they be considered? While property owners often raise economic issues at the time of designation, communities should resist the temptation to consider economic hardship at that time. The reasons for this are readily apparent. The economic impact of

[32]The D.C. Court of Appeals reiterated the high burden of proof placed on property owners to establish economic hardship in *Kalorama Heights Limited Partnership v. District of Columbia Department of Consumer and Regulatory Affairs*, 655 A.2d 865 (D.C. App. 1995)[14 PLR 1197]. Quoting from *900 G Street Assocs. v. Department of Housing & Community Dev.*, 430 A.2d 344 (D.C. 1982)[1 PLR 3001], the court explained economic hardship as follows:

> [I]f there is a *reasonable* alternative economic use for the property after the imposition of the restriction on that property, there is no taking, and hence no unreasonable economic hardship to the owners, no matter how diminished the property may be in cash value and no matter if "higher" or "more beneficial" uses of the property have been proscribed.

[33]In the District of Columbia, economic hardship is considered only in the context of applications for demolition. Section 5-1005(f) of the District of Columbia's historic preservation law provides: "No permit [to demolish a historic landmark] shall be issued unless the Mayor finds that issuance of the permit is necessary in the public interest, or that failure to issue a permit will result in unreasonable economic hardship to the owner."

the regulation is purely speculative at this point. Economic hardship must be established by "dollar and cents" proof,[34] in the context of a specific proposal for alterations or demolition. Although it is occasionally argued that designation alone gives rise to immediate and real impacts, those impacts generally do not rise to the level of economic hardship under the applicable legal standards.[35]

Consideration of economic claims at the designation stage also tends to cloud the issue at hand: whether the property meets the criteria for designation. Preservation commissions or other review boards must be careful to base their decisions on actual criteria in the ordinance. Moreover, it would be a waste of administrative resources to consider economic hardship claims at each stage of the administrative review process. As will be discussed in further detail under Parts 2 and 3 of this article, economic hardship review generally requires full consideration of the economic viability of the property in its present condition, along with various alternative proposals.

The burden of establishing economic hardship generally rests on the property owner.

Many experts advise that the economic hardship issue should be addressed in a separate proceeding after a permit application has been denied on the merits. Where there is no clear differentiation of the two issues (appropriateness versus economic hardship), economic impacts that would not otherwise meet the criteria for "hardship" may improperly affect the outcome of the permit application.

Burden of Proof. The burden of establishing economic hardship generally rests on the property owner.[36] The owner must be able to demonstrate that denial of the requested action will result in "economic hardship" as defined under the prevailing statute. The evidence that must be provided in consideration of an economic hardship claim will vary from jurisdiction to jurisdiction. For example, a number of communities, such as Pittsburgh and Chicago, require a property owner to establish, among other things, that the property cannot be sold.[37] The general rule of thumb, however, is to require the submission of evidence sufficient for the reviewing body to analyze a hardship claim.[38]

Note that, while the burden of proof rests on the applicant, a reviewing court will often look at the "record as a whole" to determine if substantial evidence supports the commission's determination, or whether the commission's decision was "arbitrary or capricious." Thus, it is important to ensure that a complete record is developed.[39] Economic hardship procedures should generally provide commissions with the opportunity to develop the record by hiring its own experts[40] and hearing evidence presented by both the property owner as well as interested organizations.

Providing Relief. As previously noted above, economic hardship provisions typically offer communities a second chance to save a building by allowing the local government to develop a relief package once hardship

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[34]In consideration of a takings claim, the New York Court of Appeals stated in *De St. Aubin v. Flacke*, 68 N.Y.2d 66, 76-77, 496 N.E.2d 879, 885, 505 N.Y.S.2d 859, 865 (1986), "the property owner must show by *'dollar and cents'* evidence that under no use permitted by the regulation under attack would the properties be capable of producing a reasonable return; the economic value, or all but a bare residue of the economic value, of the parcels must have been destroyed by the regulations at issue."

