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04/07/89

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Project director(s):  
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Funded	4,000.00	4,000.00
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Title: DISPUTE RESOLUTION TEACHING MATERIALS DEVELOPMENT

PROJECT ADMINISTRATION DATA

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Security class (U,C,S,TS) : U

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NONE PROPOSED

Administrative comments -

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SIGNED & \$500 IN FINAL PAYMENT AFTER FINAL REPORT & FINAL FINANCIAL REPORT



GEORGIA INSTITUTE OF TECHNOLOGY  
OFFICE OF CONTRACT ADMINISTRATION

NOTICE OF PROJECT CLOSEOUT

Closeout Notice Date 08/09/91

Project No. D-48-538 \_\_\_\_\_ Center No. P5070-0A0 \_\_\_\_\_  
Project Director ELLIOTT M L P \_\_\_\_\_ School/Lab DEAN ARCH \_\_\_\_\_  
Sponsor NATL INST/DISPUTE RESOLUTION/WASHINGTON, DC \_\_\_\_\_  
Contract/Grant No. 89-015 \_\_\_\_\_ Contract Entity GTRC  
Prime Contract No. \_\_\_\_\_  
Title DISPUTE RESOLUTION TEACHING MATERIALS DEVELOPMENT \_\_\_\_\_  
Effective Completion Date 901015 (Performance) 901015 (Reports)

Closeout Actions Required:	Y/N	Date Submitted
Final Invoice or Copy of Final Invoice	Y	_____
Final Report of Inventions and/or Subcontracts	N	_____
Government Property Inventory & Related Certificate	N	_____
Classified Material Certificate	N	_____
Release and Assignment	N	_____
Other _____	N	_____
Comments _____		

Subproject Under Main Project No. \_\_\_\_\_

Continues Project No. \_\_\_\_\_

Distribution Required:

Project Director	Y
Administrative Network Representative	Y
GTRI Accounting/Grants and Contracts	Y
Procurement/Supply Services	Y
Research Property Management	Y
Research Security Services	N
Reports Coordinator (OCA)	Y
GTRC	Y
Project File	Y
Other _____	N
_____	N

# **The Atlanta Historic Preservation Mediation Process: Case Studies and Negotiation Training Materials**

## **Applying Mediation to Public Policy Making**

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**NATIONAL INSTITUTE FOR DISPUTE RESOLUTION**

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## **Introduction to Teaching Materials**

This manual is primarily designed to assist educators who seek to teach multi-party negotiation and mediation techniques. In addition, it provides materials useful in teaching political process and public decision making around issues of historic preservation, real estate development and urban planning.

The manual includes a series of teaching cases and a training exercise. These materials are based on actual accounts of the Atlanta historic preservation mediation process. The case materials challenge the student to critically assess the nature and dynamics of a specific conflict, to propose negotiation and mediation strategies for resolving the conflict at various stages of the mediation process, and to evaluate the likely consequences of alternative dispute resolution strategies the student has proposed. The training exercise helps students refine their negotiation skills within a simulated training exercise, the results of which can be compared to actual events.

The materials are designed for advanced training, either at the end of a one semester negotiation course or with experienced negotiators and mediators. While all the materials can be used separately or in sequence, together the materials provide for an in-depth instructional experience where a real case can be evaluated and critiqued, and linked to a realistic negotiation exercise. If used together, the materials structure a four or five class module that can integrate multi-party negotiation and mediation theory and practice. If specific sections are used independently, up to eight hours of instructional materials can be drawn from the teaching cases and negotiation exercise.

Three sections are provided to assist the teacher in using the case studies and training exercise:

- The Overview provides the instructor or exercise leader with background information pertinent to the interpretation and use of the teaching materials. The overview provides an easy reference to details of the case and helps establish the context for teacher preparation.
- The Teacher's Guide to Case Studies provides information on how to orchestrate the use of the teaching cases. Ideas for debriefing and highlighting major lessons from each stage of the negotiation process (as represented in the different case studies) are also included.
- The Teacher's Guide to the Negotiation Exercise contains instructions on how to administer and debrief the negotiation simulation. Instructions indicate how and when the exercise should be conducted.

Preparation of these materials was sponsored by the Program in Higher Professional Education of the National Institute for Dispute Resolution.

# **The Atlanta Historic Preservation Mediation Process**

## **Overview of the Process (Teacher's Guide)**

Events occurring in 1987 and 1988 changed the way in which the city of Atlanta balances the interests of economic development and historic preservation. For nearly a year, a wide range of community leaders, including preservationists, neighborhood advocates, developers, the business community, city council members, local government administrators and the mayor participated in a mediated negotiation that resulted in a new comprehensive historic preservation program.

The mayor was the first to sign. Nine months earlier, he had initiated the consensus building process by describing his vision for the rebuilding of Atlanta as a "new international city." He had also gained national attention by describing two controversial historic structures as "a hunk of junk" and "a dump." To the mayor, they threatened to impede progress. But on June 29, 1988, after considerable dialogue and negotiation, Mayor Andrew Young declared historic preservation to be in the public interest, praised the consensus building process as being in the best tradition of Atlanta's style of open political dialogue, and signed a statement outlining a comprehensive program designed to preserve historic properties throughout the city.

Joining the mayor in signing this document were 16 other community leaders responsible for designing the historic preservation program. As representatives of the three major interest groups (the City, downtown property owners and developers, and preservation advocates), these 17 individuals constituted the Historic Preservation Policy Steering Committee. Through their perseverance and willingness to negotiate tough issues, they fashioned a detailed program that included (1) a new system for categorizing, designating and protecting historic properties, (2) incentive programs to encourage and support historic preservation, (3) an innovative process for evaluating claims of economic hardship resulting from landmarks designation, (4) recommendations concerning the disposition of 91 income-producing historic buildings in the bustling midtown and central business areas of the city, and (5) an interim development control ordinance to protect historic structures while the City implemented the program.

In the process of reaching these agreements, participants on the historic preservation policy committee passed through five identifiable stages: stabilizing the conflict, initiating the mediation process, scoping and joint factfinding, negotiating and consensus building, and implementing the program. These stages followed a series of events which escalated and brought increased attention to the conflict.

**Stabilizing the Conflict.** In the spring of 1986, several controversies highlighted the need for a more systematic and consistent approach to resolving historic preservation issues. Three apartment buildings proposed for historic designation were demolished as existing regulations were not able to protect them. Public displays in opposition to the

demolitions were common. In response to these events, City Council considered several legislative initiatives to deal with the issues. During the same time period, the Urban Design Commission proposed the addition of 85 buildings and 16 districts to the inventory of designated historic structures in the City. Three competing bills were introduced to the council to either strengthen or weaken the designations. Little consensus existed as to how to handle the issues being raised.

Realizing no simple solutions existed, representatives of city government, downtown business interests and preservation advocates formed a task force to consider the options. In early discussions, the vice-president for the business-oriented Central Atlanta Progress suggested the use of mediation. While interested, the executive directors of both the Urban Design Commission and the Atlanta Preservation Center remained skeptical. For answers to their questions, they approached the co-directors of the Southeast Negotiation Network, located at the Georgia Institute of Technology, to discuss the strengths and weaknesses of such an approach.

