



Doing Away With Demolition-by-Neglect

By Julia Miller

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The National Trust for Historic Preservation (www.PreservationNation.org) is a non-profit membership organization bringing people together to protect, enhance and enjoy the places that matter to them. By saving the places where great moments from history—and the important moments of everyday life—took place, the National Trust for Historic Preservation helps revitalize neighborhoods and communities, spark economic development and promote environmental sustainability. With headquarters in Washington, DC, eight regional and field offices, 29 historic sites, and partner organizations in 50 states, territories, and the District of Columbia, the National Trust for Historic Preservation provides leadership, education, advocacy and resources to a national network of people, organizations and local communities committed to saving places, connecting us to our history and collectively shaping the future of America's stories.

ON THE COVER: The Lamar House in Oxford, Miss., has been restored as a teaching museum following years of neglect. Mississippi's only Supreme Court Justice, L.Q.C. Lamar, lived in this Oxford house from 1868 until 1888. The Oxford-Lafayette County Heritage Foundation purchased the house in 2003 and spearheaded the \$2 million rehabilitation project. Before photo courtesy of the Oxford-LaFayette County Heritage Foundation. After photo by KG Wiseman.

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Doing Away With Demolition-by-Neglect

By Julia Miller

In November 2009, the Chicago Department of Buildings declared the YWCA in the city's South Loop "imminently dangerous," paving the way for its current owners, 830 LLC, to demolish the 1895 building. Among the oldest of the structures composing the "Michigan Avenue Street-wall" and included in the city's Michigan Boulevard Historic District, the YWCA had been neglected for more than three decades while under the ownership of a major publishing company. Following an unsuccessful attempt by a local developer to convert the structure into condominiums, the YWCA was sold in 2008 to its current owner, who, in turn, obtained permission to demolish the building, notwithstanding its historic status.

While many Chicago preservationists reluctantly agreed that the building was too far gone to be salvaged, no doubt they also felt that more could have and should have been done to prevent the YWCA's ultimate fate. The building's dilapidated condition was no secret. Reportedly, the building, located on one of Chicago's most preeminent streets, had received multiple citations over the years from the building department for numerous code and safety violations. Why wasn't the inclusion of the property in a local historic district enough? After all, Chicago's historic preservation ordinance, one of the strongest in the country, protects against the demolition of historic resources. What is the loophole and how can it be closed?

Chicago's YWCA fell victim to a condition commonly referred to as "demolition-by-neglect." The building, following a pattern of long-term neglect, became so dilapidated that rehabilitation no longer proved to be a viable option and the building, ultimately, was demolished on public safety grounds. While no one "tried and true" solution exists to the prevention of demolition-by-neglect, a number of measures can be taken to help ensure that historic resources withstand the test of time. By requiring that routine maintenance and major repairs be made, routinely inspecting properties, adopting and utilizing demolition-by-neglect procedures, committing to a course of enforcement, and working closely with building department officials, properties deemed worthy of preservation should, in fact, be preserved over time.

The YWCA Building, located in Chicago's Michigan Boulevard Historic District was demolished in 2010 after more than 30 years of neglect.

Photo courtesy Landmarks Illinois



A victim of foreclosure, the 1905 Samuel J. Hewson House was included in the Preservation Alliance of Minnesota's 10 Most Endangered Historic Places list in 2010. The Alliance is looking for a purchaser for the vacant and vandalized property, located in the Whittier Neighborhood of Minneapolis.

Photo by Kate Scott, Black Box Images, courtesy of Preservation Alliance of Minnesota

This booklet explores each of these approaches in some detail. First, it looks at affirmative maintenance requirements and demolition-by-neglect procedures in historic preservation ordinances. Second, it looks at approaches that may be used to resolve maintenance problems and enforce violations under these laws as they arise. Finally, it examines the role of historic preservation boards in preventing the needless demolition of historic structures under laws designed to protect the public against unsafe buildings.

Although beyond the scope of this publication, it is important to keep in mind that non-regulatory solutions, even when regulatory measures are present, can be instrumental in protecting endangered resources. For example, the



role of historic preservation organizations and their efforts to protect poorly maintained historic properties should not be discounted. Each year, preservation organizations work tirelessly to find solutions to dilapidated resources featured on endangered lists, often with successful results. Large numbers of historic houses and main street buildings in aging communities have been rehabilitated through revolving fund and community investment fund programs. The adoption of new regulatory measures, such as neighborhood conservation districts, (see *Protecting Older Neighborhoods Through Neighborhood Conservation Districts*, National Trust for Historic Preservation, 2004) and tax programs, such as the Low Income Housing Tax Credit and New Markets Tax Credit, have also been instrumental in spurring community reinvestment and stabilizing older, historic neighborhoods.

REGULATORY APPROACHES TO THE PREVENTION OF DEMOLITION-BY-NEGLECT

Circumvention of the application of local preservation laws through demolition-by-neglect not only endangers historic resources, it also undermines the integrity of local historic preservation programs overall. Crumbling walls, leaky porches, sagging roofs, broken windows and doors, and peeling paint do little to further the cause of historic preservation.

