

REPORT:

Problems experienced

by community groups working with the LANDMARKS PRESERVATION COMMISSION

CONTENTS

How the Report was Compiled	1
Summary	2

NINE PROBLEMS

Problems in the Designation Process:

I. Lack of Transparency and Responsiveness	4
--------------------------------------------	---

Problems in the Regulatory Process:

II. Pre-Hearing Disposition of Certificate Of Appropriateness Applications	6
III. Lack of Public Hearings for Substantially Altered Certificate of Appropriateness Applications	7
IV. Absence of Leadership in Protecting Landmarks Administered by Other Agencies of Government	8
V. Need to Provide Enough Information for Informed Public Hearing Comment	9
VI. Need for Public Access to Staff-Level Permit Records	11

VII.	Need to Ensure Community Board Participation	12
VIII.	Need for an Improved Sound System in the LPC Hearing Room	12
IX.	Lack of Consistent Standards in Regulation	13

Recommendations:	14
-------------------------	----

- I. Public Participation in the Appointment of Commissioners
- II. Adequate Funding for the Necessary Staff
- III. Regular Public Hearings to Address Designation and Regulatory Issues

How the Report was Compiled:

During the September and October 2003 City Council hearings on the proposed designation of the Cathedral of St. John the Divine various questions were raised about the propriety of the procedures being followed by the Landmarks Preservation Commission (“LPC”), crystallizing doubts that many organizations had had for numerous years about LPC procedures. Afterwards, members of preservation groups who had testified at the hearings were looking for a positive, constructive way to express their mutual concern that the integrity of the LPC was in jeopardy.

The Women’s City Club of New York is a multi-issue, non-partisan advocacy organization, celebrating its 90th year working to influence and shape public policy decisions affecting the city. An important part of our work is to partner with other organizations on specific issues.

The WCC’s Arts and Landmarks Committee therefore gathered representatives of several preservation groups to identify recurrent problems experienced in dealing with the LPC, and to suggest possible solutions.

Recognizing the excellence of New York’s Landmark Preservation Law, we had two over-riding concerns. First, securing an adequate budget and increased staffing for the Landmarks Preservation Commission to fulfill its mission of identifying and protecting the City’s cultural and architectural heritage. Second, improving the relationship of the LPC with the preservation community.

Represented at meetings held throughout the year were the Historic Districts Council, Landmark West!, The Society for the Architecture of the City, Defenders of the Historic Upper East Side, Morningside Heights Historic District Committee and the Hamilton Heights-West Harlem Community Preservation Organization. All of these individuals and groups have extensive experience, over numerous years, in monitoring the work of the LPC in various parts of New York.

Together we drafted a list of issues needing to be addressed entitled, *Memo: Outline of Problems Experienced by Community Groups Working with the LPC*, which was presented to members and staff of the City Council. The City Council Subcommittee on Landmarks, Public Siting and Maritime Uses subsequently held an oversight hearing on the administrative practices of the Landmarks Preservation Commission on October 20, 2004. The outpouring of people wishing to testify at that hearing could not be accommodated and the Subcommittee had to adjourn the hearing with a promise to reconvene it at a later date in a larger room.

This document, REPORT: PROBLEMS EXPERIENCED BY COMMUNITY GROUPS WORKING WITH THE LANDMARKS PRESERVATION COMMISSION, reproduces the full text of the original *Memo*, which is carried over and appears in *italics*. The REPORT expands the description of the problems identified, presenting them in a new and clearer format.

Summary:

Since its establishment by the City Council in 1965, the New York City Landmarks Preservation Commission has saved many elements of the City's history and beauty. Through its open and participatory procedures, it has given innumerable New Yorkers a voice in shaping the environment that has such impact upon their daily lives. Indeed, as Robert A. M. Stern observed in *New York 1960*, the application of the Landmarks Law has become "New York's most proactive form of planning."

Nearly forty years later, the LPC has had an excellent overall record, encompassing the designation of 1,101 individual landmarks, and more than 22,000 properties in 81 historic districts, according to the Mayor's Management Report: in total about, 2.3 percent of the entire city. But, it still has important work to do.

The conservation of these 23,000 properties requires countless acts of stewardship, both large and small; it is an ongoing task that would be impossible to achieve without the help of citizen-preservationists across the five boroughs. The LPC administers the statute, but it is the involvement of the city's inhabitants that makes its application a political reality.

