

**Productive Preservation and the Reinvention of Industrial America**

**by Jonathan Flynn**

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## I. Introduction: The Man in the Hathaway Shirt

On the banks of the Kennebec River, midway between Boston and the Canadian border, sits the small city of Waterville, Maine. First settled in the late 1700s, Waterville did not achieve political and physical permanence until the Industrial Revolution. With the arrival of paper mills and factories that produced textiles and consumer goods, what had been a quiet and isolated community centered around a struggling liberal arts college was transformed into a cacophonous, foul-smelling, remarkably successful center of manufacturing and commerce.<sup>1</sup>

Near the center of Waterville, wedged between the riverbank and the downtown, looms a massive building that until recently belonged to the H.C. Hathaway Company. Occupying over a quarter of a million square feet of industrial space and literally casting a shadow over parts of downtown, the Hathaway factory dominated the city both economically and physically.<sup>2</sup> For over 150 years, the giant mill produced an endless stream of tailored goods, including those worn by the iconic, one-eyed “man in the Hathaway shirt.”<sup>3</sup>

Though unremarkable to the outside world, for the people who lived and worked in Waterville, the activity that surrounded the Hathaway Mills was at the center of many ordinary lives. Like many of America’s first industrial cities, Waterville and its residents came to be defined by their mills and the goods that they produced. The fabric of the community was woven with threads of both its physical and economic past.

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<sup>1</sup> See generally, WALTER LICHT, *INDUSTRIALIZING AMERICA* (1995) (discussing the general history of industrialization in America, with particular emphasis on the social responses in affected communities).

<sup>2</sup> Mike Roy, *Reinventing Waterville*, *COLBY MAGAZINE*, Winter 2005 available at <http://www.colby.edu/colby.mag/issues/>. To put the size of the Hathaway factory in perspective, it contains as much potential office space as eight stories in the Empire State Building. In the context of a small, northern New England town, a building of that scale is enormous.

<sup>3</sup> *Id.* For a detailed history of the goods produced by the Hathaway company, see generally DOUGLAS CONGDON-MARTIN, *HATHAWAY SHIRTS: THEIR DESIGN, HISTORY, & ADVERTISING* (1998).

On October 18, 2002, Waterville's industrial age came to end as the Hathaway factory produced its last shirt, then shut its doors.<sup>4</sup> Richard Russo fictionalized the aftermath of the mill closing in his Pulitzer Prize winning novel, *Empire Falls*.<sup>5</sup> As in real-life Waterville, the closure of the fictional factory created a sense of both crisis and despair that became a burden to be borne by the town's inhabitants. Miles, the contemplative manager of the local Empire Grill, recognized this, and wondered, ". . . if the past were razed, the slate wiped clean, maybe fewer people would confuse it with the future, and that at least would be something."<sup>6</sup> Preservation would inevitably be difficult, but of perhaps greater importance, would it also be worth the effort?

Suddenly, a large and prominent piece of the town's industrial history stood idle and vacant. With time, the situation would presumably only grow worse. Unless the building could be reused as another factory, as the residents of Empire Falls hoped, or adapted by a developer for some new purpose, nature would begin to take her toll. What was once a monument to local productivity would quickly become a ugly ruin. Though fiction, the novel captures the essential sense of devastation and disorientation that influences important preservation decisions made in the context of economic distress..

Failure of the Hathaway factory did not come as a surprise. In the preceding four years alone, Maine had lost close to 20,000 manufacturing jobs under circumstances virtually identical to those in Waterville.<sup>7</sup> In fact, the local government, being somewhat more proactive and farsighted than most, recognized the dire economic trends and was already implementing a plan

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<sup>4</sup> *Developer Offers to Buy Shirt Plant*, N.Y. TIMES, Nov. 25, 2002, at C2.

<sup>5</sup> RICHARD RUSSO, *EMPIRE FALLS* (2001).

<sup>6</sup> *Id.* at 19.

<sup>7</sup> Roy, *supra* note 2; *see also* Amy Calder, *Hathaway Sale OK'd by Council*, Morning Sentinel, Jan. 18 2006, at <http://morningsentinel.maintoday.com/news/local/2340102.shtml> (last visited Apr. 15, 2006). *See also* RUSSO, *supra* note 5, at 36 ("Of course, all that was before the textile mill closed and the population of Empire Falls began to dwindle as families moved away in search of employment.").

to reinvent the struggling industrial city at the time the Hathaway factory closed.<sup>8</sup> With the help of the National Trust for Historic Preservation's Main Street Program, Waterville was well on its way towards recasting itself as a center for healthcare and higher education by 2002.<sup>9</sup> Despite these positive efforts, however, prior planning could not completely eliminate the basic problems that arose when the factory ultimately closed.

Waterville's problems are common to many early industrial cities attempting to regain a degree of economic prosperity without sacrificing the remnants of their past. Jane Jacobs, the celebrated critic of mid-twentieth century urban renewal and proponent of urban living, went further and argued that urban growth *required* a physical connection with the past when she wrote almost five decades ago that:

Cities need old buildings so badly it is probably impossible for vigorous streets and districts to grow without them. By old buildings I mean not museum-piece old buildings, not old buildings in an excellent and expensive state of rehabilitation – although these make fine ingredients – but also a good lot of plain, ordinary, low-value old buildings, including some rundown old buildings.<sup>10</sup>

Jacobs would agree that the mills and other buildings that comprise many struggling early industrial cities are undoubtedly historic and should be saved. In practice, however, these historic buildings fit awkwardly into the traditional model of preservation, already ill-suited for most struggling communities.

Historic preservation has been successful at saving and giving meaning to many vibrant and economically productive communities across the country, but this success has not been universal. Although preservation has achieved commendable results in places like Charleston and Beacon Hill, it has failed to offer a viable solution to less fortunate places like Waterville, and many other early industrial cities. For struggling cities, the traditional model of

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<sup>8</sup> *Id.* For more information about the Waterville Main Street Program, see <http://www.watervillmainstreet.org>.

<sup>9</sup> Calder, *supra* note 7.

<sup>10</sup> JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES*, 187 (1992).

preservation, characterized by strict and inflexible aesthetic standards, appears expensive, unnecessary, and basically incompatible with progress.<sup>11</sup> As a result, preservation simply fails to work in many unconventional and challenging environments. This is unfortunate and unnecessary.

Although the traditional model of preservation is often criticized, with some merit, for being too restrictive and unrealistically idealistic, the preservation laws are generally sound.<sup>12</sup> Preservation itself is not incompatible with progress, but too often good laws are interpreted poorly, and with disastrous results. A broadly defined purpose that is imprecise and inefficient in practice, combined with the disproportionate influence of certain highly aspirational models at the federal and local levels, causes preservation to be characterized by great expectations that are fulfilled in some cases, but defeated in many others.

This paper explores the problem of why the traditional model preservation, characterized by a strict and inflexible interpretation of the law, often fails in struggling communities. Particular emphasis is given to early industrial cities, where the existing urban infrastructure and difficult economic situation often conspire to make preservation exceptionally challenging. A solution is proposed for making preservation productive these distressed communities. Through a broader, and more flexible reading of existing law, a major preservation problem may be solved, and history can be used as a valuable tool for growth and positive change.

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<sup>11</sup> Carol M. Rose, *Preservation and Community: New Directions in the Law of Historic Preservation*, 33 STAN. L. REV. 473, 500 (1981).

<sup>12</sup> See Alexander Reid, *Old Mill Dreams Come True Where Laborers Toiled, Residents Shop, Relax*, BOSTON GLOBE, Aug. 1, 2004, Globe Northwest at 1; Tom Condon, *Collinsville Project Stalled*, HARTFORD COURANT, Mar. 6 2005, at C4.

## **II. The History of Historic Preservation**

### **A. Why Preserve? Defining the Purpose of Historic Preservation**

In the most basic sense, the preservation of older buildings is neither a new nor exceptionally unusual phenomenon.<sup>13</sup> Scarce resources and economic realities often make it cheaper for buildings to be repaired and reused rather than razed and rebuilt.<sup>14</sup> The effect of local economics on building decisions is particularly acute in depressed communities that already possess a substantial urban infrastructure. These communities, including many of America's first industrial cities, have retained a considerable amount of their historic integrity out of simple economic necessity.<sup>15</sup> Without the development pressure that often provokes demolition, historic buildings are unremarkably maintained and used as they are. Preservation in this common context, is simply a consequence of economic circumstances, rather than a product of political or aesthetic initiative.

#### ***Preservation for Economics: the Great Charleston Earthquake of 1886***

The origins of preservation in Charleston, South Carolina's celebrated historic district demonstrates the significant role that economic distress can play in shaping a city. Although often noted for being the first American municipality to adopt a formal historic preservation ordinance in 1931, the practice of preservation in Charleston predates this legislation by at least half a century.<sup>16</sup>

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<sup>13</sup> For a different perspective on the development of preservation, see Todd Schneider, *From Monuments to Urban Renewal: How Different Philosophies of Historic Preservation Impact the Poor*, 8 GEO. J. ON POVERTY L. & POL'Y 257, 259-62 (2001).

<sup>14</sup> See generally DONOVAN RYPKEMA, *THE ECONOMICS OF HISTORIC PRESERVATION: A COMMUNITY LEADER'S GUIDE* (2005).

<sup>15</sup> See Condon, *supra* note 12.

<sup>16</sup> See generally Preservation Process in Charleston, [http://www.preservationsociety.org/program\\_process.asp](http://www.preservationsociety.org/program_process.asp) (providing a brief overview of the preservation movement in Charleston, South Carolina).

