

DEMOLITION-BY-NEGLECT: WHERE ARE WE NOW?

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INTRODUCTION

Throughout the country, thousands of historic properties stand vacant, neglected by their owners. Typically, these properties exhibit the obvious signs of neglect, including unsecured or insufficiently sealed openings, deteriorated or missing architectural appurtenances, and weathered finishes, as well as the less apparent signs, including structural instability and tax delinquency. Once a property reaches the point at which its condition threatens its continued existence (this point differs from property to property), it has become a victim of demolition-by-neglect. Most often, demolition-by-neglect is caused by profit-driven developers who hope to circumvent preservation regulations or by generally stubborn, uninterested individuals who do not respect local laws.

Sixteen years ago, University of Pennsylvania graduate student Andrea Merrill Goldwyn completed her Master's thesis on demolition-by-neglect. Her qualitative, case-study based report examined how four municipalities responded to demolition-by-neglect and how their responses affected preservation outcomes. This thesis revisits the still-relevant topic. Although demolition-by-neglect remains prevalent and difficult to counter, much has changed in the past decade and a half. Throughout the country, the interest in sustainability, urbanism, and historic preservation has begun to converge. And in Philadelphia, the focus of this thesis, the city's population has begun to grow, and the city's economy has begun to stabilize.

In Goldwyn's thesis, she described demolition by neglect as: "when an owner, with malicious intent, lets a building deteriorate until it becomes a structural hazard and

then turns around and asserts the building's advanced state of deterioration as a reason to justify its demolition."¹ She derived that definition from a lecture given by Katherine Raub Riley at the Preservation League of New York State's 1993 meeting. Indeed, demolition-by-neglect occurs when a profit-motivated owner discontinues maintenance in order to circumvent preservation regulations. However, it is also caused by generally uninterested, stubborn owners who discontinue maintenance for reasons that go beyond malicious intent.

In the following report, I work from an expanded definition of demolition-by-neglect. The new definition includes Goldwyn's description as well as the description that omits consideration of owner intent. Most of the municipalities that explicitly define demolition-by-neglect do so accordingly. For example, Washington D.C. defines it as: "Neglect in maintaining, repairing, or securing an historic landmark or a building or structure in an historic district that results in substantial deterioration of an exterior feature of the building or structure or the loss of the structural integrity of the building or structure."² And Dallas, Texas defines it as: "Neglect in the maintenance of any structure or property subject to the predesignation moratorium or in a historic overlay district that results in deterioration of the structure and threatens the preservation of the structure."³

Like Goldwyn's, this thesis surveys responses to demolition-by-neglect, but instead of evaluating the responses of multiple municipalities, this report analyses those

¹ Goldwyn, Andrea M. "Demolition by Neglect: A Loophole in Preservation Policy." Thesis, University of Pennsylvania, 1995.

² D.C. Official Code § 6-1102(a) (3A).

³ Dallas Development Code, Div. 51A-4.500; § 80-2.

of Philadelphia. Chapter 1 summarizes the body of literature that deals with demolition-by-neglect. Chapter 2 details the legal foundation as well as the issues associated with affirmative maintenance provisions, the primary tool used to address demolition-by-neglect. Chapter 3 dissects various affirmative maintenance provisions, and frames Philadelphia's provision in terms of its components and its role. Chapter 4 presents four case studies, which represent the range of situations that the Philadelphia Historical Commission deals with. Chapter 5 highlights four distinct tools/initiatives that have the potential to alleviate demolition-by-neglect. And in the conclusion, the author presents a summary of her findings and offers two sets of recommendations, including one for the City and one for the preservation community.

CHAPTER 1: LITERATURE REVIEW

The body of literature pertaining to demolition-by-neglect is limited in scope and detail. It includes professional briefs and reports, which are geared towards municipalities that do not have affirmative maintenance standards or even preservation ordinances in place, as well as academic papers and masters' theses. One National Trust for Historic Preservation-published pamphlet surveys the key components of the complicated, multi-dimensional topic more thoroughly.

Most of these few demolition-by-neglect resources cite a paper written by Oliver A. Pollard III, a former attorney for the city of Alexandria, Virginia. In "Demolition by Neglect: Testing the Limits and Effectiveness of Local Historic Preservation Regulation," Pollard discusses affirmative maintenance provisions, the primary device for dealing with demolition-by-neglect. After describing the legal foundations that grant a municipality the power to establish minimum maintenance standards, he emphasizes that in order to be effective and legally defensible, standards must include the following components: a list of the physical conditions that constitute neglect, a means of enforcement, and an economic hardship provision. He suggests that when dealing with economic hardship claims, the municipality should consider the property owner's financial status, the property's value, the cost of rehabilitation, and possible uses for the property. If these conditions indicate that compliance with the standards impose extreme economic hardship, the municipality should either provide financial incentives

to increase the feasibility of compliance, acquire the property through the exercise of eminent domain, or reassess the property's importance.⁴

In 1990, the magazine of the National Alliance of Preservation Commissions (NAPC), dedicated an entire issue to the “menace that most commissions, design review boards, and local planning/community development professionals find very difficult to deal with effectively: demolition by neglect.”⁵ The issue contains an abbreviated and renamed version of Pollard’s paper and an article by Hilary Somerville Irwin. In “The Vieux Carré’s DBN Clause Protecting the French Quarter,” Irwin summarizes the history of the long-established affirmative maintenance standards that protect the Vieux Carré and outlines two case studies.⁶

In 1993, the NAPC surveyed preservation commissions throughout the country and found that the majority of commissions identify demolition-by-neglect as the most daunting obstacle to preservation. The survey also found that about 75% of the commissions do not have the authority to prevent it.⁷ For these reasons, demolition-by-neglect became a topic of discussion at the National Trust-sponsored 48th National Preservation Conference in Boston, Massachusetts. In addition, it became the focus of a number of papers geared towards municipalities without affirmative maintenance standards.

⁴ Pollard, Oliver A. "Demolition by Neglect: Testing the Limits and Effectiveness of Local Historic Preservation Regulation." *Notes on Virginia* 1, no. 31-35 (January 1988): 31-35.

⁵ Cassity, Pratt. "Executive Director's Message." *The Alliance Review*, Winter 1990.

⁶ Irwin, Hilary S. "The Vieux Carre' DBN Clause Protecting the French Quarter." *The Alliance Review*, Winter 1990.

⁷ Osborne, Rebecca. *Balancing Act: Preventing Demolition by Neglect*. University of North Carolina at Greensboro Department of Interior Architecture. The Historic Dimension Series. May 2005. <http://www.presnc.org/Preservation-Answers/Balancing-Act-Preventing-Demolition-by-Neglect>.

At the 48th National Preservation Conference in 1994, demolition-by-neglect was discussed by a panel of preservation law experts. National Trust Legal Liaison Claudia Sauermann moderated the panel, which presented four case studies and an introduction to the tools available to commissions. The cases of the Tracy Causer Building in Portland, Maine, the Strand Theater in Ithaca, New York, the Gibson House in Clarksburg, Maryland, and Water Street in New York each highlighted a different dimension of demolition-by-neglect. In the report resulting from the panel presentations and discussion, the National Trust concluded, "The most important tool for controlling demolition by neglect is a carefully crafted provision in your local preservation ordinance requiring affirmative maintenance and ensuring that the local commission is equipped with adequate remedies and enforcement authority." And because enforcement is carried out in coordination with building code officials, the National Trust added, "It is very important for local preservation groups to get to know your code enforcement officials. A good working relationship with these officials can be critical in helping to ensure that deferred maintenance problems are identified and corrected before they reach the point of demolition by neglect. Take your building inspector to lunch!"⁸

Throughout the 1990s and 2000s, a flurry of how-to guides detailing the process of establishing affirmative maintenance standards were published. These guides exist in various forms. For example, there is a 1999 article entitled "Establishing a Demolition by

⁸ National Trust for Historic Preservation Northeast Legal Preservation Network. "Difficult Issues Facing Preservation Commissions: Demolition-by-Neglect." Proceedings of 48th National Preservation Conference, Boston, Massachusetts.

Neglect Ordinance,” a 1999 report entitled *Demolition by Neglect*, a 2004 brief entitled “Demolition by Neglect and Economic Hardship,” a 2009 article entitled “Pursuing an Owner for Demolition by Neglect: A Tortuous Legal Path,” and a 2010 booklet entitled *Doing Away With Demolition by Neglect*, which was published by the National Trust.

In “Establishing a Demolition by Neglect Ordinance,” Raleigh Historic Districts Commission Executive Director Dan Becker summarizes the legal foundation of affirmative maintenance standards, the key components of these standards, strategies for enacting the standards, and general advice about how to apply the standards. To establish affirmative maintenance standards, the municipality must confirm that enabling legislation is in place. Unless a municipality has the power of home rule, the state must have enacted enabling legislation giving the state’s municipalities the power to enact preservation ordinances and affirmative maintenance requirements. Next, the municipality must devise the standards, including a list detailing the kinds of physical conditions that are prohibited, an outline prescribing the procedures for enforcement and appeals, and an economic hardship provision. Becker adds: “Each community has its own personality when it comes to the kinds of ordinances that are appropriate for its citizens, and no one strategy will fit all. It will not advance your preservation cause if such an ordinance becomes controversial, so it will pay dividends to carefully consider whether an ordinance is right for your community, and how to establish support for its adoption.”⁹

⁹ Becker, Dan. "Establishing a Demolition by Neglect Ordinance." *The Alliance Review*, February/March 1999.

Becker spoke from experience. While creating Raleigh's minimum maintenance standards, he and his colleagues looked to the long-established procedures for enforcing minimum housing standards. By modeling the minimum maintenance standards on the procedures for enforcing minimum housing standards, they ensured that if challenged, they could defend the affirmative maintenance standards as an application of state-granted police power and an extension of the customary process used to enforce the correction of property deficiencies. Fortunately, Raleigh's standards were never challenged.¹⁰

"Demolition by Neglect," which appeared in the National Trust's Preservation Law Reporter, echoes the report by the panel of the 48th National Preservation Conference. "Demolition by Neglect" touches upon the causes of demolition-by-neglect, affirmative maintenance standards, economic hardship, and enforcement. The remainder and bulk of the report contains samples of state enabling legislation, affirmative maintenance standards, and provisions that authorize the use of eminent domain to protect historic properties. Among the cities cited in this report that can do this are Baltimore, Maryland, San Antonio, Texas, Richmond, Virginia, and Louisville, Kentucky.¹¹

2003's "Economic Hardship and Demolition by Neglect" is the only resource that focuses upon the issue of economic hardship. In the brief, author James Reap asserts that municipalities must include economic hardship provisions under preservation

¹⁰ Ibid, Becker.

¹¹ *Demolition by Neglect*. Issue brief. Preservation Law Reporter Educational Materials. National Trust for Historic Preservation, 1999.

ordinances so that the ordinances are legally defensible and generally palatable. He goes on to list “tips from the experts for effectively addressing economic hardship.”¹² One notable tip stresses the fact that municipalities should consider multiple factors when assessing economic hardship claims, including purchase price, assessed value, operating expenses, and revenue as well as prior efforts to redevelop the property, prior efforts to sell the property, the cost of rehabilitating the property, and financing options.¹³ Each of these factors pertains to the property itself and not the owner’s standing or financial capability.

In 2009, an article entitled “Pursuing an Owner for Demolition by Neglect: A Tortuous Legal Path” appeared in the newsletter of the Historic Districts Council. In the article, New York City Landmarks Preservation Commission Deputy Council John Weiss emphasized that municipalities should focus on securing compliance before actually filing a lawsuit. This is because demolition-by-neglect cases are invariably frustrating and difficult to prosecute. In New York, the Landmarks Preservation Commission rarely resolves demolition-by-neglect cases in court. Rather, the majority of cases are resolved through respectful communication with the property owner (once the owner is located) or through the threat of legal action.¹⁴

The most comprehensive publication on demolition-by-neglect was published by the National Trust in 2010. In *Doing Away With Demolition-by-Neglect*, National Trust Special Council and Legal Education Coordinator Julia Miller emphasizes the fact that

¹² Reap, James. "Economic Hardship and Demolition by Neglect: Hard Decisions for Hard Times" *The Alliance Review*, November/December 2003.

¹³ Ibid, Reap.

¹⁴ Weiss, John. "Pursuing an Owner for Demolition by Neglect: A Tortuous Legal Path" *District Lines*, Spring 2009.

there is no “tried and true” solution to preventing demolition-by-neglect. She presents samples and very detailed analyses of affirmative maintenance requirements, demolition-by-neglect definitions, demolition-by-neglect proceedings, and enforcement procedures. In addition, she provides a sample inspection checklist and a sample economic hardship evidentiary checklist.¹⁵

An inter-departmental memorandum from the city of Mobile, Alabama illuminates the types of considerations associated with the creation of affirmative maintenance standards. In the memorandum to the Minimum Maintenance Ordinance Committee, Senior Planner Thad Crowe recommended alteration of the proposed ordinance. First, he affirmed the need for an ordinance by emphasizing that basic building codes are not equivalent to affirmative maintenance standards. The former kick in once a building has become a public safety hazard, while the latter are activated once the building has begun to exhibit signs of demolition-by-neglect. Thus, the former is reactionary while the latter is preventive. Second, Crowe emphasized that ordinances must contain an economic hardship provision that is legally defensible. For this reason, he recommended deletion of the section that defined economic hardship as applying to owners with incomes equal to or less than 125% of the poverty level, because it is doubtful that they can perform repairs, and insertion of a section defining economic hardship as the cost of rehabilitation exceeding the value of the building. Third, Crowe presented land banking as an option for deteriorated, tax-delinquent properties.

¹⁵ Miller, Julia. *Doing Away with Demolition-by-Neglect*. Washington, DC: National Trust for Historic Preservation, 2010.

Through land banking, the city could acquire properties at auction, rehabilitate them, attach easements to them, and sell them, ensuring their preservation.¹⁶

A number of academic papers and masters' theses take on the topic of demolition-by-neglect. Connie Malone's "Demolition by Neglect: A Growing Concern in Rural Communities" is the earliest. In Malone's paper, she focuses on emphasizing that the causes of demolition-by-neglect differ from place to place. According to Malone, demolition-by-neglect is the result of any combination of external and internal factors. External factors include the change in agricultural scale (farmers expand by purchasing neighboring farmsteads but rarely use or maintain redundant buildings) and declining populations (associated with the abandonment of homes and the closure of businesses). Internal factors include owners' financial inability, aging populations, disputed estates, and a general lack of appreciation for historic resources. Because the causes of demolition-by-neglect differ from place to place, the antidote must be carefully tailored to its community.¹⁷

In 2005, student Sakina Thompson completed "Saving the District's Historic Properties from Demolition by Neglect." In the paper, Thompson details the five provisions that Washington, DC implemented in 2001 to combat demolition-by-neglect. Before the implementation of the provisions, the district was powerless to prevent or address demolition-by-neglect. The provisions include affirmative maintenance requirements (attached to the existing preservation ordinance), the requirement that

¹⁶ Crowe, Thad. Memorandum to Minimum Maintenance Ordinance Committee. Mobile, August 27, 1992.