After considerable deliberations, the use of mediated negotiations was selected as the preferred means of trying to resolve the issues. Agreements developed through consensus building were viewed as the most likely to be lasting and politically acceptable. Between May and September, the task force raised \$66,000 to conduct the process. The money originated from four sources: half was provided by the National Trust for Historic Preservation; the remainder was matched by Central Atlanta Progress, the City of Atlanta and the Atlanta Preservation Center. The monies were allocated with 40 percent to the mediation process, 30 percent for technical support to the overall planning process and 30 percent for community outreach following the mediation process.

**Initiating the Process.** In early 1987, the task force selected a mediation team of Gregory Bourne and Michael Elliott of the Southeast Negotiation Network (Georgia Institute of Technology) and Richard Collins and Elizabeth Waters of the Institute for Environmental Negotiation (University of Virginia) to design and conduct the process.

Under direction of the Task Force, both the city government and the Atlanta Preservation Center served as the hiring agent for the mediation team. Finalizing the employment contract proved difficult. Mediation services did not fit standard city consultant categories. Because of complications, contract procedures took seven months and a contract was not officially issued until September.

Beginning in July 1987, the mediators interviewed approximately 50 community leaders to outline the sources of conflict, issues at stake and perceptions about possible solutions. The mediators designed the negotiation process and assisted members of the task force in selecting representatives for the Policy Steering Committee to ensure that all major interests were adequately represented. The mediators nominated specific individuals for consideration and took an active role in ensuring that the full range of interests was represented.

In addition to the mayor, the Steering Committee consisted of four city council members, the Commissioner of Community Development, the chair of the Urban Design Commission, the director of Central Atlanta Progress (a business alliance), four prominent regional developers, the director of the Atlanta Preservation Center, the chair of the Preservation Council (a coalition of historic neighborhoods) and three other prominent preservation activists.

To assist the Steering Committee in its deliberations, a Resource Group was also created. The Resource Group consisted of seven professionals with expertise in preservation and development law, programs, design and economics. Members of the Resource Group provided information at the plenary sessions of the Steering Committee and actively participated in caucus and working meetings involving subgroups of the Steering Committee. This organization allowed for wider participation while maintaining a more manageable number of individuals on the Steering Committee.

**Scoping the Issues and Joint Factfinding.** From the prenegotiation interviews, several issues emerged as crucial. During the initial phase of the negotiation process, participants examined these issues in depth. Four plenary sessions of the Steering Committee were organized to accomplish this goal. These sessions were held monthly between September, 1987, and January, 1988. The first session provided an overview of issues and perceptions of the participants in a somewhat casual atmosphere. Following a two hour introduction, participants met over cocktails and dinner at the Ritz Carlton for further discussions.

In response to questions raised as participants delved more deeply into issues, the compilation and analysis of additional information was crucial to moving past impasses. Each of the following three sessions were organized to focus discussion on one major class of issues. The sessions lasted three hours each and featured an outside expert selected by the mediators and agreed upon by the participants. The experts included Robert Freilich on preservation and planning law, Richard Roddewigg on economic impacts of preservation and tools for mitigating those impacts on property owners, and Frederick Williamson on standards for evaluating historic sites and districts. Each wrote a paper addressed at the issues raised by participants, presented an overview of these issues to the participants and, with the help of the mediators, facilitated an in-depth discussion of the issues. Each session also featured presentations about and discussions of local conditions, with members of the Resource Group providing the background. Additional technical contributions were made during the process by experts on the subjects of fiscal impacts of tax incentives, revolving funds, design guidelines for historic districts and criteria for designating historic resources.

**Building a Consensus.** From the first four sessions emerged a clear statement of the goals and a general outline of the substance of the historic preservation program. Following a raucous February plenary session during which the entire program was outlined and discussed, the goals and program were committed to a single negotiated text. From this point on, both the pace of negotiation and the depth of discussion increased dramatically. Between February meeting and the June signing ceremony, the



negotiations involved six additional plenary sessions, seven caucus meetings and eight work group meetings.

The plenary sessions provided a forum to work out general policy directives and to provide general feedback on the single negotiated text as it evolved. These sessions were open meetings. While discussion was largely limited to the members of the Policy Steering Committee with input from members of the Resource Group, members of the general public could and did attend in increasingly large numbers. The detail work associated with revising the text, however, was conducted in the caucus and work group meetings.

Caucus meetings allowed the representatives of single interest groups to explore issues and suggest changes with the mediators. Each caucus (i.e., government, business and preservation) also had at least one member of the Resource Group that took responsibility for conducting further analyses for the caucus and for providing more detailed feedback to the mediators between meetings. Caucuses allowed the representatives of single interest groups to discuss sensitive issues and possible text refinements with the mediators alone. The mediators took responsibility for altering the single negotiated text in response to this feedback. Difficult issues were discussed one-on-one with participants or referred to the working group for further negotiations.

The work group was created to facilitate more direct negotiations between the three interest groups. The plenary sessions did not provide the environment necessary for extensive face-to-face negotiations. The work group, involving ten members of the Steering Committee and Resource Group, provided a more conducive forum for negotiating difficult issues. The most frank discussions, the most carefully crafted compromises, and the most creative solutions came from this group. In particular, the group focused primarily on clarifying the conditions for declaring a designated historic structure to be an economic hardship to the owner, establishing a system of redress under conditions of economic hardship, creating an interim ordinance to govern alterations and demolitions of historic structures until implementation of the program, and developing recommendations as to permanent designations for virtually all of the income producing historic properties in the central business areas of Atlanta.

Throughout this consensus building period, the importance of information and analysis associated with the specific conditions of Atlanta continued to grow. Questions that required further analysis continued to arise as participants delved more deeply into issues. Analysis to answer many of these questions were conducted locally by either the mediation team or by members of the Resource Group. Many of these analyses were quick assessments of current situations with a heavy emphasis on information display. In particular, the team found that highly visual displays of information were most useful because such displays helped many participants understand the issues more concretely. Examples of locally generated analyses included an appraisal of the impact of various definitions of "economic hardship" and "reasonable return" on historic preservation programs across the country, an analysis of rates of return in several rehabilitated buildings in Atlanta, an assessment of previously demolished historic structures and the

disposition of the land thus cleared, and a display of the location and physical characteristics of structures currently designated under the existing conservation ordinances. Other issues, however, required more extensive analysis by outside neutral experts. In addition to the three papers commissioned early in the process, five additional studies were commissioned on issues ranging from creative financing to designation criteria to the fiscal impact of tax incentives for historic preservation. With the exception of the fiscal impact paper, most of these studies were designed to assist the implementation team in refining the work of the Policy Steering Committee. The fiscal impact paper, on the other hand, contributed directly to the debate over the reasonableness of city tax incentives.

**Implementing the Plan.** By the June 29th signing ceremony, the negotiated text provided a detailed description of the historic preservation program. Its 57 pages of text, including the interim development control ordinance, represented the result of extensive problem solving, consensus building and compromise. An implementation strategy was also incorporated into the negotiated text. This strategy specifies a process for translating the programmatic and planning elements of the agreement into legislation necessary to implement the program. It specifies responsibilities and a timetable for implementation. An Advisory Group comprised of members of the Policy Steering Committee was selected to oversee city staff in carrying out the process, assisted by the mediators on an "as needed" basis. The interim development control ordinance passed by City Council is in effect until July 1, 1989 to allow sufficient time for needed legislation and administrative initiatives to be enacted.