[35]A number of courts have ruled that historic designation does not result in an unconstitutional taking. *See, e.g., Estate of Tippett v. City of Miami*, 645 So.2d 533 (Fla. App. 1994)(takings claim at designation stage is premature)[13 PLR 1179]; *Canisius College v. City of Buffalo*, 629 N.Y.S.2d 886 (App. Div. 1995)("failed to present evidence that the designation physically or financially prevents or seriously interferes with the carrying out of its charitable purpose"); *Shubert Organization, Inc. v. Landmarks Preservation Commission*, 570 N.Y.S.2d 504 (App. Div. 1991), *appeal dismissed*, 78 N.Y.2d 1006 (1991), *cert. denied*, 112 S.Ct. 2289 (1992)[11 PLR 1071]. (Broadway theater owners failed to carry burden of proof that landmark designation denied them "essential use of their property"); *Church of St. Paul and St. Andrew v. Barwick*, 67 N.Y.2d 510, *cert. denied*, 107 S.Ct. 574 (1986)[5 PLR 3017](claim that historic designation effects unlawful taking not ripe for review); *United Artists Theater Circuit, Inc. v. City of* Philadelphia, 635 A.2d 612 (Pa. 1993)[12 PLR 1165](historic designation is not a taking requiring compensation).

[36]*See, e.g.* West Palm Beach, Fla. Ordinance No. 2815-95 § 15(b). ("The applicant has the burden of proving by competent, substantial evidence, that the denial of a permit has caused or will cause an Unreasonable Economic Hardship to the owner of the property.")

[37]Note that some courts have ruled that a property owner must demonstrate that the property could not be sold to establish a regulatory taking. *See e.g. Maher v. City of New Orleans*, 516 F.2d 1051 (5th Cir. 1975) and *City of Pittsburgh Historic Review Commission v. Weinberg*, 676 A.2d 207 (Pa. 1996)[15 PLR 1086].

[38]This may require the submission of detailed information such as the price paid for the property, the value of the property before and after the proposed action, the amount of debt service/equity in the property; historical levels of income and expenses, the ownership structure and income tax position, the condition of the property and feasibility for renovation, and so forth. *See, generally*, Richard J. Roddewig, "Preparing a Historic Preservation Ordinance", *PAS Report No. 374* (American Planning Ass'n 1983), pp. 25-28.

[39]In *Indianapolis Historic Partners v. Indianapolis Historic Preservation Commission*, No. 49D01-9107-CCP-0813 (Ind. Sup. Ct. Sept. 15, 1992)[11 PLR 1139], for example, the court ruled that the owner had established by "clear and convincing" evidence that an office building could not "be put to any reasonable economically beneficial use for which it is, or may be reasonably adapted without approval of demolition" where the evidence in the record almost entirely reflected the owner's position. In ruling against the commission in this case, the court found the owner's experts to be especially convincing where the commission had made no attempt to refute the evidence or offer any support for its position that alternative uses may be feasible.

[40]*See, e.g.* section 15(a) of the West Palm Beach Ordinance authorizing its historic preservation board to solicit expert testimony or require that the applicant submit specific information.

has been established. The process and form of relief available to property owners upon demonstration of economic hardship will necessarily vary from property to property and from jurisdiction to jurisdiction.[41] Examples range from substantial modification of a current proposal to property tax abatement to direct financial support through a combination of grant money and favorable loans so as to make renovation an economically viable option.

[41]New York City, for example, requires the formulation of a plan for relief upon a "preliminary" finding of hardship, while Chicago provides for the development of a plan after an actual finding of hardship has been made. Some experts suggest that the New York approach places a community in a stronger bargaining position and allows more time for development of an acceptable proposal for relief. An actual finding of hardship is made only upon a determination that adequate relief is not available. Both the New York and Chicago approach will be discussed in greater detail in Part 3 of this article.