Landmarks and historic districts simply cannot be designated without broad community support, nor can the LPC supervise 23,000 properties without the aid of well-informed individuals who live in the neighborhoods involved and know the principles of sensible conservation practice.

It is out of this necessity that, in step with the LPC's work of designation and regulation, groups of local activists have formed with every new historic district. By now there are more than 100 such societies in the city, learning the Landmarks Law, monitoring the LPC's practices, testifying in regard to new construction, alerting the LPC to violations, warning the city when unprotected parts of our patrimony are endangered, and so spreading the ethic of preservation among their neighbors.

Yet New York's success in preservation over the past decade has brought with it a serious challenge. Over the course of several Mayoral administrations, an increasingly understaffed and underfunded LPC has confronted the prospect of an enlarged regulatory workload along with each new designation.

Bit by bit, during this period, public access to the LPC's decisions has been hindered, making it hard to discern how, when, and on what basis the LPC is exercising its authority. A participatory decision-making process has become an administrative maze.

The early years of the LPC's existence were marked by lawsuits brought by litigants who sought to overturn the Landmarks Law. But more recently, we have seen lawsuits brought by those who believe the LPC should have taken stronger measures and applied higher standards to protect the historic city. For instance:

- *67 Vestry Tenants Association v. Raab*
- *Maxtone-Graham v. Landmarks Preservation Commission*
- *CitiNeighbors Coalition of Historic Carnegie Hill v. NY City Landmarks Preservation Commission*
- *Save the Cottages and Gardens v. The City of New York et al.*
- *Historic Districts Council, Inc. et al. v. Eliot Spitzer* (re Poe House)

- *Landmark West v. Burden* (re 2 Columbus Circle)
- *Beresford Apartments v. City of New York, et al.* (re Planetarium).

Meanwhile, the current administration has received at least one extensive document complaining of procedural problems at the LPC—not from the real estate industry, but from the Historic Districts Council, a citywide organization representing dozens of neighborhood groups concerned with historic preservation.

The resulting climate of conflict seriously endangers the cause of historic preservation.

Thus, late in 2003 the Arts and Landmarks Committee of the Women’s City Club invited neighborhood preservationists from across New York to meet and attempt to resolve this dilemma. After almost a year, nine distinct problems were identified—which are elucidated in the following pages.

The City Council has the power to affect reform in several important ways. In addition, many of the problems described in this report can be ameliorated via the administrative authority of the LPC.

The following three recommendations were formed.

- 1) We hope that opportunities for public testimony will be reinstated at the confirmation hearings of LPC commissioners. This will help revive the dialogue and bridge the current gap between the public and the municipal guardians of preservation policy.
- 2) Most importantly, the LPC requires increased funding to sustain its programs and achieve the full range of necessary reforms the public is seeking. Under-funding gravely impairs the LPC's ability to fulfill its mandate.
- 3) Public hearings should be held on a continuing basis to gather comment in regard to the designation and regulatory functions of the Landmarks Preservation Commission. These hearings would serve the particularly important purpose of providing a forum for the concerns of owners of historic properties, neighbors affected by LPC decisions, and community-based preservation groups. This would enable the LPC to better evaluate the impact of its actions on the city.

The landmarks of our city can never be irrevocably secured, only passed on from one generation of stewards to the next, with each generation required to meet its own particular challenges. *Our purpose in producing this report is to make positive and constructive suggestions as we seek to improve the procedures followed by the Landmarks Preservation Commission. It is our goal to support the LPC and to improve its interaction with the individuals and communities affected by its decision-making process.*

NINE Problems:

The working group identified nine problems in their engagement with the Landmarks Preservation Commission.

I. Designations: Lack of Transparency and Responsiveness

The process by which the LPC determines whether or not to hold a designation hearing is a mystery. We would like the designation process of the LPC to become more transparent, as transparency is the cornerstone of good government.

According to the LPC's official website, the procedure for considering whether to hold a designation hearing is as follows: 1) Once the LPC receives a request for evaluation (RFE) of a potential landmark, an RFE Committee, consisting of the Chairman, the Executive Director, the Chief of Staff, the Director of Research, and other agency staff members, review the materials submitted and discuss whether the property meets the criteria for designation. 2) The Director of Research then sends a letter to the person who submitted the request, informing him or her of the committee's determination. 3) If the RFE Committee determines that a proposed historic property merits further consideration, the property is reviewed by the Designation Committee, which consists of five Commissioners (less than a quorum of the full commission). The Designation Committee then votes on whether to send the property to the full Commission for review.