The development of the comprehensive historic preservation program for the City of Atlanta shows the great potential of mediated negotiations and consensus building for developing and implementing public policy. The success of this process was due to several tangible and intangible characteristics, including:

- leadership in key positions within city government, the business community and the preservation community, evidenced through strong support at crucial points in the process,
- meeting management, which depended primarily on extensive planning and preparation by the mediators and resource people before each meeting, and
- use of the single negotiated text, which through its specificity helped resolve some difficult issues and move the agreement beyond general agreements in principle.

While there are no guarantees of success, the universe of public policy disputes resolved through mediation and consensus building is ever increasing. As the trend toward participatory democracy in decision making continues to grow, these techniques may be even more elemental in resolving public policy issues.

# **The Atlanta Historic Preservation Mediation Process**

## **Teacher's Guide to the Case Studies**

These case materials chronicle the mediated negotiation of a major public policy issue in the City of Atlanta. The materials cannot begin to detail all of the events which affected the negotiations or their outcome. The cases attempt, however, to highlight the major components of a community-based consensus-building process involving elected, business and community leaders. The cases are built around the six major stages of the negotiation: conflict escalation, conflict stabilization, process initiation, joint fact-finding, consensus through negotiation and program implementation. In addition, a simulated negotiation exercise has been developed which incorporates some of the major issues addressed by the actual negotiation. This exercise allows students and training participants to explore the many facets of multi-issue, multi-party negotiation.

As designed, this package of educational materials should be used when the purpose is to explore in-depth the various stages of a multi-party public policy negotiation. The cases are to be used in sequence, with the negotiation exercise conducted after Case B, distributing only one case (or the exercise) at a time. If desired, any one of the cases or the negotiation exercise is designed to stand alone as well.

If the entire sequence is used, plan for at least six and one-half hours of instruction and debriefing (one hour for each case, and two and one hours for the negotiation exercise). To allow sufficient time for in-depth analysis and discussion, two hours should be allocated for each case (except perhaps Case D), since both an assignment and debriefing of the case are involved. Each case and the negotiation exercise have their own instructions and suggestions for debriefing. It is assumed that the teacher or discussion leader has sufficient knowledge of negotiation and mediation theory to undertake the debriefing. Debriefing each case and exercise is intended to highlight the major elements of each, and to critique students assignments and observations. The direct feedback provided by debriefing the exercises as a group discussion proves to be an effective teaching tool. Debriefing these cases and exercise also provide a tangible link between theory and application.

At least one and one-half hour of preparation should be allocated prior to discussing the cases. Students should be instructed to read the case, conduct a critical analysis of the components of the case and complete the case assignment. To maximize independent analysis of the case, no other guidance need be provided.

For each case, debriefing questions are provided. If the teacher or discussion leader chooses, some of these questions could be provided to students to guide their critical analysis. They are intended, however, to augment the analysis and discussion generated by the students. Actual time allotted for debriefing will depend on the number of students.

## Case A

Case A is intended to demonstrate the importance of conflict stabilization as a precursor to negotiation and joint problem-solving. Other important aspects of the case are the activities associated with selecting a mediation team and the early stage of any negotiation - the conflict assessment. The conflict assessment is essential to developing and refining a structure for the consensus-building process, setting the agenda for the first meeting, informing potential participants about the process and obtaining commitments to the process from decision-makers.

Begin the class by developing a model process based on the ideas and input of the students. This will provide a discussion of the important elements of process design as well as a critique of specific proposals by the students. Allow approximately one hour for this exercise and discussion (based on completion of the assignment), and an additional hour for discussing the debriefing questions and other issues raised by the case.

### Assignment

Instruct students to design a mediated negotiation process believed to be the best approach to solving the issues identified, given the dynamics of this case. The design should include the number of participants and their affiliations, the structure of the process, the timeframe for the process and a statement of how to proceed.

### Debriefing Questions

1. What were the major factors leading to stabilization of the conflict?
2. What was the impact of the developers being the party to suggest the use of mediation?
3. Why could not the Mayor or some other acknowledged city leader be the mediator and solve this problem? Why was an "outside" mediator hired?
4. How important is the support of key political leadership for the mediation process? What is likely to happen without that support?
5. Despite differences of opinion, leaders of the development and preservation communities had worked together on some previous projects - how important was that to initiating the process? Identify both benefits and drawbacks.

6. What was the impact of the mediation team having expertise related to planning and historic preservation? Was this expertise an asset or a barrier?

## Case B

Case B indicates the role and importance of joint fact-finding in most public policy negotiations. The case also demonstrates the value of early diagnosis of major issues and planning how those issues are most effectively and efficiently addressed by the process. Numerous issues surface because of differing perspectives on information and data analysis. Specifically, Case B shows how three major issues of concern were identified early in the process (legal, economic and designation criteria) and how the participants engaged as a group, with guidance from the mediation team, in identifying how best to deal with those issues.

Begin the analysis of this case by exploring the debriefing questions posed below. Allow one hour for this discussion. If you decide to conduct the negotiation exercise affiliated with these case studies, do so before proceeding with Case C or Case D. Distribute the general and confidential instructions at the end of the debriefing session for use during the next class or time period. Specific teachers instructions are included with the negotiation exercise.

### Debriefing Questions

1. Much attention was given to the selection of specific representatives to the negotiation team (Policy Steering Committee) by the mediators. Why is selection of representatives so important?
2. Examine and discuss the make-up of the Steering Committee selected. What was the impact of having the Mayor and four City Council members directly involved in the process? Could this have been a detriment under a different set of conditions? Explain.
3. What is the role of developing agreements-in-principle at the beginning of the process? How much energy and time should be allocated to this endeavor? What, if any, dangers are encountered in trying to accomplish this?
4. Identify the benefits accrued from three months of fact-finding. Is it necessary to bring in experts from outside of the community? What are the pros and cons of doing so? What are the potential problems posed by protracted fact-finding which forestalls discussions of possible solutions? How can these problems be ameliorated?

### Case C

Case C explores the dynamics of the mediated negotiation process, building on the joint fact-finding activities described in Case B. Broad agreements in principle can serve a very important purpose. They identify general areas of agreement, demonstrating that agreement on something is possible. Nonetheless, in most domestic, public policy disputes, agreements in principle do not achieve the initial objective. This case demonstrates the need for and the dynamics involved with moving beyond general agreements in principle. As the details of the problem, and the solutions, become more specific (as is desired to meet policy-making objectives), the positions and concerns of various parties become more pronounced. The dynamics of the negotiation change.

All too often, when the energy to reach agreement is expended, little attention is given to how the agreements are to be implemented. The sense of accomplishment seems to outweigh the interest in details of how the agreement will work. If implementation is not given due consideration, however, the agreement could fall apart. This case shows the importance of developing implementation plans.

Begin by debriefing the case. Allow one hour to explore the questions posed below as well as others raised by the students. Upon completing the debriefing, focus the students on the assignment; preparation of an implementation plan. Discuss the major components of an implementation plan: tasks, responsibilities, timeline, methods to evaluate the success of the agreement (i.e. are objectives being met?), etc. Allow one hour for this discussion, which will serve as a precursor to Case D.