By adopting, implementing, and enforcing regulations designed to ensure that properties are appropriately main-

tained, cities throughout the United States protect historic buildings from “demolition-by-neglect.” These laws—(1) affirmative maintenance and demolition-by-neglect provisions in historic preservation ordinances and (2) building codes and unsafe structure acts—enable governments to address maintenance problems proactively. They require that properties be kept in good repair and enable preservation commissions and building department officials to step in and ensure that properties are stabilized and repairs are made before a property becomes so run down that demolition becomes essential.

Affirmative Maintenance Requirements and Demolition-by-Neglect Procedures in Historic Preservation Laws

Once property is designated as a historic landmark or included in a local historic district, certain obligations fall on the property owner. While historic preservation ordinances do not require that properties be rehabilitated or restored, most do require that they be minimally maintained or kept in good repair. Moreover, a growing number of communities now include demolition-by-neglect procedures in their historic preservation programs. These procedures, typically established by amendment to a local preservation ordinance or code, help to close potential loopholes resulting from the failure to maintain historic properties up to minimum standards. If property owners can sidestep preservation laws by not maintaining

their properties, then historic properties will not be preserved notwithstanding the protections in place. These procedures also work to safeguard the public from neglected buildings and protect the investments of nearby property owners, who maintain and rehabilitate their own historic structures.

Affirmative Maintenance Requirements

Prevention of demolition-by-neglect begins with the obligation to maintain one’s property. This duty to keep one’s property free from structural defects and to prevent decay and deterioration stems from the public’s specific interest in preserving its historic resources. If properties are not maintained, then the goal of protecting historic properties—as set forth in state and local laws—will not be met.

The ability to require that historic properties be affirmatively maintained rests on the inherent authority residing in states—referred to as the police power—to regulate, protect, or promote the public health, safety, morals, and general welfare. The leading historic preservation case on this issue continues to be *Maher v. City of New Orleans*, 516 F.2d 1051, 1066-67 (5th Cir. 1975), cert. denied, 426 U.S. 905 (1976), under which the federal appeals court upheld an affirmative maintenance requirement applicable to all structures within the historic Vieux Carré in New Orleans. In *Maher*, the court rejected the claim that the city lacked the necessary authority to require that a structure be maintained because it fell outside the police power. Instead, it concluded that “upkeep of buildings appears reasonably necessary to the accomplishment of the goals of the [Vieux Carré] ordinance.”

Because the police power is inherently a state-level authority, the power of local jurisdictions to specifically compel the maintenance of historic properties through historic preservation ordinances is dependent upon state delegations of its authority. In some cases, the authority to require affirmative maintenance or to prevent demolition-by-neglect may

ENSURING THAT HISTORIC RESOURCES WITHSTAND THE TEST OF TIME

- Require that properties are maintained and major repairs are made on a timely basis;
- Have a good monitoring system in place;
- Adopt and utilize demolition-by-neglect procedures;
- Commit to a course of enforcement; and
- Work closely with building department officials.



The District of Columbia evacuated residents after an interior wall of the 1890 building, located in the 16th Street Historic District, collapsed. The D.C. Department of Consumer and Regulatory Affairs reportedly spent more than \$200,000 to stabilize the structure, which the owner must repay with interest.

Photo by Ross Bradford

defects or problems that could lead to demolition-by-neglect. By doing so, they give property owners greater detail on the type of maintenance required. The list of defects can also be used to monitor the condition of the properties and seek enforcement when maintenance is lacking. For example, Portland, Maine's preservation ordinance states:

Portland, Maine

§ 14-690. Preservation of protected structures.

(a) Minimum maintenance requirement. All landmarks, and all contributing structures located in an historic district, shall be preserved against decay and deterioration by being kept free from the following structural defects by the owner and any other person or persons who may have legal custody and control thereof:

- (1) Deteriorated or inadequate foundation which jeopardizes its structural integrity;
- (2) Defective or deteriorated floor supports or any structural members of insufficient size to carry imposed loads with safety which jeopardize its structural integrity;
- (3) Members of walls, partitions or other vertical supports that split, lean, list or buckle due to defective material or deterioration which jeopardize its structural integrity;
- (4) Structural members of ceilings and roofs, or other horizontal structural members, which sag, split or buckle due to defective materials or deterioration or are of insufficient size to carry imposed loads with safety which jeopardize its structural integrity;
- (5) Fireplaces or chimneys which list, bulge or settle due to defective

be express. See, e.g., N.C. Gen. Stat. § 160A-400.14(b) (authorizing any municipality to adopt an ordinance to prevent the demolition-by-neglect of any landmark or property within a historic district). In other states, that authority may be implied by broad grants of land-use authority or more generalized authority to regulate and protect historic properties.

Standard of Maintenance. While the level of maintenance required from place to place is generally consistent, the articulation of the standard of repair under historic preservation laws varies somewhat. Some cities, such as Philadelphia and New York, require that owners of historic resources keep their properties in "good repair." Philadelphia's ordinance, for example, states:

Philadelphia, Pa.

(c) The exterior of every historic building, structure and object and of every building, structure and object located within an historic district shall be kept in good repair as shall the interior portions of such buildings, structures and objects, neglect of which may cause or tend to cause the exterior to deteriorate, decay, become damaged or otherwise fall into a state of disrepair. *Philadelphia Code 14-2007(8).*

This standard, because of its breadth, provides sufficient flexibility to ensure that the widest range of potential defects come within the ordinance's protections.

An increasing number of jurisdictions, however, identify the types of