This pre-hearing process is conducted behind closed doors. There is no public record or disclosure of the committees' deliberations or the basis of their decisions.

All LPC designations must be supported by Designation Reports, which cite scholarly opinions and/or broad public support confirming that landmarks and historic districts meet widely accepted standards for judging architectural, historical and/or cultural significance, as stated in the Landmarks Law.

If it has been demonstrated that potential landmarks meet these criteria:

- by assembling statements of confirmation from numerous widely-recognized authorities
- and especially when the weight of support by outside experts equals or surpasses the weight of support for comparable designated structures

when the LPC refuses to calendar such properties for public hearing, it has failed to uphold its "Purposes" as established in the Administrative Code § 25-301 Purpose and declaration of public policy;

- a. "The council finds that many improvements, as herein defined, and landscape features, as herein defined, having a special character or a special historic or aesthetic interest or value and many improvements representing

the finest architectural products of distinct periods in the history of the city, have been uprooted, notwithstanding the feasibility of preserving and continuing the use of such improvements and landscape features, and **without adequate consideration of the irreplaceable loss to the people of the city** of the aesthetic, cultural and historical values represented by such improvements and landscape features.” [emphasis added]

When the LPC declines to hold designation hearings despite authoritative evidence of eligibility it fails to provide the “adequate consideration” that the law requires.

Public participation in the identification and designation process is critical. By its own account the LPC has no other system for identifying potential landmarks for designation than acting on Requests for Evaluation submitted by the public. From the late 1970s to 1990 the LPC had a Survey Department, which investigated potential landmarks in the city. That department no longer exists, and the interested public has had to assume this responsibility of the agency.

II. Regulation: Pre-Hearing Disposition of Certificate of Appropriateness Applications

When reviewing Certificate of Appropriateness applications, the LPC sees the applicant as a partner or client and therefore gives less consideration to the views of owners of neighboring properties and the views of community groups. In some cases, negotiations with applicants seem to have reached a very advanced stage before the public hearing, without input from the public. The LPC does not seem to consider itself accountable to communities.

In the regulatory process it is important for the LPC to help applicants, especially if they are inexperienced, to understand the proper practice in maintaining and altering historic structures, as well as to observe the general parameters for designing harmonious new buildings in historic districts.

Such negotiations frequently occur prior to public hearings and behind closed doors. It is essential to recognize that there is a distinction to be made between discussion that educates in terms of general practice and extensive pre-hearing private consultation in which the LPC becomes a de-facto co-designer of the submission.

In cases of highly experienced applicants or major institutions who come equipped with the best legal advice and well-known architects and historic preservation consultants, such wide-ranging confidential pre-hearing design settlements with LPC commissioners and staff compromise the LPC's statutory obligation to be a neutral arbiter of the public welfare.

Further, the LPC's general practice of using pre-written staff recommendations as the text of motions to approve suggests that a decision has been made prior to the hearing. This practice creates another impediment to meaningful citizen participation in public hearings.

The Landmarks Law states as one of its purposes to "promote the use of historic districts, landmarks, interior landmarks and scenic landmarks for the education, pleasure and welfare of the people of the city." Another stated purpose is to "stabilize and improve property values in such [historic] districts." Therefore, it is vital that the concerns of the general public and, in particular, owners of neighboring properties whose properties may be severely impacted by proposed changes, be part of the decision-making process.

III. Regulation: Lack of Public Hearings for Substantially Altered Certificate of Appropriateness Applications

Certificate of Appropriateness items that received a public hearing, but were not approved, are often brought back in radically altered form, to be reviewed not at a public hearing, but at a public meeting, where public testimony is not taken and little public notice is provided. The LPC's criteria for scheduling items for a public meeting versus a public hearing are obscure, especially in cases where the application has changed substantially (e.g., a new design, a different architect. Examples: 322 Hicks Street, Allen Stevenson School.)