#### Assignment

Prepare an implementation plan based on the agreements emanating from the negotiations. Include an analysis of tasks to be conducted, persons responsible for conducting those tasks, deadlines for completing tasks, etc. What other elements are needed for an implementation plan?

#### Debriefing Questions

1. Discuss how a single negotiated text (SNT) is developed and refined. (In essence, the mediators integrate comments, interests and concerns of negotiators to frame the issues and to outline possible solutions. The mediator clarifies that no party has committed to the language of the SNT. At a minimum, the SNT helps focus the issues, package alternatives and identify areas of agreement and disagreement. An alternative approach to refining the SNT is allowing the parties themselves to



recommend language they think best meets the interests of each party, assuming the mediators believe the discussions are interest based rather than positional.) What are the potential benefits and detriments of using a single negotiated text?

2. Discuss examples of how issues can be linked through the use of the SNT (eg. linking the types and levels of protection with the identification of specific buildings to be protected). Indicate how an SNT can be used to identify possible trade-offs and to promote creative solutions to seemingly contentious issues.
3. How is emotion best dealt with in group negotiations? Under what conditions can emotional displays be positive/negative? Under what conditions should a mediator squelch anger versus letting it proceed but redirecting it? How is this best accomplished?
4. Would it have been more or less effective to establish a work group to address the interim development control issue rather than having the mediators attempt to broker an agreement outside the meetings of the Steering Committee?
5. How important was the support of the Mayor - to the concept of the interim development controls? in sending the letter (towards the latter part of the process)? in being first to sign the agreement? Discuss the importance of having the highest levels of support possible for negotiation and consensus-buildings processes.

### Case D

In essence, Case D provides an overview of the completion of the process and the early activities associated with the implementation of the new comprehensive historic preservation program for the city of Atlanta. The case highlights the problems that can be encountered after agreements are reached, even if ample thought has been given to implementation. The politics of enacting agreements resulting from community consensus-building processes needs to be realized and addressed by the process to the extent possible. This was explicitly considered in the early stages of the process as the composition of the Steering Committee was formulated, particularly concerning the participation of City Council members. Committee assignments and status with other Council members was considered in evaluating who would best contribute to the process and enhance the probability of ratifying agreements.

No assignment is associated with this case so discussion should focus on the debriefing questions and other issues raised by students.

#### Debriefing Questions

1. How might the implementation plan described by the case be improved?
2. What actions or recommendations might have reduced the problems created by separating the economic incentives package from the initial ordinance passed by City Council?
3. In retrospect, what are the major lessons you learned from this series of case studies?

# The Atlanta Historic Preservation Mediation Process

## Case A: The Pre-Negotiation Phase

On June 27, 1989, Mayor Andrew Young signed into law a major restructuring of Atlanta's historic preservation ordinances. Surrounded by both historic preservation advocates and business leaders, he quipped: "This is almost like Camp David." At the signing ceremony, Ian Spatz of the National Trust for Historic Preservation called the law "one of the strongest" in the nation.

The irony of the occasion was not lost on the mayor. Nationally known for his outspoken opposition to historic preservation, he had signed ten demolition permits on historic structures over the recommendations of his staff and had publicly referred to two hotly contested historic buildings as a "hunk of junk" and "the dump." Two years after these events, however, he was instrumental in saving both of these buildings and in helping enact an innovative historic preservation ordinance. Invitations to speak about historic preservation in other cities represented the final irony.

The transition had not been easy. In July of 1987, he and other Atlanta community leaders entered into mediation to resolve a series of urban development and historic preservation conflicts. These leaders included preservationists,

neighborhood advocates, developers, business leaders, city councilors, the mayor and local government administrators. Over the next two years, the involved parties agreed to, and implemented, a complete reformulation of preservation law and policy for the city of Atlanta.

In the process of reaching and implementing these agreements, the parties to the dispute passed through six identifiable stages:

- conflict escalation,
- conflict stabilization,
- process initiation,
- joint factfinding,
- consensus through negotiation, and
- program implementation.

This teaching case is designed to describe and assess each of these stages, and to afford the reader the opportunity to develop increased competence in conflict assessment, process design and mediation skills. This first section examines events that (1) escalated the conflict, (2) helped stabilize the conflict and (3) initiated the consensus building process.

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This case was written by Michael Elliott and Gregory Bourne. Respectively, they are Director of Public Policy Programs and Executive Director of the Consortium on Multi-Party Conflict Resolution. The Consortium is a dispute resolution program of the Georgia Institute of Technology, the University of Georgia and Georgia State University. Inquiries should be addressed to the Consortium on Multi-Party Conflict Resolution, Georgia Institute of Technology, Atlanta, Georgia, 30332-1055. Telephone number (404)894-2351. Support for preparing this case and associated materials was provided by the National Institute for Dispute Resolution.