¹⁷ Malone, Connie. *Demolition by Neglect: A Growing Concern in Rural Communities*. 1992. On file at the National Alliance of Preservation Commissions.

the building code authority coordinate with the preservation commission when dealing with blighted property management (added under the existing Unsafe Structures and Insanitary Buildings Act), and the new Due Process Demolition Act of 2002. The Due Process Demolition Act of 2002 granted the mayor the authority to demolish vacant, deteriorated structures as long as he or she follows a set of procedures and verifies that the structures are not designated or eligible for local designation.¹⁸

In 2005, student Rebecca Osborne prepared a report entitled “Balancing Act: Preventing Demolition by Neglect” for the University of North Carolina at Greensboro Department of Interior Architecture’s Historic Dimension Series. Throughout the report, Osborne asserts that preservation advocacy groups play a key role in driving local governments to enforce minimum maintenance ordinances, and that when governments enforce minimum maintenance ordinances, they must tread lightly. Osborne provides examples of communities that apply minimum maintenance ordinances conservatively as well as aggressively. She presents Raleigh, North Carolina and Hillsborough, North Carolina as examples of places that apply minimum maintenance standards conservatively. According to interviewee Dan Becker (recall that Dan Becker authored “Establishing a Demolition by Neglect Ordinance”),

“The more control property owners feel that they have in these matters, the more likely they will be willing to work with preservation legislation, and the more supportive the community will be. Because preservation ordinances are granted through state enabling legislation, citizens can challenge preservation laws if they feel that the laws are too

¹⁸ Thompson, Sakina B. *Saving the District’s Historic Properties from Demolition by Neglect*. Georgetown University Law Center. 2004.

imposing or too restrictive, and the preservation ordinances can be dissolved.”¹⁹

Osborne presents La Jolla, California as an example of a place that applies minimum maintenance standards too conservatively. The city of La Jolla, which lacked a grassroots preservation group, allowed two seaside bungalows to languish for twenty-five years under the ownership of a defiant developer before enforcing its extant anti-neglect zoning codes.²⁰ In 2007, Osborne reiterated these cases in “Demolition by Neglect Case Studies,” which was published in the Alliance Review.

In the most recent academic paper, which was completed in 2007, Georgetown University student Anna Martin describes how demolition-by-neglect is dealt with in four large cities: Washington, DC, New Orleans, Philadelphia, and New York. Ultimately, Martin comes to the conclusion that the language of ordinances is less important than efficient cooperation between the agencies responsible for dealing with neglected properties and consistent enforcement. This paper is particularly useful because it offers insights into the way that the Philadelphia Historical Commission (PHC) handles demolition-by-neglect. Observant Philadelphia residents know that the PHC and the Department of Licenses and Inspections (L&I) rarely enforce the affirmative maintenance provision of the preservation ordinance. There are reasons for this. The PHC issues few violations because neglected buildings are commonly rehabilitated as market values increase. Also, issuing a violation leads to a comprehensive inspection, which may reveal that a building in question poses a threat to public safety. If this is the

¹⁹ Ibid, Osborne.

²⁰ Ibid, Osborne.

case, L&I will call for the demolition of the building. These insights came from PHC Historic Preservation Planner Randal Baron.²¹

Two masters' theses and one doctoral dissertation delve into the topic of demolition-by-neglect. *Demolition by Neglect: A Loophole in Preservation Policy* (1995) and *Demolition by Neglect: An Examination of Charleston's Ordinance* (2008) cover all of the background information associated with demolition-by-neglect and go on to evaluate the affirmative maintenance standards in their respective cities. Both authors discuss definitions, causes, legal foundations, affirmative maintenance standards, and additional tools before issuing recommendations for improving preservation outcomes.

In *Demolition by Neglect: A Loophole in Preservation Policy*, University of Pennsylvania graduate student Andrea Merrill Goldwyn analyzes demolition-by-neglect in Philadelphia. At the time, demolition-by-neglect was a pervasive problem that was worsening because of ongoing depopulation and overbuilding. After assessing the effectiveness of the affirmative maintenance standards of New York, Washington, DC, and Portland, Maine as well as the tools that supplement each city's standards, Goldwyn applied her findings to Philadelphia. Ultimately, she recommends two changes to the standards themselves and three changes to the way that the standards are enforced. Regarding the standards themselves, she recommends clarification of the enforcement provisions and addition of a requirement obligating property owners to restore elements that are altered without permission. Regarding enforcement of the standards, she recommends that the PHC work to ensure that historic buildings make it onto L&I's

²¹ Martin, Anna. *Demolition by Neglect: Repairing Buildings by Repairing Legislation*. Georgetown University Law Center. Spring 2007.

agenda, tightened collaboration between the PHC and the Preservation Coalition (now the Preservation Alliance for Greater Philadelphia), and improved cooperation between the PHC, the Philadelphia Housing Authority, and Philadelphia Redevelopment Authority. In Philadelphia, many neglected buildings are owned and subject to some degree of control by one of these municipal agencies.²²

In *Demolition by Neglect: An Examination of Charleston's Ordinance*, Clemson University graduate student Meg Corbett Richardson assesses Charleston's handling of demolition-by-neglect cases. She asserts that the cities that she had closely examined, Providence and Savannah, although comparable to Charleston in terms of size and population, do not employ their anti-neglect strategies, while the cities that she examined less thoroughly, Raleigh, Detroit, and Washington, DC, utilize strong minimum maintenance standards in combination with other tools. Both Detroit and Washington, DC set aside revolving funds for repairing neglected properties and Raleigh allows for equitable remedies. According to Richardson, "Equitable remedies allow for a variety of solutions" and encompass "anything that the court deems appropriate for the situation based on the facts."²³ Ultimately, she concludes that Charleston's ordinance should be rewritten and recommends a number of fundamental changes. She also notes that active, effective enforcement of affirmative maintenance standards is driven by

²² Goldwyn, Andrea M. "Demolition by Neglect: A Loophole in Preservation Policy." Thesis, University of Pennsylvania, 1995.

²³ Richardson, Meg C. "Demolition by Neglect: An Examination of Charleston's Ordinance." Thesis, University of Clemson, 2008.

cooperation between those charged with enforcement, preservation-oriented advocacy organizations, and the general public.²⁴

Lastly, in *An Exogenous Approach to Circumventing Demolition by Neglect: The Impact of Agricultural Preservation on the Historic Fabric of Colonial Towns*, Clemson University Ph.D. candidate Galen Newman applied an especially unique methodology to the study of demolition-by-neglect. First, he created an index that can be used to measure demolition-by-neglect and second, he examined the rates of demolition-by-neglect in three Pennsylvania towns with colonial era cores: Doylestown, Quakertown, and Bristol. Newman found that the amount of demolition-by-neglect in each town's core was directly proportionate to the amount of sprawl in each's suburbs.²⁵ Since completing this dissertation, Newman has gone on to become an assistant professor in the Department of Landscape Architecture and Urban Planning at Texas A&M University, where he actively promotes a regional approach to preservation policy.

²⁴ Ibid, Richardson.

²⁵ Newman, Galen D. *An Exogenous Approach to Circumventing Demolition by Neglect: The Impact of Agricultural Preservation on the Historic Fabric of Colonial Towns*. Diss., Clemson University, 2010.

CHAPTER 2: LEGAL ISSUES

Legal Foundations

On October 15, 1966, President Lyndon B. Johnson signed the National Historic Preservation Act (NHPA). The NHPA begins with a statement of purpose, which represents the nation's stance on preservation. It reads: "The Congress finds and declares that - the spirit and direction of the Nation are founded upon and reflected in its historic heritage; the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people; historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency..."²⁶ In accordance with these purposes, the NHPA established a federal preservation agency (Advisory Council on Historic Preservation), a process mandating determination and, as appropriate, mitigation of the effects of governmental action on historic resources (Section 106 Review), and a system providing for the designation of significant resources (National Register of Historic Places). In addition, the NHPA required states to establish state historic preservation offices (SHPOs). Later, the NHPA would be amended to include the Certified Local Government Program.²⁷

In response, many of the municipalities without preservation ordinances began the process of establishing ordinances and when necessary, enabling legislation. First, they looked to their state constitutions to ensure the existence of enabling legislation.

²⁶ National Historic Preservation Act of 1966. (16 U.S.C. 470)

²⁷ National Trust for Historic Preservation. "National Historic Preservation Act." 2011.

<http://www.preservationnation.org/resources/legal-resources/understanding-preservation-law/federal-law/nhpa.html>.

Enabling legislation grants municipalities the police power necessary to enact their own preservation laws. Most - but not all - enabling legislation details the kinds of provisions that a municipality can enact. Because demolition-by-neglect undermines the goals of preservation and because anti-neglect provisions are considered paramount in combating demolition-by-neglect, most enabling legislation explicitly grants municipalities the power to adopt affirmative maintenance requirements.²⁸ Examples of enabling legislation from Alabama, North Carolina, and Rhode Island demonstrate that such legislation's language and level of detail varies:

Alabama: Demolition by neglect and the failure to maintain an historic property or structure in a historic district shall constitute a change for which a certificate of appropriateness is necessary.

North Carolina: The governing board of any municipality may enact an ordinance to prevent the demolition by neglect of any designated landmark or any building or structure within an established district. Such ordinance shall provide appropriate safeguards to protect property owners from undue hardship.

Rhode Island: A city or town may by ordinance empower city councils or town councils in consultation with the historic district commission to identify structures of historic or architectural value whose deteriorated physical condition endangers the preservation of such structure or its appurtenances. The council shall publish standards for maintenance, of properties within historic districts. Upon the petition of the historic district commission that a historic structure is so deteriorated that its preservation is endangered, the council may establish a reasonable time not less than 30 days within which the owner must begin repairs. If the owner has not begun repairs within the allotted time, the council shall hold a hearing at which the owner may appear and state his or her reasons for not commencing repairs. If the owner does not appear at the hearing or does not comply with the council's orders, the council may

²⁸ Becker, Dan. "Establishing a Demolition by Neglect Ordinance." *The Alliance Review*, February/March 1999.

cause the required repairs to be made at the expense of the city or town and cause a lien to be placed against the property for repayment.²⁹

Some municipalities adopt preservation ordinances and affirmative maintenance provisions without enabling legislation in place. A municipality can do this if located in home rule state, examples of which include Pennsylvania, Michigan, and Oregon. Home rule states grant municipalities the power to enact laws independent of enabling legislation. Despite this, the majority of home rule states adopt enabling legislation. This is because most home rule states are subject to Dillon's Rule.³⁰ According to Benjamin Price, Projects Director of the Community Environmental Legal Defense Fund, Dillon's Rule "maintains that all political subdivisions of a state are connected to the state as a child is connected to a parent. Under this usurping concept, community governments are administrative extensions of the state and not elective bodies representing the right of the people to local self-governance."³¹

Philadelphia, the primary subject of this thesis, is a home rule municipality that is governed by its own Charter, but both Philadelphia's preservation ordinance and demolition-by-neglect provision are connected to Commonwealth of Pennsylvania enabling legislation that grants municipalities the power to create and govern historic districts:

Pennsylvania: The agency charged by law or by local ordinance with the issuance of permits for the erection, demolition or alteration of buildings within the historic district shall have the power to institute any proceedings, at law or in equity, necessary for the enforcement of this act

²⁹ *Demolition by Neglect*. Issue brief. Preservation Law Reporter Educational Materials. National Trust for Historic Preservation, 1999. 3.

³⁰ Price, Ben. A *(Very) Brief History of "Dillon's Rule."* Issue brief. Community Environmental Defense Fund.

³¹ *Ibid*, Price.

or any ordinance adopted pursuant thereto, in the same manner as in its enforcement of other building, zoning or planning legislation or regulations.³²

Pennsylvania's enabling legislation does not refer to demolition-by-neglect. Rather, it grants each municipality the power to enact provisions that promote the preservation ordinance's goals. According to attorney Oliver A. Pollard III, "In these cases, authority to enact such provisions may be inferred from historic preservation enabling legislation that empowers localities to create and regulate historic districts, or from general enabling legislation that delegates police powers to localities to zone to protect or promote the public health, safety, morals or the general welfare. Whether the authority of a locality to require that historic properties be repaired or maintained is express or implied, affirmative maintenance provisions must not exceed the scope of this authority."³³

Legal Challenges

Affirmative maintenance provisions must endure legal challenges. Most commonly, an exasperated property owner will sue a municipality, charging that the municipality's affirmative maintenance provision either exceeds the scope of police power or that application of the provision imposes a regulatory taking.³⁴ Fortunately, affirmative maintenance provisions have endured the former. In *Maher v. City of New Orleans*, a federal court of appeals ruled that the Vieux Carre's affirmative maintenance

³² Pennsylvania Historic Districts Act of 1961. Section 5.

³³ Pollard, Oliver A. "Demolition by Neglect: Testing the Limits and Effectiveness of Local Historic Preservation Regulation." *Notes on Virginia*. 1, no. 31-35 (January 1988): 33.

³⁴ Pollard, Oliver A. "Minimum Maintenance Provisions: Preventing Demolition by Neglect." *Preservation Law Reporter*. Vol. 8 (1989): 2005.

provision remains within the scope of police power and is therefore constitutional.³⁵

Thanks to this precedent, courts observe affirmative maintenance provisions and consistently order compliance.

Despite the fact that affirmative maintenance requirements are considered constitutional, municipalities must ensure that the requirements themselves correspond to the preservation ordinance's goals. Pollard maintains, "even if the regulation in question promotes valid objectives within the scope of police power, a further constitutional issue is whether the method employed in a particular statute bears a reasonable relation to the achievement of the permissible objective."³⁶ For example, prohibiting the loss of architectural appurtenances is related to the valid objective of protecting historic resources from demolition-by-neglect, but prohibiting the chipping of paint is not.

In addition, municipalities must endure the charge that application of the preservation ordinance's affirmative maintenance provision imposes a regulatory taking. A regulatory taking occurs when "requirements violate the federal and state constitutional prohibition of the taking of private property for a public purpose without the payment of just compensation."³⁷ Dealing with takings is complex. This is because there is no formula that delineates the difference between regulation and taking, meaning cases must be assessed individually.³⁸

³⁵ Maher v. City of New Orleans, 516 F. 2d 1051 (5th Cir. 1975)

³⁶ Ibid, Pollard. "Demolition by Neglect: Testing the Limits and Effectiveness of Local Historic Preservation Regulation." 33.

³⁷ Ibid, Pollard. 33.

³⁸ Ibid, Pollard, 33.