The Landmarks Law requires ten days statutory notice of the LPC agenda for public hearing items, which consist of Certificate of Appropriateness applications and some Reports. This provision allows interested citizens to prepare testimony in regard to projects that might have dramatic impact on individual landmarks and the character of historic districts.

At public hearings, after public testimony has been taken, the LPC may then determine how to dispose of various items. In such deliberations, in order to avoid unnecessary delay for the applicant, the LPC often allows the proposal to be modified after the hearing. The application is then brought back to a public *meeting* for final approval. At a public *meeting* there is no requirement for public testimony and no statutory requirement for notice. This is a sensible approach in most cases where needed modifications are minor or non-controversial. However, when a proposal is altered radically, a new public *hearing* should be required.

Failure to recalendar proposals for a new public hearing evades the Landmarks Law's intent that there be "adequate consideration of the irreplaceable loss to the people of the city of the aesthetic, cultural and historical values represented by such improvements."

For example: on one such recent occasion, a design for a new building in an historic district was "brought back" and approved at a public *meeting* four months after the original presentation, with a new architect and a completely different design.

Furthermore, the calendar for the public *meeting* is published on the LPC website only a few days before the meeting, and the agenda is often revised up until the day before. Additionally, the descriptions of agenda items that are used are the same as for the original hearing. All these factors combine to create a situation where the general public does not know when a completely new design is to be reviewed, and there is no opportunity to submit new testimony that is relevant.

In response to recent complaints, the LPC has made a gesture toward outreach through private, selective notification. There is, however, no legal basis or guideline for determining which members of the public are entitled to this outreach and the general public remains disenfranchised through the public review process.

IV. Regulation: Absence of Leadership in Protecting Landmarks Administered by Other Agencies of Government

We would like to see more openness in the review of alterations to landmarks owned by the City, the State, and public authorities. Applications for reports on such properties should be available to the public before the Commission takes action. In all cases, alterations to City, State, and Authority owned properties which would require a Certificate of Appropriateness if privately owned should come to public hearing. There must be prior public notice, and notice to affected Community Boards. We believe the Charter requires notice to Community Boards under Section 2800(e).

While the Landmarks Law specifically states that public notice must be given for items calendared for designation, or for Certificate of Appropriateness review, it does not stipulate public hearings for items which require advisory Reports on alterations to government properties.

However, in the decades prior to the Giuliani Administration, the LPC consistently calendared for public hearing items requiring reports to other governmental agencies (if a comparable project on private property would have warranted Certificate of Appropriateness review). Here, the LPC acted in the belief that all divisions of government should respect each other's mandates and procedures, for instance, by appearing at public hearings when seeking a Report from the Landmarks Preservation Commission.

Under this policy citizens were able to monitor and contribute to the successful restoration practices that reclaimed Central and Prospect Parks, as well as numerous other projects affecting some of New York's most prominent landmarks.

Arguably, no other self-generated LPC policy has had such profoundly positive environmental benefits for the people of the city.

Nevertheless, starting under the Giuliani administration, the LPC began to experiment with new procedures for reviewing alterations to landmarks in government ownership, sometimes avoiding full public review in important cases which would formerly have received it.

These changes have reduced public participation and institutional accountability and led to the loss of an excellent administrative practice. Indeed if interagency preservation initiatives with other branches of government were cultivated, the City as a whole would benefit.

There is a need for improved coordination between the LPC and other agencies such as the City Planning Commission, the Department of Transportation, the Board of Standards and Appeals and the Department of Buildings. Agency rules should be reviewed to identify and attempt to resolve interagency conflicts. We are also concerned that there is a failure to note deteriorating conditions in City and State owned historic properties, and in properties controlled by authorities such as the MTA and the School Construction Authority. The LPC could play an advisory role here.

V. Regulation: Need to Provide Enough Information for Informed Public Hearing Comment

Plans and materials pertaining to applications scheduled for public hearings are made available for review by interested members of the public on the Friday prior to the Tuesday public hearings, and this is very helpful; however, the materials are often incomplete. The public is not allowed to speak to staff members who are directly knowledgeable about the applications and can answer questions.

The Landmarks Law, Section 25-313 Public Hearings (b) establishes the right of New Yorkers to testify in regard to C of A applications: “the commission shall afford a **reasonable opportunity for the presentation of facts and the expression of views** by those desiring to be heard . . .” [emphasis added]

This process cannot function effectively if the public is not given sufficient access to information about the applications in advance of the public hearings.