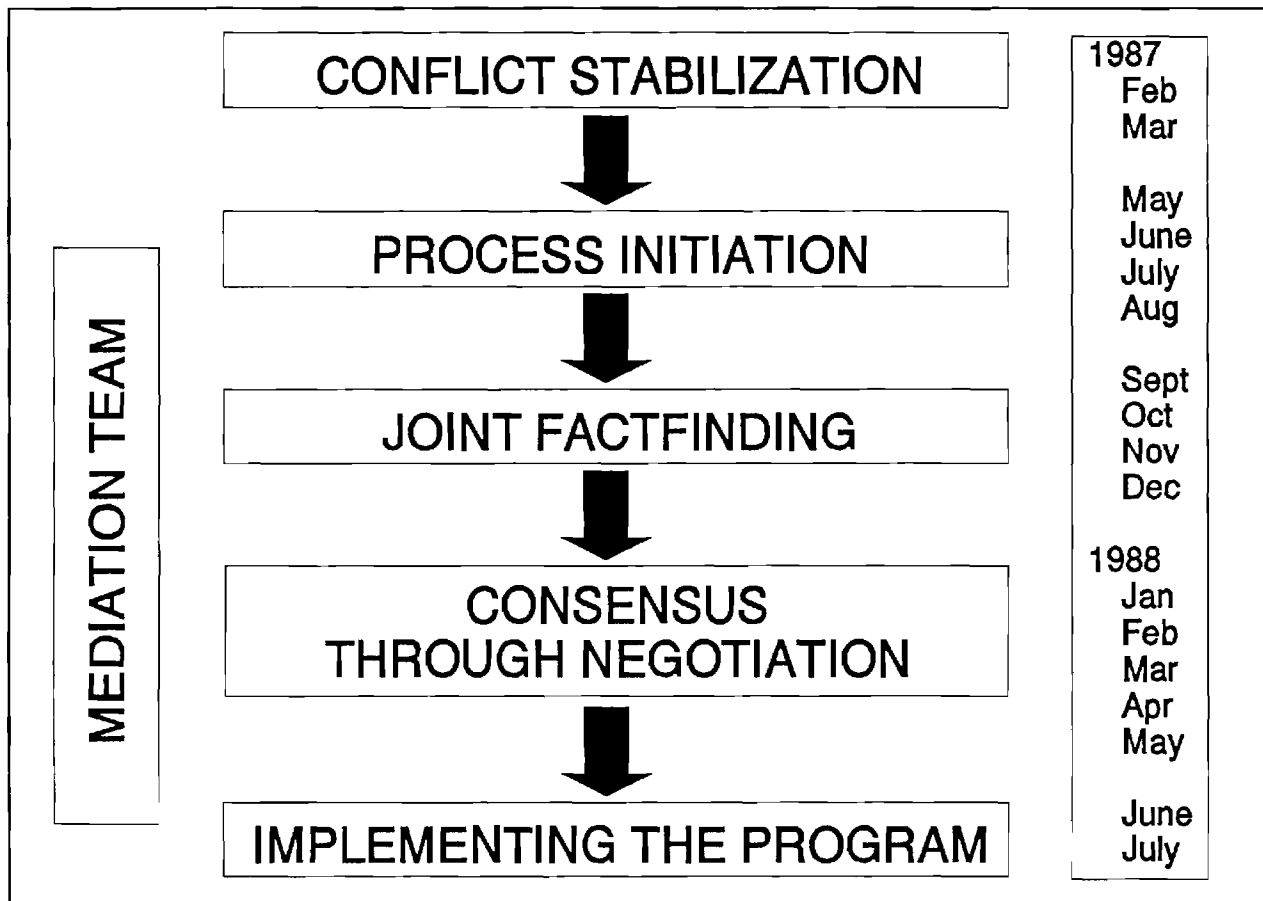
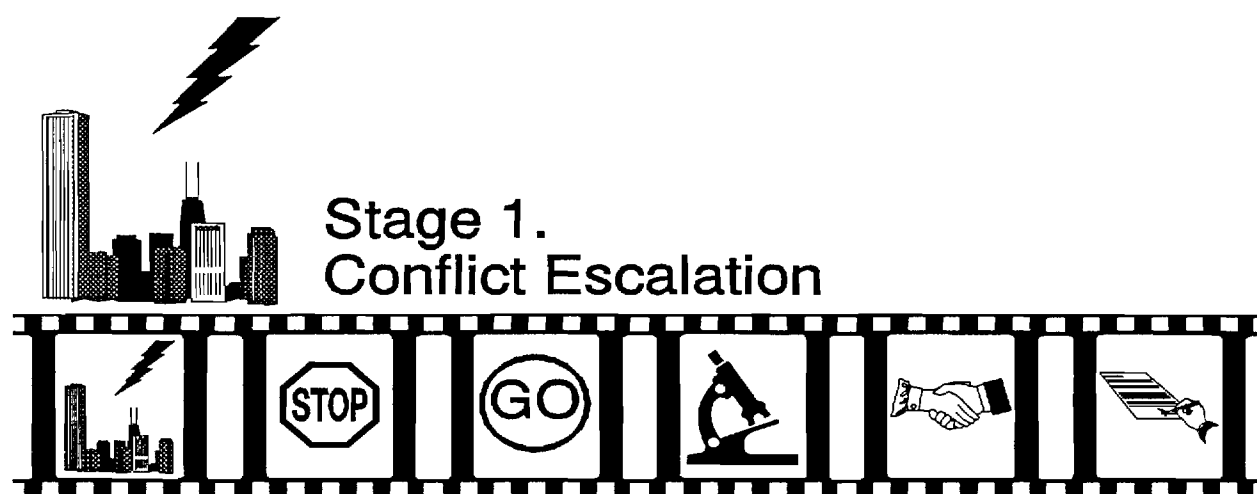


Figure 1. Timeline for the Historic Preservation Planning Process



### I. The History of the Dispute

In the spring of 1986, several controversies highlighted the need for a more systematic and consistent approach to resolving historic preservation issues in the city of Atlanta. Based on a 1985 survey, the city's Urban Design Commission expanded its inventory of historic resources by 85 buildings and 16 districts. The Commission nominated these buildings and districts to City Council for designation as Urban Conservation and Development Areas. Two competing bills were introduced to Council to weaken the designations, while a third sought to strengthen them. Public hearings held in June demonstrated widespread confusion amongst the public as to the purpose and effect of the proposed designations.

At the same time, developers requested demolition permits for three historic buildings included on the inventory: the Peachtree Terrace Apartments, Fitzhugh Apartments and the Brawner House Toy Museum. Each request was made after the Commission submitted its list to City Council. A

considerable public outcry ensued. Demolition of the Peachtree Terrace was particularly controversial. The Peachtree Terrace included 74 housing units in a finely crafted 64-year-old building surrounding a sunken courtyard. In an editorial published on May 1, the *Atlanta Constitution* labeled the proposed demolition of Peachtree Terrace "urban suicide" and supported a denial of the permit. The editorial referred to the recent demolition (in the same neighborhood) of the Pershing Point apartments as an example of what is wrong with the city's approach to historic preservation.<sup>1</sup> The next day, 200 preservation advocates rallied at the vacant site of the Pershing Point apartments to protest the demolition of the Peachtree Terrace and the construction of a 19-story office tower proposed for the site. The *Atlanta Constitution* printed a picture of the rally on the front page the next day. Mayor Young supported his decision to issue the permit for the Peachtree Terrace, claiming that

*It's a nice property, but some years ago the city zoned Peachtree commercial, and my notion is*

*that you want to keep development down the Peachtree corridor. If you don't let it come down there, you'd have an even bigger problem, which is development going deeper into the neighborhoods.*

In response, City Council passed (10 to 7) a six month moratorium on issuing the demolition permits for all three threatened buildings. Another bill establishing a six-month moratorium on the complete inventory of historic resources, including 201 sites and districts, was referred to Zoning Committee. John Leak, vice-president of Central Atlanta Progress (a business advocacy group) opposed the moratorium: "To go through the extreme of a moratorium will send a very bad signal to developers and be harmful to the city." After failing to overturn the mayor's veto of the bill, Council passed (11 to 6) a three month moratorium. Within minutes of Council's failure to overturn his second veto, Mayor Young approved the demolition permits. In his letter to the council explaining his veto, the mayor called on the city planning director, Central Atlanta Progress and the Atlanta Urban Design Commission to "initiate cooperatively" a process that would lead to a comprehensive preservation plan.

The mayor's role in the controversy continued to escalate. In response to the pressure to protect the buildings, Mayor Young remarked that "the city has no character. We're building the city's character right now." In early June, he referred to an historic structure, locally known as the Castle, as "a hunk of junk." These comments led the Atlanta Preservation Center to issue "Save our Hunks of Junk" buttons with pictures of

the Castle. Michael Lomax, Chairman of the Fulton County Commissioners<sup>2</sup>, also declared that "In the frantic dash to become, we may, by default, destroy not only our links with our past but also our links with our humanity."<sup>3</sup> In the nine days following the issuance of the permits, the *Atlanta Constitution* published seven articles and editorials against the actions taken by Mayor Young. Several cartoons, such as the one shown in Figure 1 connecting the mayor to development interests, were also published.

The issue of race and its impact on the current dispute was raised explicitly in a June 21 *Atlanta Constitution* editorial, which questioned whether historic preservation was a white versus black issue. While 65 percent of Atlanta's population is black, most of the economic wealth is held by whites. Thus, the effective management of the city required cooperation between a predominantly black political leadership and a predominantly white business leadership. Advocates of preservation, composed primarily of white residents, belonged to neither of these leadership groups. Mayor Young accentuated the debate by stating that the history for which Atlanta would be most remembered is the history of integration, the history that is now being created.