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20 August 2019

Louisville Metro Historic Landmark
and Preservation District Commission
444 South Fifth Street
Third Floor
Louisville, Kentucky 40202

Re: Holy Name Complex Local Landmark Designation

Dear Commissioners:

I am writing on behalf of Preservation Kentucky in support of a local landmark designation for Holy Name Complex at 2914 South Third Street and 2911 South Fourth Street in the South Louisville Neighborhood.

Holy Name has long been considered a landmark in Louisville's South end, second only to Churchill Downs. Holy Name Church, Rectory, Convent and School were listed in the National Register of Historic Places in 1982 for their architectural significance and **identified as "one of Louisville's finest collections of religious structures."**

Holy Name Church was designed in the Romanesque Revival style with brown glazed brick in 1912 by notable Louisville architect J. J. Gaffney, a favorite church architect during the first part of the twentieth century who was known for his extraordinary designs and frequent use of the Byzantine influence, as illustrated in the interior of **Holy Name's** sanctuary. Designed to complement the church—most likely by Gaffney—Holy Name Rectory was built in 1927. Holy Name Convent, completed in 1938, was designed by architect Thomas J. Nolan, who used orange glazed brick to aesthetically unite the Holy Name Complex. Holy Name School, originally built as the church and school in 1902, was designed by Gaffney in an eclectic Gothic Revival Style.

The architectural merits of Holy Name Complex cannot be overstated. The buildings retain their integrity in design, materials, craftsmanship, location and setting. They are significant **in their contribution to Louisville's architectural, social and religious history,** and exemplify the aesthetic and architectural heritage of Louisville. The density and continuity of the **site's footprint is important, especially as a South** Louisville landmark: It is one of the most intact mixed-use blocks in the area and appears much as it did historically.

Holy Name Complex also represents the important role of the Catholic Church in **Louisville's history, and their deep roots in both Louisville and Kentucky's heritage.** Louisville is the oldest inland diocese in the United States. The early Catholics in Kentucky were a resourceful group of pioneers, dating back to 1775, before Kentucky was admitted into the Union in 1792. Their programs and outreach ministries continue to serve communities across the Commonwealth, and they enjoy a long, venerable tradition with education and academic institutions. A local landmark designation for **Louisville's** Holy Name Complex is certainly befitting this heritage.

How we protect our historic buildings, prehistoric sites and landscapes is placemaking—the management of our spaces, our inspirations and the assets that make our communities special and contribute to our health, happiness and wellbeing. Placemaking is what makes a community special, authentic and distinctive. Keeping Louisvillians connected to their architectural heritage is critical to the identity of the city, and maintaining the integrity of our historic architecture is paramount to placemaking.

People want to experience the interesting places that we preserve, but you cannot recreate the place created by historic buildings. Once they are lost, so is a piece of our heritage and the sense of place that distinguishes Louisville.

In economics, it is the differentiated product that receives a monetary premium. If, in the long run, a community wants to attract capital to attract investment, it must differentiate itself from anywhere else. Through historic preservation a community can express its diversity, identity, individuality and the elements that make it different and distinguish it from others.

Louisville has lost far too many historic buildings—most of which could have been preserved and repurposed for new uses. Please do not contribute to the disappearance of **Louisville's heritage and deprive residents, tourists and visitors to Louisville the** opportunity to experience the treasures, assets and places that we value and that define us.

We respectfully ask that you affirm a local landmark designation for Holy Name Complex, and by doing so acknowledge the importance of and respect for our heritage, and the placemaking that makes Louisville the special community that it is.

Sincerely,

Elizabeth A. "Betsy" Hatfield
Executive Director

Darr, Savannah

From: Rachel Kennedy <RKennedy@palmernet.com>
Sent: Monday, August 26, 2019 11:54 AM
To: Darr, Savannah
Cc: Johnson, Cynthia E; mike.oleary@twc.com; mkunnecke22@hotmail.com
Subject: Local Landmark Designation_Holy Name Catholic Church Complex