On the evening of August 31, 1886, a rare and exceptionally destructive earthquake devastated historic Charleston and surrounding communities.<sup>17</sup> In addition to killing close to 100 people and causing over \$8 million in damage<sup>18</sup>, the earthquake damaged virtually every building in city to some degree,<sup>19</sup> and some historic structures, including the iconic steeple of St. Michael's Church, built in 1761, were completely ruined.<sup>20</sup> Most of the city's buildings, however, were salvageable despite their collapsed roofs, toppled chimneys, and countless cracked bricks. Amid this chaotic state of affairs, the residents of Charleston were confronted with a fateful decision: to repair and therefore preserve the damaged buildings, or to raze the wreck and build anew?

Fortunately for the still nascent preservation movement, Charleston had little choice. Still reeling from the Civil War which had concluded two decades earlier, Charleston along with all of the South was in economic ruin.<sup>21</sup> Unable to afford a genuine renaissance, Charleston chose to preserve and to rebuild what it had.

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<sup>17</sup> SIMON WINCHESTER, *A CRACK IN THE EDGE OF THE WORLD: AMERICA AND THE GREAT CALIFORNIA EARTHQUAKE OF 1906* 86-96 (2005).

<sup>18</sup> It is important to note that \$8 million was a considerable sum of money in 1886.

<sup>19</sup> Details of the Charleston earthquake were recorded by Carl McKinley, a reporter for the *Charleston News and Courier* who was working at the time the disaster struck. He recorded some of the details:

There was no intermission in the vibration of the mighty subterranean engine. from the first to the last it was a continuous jar, adding force with every moment, and, as it approached and reached the climax of its manifestation, it seemed for a few terrible seconds that no work of human hands could possibly survive the shocks. The floors were heaving underfoot, the surrounding walls and partitions visibly swayed to and fro, the crash of falling masses of stone and brick and mortar was heard overhead and without, the terrible roar filled the ears and seemed to filled the mind and heart, dazing perception, arresting thought and, for a few panting breaths, or while you held your breath in dreadful anticipation of immediate and cruel death, you felt that life was already past and waited for the end, as a victim with his head on the block awaits the fall of the uplifted ax.

*Id.* at 91; see also Paul Pickney, *Lessons Learned from the 1886 Charleston Earthquake*, S.F. CHRON., May 6, 1906, available at <http://www.sfmuseum.org/1906.2/charleston.html> (quoting the International Encyclopedia (1903) as an authority on "the Charleston phenomenon" that reported, "[s]even-eighths of the houses were rendered unfit for habitation, many persons were killed and property valued at over \$8,000,000 was destroyed. The damage, however, was quickly repaired.")

<sup>20</sup> See Pickney, *supra* note 18; see also Robert Behre, *Restoration Keeps Church Looking Old*, THE POST AND COURIER, July 4, 2005, at [http://www.charleston.net/stories/default\\_pf.aspx?newsID=31156](http://www.charleston.net/stories/default_pf.aspx?newsID=31156) (last visited Apr. 15, 2006).

<sup>21</sup> WINCHESTER, *supra* note 17, at 94.

Interestingly, this earliest preservation movement in Charleston, despite being borne out of economic distress, appears to have provided at least a modest economic boost to the local economy. Four years after the 1886 disaster, the city's population had grown by more than 10%, with a corresponding increase in local wealth and commercial activity.<sup>22</sup> By contributing to a locale with a well-defined character and consistent sense of place, Charleston was and remained an attractive and desirable place to live and to work. Identifying and protecting these attributes, even in the face of adversity, the city succeeded in advancing both its aesthetic and economic interests at once. Without any fanfare, but of great significance, Charleston showed that preservation and economic development could proceed in harmony with one another.

Preservation itself is not new, but the creation of a body of law dedicated to the protection of historic structures is a relatively recent and evolving phenomenon. Although preservation laws have always been framed as serving a "public purpose," interpretation of that broad objective has changed considerably over time.<sup>23</sup>

### ***Preservation for Patriotism***

Three distinct purposes for preservation have been proposed, beginning with the promotion patriotism in the late nineteenth century.<sup>24</sup> The Industrial Revolution and rapid economic growth that it ignited, reshaped the urban landscapes of many cities to a greater extent than ever before. In the process, many historic sites and buildings became targets, accused of standing in the path of progress. This conflict was embodied in *United States v. Gettysburg Electric Railway Co.*, one of the first preservation controversies ever to be litigated. In a

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<sup>22</sup> Pickney, *supra* note 18 ("Four years later in 1890, the only visible evidence of this great destruction was seen in the cracks which remained in buildings that were not destroyed. A new and more beautiful, more finished city had sprang up on the ruins of the old in that brief time and the population had grown to nearly 55,000 with a corresponding increase in wealth and activity.").

<sup>23</sup> See *United States v. Gettysburg Elec. Ry. Co.*, 160 U.S. 668, 680 (1896)

<sup>24</sup> Rose, *supra* note 11, at 479-90; see also David F. Tipson, *Putting the Historic Back in Historic Preservation*, 36 URB. LAW. 289, 290-93 (2004).

poignant opinion, the Supreme Court emphatically declared that the preservation of the Gettysburg battlefield was not merely a legitimate public purpose, but a patriotic cause “so closely connected with the welfare of the republic itself as to be within the powers granted Congress by the Constitution for the purpose of protecting and preserving the whole country.”<sup>25</sup> Read in these terms, preservation was not only permissible, but when a site of such profound national importance as Gettysburg was concerned, almost constitutionally required.

Preservation as a means of inspiring patriotism was enhanced by the coincidence of nation’s centenary in 1876, and the official end of Reconstruction following the Civil War.<sup>26</sup> In this environment, the disruptive effects of industrialization in general, and cases like Gettysburg in particular, served as a both a warning and a reminder. At once, it was clear that after 100 years of independence, the United States had acquired a history of its own that was worth saving, but that left to the market, these interests were unlikely to be adequately protected. Private preservation efforts modeled after the successful attempt to save George Washington’s Mount Vernon from development required considerable financial and organizational resources that were unlikely to be available for the vast majority of historic places.<sup>27</sup> The result was a gradually increasing reliance on the law to provide economic support, and to a much larger degree, a regulatory framework through which preservation efforts might be focused.

### *Preservation for Aesthetics and Architecture*

By the early twentieth century, the purpose of preservation had grown to include protecting buildings of aesthetic or architectural merit.<sup>28</sup> Reflecting an emerging realization of the potential power local land use regulation, preservation laws establishing aesthetic standards

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<sup>25</sup> 160 U.S. at 682.

<sup>26</sup> See Rose, *supra* note 11, at 481-84.

<sup>27</sup> *Id.* at 480; see generally C. HOSMER, THE PRESENCE OF THE PAST (1965) (providing a general overview of the development of the preservation movement).

<sup>28</sup> See Rose, *supra* note 11, at 484-88.

and design guidelines were enacted beginning in Charleston in 1931, followed by New Orleans in 1936, and San Antonio in 1939.<sup>29</sup>

Exercise of this new found regulatory power was infamously affirmed by the Supreme Court when Justice Douglas wrote in *Berman v. Parker* that, “[i]t is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.”<sup>30</sup> State and local governments were free to use preservation laws to regulate even the finest aesthetic details of historic structures in the interest of preventing “incongruous structures”<sup>31</sup> from upsetting the historic “harmony”<sup>32</sup> of the community.

Cities have embraced aesthetic and architectural regulation to varying degrees. Some progressive municipalities have adopted an open and flexible definition of artistic merit, accepting the possibility of exceptional modern design being compatible with a historic context.<sup>33</sup> More often, new designs are accommodated through inconsistent application of standardized design criteria. Although not ideal from a legal perspective, a degree of adaptability and pragmatism is valuable to any preservation program, particularly where subjective design criteria are concerned.

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<sup>29</sup> *Id.* at 505-06.

<sup>30</sup> *Berman v. Parker*, 348 U.S. 26, 34-35 (1954).

<sup>31</sup> Historic preservation ordinances frequently speak in terms of compatibility and harmony, contrasted with some notion of incongruity and discord. The objective of these ordinances is to create an established norm, then to prevent incompatible changes from occurring through new construction, alterations, or outright demolition. *See, e.g.*, Opinion of the Justices to the Senate, 128 N.E.2d 557, 562 (Mass. 1955) (discussing the Nantucket historic preservation ordinance), *Maher v. City of New Orleans*, 516 F.2d 1051 (5<sup>th</sup> Cir. 1975), *cert. denied*, 426 U.S. 905 (1976). For a general discussion of the notion of neighborhood character and congruity, see HENRY WARD BEECHER, *NORWOOD; OR, VILLAGE LIFE IN NEW ENGLAND* (1868).

<sup>32</sup> 16 U.S.C. § 470-1 (“It shall be the policy of the Federal Government . . . to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations . . .”).

<sup>33</sup> *See Rose, supra* note 11, at 510-11; *see also* D.C. Code Ann. § 6-1104(h) (2006) (statutory exemption for projects of “special merit” in the Washington, D.C. historic preservation ordinance).

Many other cities enforce design standards based strictly on historical architectural norms.<sup>34</sup> Architectural purity may result in a greater degree of visual conformity and historic integrity than less stringent standards, but it also risks undermining a fundamental purpose of preservation. By discouraging, or outlawing, new design, preservation will stifle the creation of new buildings of artistic and architectural merit that the ordinances were intended in part to protect. Despite the inherent challenges, the preservation of aesthetic and architecture must, therefore, be reconciled with the preservation of patriotic and more purely historic sites.