Pollard believes that affirmative maintenance provisions can withstand the tests that courts apply in response to takings claims. The first test, the diminution in value test, examines the loss caused by the application of the provision. Precedent indicates that courts accept large losses incidental to compliance with preservation ordinances.³⁹ For example, in *Maher*, the court emphasized that because “an owner may incidentally be required to make out-of-pocket expenses in order to remain in compliance with an ordinance does not per se render that ordinance a taking.”⁴⁰

The second test, the reasonable use test, examines possible use. If a court finds that the cost of basic repairs prohibits the possibility of adaptively reusing the property and “deprives a landowner of the entire reasonable economic value of the property,”⁴¹ it may rule that application of the affirmative maintenance provision imposes a taking. To avoid this, preservation commissions should be prepared to demonstrate that the affirmative maintenance provision promotes public interests and that stabilization is economically feasible.⁴²

Lastly, municipalities should know that religious properties are exempt from land use regulations that stifle religious exercise. According to the National Trust, the Religious Land Use and Institutionalized Persons Act (RLUIPA) prohibits governments from “enacting or applying land use laws, including historic preservation laws, to property owned or used by individuals or religious institutions in a manner that would ‘substantially burden’ religious exercise without a compelling state interest, such as

³⁹ Ibid, Pollard. 33-34.

⁴⁰ Ibid, Quoted in Pollard. 33.

⁴¹ Ibid, Pollard. 33.

⁴² Ibid, Pollard. 35.

public health and safety.”⁴³ So far, courts have rejected RLUIPA claims by congregations that were denied demolition permits for their locally-registered buildings. Courts reason that prohibiting demolition does not limit an organization to choosing between “pursuing its religious beliefs and incurring criminal penalties or forgoing government benefits” and it does not “prevent the organization from engaging in religious worship, or other religious activities.”⁴⁴ Despite this, affirmative maintenance provisions may be vulnerable to challenges brought under RLUIPA. This is because most affirmative maintenance provisions include stiff penalties, ranging from fines to criminal charges.

Case Law

In 1995, Andrea Merrill Goldwyn observed that the case law associated with demolition-by-neglect is limited. At the time, most preservation authorities avoided prosecuting demolition-by-neglect cases because litigating was costly and risky. Most authorities were severely understaffed and underfunded, and prosecuting a case meant subjecting the preservation ordinance to scrutiny.⁴⁵ Today, preservation commissions remain burdened by a lack of resources and an abundance of work, but most litigate because it is less risky than it was in 1995. This is because courts have upheld the constitutionality of affirmative maintenance provisions and routinely order compliance.

⁴³ National Trust for Historic Preservation. "Religious Protection." 2011. <http://www.preservationnation.org/resources/legal-resources/understanding-preservation-law/constitutional-issues/religious-protection.html>.

⁴⁴ Ibid, National Trust for Historic Preservation.

⁴⁵ Goldwyn, Andrea M. "Demolition by Neglect: A Loophole in Preservation Policy." Thesis, University of Pennsylvania, 1995. 19.

An example from New York City highlights the fact that prosecuting demolition-by-neglect perhaps has become less perilous. In 1995, Goldwyn wrote: "Many commissions do not want to jeopardize their preservation ordinance by putting it up for challenge in a criminal prosecution. For example, in New York City, there has never been a case of demolition by neglect brought to trial, partially because of this risk. In addition, the New York City Landmarks Commission has had more success pursuing compromise and compliance than it has in actually litigating these issues."⁴⁶ Indeed, New York focuses on compromising with property owners to devise mutually-satisfactory solutions, but in 2004, the commission decided to file a lawsuit against 10-12 Cooper Square, Incorporated, owner of the individually-landmarked Skidmore House. In *City of New York v. 10-12 Cooper Square, Incorporated*, the commission argued that 10-12 Cooper Square, Incorporated failed to maintain Skidmore House according to the preservation ordinance's standard of "good repair." New York Supreme Court Justice Walter B. Tolub agreed, and ordered the owner to rehabilitate the building.⁴⁷

Despite the fact that municipalities are becoming more willing to litigate against offending property owners, demolition-by-neglect case law remains limited. This is because most cases are resolved in municipal courts or are worked out before courtroom proceedings begin. The cases major include: *Maher, Harris v. Parker, Figarsky v. Historic District Commission, Buttnick v. City of Seattle, Lubelle v. Rochester*

⁴⁶ Ibid, Goldwyn. 19.

⁴⁷ New York City. New York City Law Department, Office of the Corporal Council. "In a Legal First, City Landmarked Building Is Saved from Demolition by Neglect." News release, 2004.

Preservation Board, Lemme v. Dolan, District of Columbia Preservation League v. Department of Consumer and Regulatory Affairs, City of Pittsburgh v. Weinberg.

Maier v. City of New Orleans and *Harris v. Parker* demonstrate the fact that affirmative maintenance provisions are considered valid. In *Maier*, a federal court of appeals upheld the constitutionality of affirmative maintenance provisions and also opened the loophole of economic hardship. The loophole of economic hardship was opened when the court concluded that application of affirmative maintenance requirements could affect a taking in cases in which the cost of maintenance is “unduly oppressive.”⁴⁸ In response to the court’s decision, Pollard emphasized, “It is important to recognize that the court refrained from holding that every application of the city’s minimum maintenance requirement would be constitutional. The court stated that the anti-neglect regulation in question could affect a taking under certain circumstances if the cost of maintenance were too unreasonable and ‘unduly oppressive.’ It is therefore necessary to examine how courts would address the issue of whether or not a regulation goes too far and thus constitutes a taking.”⁴⁹ For this reason, most affirmative maintenance provisions include economic hardship clauses. Economic hardship clauses, which can exempt property owners from preservation regulations, are triggered when a property owner demonstrates that “(1) there is no reasonable return on the property as it is, (2) there is no profitable use to which the property could be adapted, and (3) sale or rental of the property is impractical.”⁵⁰

⁴⁸ Ibid, *Maier v. City of New Orleans*.

⁴⁹ Ibid, Pollard. “Minimum Maintenance Provisions: Preventing Demolition by Neglect.” 2008.

⁵⁰ Ibid, Pollard. 2009-2010.

In *Harris v. Parker*, a court affirmed the constitutionality of affirmative maintenance provisions. The case arose when the town of Springfield, Virginia applied for an injunction against a property owner who had allowed several buildings, which were contributing properties in a local historic district, to deteriorate. The court granted an injunction, ordering the owner to perform repairs.⁵¹ This case is particularly notable because it involves a town filing a lawsuit against a property owner.

In *Figarsky v. Historic District Commission*, a property owner filed a lawsuit against Norwich Connecticut's Historic District Commission, charging that application of the preservation ordinance's affirmative maintenance provision constituted a taking. The Supreme Court of Connecticut disagreed, and ordered the owner to repair the property in question. This ruling was influenced by a noteworthy finding. The court found that the owner had intentionally discontinued maintenance, causing self-inflicted hardship.⁵²

In *Buttnick v Seattle*, a property owner filed a lawsuit against Seattle's City Council, which had ordered the removal and replacement of a hazardous parapet. The owner argued that imposition of the city's building code - which called for removal - in combination with imposition of the local preservation board's design standards - which called for replacement - imposed a taking. The court disagreed, and ordered the property owner to remove and replace the parapet according to the preservation board's specifications.⁵³

⁵¹ *Harris v. Parker*, Chancery No. 3070 (Cir. Ct. Isle of Wight County, Va. Apr. 15, 1985).

⁵² *Figarsky v. Historic District Commission*, 368 A.2d 163 (Conn. 1976).

⁵³ *Buttnick v. Seattle*, 719 P.2d 93, 95 (Wash. 1986).

In *Lubelle v. Rochester Preservation Board*, the owner of an individually-landmarked property sued the Rochester Preservation Board, asserting that denial of a demolition permit imposed a taking. The court disagreed, and ordered the owner to perform repairs. The court's decision was influenced by two factors. First, the plaintiff failed to demonstrate that application of the city's preservation regulations diminished the property's ability to generate a reasonable return. Second, the plaintiff had intentionally discontinued maintenance, hoping to increase the likelihood of securing a demolition permit.⁵⁴

In *Lemme v. Dolan*, a property owner filed a lawsuit against the Albany, New York's Historic Resources Commission in response to being denied a demolition permit for a fire-ravaged property within a local historic district. The owner argued that neither stabilization nor demolition and reconstruction were economically feasible; thus, denial of a demolition permit constituted a taking. Ultimately, the court rejected the plaintiff's argument and ruled that denial of the demolition permit did not amount to a taking. This case was complicated by the fact that the court doubted the validity of some of the plaintiff's documentation, which was used to demonstrate the cost of stabilization as well as the cost of demolition and reconstruction.⁵⁵

Finally, *City of Pittsburgh v. Weinberg* is a particularly interesting case because it involves a property owner who acquired a locally-landmarked property that had deteriorated because of a previous owner's actions. The former intended to restore the property until discovering that no bank would grant a mortgage to finance the

⁵⁴ *Lubelle v. Rochester Preservation Board*, No. 3481/85 (N.Y. App. Div. 1988)

⁵⁵ *Lemme v. Dolan* 558 N.Y.S. 2d 991 (App. Div. 1990).

rehabilitation. The owner filed a lawsuit against Pittsburgh, which refused to issue a demolition permit. This time, the court found that application of the preservation ordinance, which does not include an affirmative maintenance provision, imposed a taking. In addition, the court criticized the city's Historic Review Commission for relying on the plaintiff's data and failing to engage in its own analysis.⁵⁶

Because affirmative maintenance provisions are considered constitutional, the majority of the case law pertaining to demolition-by-neglect deals with the issue of economic hardship. These cases demonstrate the fact that most courts find that the application of affirmative maintenance provisions do not automatically impose undue economic hardship. Despite this, preservation authorities should be aware of the fact that the application of preservation regulations, including anti-neglect provisions, can impose economic hardship. For this reason, preservation authorities should derive a clear understanding of the factors associated with a case before engaging in litigation. Economic hardship is addressed in greater detail in Chapter 3.

⁵⁶ City of Pittsburgh v. Weinberg, 676 A.2d 207 (Pa. 1996)

CHAPTER 3: DEMOLITION-BY-NEGLECT IN PHILADELPHIA

In 1985, Philadelphia enacted a new preservation ordinance. The original ordinance, which had been enacted in 1955, did not grant the Philadelphia Historical Commission (PHC) the ability to prohibit demolition, designate historic districts, or address demolition-by-neglect. In addition, the original ordinance lacked an economic hardship clause.⁵⁷ Recall that economic hardship clauses, which exempt property owners from preservation regulations, exist to prevent regulatory takings.

Philadelphia's new ordinance and accompanying rules and regulations include the tools needed to address demolition by neglect. The ordinance contains an affirmative maintenance provision, procedural guidelines, penalties, and an economic hardship clause. In the following sections, Philadelphia's affirmative maintenance provision, procedural guidelines, penalties, and economic hardship clause are detailed and contextualized.

Philadelphia's Affirmative Maintenance Provision

In many post-industrial cities like Philadelphia, demolition-by-neglect is widespread. This is because the interconnected legacies of deindustrialization and suburbanization perpetuate cyclical disinvestment. From a regulatory perspective, disinvestment affects four kinds of properties: properties that are historically significant but not listed on the National Register or local register, properties that are listed on the National Register but not the local register, properties that are listed on the local

⁵⁷ Danta, Jorge and Randal Baron. Interview by author. February 7, 2012.

register, but not the National Register, and properties that are located on both the National Register and local register.⁵⁸ The affirmative maintenance provision in Philadelphia's preservation ordinance applies solely to properties on the local register.

Most often, local preservation ordinances do not include a definition of demolition-by-neglect. However, some affirmative maintenance provisions are preceded by a definition that clarifies the provision's purpose. Several examples are listed below:

Dallas, Texas: Neglect in the maintenance of any structure on property subject to the predesignation moratorium or in a historic overlay district that results in deterioration and threatens the preservation of the structure.⁵⁹

Topeka, Kansas: The failure to provide ordinary and necessary maintenance and repair to a structure resulting in the deterioration of the structure or resulting in permanent damage, injury or loss to exterior features.⁶⁰

Washington, DC: Neglect in maintaining, repairing, or securing a historic landmark or a building or structure in a historic district that results in substantial deterioration of an exterior feature of the building or structure or loss of the structural integrity of the building or structure.⁶¹

Some preservation ordinances include a list of the physical signs of demolition-by-neglect. Such lists, which specify structural and exterior conditions, are used to identify demolition-by-neglect. Two examples are listed below:

Detroit, Michigan: Neglect in the maintenance, repair or security of a resource resulting in deterioration of an exterior feature of the resource, the loss of structural integrity of the resource, or any of the following conditions:

⁵⁸ Ibid, Danta, Jorge and Randal Baron. Interview by author.

⁵⁹ Dallas Development Code, Div. 51A-4.5000; § 51A-4.5001.

⁶⁰ Topeka Code Ch. 80 § 80-2.

⁶¹ D.C. Official Code § 6-1102(a)(3A).

- (1) The deterioration of exterior walls or other vertical supports;
- (2) The deterioration of roofs or other horizontal members;
- (3) The deterioration of exterior chimneys;
- (4) The deterioration of exterior plaster, or mortar or stucco;
- (5) The ineffective weatherproofing of exterior walls, roofs and foundations, including broken windows or doors;
- (6) The serious deterioration of any documented exterior architectural feature or significant landscape feature which in the judgment of the commission produces a detrimental effect upon the character of the district.⁶²

San Antonio, Texas: (a) Applicability. In keeping with the city's minimum housing standards, the owner or other person having legal custody and control of a designated landmark or structure in a local historic district shall preserve the historic landmark or structure against decay and deterioration and shall keep it free from any of the following defects:

- (1) Parts that are improperly or inadequately attached so that they may fall and injure persons or property;
- (2) Deteriorated or inadequate foundation;
- (3) Defection or deteriorated floor supports or floor supports that are insufficient to carry the loads imposed safely;
- (4) Walls, partitions, or other vertical supports that split, lean, list, or buckle due to defect or deterioration or are insufficient to carry the loads imposed safely;
- (5) Ceilings, roofs, ceiling or roof supports, or other horizontal members which sag, split, or buckle due to defect or deterioration or are of insufficient size or strength to carry the loads imposed safely;
- (6) Fireplaces and chimneys which list, bulge, or settle due to defect or deterioration or are of insufficient size or strength to carry the loads imposed safely;
- (7) Deteriorated, crumbling, or loose exterior stucco or mortar, rock, brick, or siding;
- (8) Broken, missing, or rotted roofing materials or roof components, window glass, sashes, or frames, or exterior doors or door frames; or
- (9) Any fault, defect, or condition in the structure which renders it structurally unsafe or not properly watertight.⁶³

Philadelphia's affirmative maintenance provision, which was introduced in the 1985 ordinance, does not include a definition or a list of conditions. Philadelphia's

⁶² Detroit Code Ch. 25 § 25-2-2 (g).