- Materials presented for public review prior to hearings often lack clarity and crucial pieces of information; such as plans showing existing conditions versus proposed alterations, tax photographs from the Municipal Archives and other types of historic photographs, and photographs in the LPC's file documenting condition at the time of designation.
- Queries about applications are channeled through the Director of Community and Government Affairs, who must relay questions to staff, creating delays in the retrieval of information, some of which is lost in the process.
- In some cases applications change between Friday afternoon and the Tuesday hearing so that the public comments on obsolete presentation boards.

Obviously, under these conditions, it is difficult for citizens to deliver informed testimony and contribute positively to the landmarks process.

Members of the public offering testimony should be allowed to use illustration boards and audio-visual presentations to make their points.

The LPC has no clear guidelines for public participation. For instance, at various times Chairs have forbidden the use of illustration boards, the circulation of documents to commissioners, private communications with commissioners, and the use of audio-visual presentations such as PowerPoint. It is unclear whether these prohibitions are still in effect.

Furthermore, members of the general public who seek to participate in LPC hearings are habitually denied rights extended to applicants. For instance, the general public is not permitted to “pass the bar,” or the invisible line separating the panel of commissioners from the public seating area. By contrast, the applicants and their lawyers,

consultants, etc., are allowed to go to the front of the hearing room, where the commissioners are seated and where it is possible to directly refer to the visual materials of an application—a location with far better visual and auditory access. On occasion, applicants have been allowed to use PowerPoint presentations and other sophisticated means in making their case.

By contrast, recently, the LPC denied a community group the use of PowerPoint as part of its testimony. Members of the public have sometimes been refused permission to distribute illustrative handouts to commissioners during hearings and use illustrated boards as part of their testimony.

A basic principle of equity is involved: those who desire to be heard—often inhabitants of the neighborhoods where new work is proposed to be constructed—should be allowed equal access to the hearing room, not by virtue of sufferance but by fundamental right and established rule.

VI. Regulation: Need for Public Access to Staff-Level Permit Records

A vast and growing majority of applications to alter landmarks are approved at staff level under the rules. We believe that concerned neighbors and the public should have access to information about existing and pending staff-level permits. Certificate of Appropriateness decisions are already being made available on line through the Center for New York City Law. The technology is there and the available materials should be expanded.

The LPC website has made it much easier to retrieve information about designations, public hearings and meetings, and agency rules. In addition, recently, the New York City Center for Law has started making Certificate of Appropriateness decisions available on line, which is a giant step forward, although it still does not fulfill the government's responsibility to provide public information on its actions.

There is one area where information about the LPC is difficult to obtain. The majority of the permits issued by the LPC, that is, staff-level permits, are issued without public notice or review and not systematically made available to the public.

Staff-level permits are no longer just for minor work. The LPC has instituted a policy of moving as many permits as possible out of the public hearing process—by authorizing Rules, and Master Plans under the Rules. These empower staff approvals for substantial projects, some of which entail Buildings Department permits. Included are restoration, certain rear yard and rooftop additions, HVAC work, sign, window and awning changes, and new window openings. In some historic districts, new storefronts, visible additions to buildings, and other major construction, such as the demolition of certain categories of building, are approved at staff level. Consequently, work in historic districts that in the past might have been calendared (and in many cases reviewed by the local community board) now comes as a complete surprise to the people who live in such areas.

The public deserves to know what is pending and what has been approved. Sharing of information about pending permits can also help prevent the issuance of invalid permits, which has happened on occasion when staff has approved applications that do not comply with zoning or other city regulations. The Department of Buildings Building Information Service (BIS) and the Department of Finance Automated City Register Information System (ACRIS) provide a comparable service. The technology exists and other agencies have shown it can be done. The public interest would be better maintained if all LPC permits and permit applications were available on line on the agency's website.

VII. Regulation: Need to Ensure Community Board Participation

The LPC must honor the meeting schedules and procedures of Community Boards so that their reports on Certificates of Appropriateness applications can be received and considered by the commissioners at public hearing prior to a vote.

This is particularly important as Community Boards serve a vital advisory role in all municipal land-use decisions and, as an appointed arm of government, should have the sufficient opportunity to fulfill that role.