Importance: High

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Dear Savannah and Cynthia,

I am writing in support of the local designation of the Holy Name Complex, located at 2914 South Third Street in Louisville. It is my professional opinion that this property, with its complement of four contributing buildings, continues to be eligible for the National Register of Historic Places (NRHP), and that it would be an excellent addition to the list of individual local landmarks. The complex's architectural significance is clearly manifest in the four remaining buildings on the property, which include the church, rectory, school, and convent. These buildings are an exceptional examples of the work of architects J.J. Gaffney and Thomas J. Nolan. As well, they are excellent examples of early twentieth century ecclesiastical architecture The buildings have more than sufficient integrity of location, setting, design, materials, workmanship, feeling, and association to convey their architectural significance. It is possible that the NRHP nomination could be amended to include the gymnasium building as well.

As I understand it, the landmarks ordinance was amended and signed by the Mayor on August 8, 2018. As I also understand it, the designation criteria was amended to include discussion of an economic hardship exemption, under 32.260(O)(f). I am unclear how economic hardship applies to a discussion of a building's (or buildings) architectural significance or designation criteria, especially since there is not a demolition request before the commission. It seems premature to discuss future plans on these instances. However, it does appear that the economic hardship discussion must be limited to exterior changes, as specified in 32.256(C). This exemption would not apply to any discussion of reuse on the interior, which is essential to this debate. If read literally, it may not be of much use to the Commission during the designation process, especially when referring to the Economic Hardship Exemption and Guidelines for Demolition, published by the Louisville Landmarks Commission. As you know, these guidelines require that evidence that the property cannot now be put to any beneficial use, which would require an assessment of interior spaces. In addition, 32.257(L) outlines a process for this which seems to imply that a demolition request needs to be submitted. I did not see a demolition request as part of this application.

In any case, I read with interest the Economic Hardship Exemption request, put forth by the applicant and do not believe they have provided sufficient evidence to support their claim. The request appears to be missing a clear discussion of plans for the building complex that would normally be provided as part of an application for exterior changes, as well as a well-documented attempt to sell or lease the buildings, or a well-conceived analysis of the state or federal tax credit incentives. The main examination appears to have been based on a standard per square feet financial analysis that does not provide sufficient detail to be of much use. It also relies heavily on architects who do not have a solid portfolio of rehabilitating historic buildings, or of using the historic preservation tax incentives. As you know, a project of this magnitude needs the expertise of architects who make preservation and reuse their main business. Perhaps the firm

they are working with now could contract with a preservation architect to assist with rehabilitation plans to move forward.

It is my opinion that these buildings are outstanding candidates for reuse, using the state or federal historic preservation tax incentives, which can provide up to a 40 percent credit on certified rehabilitation costs. As the Holy Name complex is listed in the National Register, the state tax credit incentive of up to 20 percent is available for the archdiocese to use in their plans. I would likely to strongly encourage the applicant to make an attempt to use this incentive. In my twenty plus year career in historic preservation, I have seen a great number of buildings in this condition, and much worse, rehabilitated to serve another generation. These projects all met the test for financial profit using the historic preservation tax credit, while preserving amazing historically significant buildings, such as those at Holy Name. I can point to the work of AU Associates in Lexington, who are experts in these types of projects and who have made it their business to do so. One assumes they stay in business doing this because they make a profit, and are not a charitable entity. They have also been a turn-key developers in adaptive reuse projects for nonprofits, such as the Archdiocese.

Lastly, I would also like to urge the landmarks commission to determine whether these buildings meet the criteria for designation. I think it is very clear that they do, and that any discussion of demolition and economic hardship is a question for another day with better documentation from the applicant. It is my hope that the applicant reconsiders their desire to demolish the buildings and make plans to work with an architectural firm whose main business is historic preservation and reuse.
Thank you for this opportunity to comment.
Rachel

Rachel M. Kennedy
Historic Preservation Planner/
Architectural Historian

Palmer
ENGINEERING

3403 Stony Spring Circle
Louisville, Kentucky 40220
502-491-2411 (office)
859-806-7265 (cell)
www.palmernet.com

Darr, Savannah

From: Donna Younger <donnalyounger@yahoo.com>
Sent: Wednesday, August 28, 2019 8:28 AM
To: Darr, Savannah
Subject: Holy Name