⁶³ San Antonio Unified Development Code, Art. 5, Div. 2, § 35-615.

provision simply states that landmarked properties must be maintained according to the standard of “good repair.” It reads:

(9)(c) The exterior of every building, structure and object and of every building, structure and object located within an historic district, and every historic public interior portion of a building or structure 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 historic portion to deteriorate, decay, become damaged or otherwise fall into a state of disrepair.

(d) The provisions of Section 14-2007 shall not be construed to prevent the ordinary maintenance or repair of any building, structure, site or object where such work does not require a permit by law and where the purpose and effect of such work is to correct any deterioration or decay of, or damage to, a building, structure, site or object and to restore the same to its condition prior to the occurrence of such deterioration, decay or damage.⁶⁴

Section (d) is notable because it clarifies that 9(c) does not preclude ordinary maintenance tasks that do not require a permit.

Philadelphia’s affirmative maintenance provision is more flexible than those that include a definition of demolition-by-neglect. This is because open-ended provisions allow preservation authorities to address anything from potential demolition-by-neglect to full-fledged demolition by neglect. Conversely, specific provisions prevent preservation authorities from addressing neglect until it threatens the property’s continued existence.

Philadelphia’s Procedural Guidelines

⁶⁴ Philadelphia Code 14-2007 § 8(c)-8(d).

Almost all preservation ordinances - whether explicitly prohibiting demolition-by-neglect or requiring affirmative maintenance - include procedural guidelines. They are included in the ordinance itself or in the accompanying rules and regulations. Typically, guidelines that explicitly prohibit demolition-by-neglect are more formal while guidelines that require affirmative maintenance are more informal. Despite this, most procedural guidelines are similar in essence. Two examples are listed below:

Dallas, Texas: (3) Demolition-by-neglect procedure:

(A) Purpose. The purpose of the demolition by neglect procedure is to allow the landmark commission to work with the property owner to encourage maintenance and stabilization of the structure and identify resources available before any action is taken.

(B) Request for investigation. Any interested party may request that the historic preservation officer investigate whether a property is being demolished by neglect.

(C) First meeting with the property owner. Upon receipt of request, the historic preservation officer shall meet with the property owner or the property owner's agent with control of the structure and discuss the resources available for financing any necessary repairs. After the meeting, the historic preservation officer shall prepare a report for the landmark commission on the condition of the structure, the repairs needed to maintain and stabilize the structure, any resources available for financing the repairs, and the amount of time needed to complete the repairs.

(D) Certification and notice. After review of the report, the landmark commission may vote to certify the property as a demolition-by-neglect case. If the landmark commission certifies the structure as a demolition-by-neglect case, the landmark commission shall notify the property owner or the property owner's agent with control over the structure of the repairs that must be made. The notice must require that repairs be started within 30 days and set a deadline for completion of the repairs.

(E) Second meeting with the property owner. The historic preservation officer shall meet with the property owner or the property owner's agent with control over the structure within 30 days after the notice was sent to inspect any repairs completed and assist the property owner in obtaining any resources available for financing the repairs.⁶⁵

⁶⁵ Dallas Development Code, Div. 51A-4.5000; § 51A-4.5001.

Montgomery County, Maryland: In the event of a case of demolition-by-neglect of a historic resource on public or private property, the following provisions shall apply:

(a) If the historic resource has been designated on the master plan as an historic site or an historic resource, the director shall issue a written notice to all persons of record with any right, title, or interest in the subject property, or the person occupying such premises, of the conditions of deterioration and shall specify the minimum items of repair or maintenance necessary to correct or prevent further deterioration. The notice shall provide that corrective action shall commence within 30 days of the receipt of such notice and be completed within a reasonable time thereafter. The notice shall state that the owner of record of the subject property, or any person of record with any right, title or interest therein, may, within 10 days after the receipt of the notice, request a hearing on the necessity of the items and conditions contained in such notice. In the event a public hearing is requested, it shall be held by the commission upon 30 days' written notice mailed to all persons of record with any right, title or interest in the property and to all citizens and organizations which the director feels may have an interest in the proceedings.

(1) After a public hearing on the necessity of improvements to prevent demolition-by-neglect, if the commission finds that such improvements are necessary, it shall instruct the director to issue a final notice to be mailed to the record owners and to all parties of record with any right, title or interest in the subject property advising of the items of repair and maintenance necessary to correct or prevent further deterioration. The owner shall institute corrective action to comply with the final notice within 30 days of receipt of the revised notice.

(2) In the event the corrective action specified in the final notice is not instituted within the time allotted, the director may institute, perform and complete the necessary remedial work to prevent deterioration by neglect and the expenses incurred by the director for such work, labor and materials shall be a lien against the property, and draw interest at the highest legal rate, the amount to be amortized over a period of 10 years subject to a public sale if there is a default in payment.⁶⁶

Dallas' and Montgomery County's procedural guidelines are good representatives of the kinds of guidelines that exist. Procedural guidelines range from lenient/property owner-

⁶⁶ Montgomery County Code Ch. 24A § 24A-9.

centered to strict/historic resource-centered. Dallas' guidelines, which represent the former, call for sympathetic interaction with the property owner and require that the officer pursue financing options. Montgomery County's guidelines, which represent the latter, allow the director to perform repairs and impose a lien.

Typically, municipal preservation authorities are responsible for initiating and carrying out demolition-by-neglect proceedings. Philadelphia is an exception. When the PHC encounters a case of demolition-by-neglect of a locally-designated property, it petitions the city's building code department, the Department of Licenses and Inspections (L&I), to issue a violation. On occasion, L&I issues the violation. To find out whether or not L&I issued a violation, the PHC must check L&I's database.⁶⁷

Philadelphia's procedural guidelines read:

(9) Enforcement:

(a) The Department is authorized to promulgate regulations necessary to perform its duties under this Section.

(b) The Department may issue orders directing compliance with the requirements of this Section. An order shall be served upon the owners or person determined by the Department to be violating the requirements of this section. If the person served is not the owner of the property where the violation is deemed to exist or to have occurred, a copy of the order shall be sent to the last known address of the registered owner and a copy shall be posted on the property.

(c) Any person who violates a requirement of this Section or fails to obey an order issued by the Department shall be subject to a fine of three hundred (300) dollars.

(d) Any person who alters or demolishes a building, structure, site or object in violation of Section 14-2007 or in violation of conditions or requirements specified in a permit shall be required to restore the building, structure, site or object involved to its appearance prior to the violation. Such restorations shall be in addition to and not in lieu of any

⁶⁷ Ibid, Danta, Jorge and Randal Baron. Interview by author.

penalty or remedy available under the Code or any other applicable law.⁶⁸

Most procedural guidelines are clear and straightforward. Despite this, dealing with demolition-by-neglect remains difficult. Recall that in 1993, the National Alliance of Preservation Commissions survey found that the majority of preservation commissions identify demolition-by-neglect as the most daunting obstacle to preservation.⁶⁹ This is because many cases are caused by socioeconomic factors, health and mental health issues, and ownership disputes, which render property owners uncooperative or unable to cooperate.⁷⁰

Few demolition-by-neglect cases are caused by intentional neglect. Intentional neglect occurs when the owner of a historic resource discontinues maintenance in an effort to circumvent preservation requirements. Intentional neglect is rare and difficult to prove. Typically, it occurs in economically-stable downtowns in which a parcel with a historic structure is less valuable than the same parcel would be without the historic structure, or in up-and-coming neighborhoods in which development is anticipated. In Philadelphia, intentional neglect is rare, but when it occurs, it affects exceptionally significant resources.⁷¹ Two notable examples include the United States Naval Asylum, which is a National Historic Landmark, and the Divine Lorraine Hotel, which boasts a

⁶⁸ Philadelphia Code 14-2007 § 9.

⁶⁹ Osborne, Rebecca. *Balancing Act: Preventing Demolition by Neglect*. UNCG Department of Interior Architecture. The Historic Dimension Series. May 2005. <http://www.presnc.org/Preservation-Answers/Balancing-Act-Preventing-Demolition-by-Neglect>.

⁷⁰ Ibid, Danta, Jorge and Randal Baron. Interview by author.

⁷¹ Ibid.

highly-visible public constituency. The former has been rehabilitated but the latter continues to languish.

It is important to note that because of staffing restraints, the PHC does not systematically monitor the condition of designated properties. Instead, PHC staffers informally monitor properties. This is not uncommon, but problematic because the staffers live and work in Center City and may overlook properties located in neighborhoods beyond Center City's periphery.⁷²

Philadelphia's Penalties Section

Almost all preservation ordinances provide for the imposition of penalties. Penalties, which range from fines to jail time, are imposed when a property owner violates a court order. According to National Trust Special Council and Legal Education Coordinator Julia Miller, "Potentially, the strongest deterrent in failure-to-maintain and demolition-by-neglect cases is the ability to impose significant penalties."⁷³

Washington DC boasts an unusually strong penalties clause that authorizes the imposition of steep fines as well as significant civil penalties. It reads:

Section 11. Penalties; remedies; enforcement.

(a) Criminal penalty. Any person who willfully violates any provision of this act or of any regulation issued under the authority of this act shall, upon conviction, be fined not more than \$1,000 for each day a violation occurs or continues or be imprisoned for not more than 90 days or both. Any prosecution for violations of this act or of any regulations issued under the authority of this act shall be brought in the name of the District

⁷² Ibid.

⁷³ Miller, Julia. *Doing Away with Demolition-by-Neglect*. Washington, DC: National Trust for Historic Preservation, 2010. 14.

of Columbia in the Superior Court of the District of Columbia by the Office of Attorney General for the District of Columbia.

(b) Civil remedy. Any person who demolishes, alters or constructs a building or structure in violation of sections 5, 6, or 8 of this act shall be required to restore the building or structure and its site to its appearance prior to the violation. Any action to enforce this subsection shall be brought in the name of the District of Columbia in the Superior Court of the District of Columbia by the Office of Attorney General for the District of Columbia. The civil remedy shall be in addition to and not in lieu of any criminal prosecution.

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this act, or any rules or regulations issues under the authority of this act, pursuant to the Civil Infractions Act of 1985. Adjudication of any infraction of this act shall be pursuant to the Civil Infractions Act of 1985.⁷⁴

Philadelphia's penalties clause is simple. The penalties clause, which is included in the enforcement section of the preservation ordinance, authorizes the imposition of a \$300 fine and requires that the property owner restore the structure to pre-violation condition.⁷⁵ According to PHC Historic Preservation Planner Jorge Danta, the PHC has never imposed the \$300 fine. Rather, L&I imposes fines ranging from \$5,000 to \$25,000. This is because L&I maintains a separate fine structure.⁷⁶

Philadelphia's Economic Hardship Clause

Most preservation ordinances include an economic hardship clause. Economic hardship clauses, which exempt property owners from preservation regulations that impose undue economic hardship, protect against regulatory takings. If a property owner believes that application of a municipality's affirmative maintenance provision

⁷⁴ D.C. Official Code, 6-1110.

⁷⁵ Philadelphia Code 14-2007 § 9(c)-9(d).

⁷⁶ Ibid, Danta, Jorge and Randal Baron. Interview by author.

imposes economic hardship - typically, the definition of economic hardship is consistent with that of regulatory takings - the owner may apply for an exemption. When this occurs, the owner must provide evidence. Most preservation ordinances outline the kinds of information that owners must generate. Philadelphia's economic hardship clause reads:

(7)(f) In any instance where there is a claim that a building, structure, site or object cannot be used for any purpose for which it is or may be reasonably adapted, or where a permit application for alteration, or demolition is based, in whole or in part, on financial hardship, the owner shall submit, by affidavit, the following information to the Commission:

- (1) Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship, whether business or familial, if any, between the owner and the person from whom the property was purchased;
- (2) Assessed value of the land and improvements thereon according to the most recent assessment;
- (3) Financial information for the previous two (2) years which shall include, as a minimum, annual gross income from the property, itemized operating and maintenance expenses, real estate taxes, annual debt service, annual cash flow, the amount of depreciation taken for federal income tax purposes, and other federal income tax deductions produced;
- (4) All appraisals obtained by the owner in connection with his purchasing or financing of the property, or during his ownership of the property;
- (5) All listings of the property for sale or rent, price asked, and offers received, if any;
- (6) Any consideration by the owner as to profitable, adaptive uses for the property;
- (7) The Commission may further require the owner to conduct, at the owner's expense, evaluations or studies, as are reasonably necessary in the opinion of the Commission, to determine whether the building, structure, site or object has or may have alternate uses consistent with preservation.⁷⁷

⁷⁷ Philadelphia Code 14-2007 § 7(f).

Philadelphia's economic hardship clause is consistent with most others, although it fails to address self-imposed hardship. Despite this, according to Baron, the PHC seeks evidence of self-imposed hardship and takes into consideration affirmative indicators of neglect.⁷⁸ Typically, economic hardship clauses require the preservation authority to consider evidence of self-imposed economic hardship.

According to the National Trust, preservation authorities must approach economic hardship claims consistently. In demolition-by-neglect cases, they should examine economic impact – which is influenced by factors including the property's value, the projected cost of court-ordered repairs, operating expenses, revenue, financing options, and development incentives – as well as use considerations.⁷⁹

In general, developers compile fairly compelling economic hardship claims and homeowners present less convincing claims. This is because few homeowners' claims meet the economic impact standard or the use consideration standard. In order to meet the former, the homeowner must demonstrate that the property's current value plus the projected cost of court-ordered repairs is more than the property's post-rehabilitation value. In order to meet the latter, the homeowner must prove that rehabilitation expenditures preclude occupation of the property.⁸⁰

On occasion, preservation commissions face economic hardship claims by non-profit organizations. When a non-profit files a claim, the commission must examine both economic impact and reasonable use, but should focus on reasonable use. In particular,

⁷⁸ Ibid, Danta, Jorge and Randal Baron. Interview by author.

⁷⁹ *Assessing Economic Hardship Claims Under Historic Preservation Ordinances*. Issue brief. Preservation Law Reporter Educational Materials. National Trust for Historic Preservation. 1-2.

⁸⁰ Ibid, *Assessing Economic Hardship Claims Under Historic Preservation Ordinances*. 2.

the commission should assess the organization's financial capability and the projected cost of court-ordered repairs in order to determine whether or not the expenditure prohibits the organization from furthering its charitable mission.⁸¹

In order to ensure that economic hardship clauses are not abused, preservation authorities should assess owner-provided evidence. The National Trust recommends that during economic hardship assessment proceedings, commissions ask: "1) Is the evidence sufficient? 2) Is the evidence relevant? 3) Is the evidence competent? 4) Is the evidence credible? 5) Is the evidence consistent?"⁸² In addition, subject matter experts should review the evidence.⁸³ For example, if an owner insists that his or her property is structurally unstable, the claim should be verified by an independent structural engineer. Or if an owner purports that the projected cost of rehabilitation imposes undue economic hardship, the claim should be corroborated by an independent contractor.