VIII. Regulation: Need for an Improved Sound System in the LPC Hearing Room

A better sound system needs to be installed in the hearing room to enable the public to hear the applicants' presentations and the commissioners' discussion. The existing sound system is defective and is not always fully activated.

Section 25-313 of the Landmarks Law; Public hearings; requires that the LPC hold “public **hearings**.” [emphasis added]

After innumerable complaints, over many years, the discussion of commissioners remains frequently inaudible.

IX. Regulation: Lack of Consistent Standards in Regulation

The LPC no longer seems to be adhering to widely recognized standards of preservation practice such as the preservation of the original fabric and structure of buildings under restoration. It can be unclear what criteria are being used when the LPC makes its determinations. In some cases, there appears to be a lack of consistent and rational policy from neighborhood to neighborhood.

Looking at the roster of landmarks, we see a wonderful variety of places, a panorama of our culture and history. Flexibility in dealing with this variety is an important feature of the Landmarks Law, which gives decision makers discretionary powers when they rule on the appropriateness of alterations. Many times, landmarks present unique problems that require unique solutions.

Nevertheless, there are some general principles of historic preservation which are recognized nationally and internationally in regard to maintaining the integrity of landmarks:

- It is better to preserve the original building, the original materials, the original structure and the original setting—rather than making a copy, an imitation or a memento.
- If parts of the original are highly deteriorated, it is better to repair them rather than replace them.
- When original materials cannot be retained, it is better to replace them in kind.

The New York City Landmarks Law includes a section which permits the LPC to make a finding of hardship, allowing relief from more rigorous preservation standards because of extenuating financial circumstances. A real test for hardship was carefully prescribed by the City Council, as well as by the courts in various relevant findings.

Yet in recent years the LPC has given undue consideration to factors of economics in cases where the hardship test has not been formally applied. The LPC routinely approves discarding of original historic building components and replacing them with substitute materials of poor quality and appearance. Sometimes much or all of a structure behind the street wall is allowed to be destroyed.

Furthermore, the LPC has applied uneven standards to different neighborhoods. An equally high standard of preservation should be applied in every historic neighborhood across the city, while recognizing that each neighborhood possesses its own unique characteristics and qualities.

Finally, the LPC must uphold preservation standards that fulfill the intent of the Landmarks Law when it comes to responding to work performed without LPC permits. Property owners and other members of the general public perceive the LPC's enforcement of the Landmarks Law as inconsistent and erratic. Work done without permits is often undetected and uncorrected, in part due to shortage of enforcement staff. Furthermore, work done without permits is sometimes retroactively approved at a lower preservation standard than would have been maintained had the work been reviewed by the LPC prior to completion, even though the LPC's stated policy is to maintain a uniform standard.

Recommendations:

The signatories of this report recommend that:

I. Public Participation in the Appointment of Commissioners Be Reinstated.

As Commissioners must be confirmed through action of the City Council, we hope that the Council will confirm only those who are conversant and in sympathy with preservation goals.

We believe there should be an opportunity for public input on appointments and would like to work in partnership with the Rules, Privileges and Elections Committee of the Council so as to ensure a comprehensive, detailed interview for each Commissioner being considered.

II. Adequate Funding for the Necessary Staff Be Provided.

While the work load of the LPC has increased, the staff and funding have been cut. The LPC is short of staff in all departments. The Preservation Department needs more staff to conduct thorough investigations of the growing number of applications it receives, and make more site visits. The Research Department needs more staff to conduct surveys to identify buildings worthy of designation and to produce designation reports in a timely manner, and to perform community outreach, as it once did. More violation officers are needed to enforce the landmarks law. As the number of landmarked properties continues to grow, and the amount of investment in restoration and renovation of those properties continues to increase, the agency's resources must be expanded to meet the increased workload.

III. Regular Public Hearings Be Held to Address Designation and Regulatory Issues.

Many of the problems described in this report can be ameliorated via the administrative authority of the LPC. In order for this to occur, continuing public dialogue is needed.

Public hearings should be held on a continuing basis to gather public comment in regard to the designation and regulatory functions of the LPC. These hearings would serve the particularly important purpose of providing a forum for hearing the concerns of owners of historic properties, neighbors affected by LPC decisions, and community-based preservation groups.

This would enable the agency to better evaluate the impact of its actions on the city.