## **II. Existing City Policy Affecting Historic Preservation**

### **Existing Programs for Preservation.**

In 1987, Atlanta had two categories of historic resources. Appendix A describes these categories in some detail. The first category included seven Historic and Cultural Conservation (HCC) Districts.

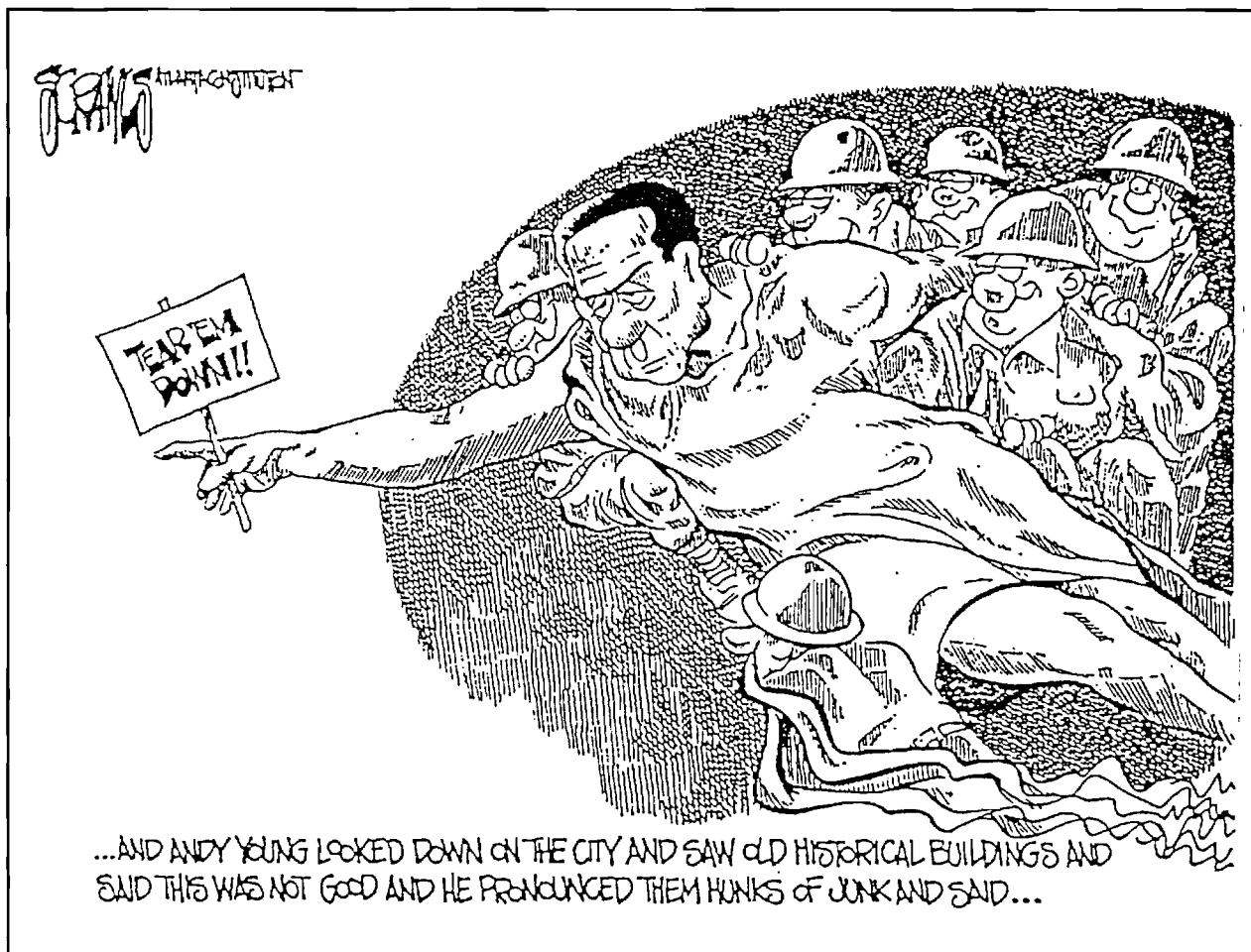


Figure 2: *Atlanta Constitution* cartoon. Used with permission.

These districts were established by means of amendments to the zoning ordinance. Any new construction, alteration or demolition of existing structures within an HCC District required a certificate of appropriateness from the Urban Design Commission.

The second category included 177 Urban Conservation and Development (UCD) Areas, of which 27 were districts and 150 were sites. As was previously mentioned, another 16 districts and 85 sites had been proposed for UCD designation. UCD designation provided the Urban Design Commission with 15 days to complete an advisory review of

any proposed changes to designated properties. The advisory review process allowed the Urban Design Commission to comment to the Mayor on permit applications affecting both UCD and UCD "eligible" properties (those identified but not yet listed) but it provided no actual protection for these properties. Final authority to deny a requested permit resided with the Mayor.

In addition to historic designations, Atlanta had a facade easement program and a transfer of development rights program to protect historic resources, although the latter had never been used. The City had also committed a limited

amount of Community Development Block Grant money to rehabilitate historic structures and fund a facade restoration program.

**Community Development Plans and Initiatives.** Atlanta's Community Development Plan called for intense development around the city's mass transit rapid rail stations and along the 7-mile Peachtree Street corridor. To further this objective, the City's zoning ordinance granted floor/area ratios (FAR's) ranging between 17 and 25 throughout most of these districts. These high FAR areas included most of the historically important commercial structures and provided considerable economic incentive to demolish many of the older, smaller buildings.

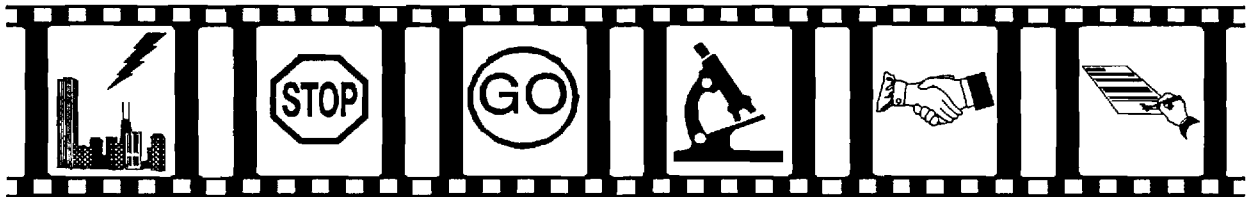
In 1987, the City and the business-sponsored Central Atlanta Progress were also jointly conducting a major planning effort for the central commercial core of the city. Called Central Area Study II, the study focused on economic development, urban amenities, safety, and the pedestrian environment, issues that were closely linked to preservation and urban design concerns.

Historic preservation efforts in Atlanta at this time were varied. Many older buildings and neighborhoods had been recently rehabilitated and were considered to be relatively stable. At the same time, demolitions of historic commercial structures were not uncommon. The greatest concern therefore focused on preservation of buildings in commercial zones.