Philadelphia's Affirmative Maintenance Provision vs. Building Codes

Philadelphia's affirmative maintenance provision's standard is vague and open-ended, but its Property Maintenance Code's standards are stringent and specific. Recall that the affirmative maintenance provision, which pertains only to locally-landmarked properties, requires maintenance according to the standard of "good repair." The Property Maintenance Code, which pertains to all properties, specifies standards for

⁸¹ Ibid, *Assessing Economic Hardship Claims Under Historic Preservation Ordinances*. 2-3.

⁸² Ibid, *Assessing Economic Hardship Claims Under Historic Preservation Ordinances*. 3.

⁸³ Ibid, *Assessing Economic Hardship Claims Under Historic Preservation Ordinances*. 4.

both exteriors and interiors. For example, the Code requires that “all cornices, belt courses, corbels, terra cotta trim, wall facings canopies, marquees, signs, metal awnings, stairways, fire escapes, standpipes, exhaust ducts and similar elements shall be maintained in good repair and be properly anchored so as to be kept in a safe and sound condition. When required, all exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.”⁸⁴

In terms of purpose, the affirmative maintenance provision authorizes the PHC to get involved in situations in which the continued existence of a historic property is threatened. This ensures that historic properties are given some priority at L&I, which is primarily concerned with ensuring public health and safety. This is why violations associated with demolition-by-neglect cite the Property Maintenance Code instead of the city’s preservation ordinance.

This is unique. Most commissions have the authority to deal with demolition-by-neglect independently - whether maintenance standards are vague or specific. Like any approach, this approach has pros and cons. The main pro is: it is possible to issue violations pertaining to interiors if necessary. The main con is: the commission must rely on L&I. In the past, L&I has been criticized as indifferent and mostly ineffective. Currently, the department is working towards enhancing its reputation. Most notably, it is beginning to enforce a provision of the Property Maintenance Code, which requires

⁸⁴ Philadelphia Property Maintenance Code § PM-304.5

vacant buildings on blocks that are at least 80% occupied to have actual windows and doors. This initiative is addressed in greater detail in Chapter 5.

For more information about how Philadelphia's ordinance compares to those in the most populous cities in the U.S., see the appendix.

CHAPTER 4: CASE STUDIES

The following case studies were selected by the author with help from PHC staffers Jorge Danta and Randal Baron, who feel that the cases best represent the range of situations they deal with. The first case, that of the Victory Building, comes close to exemplifying the traditional definition of demolition-by-neglect. It involves a speculative developer who failed to maintain his portfolio of Center City properties. The Robert Purvis House and the Samuel Machinery Company Building are representative of the majority of demolition-by-neglect cases, in that they involve generally stubborn owners who fail to respond to violations and court orders - even when facing substantial penalties. The fourth and final case, the case of the Diamond Street Historic District, is included because it serves as a reminder that some forms of demolition-by-neglect, particularly widespread demolition-by-neglect caused by complex socioeconomic factors, exceed the purview of preservation authorities.

In sum, the case studies demonstrate the fact that Philadelphia's Historical Commission demonstrates a commitment to curbing demolition-by-neglect. They do all that they can to address it. Despite this, because L&I enforces the preservation ordinance, it plays a greater role than the Commission itself in affecting outcomes. The cases also highlight the need for a revolving fund for stabilizing and sealing endangered historic buildings. L&I is authorized to do so, but rarely utilizes the authority because of lack of funding.

A. Victory Building, 1001-1007 Chestnut Street



Figure 1: The Victory Building in 1975. Photo: Historic American Buildings Survey

In the late 1980s and early 1990s, the Victory Building (Figure 1) captured the city's attention. The Second-Empire style building, located at the northwest corner of 10th and Chestnut Streets in Center City, had been allowed to decay for a more than a decade before the city acted. This case, which exemplifies the traditional definition of demolition-by-neglect, supports the argument that the imposition of substantial penalties tends to be effective in cases involving profit-driven speculative developers.

In 1974, notorious speculator Samuel Rappaport purchased the Victory Building, which is individually listed on the Philadelphia Register of Historic Places.⁸⁵ Rappaport's avowed business model was essentially real estate speculation: buying and holding downtown properties with little occupancy and management, sometimes for long periods, and then selling the properties for two to three times his purchase price. Between purchase and sale, Rappaport would discontinue all but the most routine maintenance.⁸⁶ In 1993, the Philadelphia Inquirer reported: "An Inquirer review of real estate files, tax records and court documents, and interviews with 150 business people, city officials and preservationists offer a profile of Rappaport as a master real estate speculator who has made millions of dollars in Center City, and damaged the face of Philadelphia."⁸⁷

The media began to focus on the Victory Building in 1982, after a fire vacated the building's few remaining tenants. Prior to the fire, the first and second floors had been occupied by retailers and the upper floors had been vacant (they were vacated in 1974, when Rappaport purchased the property).⁸⁸ The media focused on this building at this time for two reasons. First, the Victory Building, a major downtown landmark, was Rappaport's most conspicuous property. Second, the fire may have been prevented had Rappaport complied with a code violation calling for the installation of a sprinkler

⁸⁵ Poncet, Dell. "Let's save the Victory Building." *Philadelphia Business Journal*, September 16-22, 1991.

⁸⁶ Wiegand, Ginny, and Anthony R. Wood. "Speculation breeds decay and dismay." *Philadelphia Inquirer*, April 4, 1993.

⁸⁷ Ibid.

⁸⁸ Pennsylvania at Risk! *Victory Building*. On file at the PHC.

system. After the fire, Rappaport boarded the windows with used plywood, which was covered in graffiti, and charged his former tenants for the wood and labor.⁸⁹

In 1991, after nearly two decades of allowing the Victory Building to decay, Rappaport applied for a demolition permit. The application, which was reviewed by the PHC's Architectural Committee and its Committee on Financial Hardship, was denied. It was denied because although Rappaport had demonstrated financial hardship (according to the PHC's Committee on Financial Hardship), a potential developer and a potential tenant had come forward to express interest in the building. Subsequently, both backed out.⁹⁰ In response, Rappaport filed an appeal. The appeal, which was reviewed by the Board of Licenses and Inspections Review, was approved. The board sided with Rappaport because he had satisfied the three-pronged test for financial hardship.⁹¹ Recall that according to the PHC's Rules and Regulations: "To substantiate a claim of financial hardship to justify a demolition, the applicant must demonstrate that the sale of the property is impracticable, that commercial rental cannot provide a reasonable rate of return, and that other potential uses of the property are foreclosed."⁹² A feasibility study corroborated the Board of L&I Review's decision. The study, which examined the possibility of adapting the building to accommodate offices, found that with a market value of \$3.3 million and an acquisition/rehabilitation cost of \$20.5 million, the building's owner would have to charge \$32.09 per square foot in

⁸⁹ Gillin, Beth. "Danger smoldered for years." *Philadelphia Inquirer*, January 24, 1983.

⁹⁰ Memorandum to Sally J. Bellet, City Council from Richard Tyler. September 16, 1992. On file at the PHC.

⁹¹ Ibid.

⁹² Philadelphia Historical Commission Rules and Regulations, 6.4.

order to receive a reasonable return. At the time, comparable office buildings' rates ranged from about \$13 to \$17 per square foot.⁹³

Unfortunately, the Board of L&I Review in its determination had considered and dismissed the argument that the financial hardship was self-imposed. At the review, Howard Kittel, the Executive Director of the Preservation Coalition, asserted: "Any current hardship incurred by the applicant is self-induced. He should not be allowed to deprive the public of a historic resource - its current status as a certified historic structure makes this self-evident - due to his lack of stewardship of the resource, for at least the past decade... Is it a hardship to hold a property for a long period of time and then complain that there is no longer a market after tax laws and investment climate have changed?"⁹⁴

Although Rappaport could have demolished the Victory Building, he did not. The author suspects that this is because its demolition would have been costly, possibly prohibitively so. Over the course of decades, Rappaport exhibited a pattern that suggests that he preferred to limit his expenditures to the costs associated with acquiring buildings. Despite the fact that he was a multi-millionaire, he refused to invest in his properties through performing routine maintenance or correcting hazardous conditions.

In 1994, Mayor Ed Rendell formed a committee, which he dubbed the "Early Warning Committee." The Early Warning Committee was the third committee with ties

⁹³ Memorandum to Mayor W. Wilson Goode from Ad Hoc Committee on the Victory Building. November 9, 1991. On file at the PHC.

⁹⁴ Testimony of Howard Kittel to the Board of Licenses and Inspections Review. On file at the Preservation Alliance for Greater Philadelphia.

to the Victory Building. The first two committees - the first created by Mayor W. Wilson Goode and the second by Mayor Rendell - focused on finding a way to preserve the Victory Building. Neither accomplished much. The Early Warning Committee was charged with the tasks of identifying buildings undergoing demolition-by-neglect, determining how to stabilize the buildings, and approaching the owners. If an owner refused to repair his or her property, the city planned to repair the property with money from a privately-subsidized \$1 million revolving fund and impose a lien equivalent to the cost of the work. The Early Warning Committee never got off the ground. Many local preservation professionals felt that it did not make sense to seek private subsidies for something that the city should be dealing with through enforcement of its preservation ordinance and building codes.⁹⁵ In a 1994 *Inquirer* article, PHC member David Hollenberg echoed this sentiment: "It's weird. Basically, what this committee is doing is figuring out how to enforce what is already a law anyway, so why would potential funders give money to do something the city already has an ordinance to do?"⁹⁶

In 1998, the Victory Building saga ended when one of Rappaport's buildings - a parking garage at the northeast corner of Broad and Pine Streets - partially collapsed, killing a Court of Common Pleas judge. In response, the city threatened Rappaport's estate (he had passed away in 1994) with a \$5 million lawsuit. Finally, the estate

⁹⁵ Quoted in Wiegand, Ginny. "Rendell's panel fails to mollify preservationists; four people were named, critics wonder if they can raise enough money to save historic buildings from demolition." *Philadelphia Inquirer*, March 27, 1994.

⁹⁶ *Ibid.*

acquiesced and spent approximately \$1 million to correct over 1,300 violations, including those afflicting the Victory Building.⁹⁷

Four years later, the building was sold and subsequently developed. Because the building is listed on the National Register of Historic Places, the team of developers pursued and received the 20% Federal Historic Preservation Tax Credit. The lower floors now house a Starbucks and the upper floors contain apartments. The apartments rent for between \$1,425 and \$1,840⁹⁸ and the condominiums sell for between \$250,000 and \$950,000.⁹⁹

Despite the fact that city officials professed a commitment to preserving the Victory Building and the PHC remained steadfast in its efforts to devise a solution, the factors that impacted the outcome most included the threat of a \$5 million lawsuit and the passage of time. Naturally, when a speculative developer is confronted with financial penalties that eclipse the benefits of neglect, the developer will respond. And thanks to the forces of time, Center City boasts a healthy housing market, which makes it possible - and profitable - to adaptively reuse historic properties.

⁹⁷ Yant, Monica. "A year after judge's fatal accident, L&I reports progress; the owner of the building where a wall collapsed has spent nearly \$1 million to fix scores of properties." *Philadelphia Inquirer*, October 10, 1998.

⁹⁸ PMC Property Group Inc. "Victory Building Apartments, 1011 Chestnut Street." 2012. http://www.pmcpropertygroup.com/listings/1011_chestnut.html.

⁹⁹ Condo Domain. "Victory Condominiums." 2011. <http://philadelphia.condodomain.com/Victory-Condominiums>.

B. Robert Purvis House, 1601 Mount Vernon Street



Figure 2: The Robert Purvis House in March 2011. Photo: Rachel Hildebrandt

The Robert Purvis House (Figure 2), located at 1601 Mount Vernon Street in the Spring Garden neighborhood, stands crumbling. It has been allowed to decay while the large brick and marble townhouses surrounding it have been converted into luxury apartments and condominiums. This case demonstrates the fact that on occasion, it is impossible to make sense of a property owner's actions. In addition, this case emphasizes the need for a revolving fund to help stabilize endangered historic properties.

In 1977, Miguel Santiago purchased the Purvis House for \$15,500.¹⁰⁰ At the time, the Purvis House stood amidst a neighborhood on the cusp of transition. Soon, property

¹⁰⁰ BRT Property Search. <http://opa.phila.gov/opa.apps/Search/SearchForm.aspx?url=search>.

values would rise, large brick townhouses would be converted into luxury housing, and demographics would shift. For several years, Santiago's father operated a dry cleaning business out of the ground floor.¹⁰¹

This case came to the attention of the PHC in the early 2000s. The building - which is part of a local historic district as well as a national historic district - appeared to be undergoing demolition-by-neglect. Its brick walls were deteriorating and its windows were unsecured. In 2003, the PHC contacted Santiago to inquire about his plans for the property. In response, he devised a plan to rehabilitate the property and erect a three-story addition to the rear. After debating the details of the plan, the PHC granted the necessary permits.¹⁰² Despite this, Santiago failed to follow through. This process occurred repeatedly - in February of 2007 and again in June of 2010. Each time, Santiago had failed to secure either cost estimates or work contracts.¹⁰³

In 2006, the PHC began to request the issuance of violations. L&I responded, issuing violations for the deteriorated east wall and the boarded windows.¹⁰⁴ Recall that according to the Property Maintenance Code's standards for vacant buildings, vacant buildings on blocks that are at least 80% occupied must install actual windows and doors. These violations were issued repeatedly.¹⁰⁵ Santiago failed to respond.

Finally, in early 2011, the Court of Common Pleas fined Santiago \$10,000 for failing to respond to a court order, which called for repair of the interior flooring system,

¹⁰¹ Salisbury, Stephan. "Philadelphia panel approves effort to preserve historic Purvis house." *Philadelphia Inquirer*, May 14, 2011.

¹⁰² Memorandum to Norman Mason, L&I from Randal Baron. March, 21, 2001. On file at the PHC.

¹⁰³ Ibid.

¹⁰⁴ Brief by Jorge Danta. January 15, 2009. On file at the PHC.