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Is there no way they can save the exterior of the Holy Name school and restore the inside like they did at Colonial Gardens? Couldn't be anymore expensive than tearing it down and rebuilding. Donna Younger

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Darr, Savannah

From: Chris Harrell <Harrell@lazarusllc.com>
Sent: Friday, August 23, 2019 3:56 PM
To: Darr, Savannah
Subject: Support for 19Designation1000 (Holy Name Convent and Grade School)

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Dear Savannah Darr:

I'm writing to support the landmark designation of the Holy Name Convent and Grade School at the site identified below:

Property Address:	2911 S 4TH ST
Owner:	ROMAN, CATHOLIC BISHOP OF LOU
Parcel ID:	050J01660000
Assessed Value:	$46,220.00
Acres:	2.19480
Neighborhood:	14

These historic buildings are valuable to our community and certainly in the condition that warrants investment and reuse as landmarks in the community. Their glazed brick exterior and detail from ca 1902 is remarkable, and they are irreplaceable examples of the built environment that cannot be rebuilt in modern times. The quality of materials and workmanship witnessed on these structures are unapproachable in modern times.

The sites shall certainly meet nearly all of the criteria for landmark status, and I strongly support their inclusion as local Louisville Landmark.

The interiors of these buildings can cost-effectively be updated and reused for office or residential reuse purposes and our built environment should not lose their historic nature - especially so near such a giant Louisville landmark as Churchill downs.

Kind regards,



Darr, Savannah

From: Kevin Kouba <bearwood223@gmail.com>
Sent: Friday, August 23, 2019 10:01 PM
To: Darr, Savannah
Subject: Holy Name Property

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PLEASE do what it takes to keep those buildings in that beautiful campus intact. Iconic as part of the drive south on a One-way street.

Thanks!

Darr, Savannah

From: Holli Nance <hollinance@yahoo.com>
Sent: Friday, August 23, 2019 10:26 PM
To: Darr, Savannah
Subject: Holy Name convent and School

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I strongly oppose the destruction of the historic properties located at 2911 S 4th St, ie the Holy Name Convent and School. I do however support landmark designation for these properties and common sense development of our city's historic treasures.

Also, it would seem in the wake of the homeless epidemic Catholic Charities could find something better to do with this property than raze it

Thank you,

Holli Nance
520 W Oak St.
Louisville, KY 40203

Darr, Savannah

From: Bryan Grumley <jbgrumley@gmail.com>
Sent: Saturday, August 24, 2019 6:54 AM
To: Darr, Savannah
Subject: Catholic Charities buildings