## Stage 2. Conflict Stabilization



As the public battle over the issues sharpened, advocates of both preservation and business interests realized that no simple solutions existed. Concern over the overt politicization of the development process, however, intensified. Developers grew wary of a preservation process that at times appeared arbitrary and unpredictable. Preservationists, while able to raise considerable public outcry against demolitions, were frequently unable to stop them. The city was increasingly called upon to resolve specific historic preservation disputes through legislative action, a process which was inefficient and politically costly.

Amidst this environment, the City urged the development community and preservationists to work together to solve the problems associated with historic preservation in downtown Atlanta. As a result, the Atlanta Historic Preservation Task Force was established. This group was comprised of representatives from the city's Department of Community Development, the city's Urban Design Commission, the Atlanta Preservation Center (a preservation advocacy group) and Central Atlanta Progress (a business

advocacy group). In early discussions, the vice-president for Central Atlanta Progress suggested the use of mediation to resolve the controversy. While interested, the executive directors of both the Urban Design Commission and the Atlanta Preservation Center remained skeptical. For answers to their questions, they approached the co-directors of the Southeast Negotiation Network, located at the Georgia Institute of Technology, to discuss the strengths and weaknesses of such an approach.

After considerable deliberations, the use of mediated negotiations was selected as the preferred means of trying to resolve the conflict. Agreements developed through consensus building were viewed as the most likely to be lasting and politically acceptable. The members of the Task Force agreed to seek mediators

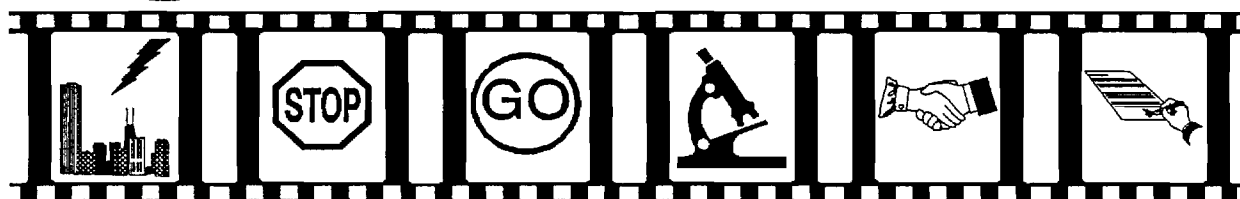
*to assist political leaders, planners and administrative personnel, preservation groups, business groups, property owners and others impacted by issues of historic preservation to develop planning guidelines which address*

*the perceived tensions between historic preservation and economic development in the city of Atlanta.*

Between May and September, the task force raised \$66,000 to conduct the process. The money originated from four sources: half was provided by the National Trust for Historic Preservation; the remainder was matched by Central Atlanta Progress, the City of Atlanta and the Atlanta Preservation Center. The monies were allocated with 40 percent reserved for the mediation process, 30 percent for technical support to the mediation process and 30 percent for community outreach following the mediation process. In addition, the National Institute for Dispute Resolution contributed funds for additional expenses later in the process.



## Stage 3. Process Initiation, Part 1



### I. Selecting the Mediation Team

Based on responses to their request for qualifications, the task force interviewed members of three mediation teams in early 1987. The mediation team selected by the task force consisted of principals from the Southeast Negotiation Network of the Georgia Institute of Technology and the Institute for Environmental Negotiation of the University of Virginia. Both the Network and the Institute were specifically organized to mediate multi-party disputes and facilitate group decision making. Both organizations focused their resources on consensus building in the public policy-making arena, with particular emphasis on urban planning and development.

The mediation team consisted of four members: Michael Elliott and Gregory Bourne, Co-Directors of the Southeast Negotiation Network, and Richard Collins and Elizabeth Waters, Director and Senior Associate of the Institute for Environmental Negotiation, respectively.

In addition to a wide range of experience in consensus building

processes, the co-mediators also had specific expertise in regulatory policy, comprehensive planning, historic preservation and urban design. Three of the four mediators were professional planners; all four were faculty members associated with graduate planning programs. At the same time, none specialized in real estate development.

As reflected in their backgrounds, the team was decidedly more experienced in some aspects of the conflict than in others. The team's claim to neutrality came not because they personally felt indifferent as to the outcomes of the process. The members of the team clearly hoped that the process would in fact lead to a stronger and more workable preservation ordinance, consistent with good planning practice. Rather, the claim to neutrality came from the team's commitment to empowering the disputants to reach their own conclusions, as well as a deeply felt trust in the appropriateness of consensus building processes as a vehicle for policymaking. The team fundamentally believed that an historic preservation ordinance *appropriate to Atlanta* could best be designed by Atlantans committed

not only to the interests of the constituency groups they represented, but also to the interests of the city as they saw it.

Under direction of the Task Force, both the city government and the Atlanta Preservation Center served as the hiring agent for the mediation team. Finalizing the employment contract proved difficult. Mediation services did not fit standard city consultant categories. Because of complications, contract procedures took seven months and a contract was not officially issued until September.

## II. Conflict Assessment

Beginning in July 1987, the mediators interviewed approximately 50 community leaders to outline the sources of conflict, issues at stake and perceptions about possible solutions. These community leaders included (among others):

### City Interests

- mayor,
- two of the mayor's administrative assistants,
- president of city council,
- seven additional members of city council,
- commissioner of community development,
- the director of planning,
- the deputy planning director for zoning administration,
- the chair of the Urban Design Commission, and
- the executive director of the Urban Design Commission;

### Business Interests

- president and vice-president of Central Atlanta Progress,
- four regional partners or executive vice-presidents of national development firms,
- three partners or executive vice-presidents of regional and local development firms,
- three partners or executive vice-presidents of development firms specializing in historic renovation,
- two directors of firms managing commercial historic buildings, and
- two development lawyers;

### Preservation Interests

- executive directors of three non-profit preservation advocacy groups,
- two local preservation lawyers,
- a number of preservation advocates working to preserve neighborhoods through Neighborhood Planning Units established by the city,
- director and staff members of the State Historic Preservation Office,
- several directors of non-profit managed local historic buildings, and
- academics working in historic preservation.

During these preliminary interviews, steering committee participants raised a number of issues concerning the development of effective and equitable preservation laws and policies. These issues can be divided into three groups: the objectives of historic preservation, the process of selecting buildings for protection and the mechanisms for protecting those buildings.

**A. Issue I: The Objectives of Historic Preservation.** The issues of historic preservation intersected with a number of other city goals. Issues raised during interviews included:

- the role of preservation in increasing awareness of significant historic events by protecting individual buildings, places and districts associated with those events,
- the ways in which preservation contributes to or competes with the physical redevelopment and economic revitalization of downtown, midtown and similar commercial districts,
- the relationship between historic preservation, development and the integrity and quality of residential neighborhoods,
- the impact of preservation on the city's efforts to expand in-town housing opportunities, and
- the uses of historic preservation for creating a mix of buildings, streetscapes and cultural amenities that contribute to the overall urban design of Atlanta and its districts.

**B. Issue II: The Process of Selecting Buildings, Places and Districts for Preservation.** By establishing 7 Historic and Cultural Conservation Districts, as well as 177 Urban Conservation and Development areas, the City of Atlanta had already indicated that certain historic properties were worthy of protection. In general, the Urban Design Commission identified historically

significant structures by means of criteria established for the National Register of Historic Places. Unlike National Register criteria, however, the Commission was willing to consider any building 30 years old or older, while national criteria required historic properties to be at least 50 years old.