### *Preservation for Community*

Most recently, the purpose of preservation has been expanded to include protecting wherever possible, a sense of place and community. Emerging out of the ambitious, but ultimately ill-conceived, urban renewal projects of the 1950s and 60s, proponents of community preservation recognized the important connection between a city's physical past and its present identity. Reminiscent of the response to destructive effects of industrialization in the late 1800s, the demolition of historic buildings and neighborhoods in the name of progress disoriented and weakened the community by depriving it of the historic focal points that previously bound it together. Speaking to a Congressman on the subject of the proposed demolition of the Willard Hotel in Washington, DC, a representative of the U.S. Park Service stressed that point when he said:

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<sup>34</sup> The ordinance in Charleston, South Carolina is particularly strict, and allows preservation officials to prohibit any alternation simply for being "inappropriate." See CHARLESTON, SC., ZONING ORDINANCES § 54-240(i) ("Among other grounds for considering a design inappropriate and requiring disapproval and resubmission are the following defects: Arresting and spectacular effects, violent contrasts of materials or colors and intense or lurid colors, a multiplicity or incongruity of details resulting in a restless and disturbing appearance, the absence of unity and coherence in composition not in consonance with the dignity and character of the present structure in the case of repair, remodeling or enlargement of an existing building or with the prevailing character of the neighborhood in the case of a new building."). Many newer communities with less historic integrity have, nonetheless, emulated Charleston's strict standard. Despite good intentions, these communities risk of over-regulating aesthetics and design to the extent that it may discourage new development and architectural experimentation.

A lot of things make things historic. It is anything that gives a place a sense of place . . . . And if we keep tearing down everything which gives the city a sense of identity, and putting up duplicates of commercial glass boxes . . . . how do you know where you are?<sup>35</sup>

To some degree, preservation of community was an immediate response to a surge in demolition and development that was so sudden and fast that residents (many of whom were in fact physically displaced) had become lost in their own neighborhoods.

Concern for community, and the use of historic preservation for standards and procedures to exert control over the development process was new in the mid-twentieth century, and in some circles almost revolutionary. As bulldozers demolished the aged buildings of Southwest Washington, DC in the 1950s, one commentator noted the “tremors of the new preservation movement were already commencing.”<sup>36</sup> This sentiment was convincingly clarified in 1981 when Carol Rose wrote that “[t]he chief function of preservation is to strengthen local community ties and community organization.” Despite substantially broadening the potential reach of preservation law once again, the protection of community has resonated with the public and is now an integral part of virtually all preservation programs.

Though potentially distinct, the three purposes of preservation – patriotism, aesthetics, and community – have blended together as the law of historic preservation has been gradually been codified. In federal and local preservation laws, elements of each purpose are used to produce statutes that are uncontroversially within the “public interest,” as that constitutionally specific term has been defined by the courts.

In other contexts, however, failure to distinguish the purposes of preservation has limited the potential success of historic preservation. Because even relatively sophisticated preservation

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<sup>35</sup> *Oversight Hearing on Pennsylvania Avenue Development Plan: Hearing Before the Subcomm. on Parks and Recreation of the House Comm. on Interior and Insular Affairs*, 94<sup>th</sup> Cong., 1<sup>st</sup> Sess. 65 (1975) (statement of E. Connally), quoted in Rose, *supra* note 11, at 490..

<sup>36</sup> Mina Marefat and Roya Marefat, *Southwest Study*, D.C. Historic Preservation Review Board Staff Report and Recommendation for Capitol Park Apartments.

statutes decline to distinguish between sites that are historically significant for exemplary architecture, as opposed to significant for their association with historic events, or individuals, “what is historic?” becomes a critical threshold question, but one that is soon forgotten once answered.<sup>37</sup> This may be a distinction without a difference in now-prosperous places like Charleston, Nantucket, and Beacon Hill, but it is relevant in economically distressed communities, particularly for those properties that are typically less suited for easy adaptive reuse.

## **B. Federal Preservation Law: The Model**

Federal preservation law articulates and serves the varied purposes of preservation that have developed over time in several complimentary ways. First, federal preservation law serves as a model that state and local governments may emulate and adapt to local needs. As exemplified through the National Historic Preservation Act (NHPA) and related regulations, the federal laws provide a procedural framework and substantive standards that can be easily translated to the municipal level.<sup>38</sup> Second, federal preservation law provides considerable economic assistance through tax credits that encourage high quality rehabilitation projects within the private sector.<sup>39</sup> Finally, federal preservation law supports the traditionally dominant role of local government in land use planning by reaffirming the power and discretion of the states.

Federal preservation law provides both a procedural and substantive model for state and local government to follow. The National Register of Historic Places, created under the Historic Sites Act of 1935<sup>40</sup> and expanded by the NHPA in 1966<sup>41</sup>, serves as the starting point for the

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<sup>37</sup> See, e.g., D.C. Reg. § 201.1(a)-(g).

<sup>38</sup> 16 U.S.C. §§ 470 *et. seq.*

<sup>39</sup> See I.R.C. § 47.

<sup>40</sup> 16 U.S.C. §§ 461 *et. seq.*

<sup>41</sup> 16 U.S.C. §§ 470 *et. seq.*

protection of most historic assets.<sup>42</sup> Although merely listing a site on the National Register provides no additional legal protections, the process used for identifying and cataloging historic properties according to established criteria provides a simple and effective framework for local governments to follow.<sup>43</sup> Applied at the municipal level, some variation on the National Register criteria are often used as the basis for designating locally significant landmarks and historic districts where, unlike at the federal level, stringent substantive restrictions are often imposed.

The procedural framework established by the National Register is supported through substantive preservation standards provided by the Secretary of the Interior.<sup>44</sup> The standards define four potential “treatments,” each designed to serve a particular preservation need.<sup>45</sup> While these standards are not automatically binding, they substantially influence the manner in which local preservation ordinances are interpreted and the type of substantive requirements they impose.

High-quality preservation based on the Secretary of the Interior’s Standards is reinforced through the historic rehabilitation tax credit program.<sup>46</sup> By providing an immediate credit of between 10 and 20 percent of total qualifying rehabilitation costs, federal tax laws provide a valuable incentive for commercial developers to preserve rather than build anew.<sup>47</sup>

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<sup>42</sup> JULIA MILLER, LAYPERSON’S GUIDE TO PRESERVATION LAW: FEDERAL, STATE, AND LOCAL LAWS GOVERNING HISTORIC RESOURCES 2 (1997).

<sup>43</sup> See 35 C.F.R. § 60.4 (criteria for evaluation of properties eligible for listing on the National Register of Historic Places)

<sup>44</sup> 36 C.F.R. § 67

<sup>45</sup> *Id.* The most stringent standard, reserved for structures of “exceptional significance in American history,” often requires the use of authentic materials whenever possible and limits the degree of modification allowed, even in the context of adaptive reuse. For these cases, the applicable treatments would be either “restoration” or “preservation.” For properties of less direct historic importance, such as contributing buildings in a historic district, greater flexibility is recommended. Here either the “rehabilitation” or “reconstruction” treatment would likely be applicable. *Id.* For more detail, see the National Park Service web page Technical Preservation services, *at* [http://www.cr.nps.gov/hps/TPS/standards/choosing\\_treatment.htm](http://www.cr.nps.gov/hps/TPS/standards/choosing_treatment.htm) (last visited Apr. 28, 2006).

<sup>46</sup> I.R.C. § 47.

<sup>47</sup> *Id.*

Preservation tax benefits are particularly important for less affluent communities seeking encourage development downtown where the cost of rehabilitating an existing building might otherwise be greater than a comparable “greenfield” project.<sup>48</sup> The rehabilitation incentive is also meaningful for owners the of preservation’s “white elephants,” properties that have historic merit but that are to difficult to adapt to an economically viable current use.

The tax credit program only applies to “certified” preservation projects that meet the Secretary of the Interior’s rehabilitation treatment standards.<sup>49</sup> The result, therefore, is a hybrid system that offers considerable financial incentive in exchange for meeting rigorous federal standards.

The most significant aspect of federal preservation law, however, is the active role that it envisions for state and local governments in the preservation process. Although the NHPA and historic preservation tax credit program demonstrate concern for preservation at the federal level, the majority of preservation activity occurs at the most local governmental levels. This devolution of power is implicit in statutes like the NHPA, which provide an active role for state historic preservation officers in listing of locally important sites on the National Register.<sup>50</sup>

The broad power and active role of local government in preservation was affirmed by the Supreme Court’s landmark decision in *Penn Central Transportation Company v. City of New York*.<sup>51</sup> While resoundingly resolving the constitutional question of property “takings” posed by historic preservation, the Supreme Court also affirmed its earlier holding in *Berman v. Parker*,

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<sup>48</sup> A “greenfield” is a piece of real property that is perceived as being pristine, and free from any existing physical development, or potential environmental contamination. For these reasons, greenfields are attractive to developers who often value low construction costs coupled with high project predictability. Greenfields stand in contrast to greyfields, properties where there are pre-existing physical improvements, and brownfields, properties where there are pre-existing physical improvements and a problem of real or perceived environmental contamination. For more information on brownfields, in particular, see the EPA’s Brownfields web site at <http://www.epa.gov/brownfields/> (last visited Apr. 28, 2006).

<sup>49</sup> I.R.C. § 47.

<sup>50</sup> 16 U.S.C. § 470a(a)(6)

<sup>51</sup> 438 U.S. 104 (1978)

acknowledging that local governments had enormous discretion with regards to how they chose to regulate their lands. The role of the federal government in historic preservation was, by comparison, limited to serving as a practical framework defined in terms of optional policy preferences that state and local government could, but were not obligated, to follow.

### **C. State and Local Preservation Law: The Application**

Influenced and supported by the federal model, both procedurally and financially, preservation law is translated into practical terms at the state and local level. Functioning primarily through local preservation ordinances that establish a process for the designation and treatment of historic landmarks and districts, historic properties are afforded some degree of additional protection against demolition or destructive alteration.