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I'd like to add my voice to the opposition to yet another request to demolish eminently useful and neighborhood-defining structures by the Catholic Archdiocese, this time, near Churchill Downs, a neighborhood already being decimated by demolition and surface parking -- with enormous socioeconomic consequences being borne by the powerless who can only stand aside as their neighborhood is continually scraped away. I signed the petition to landmark the church and convent buildings. The writers of the petition have given myriad reasons for landmarking, and I won't rehash those here. I want to add my voice, simply, to the principled opposition -- hoping, too, to speak for all those who are like-minded, but otherwise unable or unwilling to speak up. Catholic Charities will do far more harm than good to the neighborhood it purports to value by tearing out two of the "everyday landmarks" that give that neighborhood a sense of place, and of permanence -- qualities of a neighborhood that are difficult to quantify or to assign monetary value, but which are invaluable, nonetheless. Additionally, a city like Louisville must make a stand -- and in this case, it falls to you -- to place sensible limitations on mindless and myopic additions to our nationally-famous heat island city. There is plenty of parking. There is no need for an additional expanse of asphalt. Has any effort been made by Metro to broker agreement(s) to ensure the parking concerns are met? If I recall, there is a vacant lot across the street -- it's in Metro's interest to broker transactions that might utilize a disused lot, while preserving the built environment. Are provisions being made for on-street, permit parking? Has consideration for a road diet and/or re-striping of the adjacent streets been given? Or, does apathy rule the day? Louisville is smarter than this -- but each little battle like this that is lost (and most of them end in surrender -- or, honestly, not even showing up for the fight), the further we get from creating the city we know will attract new investment and promote equity for each of its citizens. Additionally, we also know that this move by Catholic Charities has little to do with parking. This is a proxy for avoiding the costs of deferred maintenance for these buildings. The replacement building will be of 30-year quality, will rapidly produce its own maintenance issues, and will be a net detriment to the neighborhood. If CC wants to make good on their threat to move, let them move. These buildings have myriad uses, and it's better to let them be until that other use takes the reins -- indeed, I've already seen a few proposals, and the archdiocese even has its own, in the form of senior living apartments, already implemented at other sites. Just like the ridiculous demo of the Holy Family convent on Poplar Level Rd., we must assist (and insist) the archdiocese in adaptive reuse of their beautiful structures. Otherwise, we might as well just give up, forget about all those comprehensive plans, throw in the towel, and let the Houston no-zoning pattern take over and see what happens. I'm sure you agree that's not what we want. But, to re-create the vibrant city we want, we have to demand that our neighborhoods are not gutted. This project is a good place to put our foot down. Thank you.

Darr, Savannah

From: Luckett, Jay P
Sent: Monday, August 26, 2019 8:59 AM
To: Darr, Savannah
Subject: FW: Save Holy Name School and Convent!

Follow Up Flag: Follow up
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From: Deanna O'Daniel [mailto:dodselfseek@gmail.com]
Sent: Friday, August 23, 2019 5:51 PM
To: Luckett, Jay P
Subject: Save Holy Name School and Convent!

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My name is Deanna O'Daniel. I taught at Holy Name from 1960-1964. We have our faculty meetings in the basements of the convent. These are two very special historic buildings in an area that needs historic preservation. Please work to save these two buildings. I know there is water damage, but that is no problem for a developer. Either building would make a great condo!

--
Deanna O'Daniel, CHT

Darr, Savannah

From: Luckett, Jay P
Sent: Monday, August 26, 2019 8:59 AM
To: Darr, Savannah
Subject: FW: Holy Name demolition

Follow Up Flag: Follow up
Flag Status: Flagged

From: Dan McCarthy [mailto:zorrodan@twc.com]
Sent: Saturday, August 24, 2019 1:20 PM
To: Luckett, Jay P
Subject: Holy Name demolition

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We strongly oppose demolishing the beautiful Holy Name church and convent to build a parking lot. It's absurd to even consider the proposal.
Judy and Dan McCarthy

To whom it may concern:

My name is Consuelo Santillan and I am writing to you in favor of the replacement of the Holy Name School, Convent and Gym. My family and I have been members of Holy Name Parish for 10 + years. The school and gym buildings have not been in use for many years as the deterioration of the buildings are far beyond repair and the cost of repairing would be astronomical. The convent has barely been able to be used by Catholic Charities because of the outdated and inaccessible space. The buildings were built because of the need for them in early 1900's. Now over a century later they have served their purpose and with the pass of the decades there is now a need for a new updated, handicap accessible space for the people of the south end community. Catholic Charities does great work and the new building would only increase the amount of people they serve (as the Holy Name campus sits in front of a TARC line). In addition to this, our Holy Name campus is in need of revitalization and renewal as well. We have long been a struggling parish; the possibility of the new building brings hope for parish program development, as the new space would be also used to further develop our programs. This would increase our ability to provide and expand our ministry. This would benefit both our existing parish family and the new people that the new Catholic Charities Headquarters could bring our way.

I do not believe it would be right to prevent our parish from flourishing to its full capacity by land marking three buildings that are no longer fully operational.