¹⁰⁵ Ibid.

the exterior walls, and the roof.¹⁰⁶ In order to complete these repairs, Santiago applied for permits to do so. The PHC was quick to issue permits for the repair of the flooring system and the roof, but were slow to issue a permit for repair of the east wall. This is because Santiago applied to demolish and replace the entire wall, and the Commission feared that Santiago would demolish the wall and fail to rebuild it. Eventually, the PHC issued the permit.¹⁰⁷

Despite the fact that Santiago has been granted permission to rehabilitate the property and to replace the east wall, he has failed to do so. According to a Philadelphia Inquirer article from April 2011, Santiago recognizes the house's historic value and still plans to rehabilitate it. He blames the inability to obtain financing for his failure to follow through.¹⁰⁸ Unfortunately, it is unlikely that the building will be repaired while owned by Santiago. According to PHC staffer Randal Baron, Loonstyn Properties, a developer who has done a lot of work in the area, including the total rebuilding of the adjacent house, offered to partner with Santiago to redevelop the property. Santiago refused. In addition, numerous parties have attempted to buy the property. Again, Santiago repeatedly refuses.¹⁰⁹

This case inspired John Gallery, Executive Director of the Preservation Alliance of Greater Philadelphia, to suggest the creation of an "intervention fund" which could be used to stabilize especially significant historic structures while comprehensive plans are developed. For a time, Philadelphia had access to a similar fund. The fund was seeded

¹⁰⁶ Salisbury, Stephan. "Abolitionist home at risk – Robert Purvis' house in disrepair, legal limbo." *Philadelphia Inquirer*. April 29, 2011.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Baron, Randal. Interview by author. February 28, 2011.

by the Pew Charitable Trusts and was administered by Preservation Pennsylvania. In fact, the fund was used to stabilize the ceiling in Al Capone's cell in Eastern State Penitentiary. Unfortunately, it was discontinued over a decade ago when funding ran dry.¹¹⁰

¹¹⁰ Ibid, Salisbury, Stephan. "Abolitionist home at risk – Robert Purvis' house in disrepair, legal limbo."

C. Samuel Machinery Company Building, 135-137 N. 3rd Street



Figure 3: The Samuel Machinery Company Building. Photo: Naked Philly

The Samuel Machinery Company Building (Figure 3), built 1851-1853 and designed by architect Gustav Range,¹¹¹ stands at 135-137 N. 3rd Street in the Old City neighborhood. While the Old City neighborhood thrives, this individually-landmarked building languishes. This case highlights the fact that when uninterested, stubborn property owners fail to correct violations or comply with court orders, the imposition of substantial penalties tends to be ineffective. It also emphasizes the need for a revolving fund for emergency repairs.

In 2004, Henry Nemrod inherited the Samuel Machinery Company Building, which is both individually listed on the local register and included in a local historic district. According to mortgage documents, he inherited the building from his mother,

¹¹¹ Email to Council Requests/L&I from Rebecca Sell. November 28, 2011. On file at the PHC.

who had owned it since 1961.¹¹² In 2006, the PHC noticed that the building was decaying. Pieces of its brownstone facade were falling onto the street and many of its windows were unsecured. According to standard procedure, the Commission contacted L&I to request the issuance of a violation. L&I issued the violations, citing the crumbling facade and the failing rear wall.¹¹³ Unfortunately, Nemrod neglected to respond.

In May 2007, after failing to correct violations and refusing to appear in court, the Court of Common Pleas issued an order which called for the repair of the roof and walls and the removal of debris. In addition, the order called for the imposition of a \$79,000 fine (\$1000 for each day the group of violations remained uncorrected) and a 6 month jail term.¹¹⁴ Again, Nemrod neglected to respond. In October 2007, 137 N. 3rd was sold via sheriff's sale. Legally, 135 N. 3rd Street and 137 N. 3rd Street are distinct properties. It was sold because, according to court documents, Nemrod owed numerous creditors including his mortgagee, Gelt Financial Corporation.¹¹⁵

After losing control of 137 N. 3rd, Nemrod applied for the permits needed to rehabilitate the brownstone facade and install actual doors and windows. In addition, Electra 137 LLC, owner of 137 N. 3rd, applied for the corresponding permits. Commission staffer Erin McGinn-Cote reviewed the plans and approved them. But despite the fact that the necessary work was approved, it never occurred.¹¹⁶

By 2010, the derelict property remained unsecured and neither Nemrod nor Electra 137 LLC appeared willing to correct the building's numerous violations. That

¹¹² Mortgage documents. April 1, 2004. On file at the PHC.

¹¹³ Ibid, Email to Council Requests/L&I from Rebecca Sell.

¹¹⁴ Court order. May 16, 2007. On file at the PHC.

¹¹⁵ Court affidavit. September 7, 2007. On file at the PHC.

¹¹⁶ Ibid, Email to Council Requests/L&I from Rebecca Sell.

year, Nemrod passed away, igniting a lien holder's dispute. The dispute was settled quickly (thanks to the city's Law Department), allowing the emergent owner to sell 135 N. 3rd to Electra 137 LLC.¹¹⁷ Those affected by this case, including the Commission, L&I, the Old City Civic Association, and neighbors, hoped that new, united ownership would bring about change. After all, the property is located amidst a booming district that boasts steep real estate values. As of yet, 137 LLC has failed to perform any of the necessary work.

Currently, the property continues to stand vacant, its brownstone continuing to crumble and its structural members continuing to fail. However, according to Commission staffer Randal Baron, the property was sold in February 2012. The new owner – whose name does not appear in sales records just yet - intends to rehabilitate the property.¹¹⁸ The ground floor, which was occupied by the machine shop for approximately a century, will probably become boutiques or art galleries, and the upper floors, which were occupied by offices, will probably become luxury apartments or condominiums.

¹¹⁷ Email to Erin McGinn-Cote and Jonathan Farnham from Leonard Reuter, Assistant City Solicitor. March 2, 2010. On file at the PHC.

¹¹⁸ Baron, Randal. Interview by author. March 8, 2011.

D. Diamond Street Historic District, 1400-2000 Diamond Street



Figure 4: The 1900 Block of Diamond Street. Photo: Google Earth

Diamond Street, from Broad to 21st (Figure 4), boasts a collection of nineteenth century homes that rival those of Rittenhouse Square. Throughout the 2000s, many of the block's dilapidated, but historic homes were demolished by the city. This case differs from the cases of the Victory Building, the Robert Purvis House, and the Samuel Machinery Building because it involves demolition-by-neglect caused by socioeconomic factors. Demolition-by-neglect caused by socioeconomic factors tends to affect entire neighborhoods rather than individual properties. For this reason, this case highlights the issues and complexities that can arise when preservation and planning initiatives intersect.

Throughout the 1980s and 1990s, the Church of the Advocate-affiliated Advocate Community Development Corporation (ACDC) had rehabilitated hundreds of properties along Diamond Street. The properties, which exhibited deteriorated masonry, broken windows, and collapsed roofs, had suffered from decades of disinvestment caused by gradual deindustrialization and suburbanization. The ACDC

accomplished this by partnering with developers with experience in constructing and managing affordable housing, and by utilizing programs offered by the U.S. Office of Housing and Urban Development (HUD), the Philadelphia Office of Housing and Community Development, and the Philadelphia Redevelopment Authority.¹¹⁹

Despite the fact that the Diamond Street's homes and several churches comprise a local historic district (the city's first) as well as a national historic district, the area was targeted by those administering Mayor John Street's Neighborhood Transformation Initiative (NTI). NTI, which remained in effect from 2001 until 2008, was a multi-dimensional initiative intended to primarily alleviate blight and foster the development of both affordable and market-rate housing. Under NTI, hundreds of millions of dollars (generated from city-issued bonds) were used to demolish blighted houses. Most were vacant, but some were occupied. The city did this by declaring the homes either imminently dangerous or unsafe, and issuing 'demolish or repair orders.' Essentially, a 'demolish or repair order' is equivalent to a demolition permit.¹²⁰

Along Diamond Street, the city demolished approximately eighty historic properties (if the owner did not demolish the property, the city did), including the south side of the 1600 block, the entire 2000 block, and the south side of the 2001 block.¹²¹ Because the Diamond Street properties are listed on the Philadelphia Register, the city should have asked the PHC to review and comment on the list of properties slated for

¹¹⁹ Advocate Community Development Corporation. *The Diamond Street Corridor Concept Plan*. August 2000. On file at the PHC.

¹²⁰ McGovern, Stephen J. "Philadelphia's Neighborhood Transformation Initiative: A Case Study of Mayoral Leadership, Bold Planning, and Conflict." *Housing Policy Debate* 17, no. 3 (2006): 529-70. http://http://www.seas.upenn.edu/~sys502/arcview/Projects/Phil_Housing/Phil_Nbhd_Initiative.pdf.

¹²¹ Map of properties affected by NTI. 2001. On file at the PHC.

demolition. It did not.¹²² And because the properties are listed on the National Register, the city should have initiated Section 106 Review. Again, it did not.¹²³

These mistakes led to discussions between several city agencies, the SHPO, the Preservation Alliance, and the National Trust. As a result of these discussions, the city acknowledged its obligation to submit lists of properties to the PHC for review and to participate in Section 106 Review, and agreed to fund a grant program.¹²⁴ The grant program, called the Historic Properties Repair Program, was funded by NTI and administered by the Preservation Alliance. The wildly-successful program, which provided grants amounting to the difference between the cost of doing basic repairs and the cost of doing PHC-approved repairs, facilitated the rehabilitation of hundreds of historic owner-occupied houses.¹²⁵

This case, which highlights the conflicts that can occur when preservation and planning intersect, serves as a reminder that some forms of demolition-by-neglect escape the purview of preservation authorities. Despite this, it is crucial that governmental departments cooperate. When one department (or the municipality itself) sidesteps the regulations of another, the latter's authority is undermined and its objectives are diminished. In the case of the Diamond Street Historic District, the city's failure to adhere to federal and local preservation law resulted in the emergence of an incohesive, pockmarked streetscape that now lacks some of the very assets that could

¹²² Danta, Jorge. Interview by author. March 15, 2012.

¹²³ Ibid, Danta, Jorge. Interview by author.

¹²⁴ Ibid.

¹²⁵ Preservation Alliance for Greater Philadelphia. *Need to repair your historic home? Then the Preservation Alliance for Greater Philadelphia's Historic Properties Repair Program may be able to help you!* On file at the PHC.

have ignited a rebirth. In fact, although some houses remain dilapidated, many have been rehabilitated and converted to student housing for nearby Temple University.

CHAPTER 5: ADDITIONAL TOOLS

In 1995, when Andrea Goldwyn Merrill surveyed the additional tools that can be used to address demolition-by-neglect, she emphasized that affirmative maintenance provisions are imperative, but do not eliminate the problem of demolition-by-neglect.¹²⁶ This remains true. Preservation advocates should promote the strategic use of the other tools - including tools that apply to both historic and non-historic properties - that can be used to alleviate demolition-by-neglect.

The following section profiles four tools that have the potential to directly impact demolition-by-neglect: facade ordinances, revolving funds, Philadelphia's Windows and Doors Initiative, and the newly ratified Blighted and Abandoned Property Conservatorship Act. The first two tools, facade ordinances and revolving funds, are used throughout the country. The third tool, the Windows and Doors Initiative, is unique to the city of Philadelphia. And the fourth tool, the Blighted and Abandoned Property Conservatorship Act, is unique to the state of Pennsylvania.

There are other tools, including tax incentive programs like those administered by the National Park Service as well as educational programs. Although these tools have the potential to impact preservation outcomes, they are in general less direct responses to demolition-by-neglect.

Facade Ordinances

¹²⁶ Goldwyn, Andrea M. "Demolition by Neglect: A Loophole in Preservation Policy." Thesis, University of Pennsylvania, 1995. 53.

In February 2010, Philadelphia adopted a facade ordinance. Facade ordinances, which have become commonplace in large cities, require building owners to inspect their older facades periodically to ensure that architectural appurtenances are securely fastened. Philadelphia's facade ordinance, which requires building owners to hire a pre-approved engineering firm to inspect their facades every five years, is included within the property maintenance code.¹²⁷ It reads: "The owner of each affected building shall be responsible for retaining a professional to conduct periodic inspections of exterior walls and any appurtenances thereto, except for those parts of any exterior wall which are less than twelve inches from the exterior wall of an adjacent building, and to prepare and file a report on such inspection as required by this Section."¹²⁸ Affected buildings' include those that stand "six or more stories in height; all buildings with any appurtenance in excess of 60 feet in height; and any building located in the following areas, other than one- or two- family dwellings greater than two stories."¹²⁹

Philadelphia's facade ordinance will further the preservation of the city's taller buildings, including its many office towers, which are concentrated in Center City, as well as its industrial buildings, which are scattered throughout North Philadelphia and Frankford. L&I estimates that the ordinance impacts approximately 650 properties.¹³⁰ Although enactment of the facade ordinance promotes preservation interests, it is unlikely to impact demolition-by-neglect cases in which negligent, tax delinquent owners repeatedly fail to respond to violations and ignore court orders. In part, this is

¹²⁷ Philadelphia Property Maintenance Code § PM-304.0

¹²⁸ Philadelphia Property Maintenance Code § PM-304.10.2.1.

¹²⁹ Philadelphia Property Maintenance Code § PM-304.10.1.

¹³⁰ Keast & Hood Co. "Philadelphia Facade Ordinance." Keast & Hood: Structural Engineers. 2012. http://www.keasthood.com/philadelphia_facade_ordinance.html.

because the penalty for failing to perform a facade inspection - a \$2000 fine¹³¹ - is not particularly substantial. However, the legal liabilities associated with failing to do so are very substantial.

Revolving Funds

Simply put, a revolving fund is a fund that is created for a specific purpose and sustained through the recouping of its expenditures. In historic preservation, there are two types of revolving funds. The first type is non-profit operated and privately-funded. This type is used to purchase, rehabilitate, and sell endangered historic properties. To ensure the preservation of the properties, the administrators of the fund attach a legally binding easement to the deed. Providence, Rhode Island boasts an exemplary revolving fund of this type.

The Providence Revolving Fund, founded in 1980, is a non-profit organization that manages two revolving funds: the Neighborhood Loan Fund and the DOWNCITY Loan Fund.¹³² The funds are supported by donations from charitable foundations as well as corporations, including the National Trust, the Rhode Island Historic Preservation and Heritage Commission, the 1772 Foundation, the Citizens Bank Foundation, Bank RI, and Textron.¹³³ The Neighborhood Loan Program is used to purchase, rehabilitate, and sell endangered properties that are located in low and moderate income neighborhoods. In addition, the fund is used to grant loans to homeowners who cannot obtain

¹³¹ Ibid.

¹³² Providence Revolving Fund. "About Us." Providence Revolving Fund. 2012. <http://www.revolvingfund.org/about.php>.

¹³³ Providence Revolving Fund. "Resource Center." Providence Revolving Fund. 2012. <http://www.revolvingfund.org/resourcecenter.php>.

conventional financing due to either their income level or their property's condition. At this time, it maintains approximately \$2 million in assets.¹³⁴ The DOWncity Loan Fund is used to grant loans for the rehabilitation of downtown properties. It is also used to grant loans for storefront improvements and signage upgrades. At this time, it maintains over \$7 million in assets.¹³⁵ Since 1980, the two funds have infused nearly \$15 million and have leveraged an additional \$125 million.¹³⁶

For a brief time, the Preservation Alliance managed a revolving fund. According to Randal Baron, the fund no longer exists because it was not distributed intelligently. It was used to finance the rehabilitation of several Parkside Avenue mansions. The project, which was spearheaded by developer Penrose Properties, created affordable housing, but did not generate the income needed to keep the fund going.¹³⁷

The second type of revolving fund is municipally-operated and ideally, municipally-funded. This type is used to stabilize and seal properties, including endangered historic properties. Unlike the first type, which is sustained through the sale of properties and the repayment of loans, this type is sustained through the imposition of liens.