The designation process in most local preservation ordinances parallels the flexible federal model. The broad criteria used to determine whether structures in Providence, Rhode Island are eligible for historic designation are typical, and include:

example[s] of the architectural, cultural, economic, historic, social, or other aspect of the heritage of the city . . . . site[s] of significant historic event[s] . . . . important architecture . . . . and, unique visual feature [s] . . . . [that] represent[] an established and familiar visual feature of a neighborhood, community, or the city.<sup>52</sup>

Though not entirely unbounded, these characteristics are potentially highly inclusive, and open to administrative interpretation each individual case.<sup>53</sup>

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<sup>52</sup> PROVIDENCE, RI MUNICIPAL CODE § 501.14.1 (2006)

<sup>53</sup> In the aftermath of the U.S. Supreme Court decision in *Chevron, U.S.A. v. Natural Resources Defense Council*, administrative law has set a new course with potentially significant implications for preservation. *See* 467 U.S. 837 (1983). Under *Chevron*, administrative bodies, including local historic preservation review boards, are vested with tremendous regulatory discretion, depending on the breadth and language of their enabling acts. Though some preservation laws are narrow, many are not, and the result is considerable flexibility for how individual laws are applied within any given community. Courts must defer to these interpretations unless they are found to be arbitrary and capricious, or otherwise not in accord with the law. It is true that many state administrative laws are different than their federal counterpart, but the principle is the same. Administrative bodies have discretion, even in the context of preservation, and they should use it when appropriate.

Though theoretically broad, in practice most local historic designations decisions conform with a narrow, established pattern. Landmark designations are typically reserved for individual properties of extraordinary historic importance, whereas historic districts, which may include a variety of buildings varying significance, are often subject to a less absolute standard.<sup>54</sup>

Once designated as historic, most successful preservation ordinances require a “certificate of appropriateness” issued after a special review before any proposed demolition or significant alteration of the property will be allowed. Some municipalities go further, to prohibit “demolition by neglect,” a practice where historic properties are lost by falling into disrepair through abandonment or inadequate maintenance.<sup>55</sup> All preservation based land use restrictions must include some form of potential relief for “economic hardship,” but as an almost unbroken chain of Supreme Court cases has determined, the threshold for proving a constitutional violation is almost insurmountably high.<sup>56</sup>

The result is a local system for historic preservation that is both adaptable and potentially very powerful. A recent survey by the National Trust for Historic Preservation found that over 2300 communities already have some form of preservation ordinance. These results suggest that local historic preservation efforts are not only potent, but also becoming increasingly accepted and widespread.<sup>57</sup> Though the traditional preservation approach, based on designation according to accepted criteria and protection through demolition review, has been successful in numerous

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<sup>54</sup> Rather than relying on any particular building’s historic value, a proposed historic district is first defined as geographically contiguous areas characterized by specific period in time, then assessed as the aggregate of its contributing and non-contributing parts. Although the historic integrity and harmony of the proposed district are important, an allowance for non-conforming structures is essential, with less stringent standards for non-contributing buildings relatively common.

<sup>55</sup> See National Trust for Historic Preservation, *Demolition by Neglect*, PRESERVATION LAW REPORTER (1999).

<sup>56</sup> See, e.g., *Penn Central Trans. Co. v. City of New York*, 438 U.S. 104 (1978); *Lucas v. So. Carolina Coastal Council*, 505 U.S. 1003 (1992); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001).

<sup>57</sup> See MILLER, *supra* note 40.

communities, it is not perfect. Nowhere is this more true than in America's early industrial cities.

Faced with generally poor economic conditions and an urban infrastructure that must be repaired and reshaped before it can be saved, these troubled cities exemplify the problems that preservation must solve before it can achieve more universal success. Despite the challenges, if the heritage and character of these communities is to be revived, some form of preservation must be found that remains productive, even in the context of economic despair. The search for this solution begins with an understanding of the problem, and an analysis of why the traditional model of historic preservation does not work in economically distressed communities.

### **III. Embracing Preservation's White Elephants**

#### **A. Defining the Problem: The Road to Ruin**

In many historic communities, the traditional model of preservation has been an unqualified success. In now-prosperous places like Charleston and Nantucket, where the primary threat to historic buildings is careless and incompatible development, preservation provides a valuable legal framework that promotes high standards and a conservative deliberation process. The aesthetic and design criteria used by many preservation ordinances serve as a useful guide to the type and quality of construction that will be permitted. Provided that developers are willing to tolerate the added time and expense that these requirements may demand, preservation in this context ultimately results in more attractive and functional communities.<sup>58</sup>

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<sup>58</sup> Janet Zink, *Tampa Preservation Suffering a Backlash*, ST. PETERSBURG TIMES, Feb. 20, 2006 at 1A ("ARC member Gus Paras admits some board members are purists with strong ideas about such minutia as window placement. Others are more lenient. But he said plenty of builders tell him that after all the headaches, they have a better product.").

These standards are reinforced through the historic review process, which requires developers to obtain permission before substantially altering a historic structure. Through this compulsory review, the community is guaranteed an opportunity to comment on proposed changes before a panel of expert decisionmakers, making potentially irreversible demolition decisions at least the product of an open and public debate.

Evidence suggests that in places where the tradition model of preservation has worked, the results have been self-affirming. A recent study found that of the twenty fastest growing urban areas, fifteen of them had well-established historic preservation programs.<sup>59</sup> In these thriving communities, preservation provided balance and direction to what might otherwise have been unguided and unplanned development. In addition to maintaining greater architectural harmony, these successful preservation efforts have often been associated with increased tourism, rising property values, and an enhanced quality of life.<sup>60</sup> For these reasons, preservation is often described as the one of the few forms of community development that also functions as economic development.<sup>61</sup> Preservation, despite its costs, pays off for communities that can make it work.

Despite the positive relationship between historic preservation and economic growth, the traditional model of preservation is not effective in every context. For economically distressed communities, particularly those burdened with an urban infrastructure that is not well-suited for adaptive reuse, the traditional approach to preservation presents a dilemma. In these places,

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<sup>59</sup> RYPKEMA, *supra* note 14, at 16.

<sup>60</sup> For example, the National Trust for Historic Preservation has a specific program of “heritage tourism” that helps communities coordinate their preservation and tourism resources. Heritage Tourism, *at* [www.nationaltrust.org/heritage\\_tourism](http://www.nationaltrust.org/heritage_tourism) (last visited May 6, 2006).

<sup>61</sup> Donovan A. Rypkema, Neighborhood Change and Historic Preservation in the District of Columbia, March 10, 2004.

abandonment, neglect, and preemptive demolition are far greater threats to historic sites than insensitive development.

These problems are endemic in America's early industrial cities. The National Register of Historic Places alone contains over 9000 abandoned sites considered to be of national historic significance. At the local level, the problem is even greater. A historic preservation official in Connecticut estimated that in his state alone there were at least another 10,000 unlisted historic properties either vacant or significantly underutilized.<sup>62</sup> Many of these "white elephants" are former industrial facilities that anchor and define the cities in which they reside, but when they are not used, nature inevitably causes them to fall into critical disrepair and to become threatened.<sup>63</sup> Traditional preservation, with its emphasis on quality, conforming design and the prevention of demolition, may be theoretically beneficial to these struggling communities, but in practice it is a model that is almost impossible to employ. Though preservation may add to the prosperity some places, prosperity is an impossible prerequisite for preservation in others.

Several reasons have been offered for why the traditional model of preservation generally fails in the context of economic distress. Each reason contains a combination of political, economic, and legal elements that together, conspire to make preservation in these communities seem to be difficult, if not impossible. Although some of these challenges are undeniable, many others are based simply on mistaken understanding of the law and economics of preservation and need only be clarified.

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<sup>62</sup> *Saving Historic Buildings*, HARTFORD COURANT, Nov. 14, 2001, at A12.

<sup>63</sup> *See, e.g.*, America's 11 Most Endangered Historic Places at <http://www.nationaltrust.org/11Most/index.html> (last visited Apr. 16, 2006). The National Trust and its state counterparts have identified an increasing number of industrial sites in economically distressed communities as "endangered" in the recent past. Some recently listed sites include: the Bethlehem Steel Plant, Bethlehem, PA (2004 NTHP Endangered List); the Hackensack Water Works, Hackensack, NJ (2002 NTHP Endangered List); the Pullman Factory Complex, Pullman, IL (1999 NTHP Endangered List); the entire San Diego Arts & Warehouse District, San Diego, CA (1999 NTHP Endangered List); Great Bowdoin Mill, Brunswick, ME (1998 NTHP Endangered List); and to a lesser extent the Tobacco Barns of southern Maryland (2004 NTHP Endangered List); the Miller-Purdue Barn in Grant County, IL (2001 NTHP Endangered List), and even John Steinbeck's iconic Cannery Row in Monterey, CA (1998 NTHP Endangered List).

In fact, if the existing law is read more broadly, historic preservation can actually offer significant tools to aid in the renewal of early industrial America. Of greatest importance, however, and contrary to common belief, economics is not a significant obstacle to most preservation projects, even in the ambitious task of reinventing historic industrial cities.

Before an alternative to the traditional model of preservation can be proposed, however, the reasons for rejecting preservation must be explored from the perspective of the affected communities to identify legitimate issues and to clarify common misconceptions.

***Reason #1 – “Preservation can wait”***

The simplest reason offered for not pursuing historic preservation is the belief that history can wait. Lacking the intense development pressure and economic incentive for demolishing historic buildings that characterize the most sensational preservation cases, struggling communities often assume that their heritage is safe. This is a mistake.

Though not at risk of overt demolition that booming communities face, historic buildings in struggling communities are threatened by the equally destructive forces of decay and neglect. This threat is even more acute in depressed communities where a considerable part of the historic urban infrastructure may be abandoned or underused.<sup>64</sup> Local governments may believe that preservation should wait until the city has achieved a greater degree of financial stability, but this assumes, often incorrectly, that buildings that have stood for over a century will continue to do so unaided and indefinitely.