Sincerely,

A hopeful Holy Name parishioner

Darr, Savannah

From: T Guenthner <tguenthner@twc.com>
Sent: Tuesday, August 27, 2019 5:38 PM
To: Darr, Savannah
Subject: Holy Name

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date

Savannah:

I am a member of Holy Name Parish writing to you in support of the proposed renewal of our parish campus. Catholic Charities has been a neighbor and a partner with our parish for many years. I am aware that the old school has decayed beyond reasonable hope of repair for continued use, and that the old convent and the old gym need serious repair in order to function. The maintenance and repair of these buildings have been far beyond the capacity of our parish for many years. I am aware that the Archdiocese purchased the gym, school, and convent from our parish several years ago, thus giving our parish an infusion of cash that is being used for operating expenses and needed repairs to the church building and rectory.

The current plan is to remove the old decayed buildings and replace them with a new Catholic Charities headquarters. The new building will have an architectural style that matches the existing church and rectory. The shared building space will enhance parish ministry. The expanded parking lot and green space will make the campus much more attractive and welcoming.

The neighborhood association that has petitioned to landmark the old decaying buildings does not represent the interests of our parish.

I hope that the Landmarks Commission will respond favorably to our proposal for a renewed campus through the demolition of the old buildings, the construction of the new Catholic Charities building, the expanded parking lot, and the green space.

Sincerely,

Tom Guenthner

August 27, 2019

To Whom It May Concern:

I am a member of Holy Name Parish, and I fully support the proposed renewal of the parish campus by the demolition of the old convent and gym and for the construction of new Catholic Charities headquarters in their place.

I have only been attending Holy Name for about a year and a half, stumbling on it by accident. I was immediately drawn to the church by its antique beauty but could not help but notice that it seemed to be "short on funds." Repairs had been neglected, I could see, for many years. Being a life-long Catholic, attending Catholic churches, and putting children through Catholic schools, I understood that the main source of funds for church upkeep comes from the parishioners. Obviously, with changing neighborhood demographics, the congregation who kept Holy Name alive for many, many years had moved elsewhere. And most telling, I had never heard of Holy Name, even though I grew up in Southwest Jefferson County, attending Catholic elementary and high school there. When I told my friends where I was attending church, I had to explain where it was. Except for the current parishioners, it seemed to be on the verge of being forgotten.

One day last year, I was assisting in removing some things from the old school. On the outside, it *is* a beautiful building, but it was painful to see the level of disrepair inside. I do not pretend to be able to estimate the cost of restoring it. However, what I saw was caved-in ceilings, sagging floors, water damage, and broken plaster. That was in just a couple of the rooms that we could enter. It was too dangerous to go anywhere but down the hall on the first floor.

As a member of Holy Name, I was given the opportunity, along with all the other members, to view the plans for the new Catholic Charities Headquarters. They were beautiful. It heartened me that the new HQ would be "attached" to our church and was happy to hear that their architectural style would match the structures around it. I was also excited that our parish would be able to expand its ministries to those it already serves and those who have not had the opportunity or good fortune to be a part of Holy Name. "All are Welcome" is not just a hymn we sing on Sundays. Holy Name Church and Catholic Charities are practicing this daily. The addition of a green space, and yes....the much-denounced additional parking will be an attraction to those who are looking for a church home or need the services of Catholic Charities. We are an institution, but we do not want to look "institutional." The new facility will not detract from the neighborhood but add a much-needed presence of compassion *and* progress. It is certain, I believe, to breathe new life into the parish.

It is always sad when the old has to give way to the new. I understand those who grieve the loss of the beautiful features of the school and convent and their memories there. At some point, however, there have to be decisions made on how to be good stewards of the things we have been granted. The expense of restoring and maintaining those buildings would be insupportable.

It is my hope that the Landmarks Commission will judge, as I do, that the demolition of the old buildings and the construction of the new Catholic Charities buildings, the additional parking, and the green space will prove to be in the best interests of the church, the neighborhood, and the community.

Anita G. Stemple

Landmarks Commission

Louisville, Ky.