Recall that in 1991, Mayor Ed Rendell proposed the creation of a privately-subsidized revolving fund. The "Early Warning Committee," which was comprised of four individuals (PHC Chairman Wayne Spilove, PHC Planner Richard Tyler, Preservation Alliance Executive Director Jennifer Goodman, and L&I Commissioner Bennett Levin),

¹³⁴ Ibid, Providence Revolving Fund. "About Us."

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Baron, Randal. Interview by author. February 28, 2012.

was charged with identifying buildings undergoing demolition-by-neglect, determining how to best stabilize and seal the properties, and speaking with the owners. If an owner refused to repair his or her property, the city would repair and seal the property and impose a lien equivalent to the cost of the work.¹³⁸ Unfortunately, the Early Warning Committee never took off. This is because the revolving fund, which was supposed to be seeded by individual donors and charitable foundations, was never funded. In 1991, historic preservation was not a priority and many local preservation professionals felt that it would not make sense to use private subsidies to accomplish something that the city should have been dealing with through existing laws.¹³⁹

In 1996, the city set out to discourage property owners from allowing locally-landmarked properties to decay by applying a version of the model proposed in 1991. It did this by making an example out of two owners: the owner of the nineteenth century church at 832 Lombard Street and the owner of the eighteenth century commercial building at 9 South 2nd Street. These properties were targeted because they are centrally located and were in markedly poor condition. Using a \$50,000 grant from Senator Vincent Fumo, L&I performed minor repairs and sealed openings, imposed liens equivalent to the cost of the work, and emphasized that if the liens were not repaid, the properties would be sold at sheriff's sale. The city hoped that the owners of other vacant properties would take note.¹⁴⁰ Unfortunately, this initiative proved unsuccessful.

¹³⁸ Wiegand, Ginny. "Rendell's panel fails to mollify preservationists; four people were named, critics wonder if they can raise enough money to save historic buildings from demolition." *Philadelphia Inquirer*, March 27, 1994.

¹³⁹ Ibid.

¹⁴⁰ Ferrick Jr., Thomas. "City tests a new strategy for saving old sites; it is fixing two historic buildings; if owners don't pay for the repairs, the property will be sold." *Philadelphia Inquirer*, June 27, 1996.

Today, L&I maintains a unit that focuses on cleaning and sealing vacant properties. Typically, the municipally-funded unit cleans and seals vacant properties - mostly non-historic - that fail to correct violations. Until last year, the unit maintained a substantial backlog.¹⁴¹ Despite the facts that the backlog has been eliminated and that L&I is working rigorously to improve the clean-and-seal program, thousands of vacant properties remain unsecured. This is because the city lacks the resources to seal its tens of thousands of vacant properties and because the majority, which have become commonplace in many neighborhoods, do not provoke complaint.

At this time, Philadelphia does not have access to a revolving fund, but it does operate a clean-and-seal program. The author believes that the city would benefit from the creation of a revolving fund. Ideally, the fund should be administered by an experienced advocacy group like the Preservation Alliance, seeded by both public and private monies, and used to repair and seal historic properties (both local register and national register listed properties) that are exhibiting the signs of demolition-by-neglect. In addition, the city would benefit from expansion of the existing clean-and-seal program. Ideally, the city should increase L&I's budget. In the recent past, small increases afforded L&I the opportunity to eliminate its backlog.

¹⁴¹ Campisi, Anthony. "Update: How L&I cleaned out its clean and seal backlog." *Philadelphia Inquirer*, June 2, 2010.

L&I's Windows and Doors Initiative

In 2011, L&I began applying a select provision of its Property Maintenance Code. The provision, which requires vacant buildings on blocks that are at least 80% occupied - these buildings are called "blighting influences" - to have actual windows and doors, is included under Section PM-306.2 of the Property Maintenance Code.¹⁴² It reads: "The owner of a vacant building that is a blighting influence, as defined in this subcode, shall secure all spaces designed as windows with windows that have frames and glazing and all entryways with doors. Sealing such a property with boards or masonry or other materials that are not windows with frames and glazing or entry doors shall not constitute good repair or being locked, fastened or otherwise secured pursuant to this subsection."¹⁴³ The penalty for failing to comply with a violation of this provision is \$300 per opening per day.¹⁴⁴

In order to strategically combat blight, L&I has shifted its attention from demolishing vacant properties, a key component of NTI, to improving the appearance of vacant properties. According to the Philadelphia Inquirer, "Demolition is not the focus of L&I's muscular new program because most of the blighted houses it is targeting are structurally sound but so badly neglected that they've become nuisance properties, threatening to destabilize residential blocks."¹⁴⁵ For now, the department is focusing on property owners that own more than one blighted property and on neighborhoods that

¹⁴² Philadelphia Property Maintenance Code § PM-306.0

¹⁴³ Philadelphia Property Maintenance Code § PM-306.2

¹⁴⁴ Philadelphia Property Maintenance Code § PM-306.5

¹⁴⁵ Geringer, Dan. "L&I coming down hard on slumlords." *Philadelphia Inquirer*, October 26, 2011.

are experiencing growth, like Francisville and Point Breeze.¹⁴⁶ By November 2011, the initiative had brought in over \$150,000 in back taxes and fines, and had motivated the rehabilitation of dozens of properties.¹⁴⁷ L&I's Facebook page maintains a gallery featuring photographs of homes before and after complying.

If enforced properly, the Windows and Doors Initiative will slow the process of demolition-by-neglect. By halting the damage that is caused by water infiltration and unlawful occupancy, the initiative renders many properties potentially-salvageable. However, the department must follow through and take action against the owners who fail to comply. If it fails to do so, it will undermine its own authority. Hopefully, L&I will continue to order property owners to replace plywood boards and concrete fill with actual windows and doors. In addition, the author believes that the department should expand its focus to include local and national historic districts.

Blighted and Abandoned Property Conservatorship Act

In 2009, the state of Pennsylvania enacted the Blighted and Abandoned Property Conservatorship Act. This tool, designed to help communities reclaim abandoned property, gives interested parties the right to petition local courts for temporary possession of an adjacent vacant, blighted property. If the court grants temporary

¹⁴⁶ Naked Philly. "L&I is fighting blight in your neighborhood." October 25, 2011. <http://nakedphilly.com/uncategorized/li-fighting-blight-in-your-neighborhood/>.

¹⁴⁷ Hill, Miriam. "Philadelphia cracking down on owners of rundown properties." *Philadelphia Inquirer*, October 27, 2011.

possession, the party must either rehabilitate or demolish the property and then return it to the market.¹⁴⁸

According to Housing Alliance of Pennsylvania, which maintains a clearinghouse filled with information about the Conservatorship Act and how it is being applied (law is created through a process of judicial interpretation), each case involves four players: the building, the petitioner, the conservator, and the local court.¹⁴⁹

In order to be eligible for conservatorship, the building must meet certain criteria, which dictates that the building must be legally unoccupied for one year, off the market for sixty days, and free from foreclosure action. In addition, the building must exhibit at least three of the conditions that are associated with blight, such as unsecured openings, fire hazards, illicit activities, etc.¹⁵⁰

The petitioner or “ ‘party in interest’ authorized to initiate a conservatorship action” can be an owner, a lien holder, a resident or business owner within five hundred feet, a nonprofit corporation located within the municipality, or the municipality. In Philadelphia, the non-profit must have completed a project within one mile of the building.

The conservator or “third party that has the capacity to take possession, effectuate rehabilitation, and manage the conservatorship process”¹⁵¹ should be a senior lien holder, a non-profit corporation, a governmental agency, or an individual.

¹⁴⁸ Housing Alliance of Pennsylvania. *Conservatorship for Abandoned Properties: Training PowerPoint*. October 2009. PowerPoint presentation.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

Typically, courts grant conservatorship to the interested party that has the greatest stake in the property.¹⁵²

Lastly, the local court is responsible for overseeing the entire process. The court appoints a conservator, approves the conservator's initial and final plans, issues court orders pursuant to the plans, supervises construction or demolition, imposes liens, and ends conservatorship. The law provides for the creation of both initial and final plans and allows either rehabilitation or demolition because it is based on the assumption that the conservator will not see the interior of the property until being granted possession of it.¹⁵³

Thus far, the law has been invoked twice: in the Borough of Saint Clair and in the city of Philadelphia. In Saint Clair, the borough itself petitioned the Court of Common Pleas to grant conservatorship of a blighted, tax delinquent property (located at 133 South Nichols Street) to neighbors James and David Brady. The court agreed and ultimately, the Bradys demolished the structure in accordance with their final plan.¹⁵⁴

In Philadelphia, neighbor and Neighborhood Watch member Joel Palmer petitioned the Court of Common Pleas to grant him conservatorship of a property once owned by Scioli Turco V.F.W. The property, a former row house located at 744 Saint Albans Street, had been vacant since 2004 when the post's charter was revoked by the VFW Department of Pennsylvania. At that time, the property was transferred, in accordance with its charter, to the Pennsylvania Department Adjutant. Palmer decided

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Borough of Saint Clair vs. Floyd Kimmel and Deborah Kimmel (Court of Common Pleas of Schuylkill County, PA May 28, 2009).

to petition the court for conservatorship because the PA Department Adjutant failed to maintain the property, which bore black paint atop its iron speckled roman brick and two-story bay window and plywood before its openings. After a brief conflict with the state, the case the property was granted to Palmer.¹⁵⁵

Shortly after rehabilitating the clubhouse, Palmer founded Scioli Turco, the only non-profit corporation that utilizes the Conservatorship Act to rehabilitate blighted properties throughout South Philadelphia. Its mission states: "Scioli Turco is a 501(c)(4) (not for profit) corporation that rehabilitates derelict properties in the Philadelphia area in order to beautify neighborhoods while increasing tax revenue to the city. Using private resources, we return them to habitable homes benefiting neighbors who already live there while adding active new members to the community."¹⁵⁶ The corporation accomplishes this by helping interested parties petition the court and by acting as conservator. If Scioli Turco can successfully rehabilitate the properties that it is currently pursuing, it will recoup all of its expenses and receive 15% of the sales. The remaining funds will be returned to the owners.¹⁵⁷

The Conservatorship Act is a powerful tool that has the potential to aid Philadelphia's preservation community in abating demolition-by-neglect and returning vacant structures to active use. It has enormous potential in demolition-by-neglect cases in which the owner cannot be located. If the owner is an individual, this may be because of death, and if the owner is a corporation or a lien holder, this may be because of a

¹⁵⁵ Vanderslice, Richard L. *Act 135 Conservatorship Case Studies in Philadelphia*. June 10, 2011. PowerPoint presentation.

¹⁵⁶ "Scioli Turco." Scioli Turco. 2012. <http://scioliturco.org/cms/>.

¹⁵⁷ Ibid.

closure or a merger. In addition, conservatorship is profitable. It profits the conservator, the adjacent community, and the city.

CONCLUSION

Despite the fact that a broad range of tools for addressing demolition-by-neglect exists, it remains widespread and difficult to eradicate. This thesis, which focuses on Philadelphia's handling of demolition-by-neglect, including its ordinance's affirmative maintenance provision, its enforcement proceedings, and its overall effectiveness, is intended to help both the city government and the preservation community begin to refine their roles in addressing demolition-by-neglect. This section contains a summary of the author's findings as well as two sets of preliminary recommendations: one for the City and one for the preservation community.

Although every preservation ordinance should contain an affirmative maintenance provision, no model ordinance with universal applicability exists. Appropriately, affirmative maintenance provisions vary from place to place, as each is the product of its political and legal context. Despite this, the strongest ordinances share two provisions: they contain a precise definition of demolition-by-neglect without reference to owner intent and authorize the imposition of substantial penalties. Precise definitions are important because they strengthen the provision's legal standing. Substantial penalties are important because they serve a dual purpose: they serve as a deterrent and as a repercussion.

Philadelphia's affirmative maintenance provision does not include a precise definition, nor does it authorize the imposition of substantial penalties. However, although Philadelphia's provision is not exemplary, it is sufficient. This is because the Department of Licenses and Inspections (L&I), the department charged with the

provision's enforcement, issues building code violations for conditions caused by demolition-by-neglect and maintains a separate system of penalties. The financial penalties range from the hundreds of dollars to the tens of thousands of dollars.

Substantial penalties are important, but they tend to be more effective in cases that fit the typical definition of demolition-by-neglect, which incorporates owner intent. Recall that according to the typical definition, demolition-by-neglect occurs when a financially-motivated property owner with the intention of demolishing his or her historic property intentionally discontinues routine maintenance. In cases involving profit-driven speculators like Samuel Rappaport, substantial penalties, particularly fines and legal action (or the threat of legal action), often motivate the correction of long-standing violations and court orders.

Penalties tend to be less effective in cases that do not fit the typical definition of demolition-by-neglect. The majority of demolition-by-neglect cases (aside from those caused by socioeconomic factors) occur when a generally stubborn, uninterested owner with no plan for his or her historic property discontinues routine maintenance. In the case studies examined in this thesis involving immovable owners like Miguel Santiago, Henry Nemrod, and Electra 137 LLC, penalties failed to motivate the correction of violations or court orders. Typically, properties subject to such behavior are not sealed, repaired, or rehabilitated before sale (or transfer), and uninterrupted, long-term neglect decreases the feasibility of future rehabilitation.

In this thesis, economic hardship came into play less often than expected. The issue was relevant to one case, the case of the Victory Building. The Victory Building

highlights the importance of considering evidence of self-imposed hardship. Recall that the Victory Building, which might have been demolished, fulfilled the preservation ordinance's three-pronged test for financial hardship, but that that hardship was caused by decades of intentional neglect. In this country, it is legally permissible to consider and to base decisions on evidence of self-imposed hardship. In order to safeguard historic resources from deliberate demolition-by-neglect, evidence of self-imposition, including detailed records including photographs and reports, should be considered carefully and observed.

Despite the fact that it is virtually impossible to force offending owners to act, the understaffed Philadelphia Historical Commission remains steadfast in attempting to do so. It monitors the condition of locally-designated properties, petitions L&I to issue violations, ensures that L&I enforces violations, and participates in any legal proceedings. But because L&I is responsible for enforcing the affirmative maintenance provision, the PHC is only as effective as L&I. Unfortunately, L&I does not enforce violations with consistency. This failure to do so perpetuates the pervasive, commonly-held notion that it is easy to get away with abandoning property in Philadelphia whether locally designated or not.