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<sup>64</sup> Lavea Brachman, *Vacant and Abandoned Property: Remedies for Acquisition and Redevelopment*, LAND LINES (Lincoln Land Inst.), Oct. 2005, at 1-5. In Baltimore, for example, 40,000 houses representing fourteen percent of the city's total housing stock is vacant with an additional 17,000 lots now vacant. In St. Louis and Philadelphia the situations are even worse. In St. Louis, seventeen percent of the city's housing is vacant, while in Philadelphia 60,000 buildings are vacant, including 27,000 houses that have been completely abandoned. *Id.* The effects of neglect and abandonment go beyond preservation. Cities that experience a permanent exodus of ten, fourteen, or seventeen percent of the urban population become modern ghost towns, but the empty neighborhoods they leave behind are haunted by something more frightening than restless spirits. These desolate areas are often breeding grounds for the violent crime that is most closely connected with the idea of urban blight. *See* Rypkema, *supra* note 59.

Even if a historic structure does not fall into complete ruin, delay only makes the task of rehabilitation more costly and difficult. Meanwhile, the surrounding neighborhood will suffer from all negatives effects that are commonly associated with blight, including crime, declining property values, and ultimately additional abandonment.<sup>65</sup>

In the context of struggling communities, preservation should be the remedy to a dangerous urban disease that must be treated aggressively before it is allowed to spread, and not a policy that can wait in hope of better times. Despite the political challenges, preservation must be pursued proactively.<sup>66</sup> Although one Connecticut preservationist fairly noted after unsuccessfully trying to save a local mill that, “[t]here’s nothing like razing a historic building to get people motivated to stop the razing of historic buildings,” cities should not need to lose part of their heritage before they realize what should have been saved.<sup>67</sup> Faced with a situation that will not, in almost every case, resolve itself, but rather grow worse with time, preservation must come first in struggling communities and not be delayed.

***Reason #2 – “Preservation is too expensive”***

The traditional model of historic preservation is also criticized as being too expensive, and a luxury that economically distressed communities simply cannot afford. Using exceptionally ambitious programs like Charleston and New Orleans as examples, many of local governments believe that the aesthetic and architectural restrictions associated with preservation would discourage new business activity and stifle local economic growth. Faced with a perceived choice between making their city either physically or commercially attractive, many

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<sup>65</sup> Rypkema, *supra* note 59.

<sup>66</sup> The case of Brookland, a neighborhood in northeast Washington, D.C., provides an example of how difficult proactive preservation can be. Despite a well-organized community organization, and a municipal government that is generally supportive of historic preservation, a local effort to designate the neighborhood as a historic district failed dramatically as some residents protested the plan. Although primarily a product of poor planning and bad timing, Brookland’s unsuccessful attempt is not an uncommon occurrence.

<sup>67</sup> Tom Condon, *May Change Arise Amid These Ruins*, HARTFORD COURANT, Apr. 25, 2002, at B1.

desperate municipalities abandon thoughts of preservation in exchange for hopes of profit. The result is a fierce competition that positions many similarly disadvantaged communities in a regulatory race to the bottom, where presumably the city with the least onerous restrictions wins.

These concerns recently arose in Tampa, Florida, in the context of the city's historic cigar factories.<sup>68</sup> Local preservation officials were concerned that these underused, century old icons of the city's architectural past were at risk of being lost through a combination of new development and neglect. Despite legitimate concerns about the future of these significant historic assets, the factory owners protested when the city attempted to designate their property as historic. At the heart of their complaint was the belief that once labeled as historic, they would be obligated to comply with draconian aesthetic regulations as part of a long and uncertain design review process. These new restrictions, it was believed, would make it impossible for the factory owners to adapt their former manufacturing facilities into any new and profitable enterprise.

The factory owners' fears were not completely unfounded. Some preservation laws are very strict and unforgiving. Although some financial assistance is available in specific circumstances, the added cost of complying with local requirements is always the responsibility of the historic property owner. Even the federal rehabilitation tax credit, often the most significant subsidy available for historic preservation projects, requires compliance with the Secretary of the Interior's rigorous standards.

Despite the potential for harsh interpretation and enforcement, preservation is rarely meant to undermine responsible growth. The Secretary of the Interior's standards, though strict,

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<sup>68</sup> See Zink, *supra* note 57; see also *Council Sends Mixed Signals On Property Rights Vs. Preservation*, TAMPA TRIBUNE, Mar. 2, 2006, at 12.

also emphasize flexibility when necessary for a preservation project to succeed.<sup>69</sup> Similarly, local preservation ordinances can be interpreted and applied harshly, with the counterproductive effect of simultaneously discouraging growth and crippling private rehabilitation efforts. The same statutes, however, can be read broadly to allow for flexibility and individual treatment where appropriate. Applied in a more dynamic manner, preservation can impose reasonable restrictions without rendering projects unprofitable or making the community hostile to new investment.<sup>70</sup>

***Reason #3 – “Preservation is an obstacle to progress”***

Another reason offered for why the traditional model of preservation has failed in economically distressed communities is because it is viewed as incompatible with progress. Ominously reminiscent of the now strongly discredited urban renewal movement of mid-twentieth century, preservation must still confront the widely-held belief that in order for the problems of crime, poverty, and economic stagnation to be solved, a city must physically reinvent itself, beginning with the removal of its most outdated and decrepit infrastructure. This preemptive demolition anticipates development rather than responding to it, and affords preservation virtually no weight in the local planning process. The result is a missed opportunity for the community to use its physical past as framework for future growth, coupled with the loss of the city’s most defining characteristics based on speculation alone.

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<sup>69</sup> See generally 36 C.F.R. § 68.

<sup>70</sup> It is also important to distinguish between projects of similar quality and scope. Although it is often argued that preservation is more expensive than new construction, this does not usually take into account the fact that preservation tends to result in a higher quality end product. As noted by Don Rypkema, “[renovating a historic building is] rarely cheap, but if quality is part of the equation, it will always be a competitive alternative.” RYPKEMA, *supra* note 14, at 14.

The modern history of the Amoskeag mills in Manchester, New Hampshire provides a profound example of how a city's heritage may be plundered in the blind pursuit of progress.<sup>71</sup> From its founding in 1838, until its demise ninety-eight years later, the mills, once the largest producer of textiles in the world, were an imposing presence within the city of Manchester, and around the manufacturing world.<sup>72</sup> Visually simple and unadorned, Amoskeag resembled the monument to functionality and efficiency that its engineer-designers made built it to be.<sup>73</sup> The industrial complex blended seamlessly into the surrounding community as the mill yards turned into streets, and the mills into housing with only a momentary pause in the dense brick facade.

Despite its enormity and exceptional significance, thirty-five years after closing in 1936, Amoskeag became a large, but typical, target of preemptive demolition. Local officials derided the site as an eyesore that was emblematic of failure and inconsistent was the city's view of the future. Even though the former mill buildings were partially occupied by over eighty paying tenants, the complex as a whole was considered to be an inefficient use of valuable urban space that could not reasonably be adapted to any better use. Ignoring the potential benefits of preservation and the importance of the mill in the history of the city, if not the nation, the municipal government demolished large portions of the original structure to clear the way for new development. The promise of the city's plan, however, proved to be ephemeral. When new

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<sup>71</sup> See generally TAMARA K. HAREVEN & RANDOLPH LANGENBACH, *AMOSKEAG: LIFE AND WORK IN AN AMERICAN FACTORY CITY* (1978).

<sup>72</sup> The Amoskeag complex was once the biggest manufacturing site in the country, if not the world. By 1915, the mills employed 15,000 people and could produce cloth at rate of just over seventy feet per second; that is the equivalent of about fifty miles per hour! David G. McCollough, *Epitaph for an American Landmark*, Apr. 1970, at [http://www.americanheritage.com/articles/magazine/ah/1970/3/1970\\_3\\_110.shtml](http://www.americanheritage.com/articles/magazine/ah/1970/3/1970_3_110.shtml) (last visited Apr. 20, 2006).

<sup>73</sup> Amoskeag is notable, in part, for being designed entirely by a single engineering firm. Clearly, the owners of Amoskeag were concerned more with function than form. See Randolph Langenbach, *An Epic in Urban Design*, *HARVARD ALUMNI BULLETIN*, Apr. 13, 1968, available at <http://www.conservationtech.com/RL's%20resume&%20pub's/RL-publications/Milltowns/1968-HARVbulletin/HarvBulletin.htm>.

business failed to come to the former Amoskeag site, the ruins were replaced with parking lots. History was lost for progress that did not come.

When pursued thoughtfully, preservation is not an obstacle to progress, but an instrument that strengthens local economic development efforts by giving them focus and direction. By establishing a preference for reuse over new construction, preservation augments local zoning laws that dictate where development may occur with design criteria that influence the aesthetic form that this new activity should take. Using the existing urban infrastructure as a natural guide, rehabilitation standards can be used to harmonize new construction with attributes of the city's past to create a landscape that is both meaningful and productive. The implementation of these objectives is supported through the well-established historic designation and design review process.

Examples of how local history can serve as a foundation for growth can be found among the many communities participating the National Trust for Historic Preservation's Main Street initiative. In places like Littleton, New Hampshire, a historic rural New England town struggling after the collapse of its local industries, preservation was adopted as an alternative to demolition and used as successful foundation for positive change.<sup>74</sup>

Whether a community ultimately accepts historic preservation is always a political question that must be decided in a public forum through the democratic process, but framing this question as a referendum between either progress or the past is unnecessary and a mistake. Preservation does not result in a moratorium on growth, but rather contributes to a coordinated plan that seeks to define both where and how progress should occur. Although good

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<sup>74</sup> See Elaine McArdle, *Here's a Town That is Remarkably Real*, BOSTON GLOBE, Aug. 31, 2003, at M7; see also Littleton Main Street at <http://www.littletonmainstreet.org>; 2003 Great American Main Street Awards Winner – Littleton, NH at <http://awards.mainstreet.org/content.aspx?page=5142&section=22> (last visited Apr. 21, 2006) (briefly discussing the history of Littleton and its decision to pursue preservation, rather than demolition or nothing as a means of economic development).

preservation laws can always be read so narrowly that they become obstacles to even reasonable development, this is a failure caused by how the law has been applied, not a failure of preservation itself. When provided with adequate political support, and interpreted with a sensitivity for the local context, preservation can actually serve as a catalyst for positive change.