Louise DeSpain

7503 Pony Haven Drive

Louisville, Ky. 40214

August 22nd 2019

To whom it may Concern

I am writing in total support of the proposed renewal of the Holy Name Campus. The project that Catholic Charities is planning for the site can bring about renewal for that specific site, but also for the entire area.

As the former President of a preservation and restoration council in one of the National Historic Districts of Jacksonville Florida, my heart is truly into preserving history, and historic properties.

However as all of you are surely aware, preservation and landmarking buildings with out restoration, can accomplish nothing. On the contrary, leaving buildings to continue deterioration contributes to the unsightliness, and actually to continued neglect and criminal behavior to an entire area of a city.

I lived in such an area for many years; it was though, an area of renewal.

Through care and hard work, that community went through a great renewal process and became a neighborhood where people wanted to be.

I ask for a positive response to the renewal project, with the demolition of the buildings that have been deemed beyond repair, so that 4th street and the surrounding area can once again become a part of a vibrant community.

Thank you for your concern

Louise DeSpain

Darr, Savannah

From: Tony Tricase <tonytricase@homesinlouisville.com>
Sent: Tuesday, August 27, 2019 3:21 PM
To: Darr, Savannah
Subject: Holy Name School and Convent

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Savannah,
I am a member of Holy Name Parish writing to you in support of the proposed renewal of our parish campus. Catholic Charities has been a neighbor and a partner with our parish for many years. I am aware that the old school has decayed beyond reasonable hope of repair for continued use, and that the old convent and the old gym need serious repair in order to function. The maintenance and repair of these buildings have been far beyond the capacity of our parish for many years.
The current plan is to remove the old decayed buildings and replace them with a new Catholic Charities headquarters. The new building will have an architectural style that matches the existing church and rectory. The shared building space will enhance parish ministry. The expanded parking lot and green space will make the campus much more attractive and welcoming.
The neighborhood association that has petitioned to landmark the old decaying buildings does not represent the interests of our parish.
I hope that the Landmarks Commission will respond favorably to our proposal for a renewed campus through the demolition of the old buildings, the construction of the new Catholic Charities building, the expanded parking lot, and the green space.

My family and I have lived on Southern pkwy for over 44 years. We believe in the great people of the area. We fully back the prospect of bringing new revived energy to this part of our neighborhood and hope to do it hand and hand with all of our neighbors.

Tony Tricase
RE/MAX Properties East
email: tonytricase@4256000.com
office: 502-425-6000
Cell/text: 502-643-5050
Please like our facebook page:
https://www.facebook.com/tonytricaserealtor/

The ability to communicate business electronically is a convenience that requires buyers and sellers to exercise caution. Fraudulent emails may be sent to you that appear sophisticated and legitimate, some of which may even originate from a trusted source due to hacking the sender's email. Your real estate agent will NEVER send you any electronic communication, whether by email, text or social media messaging, with instructions to transfer funds or to provide credit card or debit numbers, or bank account and/or routing numbers. If you have a closing transaction with your real estate agent and you receive an email containing Wire Transfer Instructions, or if you

Darr, Savannah

From: jackdulworth@aol.com
Sent: Tuesday, August 27, 2019 10:30 AM
To: Darr, Savannah
Subject: Holy Name

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Ms. Darr,

I am writing to oppose the Landmarks Designation of the Holy Name properties on South Fourth Street.

I am a partner of The Marshall student housing complex at 4th and Industry and own multiple properties in the area. The Marshall is a $50,000,000 plus investment that has already had a ripple effect with the announcement of several projects along the 4th Street corridor. This area has long been blighted and is in need of redevelopment.

As a former Chairman of the Planning Commission, I can attest that it is important for private development to lead the way in transforming areas while preserving our most treasured assets. The Holy Name properties do not rise to the level of needing protection and do not contribute to any architectural significance or history of the area. It is much more important to implement the University Corridor Study which connects the University and Churchill Downs; the redevelopment of these properties will be a major step forward in making this community plan a reality.

I encourage the Commission to deny this application.

Thank you,

Jack B. Dulworth