If the city has an interest in the preservation of its historic resources, including the 10,000 historic properties that are locally designated and the countless others that are not, it must take action against demolition-by-neglect. Because demolition-by-neglect is most often furthered by non-compliant, immovable property owners who also fail to pay property taxes, the city should focus on two interventions: bringing

properties to sheriff's sale (this is possible in cases in which the owner owes back taxes to the city), and stabilizing/sealing properties. At this time, the city lacks the resources necessary to embark upon an aggressive program of stabilizing and sealing properties, and also remains slow to initiate foreclosure, despite committing to hasten this process. In 2010, the city pledged to take tax delinquency more seriously and vowed to increase the rate of sheriff's sales to approximately 600 per month. Two years later, the city is selling just 200 properties per month. According to PlanPhilly reporter Patrick Kerkstra, at this rate, it will take 45 years to sell the 100,000 properties that are tax delinquent.¹⁵⁸

In addition, demolition-by-neglect may be reduced through the use of two tools: an expanded clean-and-seal program and a revolving fund. Philadelphia's existing clean-and-seal program, which impacts only about 1500 properties each year, generally targets vacant row homes in residential neighborhoods instead of larger or historic properties. However, on occasion, the city will seal an especially important property. For example, L&I recently completed sealed the long-vacant Divine Lorraine Hotel, which towers over the intersection of North Broad Street, Fairmount Avenue, and Ridge Avenue. The city sealed the hotel, the subject of widespread media coverage due to its conspicuous location, distinctive architectural style, and poor condition, because Mayor Michael Nutter and City Council President Darryl Clarke believe that it is the key to revitalizing North Broad Street's long-dormant economy and expressed a commitment to seeing it redeveloped before the Greater Philadelphia Chamber of Commerce.

¹⁵⁸ Kerkstra, Patrick. "Sheriff sales failing to round up promised bonanza of property tax deadbeats." *PlanPhilly*, April 13, 2012. <http://planphilly.com/sheriff-sales-failing-round-promised-bonanza-property-tax-deadbeats>.

Ideally, the city should expand its clean-and-seal program by developing a list of historic properties exhibiting the tell-tale signs of demolition-by-neglect and should strategically clean and seal the properties. Cleaning and sealing is a minimal, temporary intervention, and although it does not guarantee preservation or alleviate blight, it does preserve the feasibility of future redevelopment. This same market-focused strategy could be applied to a separate program intended for locally-designated properties.

The creation of a revolving fund could provide for the financing of anything from basic repair to complete rehabilitation. Ideally, the revolving fund would be administered by a non-profit corporation and subsidized by both public and private funds. For decades, Philadelphia's preservation community has entertained the idea of establishing a revolving fund, but has refrained from attempting to do so because of perceived lack of will and interest. The preservation community should not abandon this idea. Much has changed in the last decade or so. At this time, it may be possible to make a compelling case for a revolving fund and to assemble the resources necessary. For the first time in over half a century, Philadelphia's population is growing and its economy is stabilizing. In addition, these trends coincide with the nationwide convergence of interest in sustainability, urbanism, and historic preservation.

Because demolition-by-neglect remains prevalent, it is important that Philadelphia's city government and the preservation community refine their respective, mutually dependent roles in addressing it. The city agencies responsible for initiating action against property owners who permit demolition-by-neglect, the PHC and L&I, must continue to work together, and should explore ways to further their common

interests. Some of the key tools have been in place, but they are not being utilized according to their full potential. The preservation community must continue to study the impact of historic preservation and to educate the public about its values and about the phenomenon that undermines its core goals, demolition-by-neglect.

It is important to note that the author began this thesis with a focus on the city's affirmative maintenance provision, but ended with a focus on the city's property maintenance standards and enforcement. Because the PHC does not have the authority to enforce the preservation ordinance and because violations of the preservation ordinance are actually based on the building code's property maintenance standards, the city's historical commission and building code department share a relationship that is unique to Philadelphia. This relationship merits further study. In addition, some of the interventions that the author recommends, including sheriff's sales and L&I's clean and seal program in particular, do not operate according to their full potential. For instance, tax delinquent properties are commonly sold to owners who continue a pattern of neglect via sheriff's sales. And properties that are cleaned and sealed do not appear to be monitored. Both of these tools merit further investigation as well.

BIBLIOGRAPHY

Advocate Community Development Corporation. *The Diamond Street Corridor Concept Plan*.

Aug. 2000.

Assessing Economic Hardship Claims Under Historic Preservation Ordinances. Issue brief.

Preservation Law Reporter Educational Materials. National Trust for Historic Preservation.

Becker, Dan. "Establishing a Demolition by Neglect Ordinance." *The Alliance Review*,

February/March 1999.

Borough of Saint Clair vs. Floyd Kimmel and Deborah Kimmel. Court of Common Pleas of

Schuylkill County, PA. 28 May 2009.

Buttnick v. Seattle, 719 P.2d 93, 95 (Wash. 1986).

Campisi, Anthony. "Update: How L&I cleaned out its clean and seal backlog." *Philadelphia*

Inquirer. 2 June 2010. <[http://www.philly.com/philly/blogs/our-](http://www.philly.com/philly/blogs/our-money/Update_How_LI_cleaned_out_its_clean_and_seal_backlog.html?c=0.8607843204768956&posted=y&viewAll=y)

[money/Update_How_LI_cleaned_out_its_clean_and_seal_backlog.html?c=0.860784320](http://www.philly.com/philly/blogs/our-money/Update_How_LI_cleaned_out_its_clean_and_seal_backlog.html?c=0.8607843204768956&posted=y&viewAll=y)

[4768956&posted=y&viewAll=y](http://www.philly.com/philly/blogs/our-money/Update_How_LI_cleaned_out_its_clean_and_seal_backlog.html?c=0.8607843204768956&posted=y&viewAll=y)>.

Cassity, Pratt. "Executive Director's Message." *The Alliance Review*, Winter 1990.

City of Philadelphia. "Agency Information: Art Commission." *City of Philadelphia Department of*

Records. 2000.

<<http://www.phila.gov/phils/docs/inventor/graphics/agencies/A140.htm>>.

City of Pittsburgh v. Weinberg, 676 A.2d 207 (Pa. 1996)

City of Ventura. "Public Art Opportunities & Murals." *City of Ventura*. 2010.

<<http://www.cityofventura.net/cs/arts/public-art-opportunities>>.

Condo Domain. "Victory Condominiums." *Condo Domain*. 2011.

<<http://philadelphia.condodomain.com/Victory-Condominiums>>.

Crowe, Thad. Memorandum to Minimum Maintenance Ordinance Committee. Mobile, August 27, 1992.

Dallas Development Code, Div. 51A-4.5000

Demolition by Neglect. Issue brief. Preservation Law Reporter Educational Materials. National Trust for Historic Preservation, 1999.

Detroit Code, Ch. 25

Ferrick Jr., Thomas. "City tests a new strategy for saving old sites: it is fixing two historic buildings; if owners don't pay for the repairs, the property will be sold." *Philadelphia Inquirer* 27 June 1996.

Figarsky v. Historic District Commission, 368 A.2d 163 (Conn. 1976).

Gillin, Beth. "Danger smoldered for years." *Philadelphia Inquirer* 24 Jan. 1983.

Ginny Wiegand. "Rendell's panel fails to mollify preservationists four people were named, critics wonder if they can raise enough money to save historic buildings from demolition." *Philadelphia Inquirer* 27 Mar. 1994.

Goldwyn, Andrea M. "Demolition by Neglect: A Loophole in Preservation Policy." Thesis, University of Pennsylvania, 1995.

Harris v. Parker, Chancery No. 3070 (Cir. Ct. Isle of Wight County, Va. Apr. 15, 1985).

Hill, Miriam. "Philadelphia Cracking down on Owners of Rundown Properties." *Philadelphia Inquirer*. 27 Oct. 2011.

<http://www.philly.com/philly/news/local/20111027_Philadelphia_cracking_down_on_owners_of_rundown_properties.html>.

Housing Alliance of Pennsylvania. *Conservatorship for Abandoned Properties: Training PowerPoint*. Oct. 2009. PowerPoint presentation.

"Interview with Jorge Danta and Randal Baron." Personal interview. 7 Feb. 2011.

- Irvin, Hilary S. "The Vieux Carre' DBN Clause Protecting the French Quarter." *The Alliance Review*, Winter 1990.
- Keast & Hood Co. "Philadelphia Facade Ordinance." *Keast & Hood: Structural Engineers*. 2012.
<http://www.keasthood.com/philadelphia_facade_ordinance.html>.
- Kerkstra, Patrick. "Sheriff sales failing to round up promised bonanza of property tax deadbeats." *PlanPhilly*, April 13, 2012.
<<http://planphilly.com/sheriff-sales-failing-round-promised-bonanza-property-tax-deadbeats>>.
- Lubelle v. Rochester Preservation Board, No. 3481/85 (N.Y. App. Div. 1988)
- Lemme v. Dolan 558 N.Y.S. 2d 991 (App. Div. 1990).
- Maher v. City of New Orleans, 516 F. 2d 1051 (5th Cir. 1975)
- Malone, Connie. *Demolition by Neglect: A Growing Concern in Rural Communities*. 1992. On file at the National Alliance of Preservation Commissions.
- Martin, Anna. *Demolition by Neglect: Repairing Buildings by Repairing Legislation*. Georgetown University Law Center. Spring 2007.
- McGovern, Stephen J. "Philadelphia's Neighborhood Transformation Initiative: A Case Study of Mayoral Leadership, Bold Planning, and Conflict." *Housing Policy Debate* 17.3 (2006).
<http://http://www.seas.upenn.edu/~sys502/arcview/Projects/Phil_Housing/Phil_Nbhd_Initiative.pdf>.
- Miller, Julia. *Doing Away with Demolition-by-Neglect*. Washington, DC: National Trust for Historic Preservation, 2010.
- Montgomery County Code, Ch. 24A
- Naked Philly. "L&I is fighting blight in your neighborhood." Blog post. *Naked Philly*. 25 Oct. 2011.
<<http://nakedphilly.com/uncategorized/li-fighting-blight-in-your-neighborhood/>>.

National Historic Preservation Act of 1966. (16 U.S.C. 470)

National Trust for Historic Preservation. "National Historic Preservation Act." 2011.

<<http://www.preservationnation.org/resources/legal-resources/understanding-preservation-law/federal-law/nhpa.html>>.

National Trust for Historic Preservation. "Religious Protection." 2011.

<<http://www.preservationnation.org/resources/legal-resources/understanding-preservation-law/constitutional-issues/religious-protection.html>>.

National Trust for Historic Preservation Northeast Legal Preservation Network. "Difficult Issues Facing Preservation Commissions: Demolition-by-Neglect." Proceedings of 48th National Preservation Conference, Boston, Massachusetts.

Newman, Galen D. *An Exogenous Approach to Circumventing Demolition by Neglect: The Impact of Agricultural Preservation on the Historic Fabric of Colonial Towns*. Diss., Clemson University, 2010.

New York City. New York City Law Department, Office of the Corporal Council. "In a Legal First, City Landmarked Building Is Saved from Demolition by Neglect." News release, 2004.

Osborne, Rebecca. *Balancing Act: Preventing Demolition by Neglect*. University of North Carolina at Greensboro Department of Interior Architecture. The Historic Dimension Series. May 2005. <<http://www.presnc.org/Preservation-Answers/Balancing-Act-Preventing-Demolition-by-Neglect>>.

Pennsylvania at Risk! *Victory Building*. Located in the Philadelphia Historical Commission's file on the Victory Building.

Pennsylvania Historic Districts Act of 1961.

Philadelphia Code, 14-2007

Philadelphia Property Maintenance Code, Ch. 3

PMC Property Group Inc. "Victory Building Apartments, 1011 Chestnut Street." *PMC Property Group Inc.* 2012. <http://www.pmcpropertygroup.com/listings/1011_chestnut.html>.

Pollard, Oliver A. "Demolition by Neglect: Testing the Limits and Effectiveness of Local Historic Preservation Regulation." *Notes on Virginia* 1, no. 31-35 (January 1988).

Pollard, Oliver A. "Minimum Maintenance Provisions: Preventing Demolition by Neglect." *Preservation Law Reporter*. Vol. 8 (1989).

Poncet, Dell. "Let's save the Victory Building." *Philadelphia Business Journal* 16-22 Sept. 1991.

Preservation Alliance for Greater Philadelphia. *Need to Repair Your Historic Home? Then the Preservation Alliance for Greater Philadelphia's Historic Properties Repair Program May Be Able to Help You!* Pamphlet.

Price, Ben. *A (Very) Brief History of "Dillon's Rule."* Issue brief. Community Environmental Defense Fund.

Providence Revolving Fund. "About Us." *Providence Revolving Fund*. 2012.
<<http://www.revolvingfund.org/about.php>>.

Reap, James. "Economic Hardship and Demolition by Neglect: Hard Decisions for Hard Times" *The Alliance Review*, November/December 2003.

Richardson, Meg C. "Demolition by Neglect: An Examination of Charleston's Ordinance." Thesis, University of Clemson, 2008.

San Antonio Unified Development Code, Art. 5, Div. 2

"Scioli Turco." *Scioli Turco*. 2012. <<http://scioliturco.org/cms/>>.

Thompson, Sakina B. *Saving the District's Historic Properties from Demolition by Neglect*. Georgetown University Law Center. 2004.

Topeka Code, Ch. 80

Washington D.C. Official Code, Ch. 6

Weiss, John. "Pursuing an Owner for Demolition by Neglect: A Tortuous Legal Path" *District Lines*, Spring 2009.

Wiegand, Ginny, and Anthony R. Wood. "SPECULATION BREEDS DECAY AND DISMAY." *Philadelphia Inquirer* 4 Apr. 1993.

Wiss, Janney, Elstner Associates, Inc. "Facade Ordinances: Philadelphia." *Facadeordinance.com*. 2011. <<http://www.facadeordinance.com/philadelphia.shtml>>.

APPENDIX

Preservation Ordinances at a Glance

	1. New York	2. Los Angeles	3. Chicago
Refers to demolition-by-neglect?	No	No	No
Affirmative maintenance provision?	Yes	Yes	No
Specifics?	No	No	N/A
Penalties?	\$25-250 fine, 30 days in jail	\$2500 fine, misdemeanor	N/A
Ceiling on penalties?	\$100-500 fine, 3 months in jail	No	N/A
Economic hardship clause?	Yes	Yes	Yes

	4. Houston	5. Philadelphia	6. Phoenix
Refers to demolition-by-neglect?	Yes	In the rules and regulations	No
Affirmative maintenance provision?	Yes	Yes	Yes
Specifics?	Yes	No	No
Penalties?	\$50-500 fine, misdemeanor	\$300 fine, 90 days in jail	Yes
Ceiling on penalties?	No	No	No
Economic hardship clause?	Yes	Yes	Yes

	7. San Antonio	8. San Diego	9. Dallas
Refers to demolition-by-neglect?	Yes	No	Yes
Affirmative maintenance provision?	Yes	Yes	Yes
Specifics?	Yes	No	Yes
Penalties?	\$10-1000 fine, misdemeanor	Fines, misdemeanor	Fines
Ceiling on penalties?	No	No	No
Economic hardship clause?	Yes	No	Yes

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