***Reason #4 – “Preservation cannot save everything”***

The final reason offered for why traditional preservation fails in economically distressed communities is the belief that some buildings simply cannot or should not be saved. One manifestation of this occurs in places that have already lost substantial portions of their historic infrastructure to decay, demolition, or incompatible alterations. For these cities, the local historic fabric has already become seriously frayed and preservation is often thought to be unattainable for the buildings that remain. Based on an idealized notion of preservation drawn from some of the movement’s most successful and celebrated sites, these struggling communities conclude that because they lack the uniformly high quality and integrity of places like Charleston and Beacon Hill, they are not historic enough to be preserved.

This perception is even more acute for industrial properties that despite considerable local, or even national significance frequently remain unprotected because their non-traditional characteristics are considered incompatible with the traditional standards of preservation.<sup>75</sup> Although preservation is never codified in such exclusive terms, evidence of this more restrictive interpretation can be found from the ruins of Amoskeag to the threatened cigar factories of Tampa, and the results are predictable. When preservation is interpreted narrowly, it often

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<sup>75</sup> See Condon, *supra* note 12.

fails.<sup>76</sup> Fortunately, because flexible standards and adaptability actually enhance most preservation projects, perfection is not required.

### ***Bethlehem Steel: A Case Study***

The evolving story of the Bethlehem Steel Plant provides an interesting example of defining history broadly can be used to promote the purposes of preservation, while contributing to the character and development of a struggling community. From the earliest commercial experiments in 1857 until closure and bankruptcy of the plant in 2003, the hundred-acre plant adjacent to downtown dominated both the economic and aesthetic landscapes of the city.<sup>77</sup> For well over a century, the lifeblood of Bethlehem, Pennsylvania was steel, and the Bethlehem Steel Plant was the city's heart.<sup>78</sup>

When the local steel industry collapsed, the community was faced with an economic and preservation dilemma. In just a few short years, the abandoned plant had been vandalized and allowed to fall into such serious disrepair that either demolition by either neglect or development

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<sup>76</sup> The case of Rhodes Tavern in Washington, D.C. is illustrative. A local preservation group had managed to convince a developer to preserve a significant portion of a historic block in downtown Washington, but was unwilling to compromise on a portion of the site that included Rhodes Tavern. Although the tavern was the site of several significant events in local and national history, including temporary service as the British headquarters during the burning of Washington during the War of 1812, it had since fallen into considerable disrepair and was largely unrecognizable due to significant structural and aesthetic changes that had taken place over time. The preservation group refused to compromise on the site, and as a result they lost. The remainder of the block was, to some extent, saved but all that remains now of Rhodes Tavern is a bronze plaque on the new building that was built in its place. Preservation can accomplish more when it is flexible. See Citizens Committee to Save Historic Rhodes Tavern v. D.C. Dept. of Housing and Comm. Dev., 432 A.2d. 710 (D.C. App. 1981).

<sup>77</sup> Amanda Kolson Hurley, *Industrial Strength*, PRESERVATION, May-June 2005, available at [http://www.nationaltrust.org/Magazine/archives/arc\\_mag/mj05cover.htm](http://www.nationaltrust.org/Magazine/archives/arc_mag/mj05cover.htm).

<sup>78</sup> The Bethlehem Steel Plant occupies an important place in the history of American industry that has relevance outside the eastern Pennsylvania city that shares its name. Bethlehem was one of the first fully-integrated steelmaking facilities in the world. Highly innovative and efficient for the time, Bethlehem Steel was used in such famous projects as the Empire State Building and the Golden Gate Bridge. So famous, in fact, was the Bethlehem Plant that its products were often asked for by name, including when the White House was reconstructed during the Truman administration. See National Trust for Historic Preservation: 2004 Most Endangered List, Bethlehem Steel Plant, at <http://www.nationaltrust.org/11most/2004/bethlehem.html> (last visited Apr. 28, 2006); Save Our Steel, at <http://www.saveoursteel.org> (last visited Apr. 28, 2006).

was imminent.<sup>79</sup> Too important to lose, one proposal called for saving the entire site as a museum, but this would be expensive and would permanently remove an important part of the urban infrastructure from productive use. Too costly to save, others called for demolition and construction of a modern industrial park, but this would sacrifice a priceless piece of history in pursuit of an uncreative, shortsighted economic development goal. The result was a compromise that made traditional preservationists unhappy, but that ultimately succeeded in saving the plant and its place in community by defining history more broadly and relying on a more flexible and pragmatic interpretation of how preservation in struggling communities needed to work.<sup>80</sup>

The Bethlehem proposal calls for most of the buildings at the site to be preserved, but with considerable alterations necessary for the industrial site to be adapted to current use. Though the 13-story Steel General Office Building will undergo limited changes as it is converted into an apartment building, the Iron Foundry (built in 1873) is likely to be affected more dramatically as it is transformed into a public marketplace that will contrast contemporary boutique stores against a row of blast furnaces that once smelted iron ore. These changes undoubtedly detract from the historic integrity of the plant, but they also make history more productive and accessible by opening previously private sites up to the public for commerce, and by making preservation viable in what would otherwise be an untenable context. High standards that aspire toward perfection may be appropriate in certain particularly fortunate locales, but strict rules simply will not work everywhere. In more challenging, non-traditional situations, preservation must be pragmatic to succeed.

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<sup>79</sup> National Trust for Historic Preservation: 2004 Most Endangered List, *at* <http://www.nationaltrust.org/11most/2004/index.html> (last visited Apr. 28, 2006).

<sup>80</sup> Margaret Foster, *Bethlehem Questions Plans for a Casino in Steel Plant*, PRESERVATION ONLINE, Sept. 7 2005, *at* [http://www.nationaltrust.org/Magazine/archives/arc\\_news\\_2005/090705.htm](http://www.nationaltrust.org/Magazine/archives/arc_news_2005/090705.htm).

### *The Brownfields Problem*

The preservation of industrial properties is often further complicated by the belief that potential environmental contamination and other regulatory issues makes saving these sites a practical impossibility. In addition to the environmental issues common to most historic rehabilitations, including the presence of lead paint and plumbing, and asbestos, industrial properties present special problems that demand a higher than normal degree of technical expertise and political sophistication to be addressed successfully. As one preservationist recently involved in a historic project in Connecticut noted, “[r]estoring old mills and factories is dauntingly complex and expensive. Projects . . . require enormous skill and determination, which is why so few developers take them on.”<sup>81</sup> Despite these common problems, even historic industrial properties can be saved.

Many historic industrial sites are “brownfields,” defined simply as property that cannot easily be redeveloped because of real or perceived contamination.<sup>82</sup> Where hazardous substances actually exist, responsible site remediation can eliminate all reasonable health concerns except at the most severely contaminated sites.<sup>83</sup> Although this process is costly, the Environmental Protection Agency (EPA) along with most state governments often provide considerable incentives designed to encourage private environmental cleanup efforts, especially in the context of brownfields redevelopment.<sup>84</sup> In addition to technical and financial support,

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<sup>81</sup> Condon, *supra* note 14.

<sup>82</sup> Brownfields are defined in the Comprehensive Environmental Response, Liability, and Cleanup statute, commonly known as “superfund.” *See* 42 U.S.C. § 9601(39)(A) (The term ‘brownfield site’ means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.).

<sup>83</sup> For these sites, some state governments have employed “activity and use limitations” that permit some land uses, but not other. *See, e.g.*, Summary of the Brownfields Act (Massachusetts), *at* <http://www.mass.gov/dep/cleanup/bfhdout2.htm> (last visited Apr. 26, 2006).

<sup>84</sup> This is, in fact, why the Superfund was created. It has subsequently been added to state voluntary cleanup programs, and a newly established right of contribution in CERCLA. *See id.*

developers also benefit from a legal safe harbor that provides liability relief against both government or private enforcement.

Despite the challenges, these resources were successfully put to use in the historic textile mills of Lowell, Massachusetts where the local government partnered with the EPA to simultaneously cleanup and preserve the city's industrial past. Using the existing urban infrastructure as a backdrop, the city incorporated preservation into a community inspired, comprehensive plan designed to make the city more prosperous, attractive, and healthy. The results have been positive. Large parts of Lowell have been transformed from stigmatized Superfund sites into promising communities anchored by buildings recently listed on the National Register. Perhaps of greater significance, however, Lowell demonstrated how an emphasis on history can be used to balance public suspicion of formerly contaminated industrial sites. By providing a sense of continuity and purpose, preservation positively influences public perception, often the most challenge part of the redevelopment process, making controversial projects compatible with the development of an attractive, growing, and healthy city.

Preservation may not, indeed, be able to save every historic building, but history is a valuable asset that can enhances, rather than hinders, many development projects. Although this advantage is used most frequently in prosperous areas, preservation holds even more promise in the more challenging context of economically distressed communities. By simply reading the existing law more broadly, preservation can and should be expanded as a tool for both community development, and smart economic growth.

### *Summary*

The reasons provided by communities that chose not to preserve each reflect a combination of underlying political, economic, and legal concerns. Although some of these

concerns are valid, many misconstrue the nature of what preservation has the potential to be, how it can be adapted to local needs and consistently made to work. The most significant political concern, that some communities reject preservation before adequately understanding what it is, can be solved primarily through education of the public and local officials. Economic concerns, though often the most pronounced, ultimately prove to be the least substantial. Although preservation necessarily imposes additional regulations on developers and land owners, when these restrictions are applied reasonably and combined with governmental incentives they may actually promote economic activity by providing a degree of direction and certainty that was previously lacking. Addressing the legal problems that remain is considerably more complex, but still not unsolvable. Preservation can be made productive, even among the cities of early industrial America, but a conscious commitment to make certain fundamental legal changes is required. This can be done within most existing legal frameworks, but the process must begin with a new, broader, and more pragmatic approach to the law.

#### **B. Framing a Solution: Interpreting Preservation Law More Broadly**

The traditional model of preservation fails in the context of economic distress because of three basic legal problems: definition, direction, and degree.

The traditional model of preservation suffers from a problem of definition because although its potential scope is broad, it is also imprecise. Properties may qualify for listing on the National Register, for example, by satisfying criteria ranging from architectural merit, to cultural significance, but once classified as “historic” there is no further substantive differentiation between radically different assets. The result is a broad, but stark standard, that tends to exclude many significant sites, while treating those that are listed as legally alike. Without more precise definitions that acknowledge different types of historic merit, the law of

preservation is forced to strike a balance that is always either too strict and too lenient in any given situation. For economically distressed communities, where the tolerance for additional regulatory burden is low, and poor definition of history makes preservation more costly, less rewarding, and ultimately unsuccessful.

The direction of traditional preservation is also incompatible with economic realities of most struggling communities. Most preservation programs focus on preventing the demolition or alteration of historic structures by owners or developers motivated by profit. Although this traditional emphasis is appropriate and effective in growing urban areas where the greatest threat to preservation comes from development, it is ill-suited and ineffective elsewhere.

Throughout America's early industrial cities, decay and neglect, caused by economic distress, not development, are the most significant threats to historic properties. Regulations designed to address other concerns are simply irrelevant and inappropriate. Some communities have adopted demolition by neglect provisions that impose affirmative obligations on historic property owners to maintain the appearance and structural integrity of their properties, but even these seemingly strategic tools misconstrue the situation and fail to offer a satisfactory solution.<sup>85</sup> Aside from the potential constitutional issues associated with the positive obligations these statutes impose, demolition by neglect provisions are not practical in communities where entirely unregulated buildings still struggle to remain economically viable. Strict provisions, such as the one used by Charlottesville, Virginia, that mandate a high aesthetic standard may work in select communities, but for struggling cities, they have the opposite effect, and make preservation impossible.<sup>86</sup> To succeed in more challenging environments, preservation must direct itself to the specific needs of the community.

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<sup>85</sup> See *Demolition by Neglect*, *supra* note 54.

<sup>86</sup> See CHARLOTTESVILLE, VA CODE § 34-580 (2002).

Finally, the traditional model of preservation fails in struggling communities because of a problem of degree. Although some form of aesthetic and design regulation is necessary, strict standards that refuse to acknowledge local economic conditions stifle preservation by making the reuse of historic buildings impractical. Because potential developers often can choose between in different cities, or even different neighborhoods within a city, historic districts must be a competitive alternative in order to succeed. In many ways, preservation can be used as a local advantage, by giving an neighborhood a consistent and distinct character, or by focusing growth in one particular area while protecting open space, but it can be a deterrent if used to an inappropriate degree. The way in which the local community balances preservation with the market will ultimately determine the success of both objectives, but this balance must be derived individually, not based on an idealistic model. Preservation cannot be achieved through regulation alone, rather the law must be applied only to the degree that is reasonable given the economic reality of the community.

Each of the problems with the traditional model of preservation is a product of statutory interpretation, not a fundamental flaw within the law. As a result, these problems do not require complex amendments or reforms, but can instead be solved through a new, more appropriate reading of existing law. Accordingly, the solutions offered come in the form of guidelines that may be adopted by local officials seeking to make their preservation productive for their communities.

### **C. Making Preservation Productive**

Although it is true that not every old buildings is worth saving simply because it is old, in order for preservation to be meaningful in larger sense it must protect more than just a community's most exemplary and monumental sites. To preserve the historic character that a

city may possess often requires saving many of the ordinary elements of its physical environment even though they may not traditionally qualify as historic landmarks or paradigms of architecture.

For this to be practical in the challenging context of economically distressed communities requires several incremental, but critical, legal changes. First, the purposes of preservation must be clarified, with individual significance given to each justification. Clarity and specificity will encourage more precise and predictable regulation. Next, existing law must be read more broadly. More flexible and adaptable standards will allow a larger number of properties to be protected as historic without excessively burdening owners. Finally, preservation must be coordinated with other local resources. Coordination will not only enhance the role of preservation in economic development, but it will enable the community to more effectively attract business for the benefit of its residents. These modest legal changes are essential for preservation to become viable and productive in the struggling communities where it is needed most.

### *Clarify the Purpose of Preservation*

Making preservation productive begins with clarifying its purpose. Most preservation laws, including the NHPA, were established to protect a broad array of historically significant assets that range from special places that inspire national patriotism and exemplary architectural achievements, to the relatively mundane contributions to a coherent historic district.<sup>87</sup> Although each of these purposes is individually legitimate, preservation law as it is currently applied, rarely distinguishes between the appropriate treatments for each. The result is a set of standards that is too lenient in some situations, but too strict in others. For example, a preservation official may hesitate to approve the use modern synthetic materials for a contributing house in a historic

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<sup>87</sup> 16 U.S.C. §§ 470 *et. seq.*

district out of fear that a similar standard may later be applied in the less appropriate context of house of exceptional architectural merit according to precedent.

Rather than settle for average treatment, preservation should begin to identify the purpose served by every historic asset, and establish appropriate standards for each. This does not mean an individual quantification of every historic site, but rather a set of parallel standards that can be applied appropriate to different general classes of buildings. Doing so will enable regulators to apply more specific and precise regulations for particular types of buildings, while promoting clarity through the use of objective criteria associated with particular treatments, rather than case-by-case analogy.

Clear and consistent standards benefit the government and the regulated community by making expectations and enforcement more predictable. Clear standards may also have the added effect of encouraging more properties to be formally registered as historic by making the potential implication of designation less uncertain and speculative for land owners. In this sense, a interpreting preservation more broadly may ultimately result in saving more history by applying more flexible standards to a substantially larger group of eligible buildings. This may be a less perfect solution, but it is a solution that will work in more challenging environments.<sup>88</sup>

### *Create More Flexible Standards*

Productive preservation also requires more flexible and pragmatic standards. Building on the clarified the purposes of preservation, local officials must identify which criteria are most important for each type of historic asset and regulate those strictly, while allowing greater flexibility in other respects. Only in very rare circumstances will a particular property warrant

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<sup>88</sup> See Tyler Smith, *A Bill of Rights for Buildings*, Hartford Courtant, Dec. 11, 2005, at C5. This author proposes a novel approach to preservation: a building bill of rights. His basic idea is that cities should reverse their traditional approach to preservation, and make it presumptively wrong for buildings to be demolished by placing the burden on the developer or landowner to show why it cannot be adapted and reused. There are many practical and political concerns with this approach, but it is an interesting concept.

strict treatment with regards to all the identified criteria. More commonly, certain criteria will be less important for a particular historic site, allowing the developer a certain degree of defined discretion with regards to how to design a project. This added flexibility will facilitate development and design review by focusing scrutiny on the particular criteria that are most relevant to a particular site, and discounting the effects of the remainder.

Flexible standards should also include a substantively lower level of preservation protection for certain properties, particularly within the context of economically distressed communities and non-conventional properties. The ability to adapt to individual circumstances by resorting to a substantively lower standard may often make the difference as to whether a particular project may be preserved at all.

One successful model of this appears through the practice of conservation districts. Conservation districts co-exist with traditional historic districts providing a less rigorous alternative, both in terms of eligibility requirements and substantive standards. Properties in conservation districts do not need to meet the establish the same degree of historic significance or integrity as those in a traditional historic district, and as a consequence, they are subjected to less strict standards with respect to demolition and alterations. One common positive effect is that by establishing a two-tier system, more properties fall under some form of historic protection with less overall regulatory burden.

More pragmatic standards also mean permitting radical adaptive reuse when doing so is necessary to save an otherwise unmarketable building. When the primary threat to historic buildings is decay rather than demolition for development, the instruments of preservation must focus on abandoned and underused properties that are already failing in an unregulated market.

By being realistic about what can and cannot be saved, preservation can reach more broadly and have greater positive effect, even if it means sacrifices in a larger number of individual cases.<sup>89</sup>

### *Coordinate Local Resources*

Ultimately, preservation law must be integrated with other local development and land use efforts to promote efficiencies where they exist, while maximizing the potential of preservation as both a community development and economic development tool. The federal and state tax incentives for historic preservation are an important part of the economics of preservation, but they are potentially just only a small part of the overall equation.

Local governments must facilitate preservation by coordinating various the incentives available, and packaging them for developers in a simple, easy to understand format. For economically distressed communities this means, at a minimum, aligning the city's economic development zone's with its preservation activity. By making an existing industrial both a historic district and an "enterprise zone," the local government sends a clear message as to where and how it wants growth to occur. Often supported by economic development tax incentives that add to the preservation credits, any added cost associated with preservation is substantially mitigated. From the perspective of the city as a whole, encouraging this type of development conserves green space on the suburban fridge, while also reducing the overall cost on the city of new development by promoting the reuse of existing infrastructure.

These benefits can be further enhanced by harmonizing the preservation with local land use controls and zoning. By streamlining the permitting and regulatory approval process, a city not only promotes a more cohesive and consistent approach to its own growth, but it makes itself more attractive and predictable to developers. Eliminating uncertainty and bureaucracy from the development process not only saves aggravation, but it also saves time, money, and uncertainty,

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<sup>89</sup> RYPKEMA, *supra* note 14.

all commodities that are highly valued by the businesses that struggling communities are competing for.

### ***Providence, Rhode Island: A Case Study***

The city of Providence, Rhode Island provides an interesting demonstration of how historic preservation can be made productive, even in an industrial context. By clarifying the specific purposes of its preservation program, offering greater flexibility in the interpretation of its regulations, and providing a framework that organized local development, Providence has managed to transform many of its formerly vacant or underused mills into vibrant places where residents both live and work. In the process, Providence has become a model for other cities in Rhode Island, and throughout the nation seeking to reinvent their industrial past.

At its peak in 1920, Providence employed over 140,000 workers in what were widely considered to be some of the most efficient and competitive factories in the world.<sup>90</sup> In the decades that followed, however, the city's industrial decline led many residents and local officials to question the future of these once productive buildings. As part of an exodus of traditional industry from New England, Providence was largely abandoned by business and devoid of jobs, causing local officials to debate whether the city's interests might be best served by demolishing the old mills to clear the way for new development. Some of the mills were torn down, but by 2000, in response to the threatened demolition of a highly visible local mill, the local government formally changed course, and announced a comprehensive preservation program that specifically targeted the city's historic industrial sites.<sup>91</sup>

The city's response began with the creation of the Industrial Commercial Buildings District ("ICBD"), a formal historic district designated in accord with Providence's historic

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<sup>90</sup> See, Rhode Island House Resolution 7533.

<sup>91</sup> Robin Amer, *The New Fight for Providence's Mills*, PROVIDENCE PHOENIX, Nov. 5-11 2004, at <http://www.providencephoenix.com/features/top/multi/documents/04246900.asp> (last visited May 6, 2006).

preservation statutes.<sup>92</sup> As with other historic districts and landmarks in Providence, properties within the ICBD fall within the jurisdiction of the Providence Historic District Commission (the “Providence Commission”).<sup>93</sup> The Commission functions in a traditional capacity by reviewing development proposals that affect the structure or exterior appearance of designated buildings to ensure that buildings of historic merit are preserved and maintained.<sup>94</sup> Demolition, including major alterations and additions, is prohibited without a Certificate of Appropriateness that can only be granted once the merits and compatibility of a proposal are considered and deemed to be in the public interest.<sup>95</sup>

The ICBD is, however, is an unusual and innovative type of historic district. Unlike traditional historic districts which are defined by geographic boundaries and organized around a predominant period in history, the ICBD is entirely non-contiguous and defined by a common theme.<sup>96</sup> Similar to the thematic, multiple property designation process used by the National Register, the ICBD has defined a local historic district in flexible and functional terms.<sup>97</sup> As a result, buildings that comprise the ICBD are scattered throughout Providence with their only unifying characteristic being a shared heritage in the city’s industrial past.

The limiting the scope of the ICBD to industrial and commercial properties gave the Providence Commission the flexibility and discretion it needed to save these challenging properties in an economically efficient and marketable manner. Rehabilitation guidelines could be customized to the needs to former industrial properties to streamline and simplify the process

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<sup>92</sup> See PROVIDENCE, RI CODE §§ 501.14 *et. seq.* (2006).

<sup>93</sup> *Id.* at § 501.14.3.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at § 501.14.2; *see also Id.* at § 501.14.4.

<sup>96</sup> *Id.* at § 501.14.1.

<sup>97</sup> For more information on the thematic nominations to the National Register, see the National Register Bulletin, at <http://www.cr.nps.gov/nr/publications/bulletins/nhl/nhlpt3.htm> (last visited Apr. 26, 2006).

of adaptive reuse.<sup>98</sup> In addition, by creating a subset of more flexible rules for industrial properties, the Providence Commission could ensure that stricter standards for areas like College Hill could remain unaffected.

Providence's response continued by aligning its historic preservation program with the city's planning and economic goals. To address potential zoning problems associated with the potential conversion of industrial property to non-industrial use, buildings within the ICBD automatically received a live-work variance that permitted developers to build housing in the former mills without appealing to the local zoning board or seeking an amendment to the city's zoning plan.<sup>99</sup> The city also realigned its economic development program to place a majority of the ICBD buildings in enterprise zones.<sup>100</sup> This change gives developers access to a variety of incentives designed to encourage construction and attract new business to the urban core.

Providence's preservation program is also integrated with a variety of state and local programs designed to encourage the rehabilitation of historic structures, including several that specifically target industrial properties. Through various certification programs, the local preservation program facilitates compliance with the requirements for the state and federal tax credit programs.<sup>101</sup> Combined, these credits can account for up to 50% of the cost of rehabilitating a historic building. In addition, the Rhode Island provides additional tax credits for businesses that substantially rehabilitate and reoccupying vacant mill space through the Mill Building and Economic Revitalization Act.<sup>102</sup> Part of the benefit of this narrowly focused

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<sup>98</sup> Carol Rose noted the significance of flexibility in preservation when she wrote, ". . . however important it may be to conserve the indicia of the past, some latitude must remain for the contributions of the present." Rose, *supra* note 11, at 491.

<sup>99</sup> Amer, *supra* note 90.

<sup>100</sup> *Id.*

<sup>101</sup> See Providence Preservation Society Industrial Sites and Commercial Buildings Survey 2001-2002, at <http://local.provplan.org/pps/incent.asp> (last visited May 6, 2006)

<sup>102</sup> Rhode Island Mill Building and Economic Revitalization Act (Mill Building Program Legislation, R.I. GEN. LAWS, § 42 Ch. 42-64.7 (2006).

program goes directly to the occupying business in the form of rehabilitation credits and credits for “new mill building employees,” while other benefits are directed toward ancillary entities like banks and non-profit organizations to encourage investment in and association with rehabilitation projects. Long-term property tax abatement is offered to certain types of tenants, particularly artists and small businesses.<sup>103</sup> Viewed as a whole, the Providence approach offered a coherent and well-reasoned system that encourages and makes possible the rehabilitation and reuse of the city’s important historic industrial structures.

From the perspective of developers, the Providence approach has proven to be workable and a source of mutual success.<sup>104</sup> The city has received the obvious benefit of having its historic buildings reoccupied and returned to productive use. In addition to making the city a more attractive and vibrant place to live and work, it has added to the city’s tax base and increased municipal revenues. Indeed, historic preservation has served as a vital component in easing the economic distress that Providence had long felt after its signature industries had declined. The Providence approach has also benefited developers by offering a simple and predictable system for negotiating through the city’s regulations and requirements. Though historic preservation is often viewed as one more obstacle that developers must overcome in order to be successful, Providence has used its industrial properties as an example for how coordination and proactive planning can actually be used to transform the process into a competitive advantage.

#### **IV. Conclusion: Waterville Revisited**

In places like Waterville, the physical reminders of early industrial America are slowly fading away. Characteristic of a problem in the law of preservation that transcends the industrial

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<sup>103</sup> Id.

<sup>104</sup> Amer, *supra* note 90.

landscape, the historic fabric of these industrial towns is being lost to the subtle and often silent wear of abandonment and neglect. Even though many of these places are not historic in a conventional sense, their loss is still profound and important. As one commentator noted after the Connecticut Trust for Historic Preservation published its annual list of the state's most endangered historic places, which included several mills and other seemingly unremarkable buildings:

Most buildings on its [most endangered list] are not national landmarks. But that doesn't make them inconsequential. Their demolition [through neglect or otherwise] would be further evidence of a more insidious threat: the gradual erosion of our communities' historic fabric, the small-scale, piece-by-piece demolition that never seems to make a noticeable difference – until one day we realize that a street or neighborhood or even an entire town has quietly lost its identity.<sup>105</sup>

The problem, of course, is that too few struggling communities have found a way to reverse this trend. This paper will hopefully help some of those communities find that way, by adopting preservation as a means of community and economic revival, reading their laws broadly, and ultimately making preservation productive. New problems may arise, and one new approach may be inadequate to address every situation, but the risk of doing nothing is too great to allow perfection to be an obstacle to progress.

In Waterville, the Hathaway factory beat the odds, but not in a manner likely to inspire confidence in the traditional model of preservation. After sitting vacant for several years, surrounded by speculation that demolition might be imminent, something unusual happened. A Rhode Island developer named Paul Boghossian emerged who listened to what the community wanted, then made a straightforward offer to build that vision almost exactly as the people had

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<sup>105</sup> See *Saving Historic Buildings*, *supra* note 60.

requested.<sup>106</sup> At first it seemed as though the developer was oblivious to the economic conditions in central Maine because the plan was ambitious, even by Rhode Island standards, and involved considerable uncertainty and risk. Soon, however, it became clear that this was a modest offer of charity. Boghossian, it turned out, was an alumnus of the small liberal arts college in Waterville, and apparently wanted to give something back to the home of his alma mater. He noted, “[t]his isn’t likely to be the most fruitful project I’ve ever done . . . . I know that right now. But if it succeeds in the way I envision it, it could be so important to Waterville . . . [that] in the final analysis, it could be my greatest gift to Colby.”<sup>107</sup> Waterville and the Hathaway factory were saved from what would have been a long and difficult path, but few early industrial communities are so fortunate. For those that do not have a guardian angel, preservation provides a framework that helps communities define and protect their historic character. By making preservation productive, this framework also serves as a valuable tool for local planning and economic development. When put into practice, the result will hopefully be the reinvention of industrial America.

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<sup>106</sup> The fictional story of Empire Falls is again instructive. After noticing an out-of-state car parked in front of the abandoned mill, one local resident mused pessimistically about the fate of the factory:

Hey, it’s clear to me. They came to invest millions. For a while they were thinking about tech stocks, but then they thought, Hell, no. Let’s go into textiles. That’s where the *real* profits are. Then you know what they did? They decided not to build the factory in Mexico or Thailand where people work for about ten bucks a week. Let’s drive up to Empire Falls, Maine, they said, and look at that gutted old shell of a factory that the river damn near washed away last spring and buy all new equipment and create hundreds of jobs, nothing under twenty dollars an hour.

RUSSO, *supra* note 5, at 25.

<sup>107</sup> Roy, *supra* note 2.