Issues raised during interviews relevant to determining historical significance included, among others:

- the development of appropriate criteria for designating historic buildings and districts,
- the establishment of different categories for protecting places of differing historic or architectural significance,
- the standardization of the designation process to increase the predictability of its impact on property development potential and to speed up decision making,
- the expansion or contraction of the number of buildings and districts receiving recognition or protection and the role of the existing historic resources inventory in the selection process, and
- the role of property owners (residential or commercial), developers, preservation activists, technical experts and other interest groups in the process of designating new properties.

**C. Issue III: Mechanisms for Protecting Historic Places.** In 1987, the City of Atlanta required a Certificate of Appropriateness from the city's Urban

Design Commission for any new construction, alteration, or demolition in its 7 Historic and Cultural Conservation Districts. The zoning ordinance established special use, density and other provisions for each of the 7 Districts.

As discussed above, the zoning ordinance also provided for advisory review by the Urban Design Commission of any new construction, alteration or demolition involving an Urban Conservation and Development property. In these areas, however, demolition permits were issued at the discretion of the mayor, even if such issuance was at odds with the Urban Design Commission. Furthermore, while Atlanta's ordinances allowed for both transfer of development rights and a facade easement program administered by the Urban Design Commission, neither was actively used.

Issues raised during interviews included, among others:

- the lack of consistency between historic designations and zoning that frequently encouraged demolition of historic buildings for higher density uses,
- the management and technical capacity of city government to handle preservation and urban design issues,
- the creation of consent and/or compensation provisions for owners whose properties were affected by historic preservation laws and regulations,
- the establishment of stricter regulations on permits for demoli-

tion or alteration of designated properties,

- the design of economic incentives to make compliance with preservation policies more voluntary, with less reliance on regulation to achieve preservation goals,
- the institution of interim controls to protect historic properties while the preservation plan was being negotiated,
- the elimination of delays and uncertainties associated with preservation laws and processes, and
- the establishment of procedures for granting variances from the requirements of historic preservation laws.

### III. Finalizing Process Design and Selecting Participants

In conjunction with the task force, the mediators designed the negotiation process and selected participants for the process. The mediators sought to ensure that all major interests were adequately represented. The details of this process are described in Case B.

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## ENDNOTES

1. The Pershing Point block, a highly visible cluster of ornate apartment complex in Atlanta's midtown, was demolished in February of 1986. The demolitions were conducted speculatively to provide a site for a proposed corporate office tower. The controversy around the demolition, however, made the site unbuildable for several years.

2. Atlanta is located in Fulton County. The County is extremely active in arts and culture programming for the city, though it has no responsibilities for historic preservation within city boundaries.

3. Speech before the Atlanta Chapter of the American Institute of Architects.

## Appendix A

### Historic Preservation Ordinances of Atlanta

Adapted from Atlanta Urban Design Commission, *Atlanta's Lasting Landmarks*, 1987.  
Used with permission.

The Atlanta Urban Design Commission, along with the Department of Community Development and its Bureau of Planning, has been charged by the City of Atlanta with responsibility for implementing the city's historic preservation ordinances.

In this overview, we describe the process of identifying and protecting historic resources.

#### THE SURVEY

Beginning in 1975, a systematic field survey of Atlanta historic resources was undertaken by a team of researchers. It was that group who first identified the numerous sites within the city with historic and/or architectural significance. Several years later, in 1981, the Urban Design Commission was able to update and expand the original survey through a grant from the Georgia Department of Natural Resources Historic Preservation Section. The data collected from those two efforts was evaluated and refined in a series of workshops attended by preservation professionals. Interested individuals and organizations were also given an opportunity to provide their input.

In order to substantiate their role in Atlanta history, the sites identified through this evaluation process were further researched by the Urban Design Commission staff. Once a list of

proposed historic sites was agreed upon, it was presented to the Commission for approval, and then to property owners for comment and review. The final proposed list was submitted to the City Council for designation as Urban Conservation and Development Areas.

Another update was conducted in 1985, resulting in an additional 85 sites and 16 districts proposed for consideration as Urban Conservation and Development Areas. These additional UCD properties were not officially designated by the City Council, pending completion of the Comprehensive Historic Preservation Plan being developed as part of the mediation process.

#### NATIONAL REGISTER OF HISTORIC PLACES

The National Register of Historic Places was created by the Historic Preservation Act of 1966. Listing in the National Register protects a property from impairment by federally funded or federally licensed projects; however, no restrictions as to use and disposition of registered properties are made on private property owners. All National Register properties and districts in Atlanta have also been designated locally as Urban Conservation and Development Areas or Historic and Cultural Conservation Districts.



In brief, the National Register criteria state that:

*The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association, and:*

*a) are associated with events that have made a significant contribution to the broad patterns of our history; or,*

*b) are associated with the lives of persons significant in our past; or,*

*c) embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or,*

*d) have yielded, or may be likely to yield, information important in prehistory or history.*

Inclusion in the National Register of Historic Places signifies recognition at a national, state, or local level of the historic significance of a property and provides a degree of protection to the sites from adverse impact of federally funded or federally licensed projects. It also makes sites eligible for limited matching grant-in-aid programs for acquisition and/or restoration of Register

properties and for historical and archaeological surveys when funding is available.

The Urban Design Commission works closely with the State Historic Preservation Office, nominating sites and districts for possible inclusion in the National Register.

## **URBAN CONSERVATION AND DEVELOPMENT (UCD) AREAS**

Originally, Atlanta's local roster of historic sites and districts was referred to simply as the Category 1 list. However, the name was formally changed by the Mayor and City Council to Urban Conservation and Development Areas. UCD Areas now refers to all historic sites previously designated as Category 1, as well as properties and districts added as a result of the 1981 and 1985 updates of the General Survey.

For the most part, properties and districts designated as Urban Conservation and Development Areas are selected on the basis of the same criteria followed by the National Register program in the selection of its sites. One major difference between the two designations is that properties which have attained historic significance within the last fifty years generally are not eligible for the National Register. Atlanta's Urban Conservation and Development Areas, however, is open to properties not less than thirty years old.

While all UCD Areas are considered potentially eligible for the National Register, a separate nomination process is required for placement on the Register. Of the 235 individual sites and 43 districts designated or proposed as UCD

Areas, 71 sites currently are listed in the National Register, along with 24 districts.

It is important to emphasize that being designated as a UCD Area does not restrict the rights of private property owners, nor is it an automatic first step to listing in the National Register. Designation as a UCD Area merely provides a process for City departments and agencies to submit projects located in these areas to the Atlanta Urban Design Commission for advisory review and comment. This review provides a process for assisting owners with the preservation of the unique qualities and features which contribute to the historical significance of their property.

#### **HISTORIC AND CULTURAL CONSERVATION (HCC) DISTRICTS**

The 1981 Atlanta Zoning Ordinance created Historic and Cultural Conservation Districts to protect individual local structures and districts considered to be of major historic, architectural and cultural significance. Once areas are zoned as HCC Districts, they fall under the jurisdiction of the Atlanta Urban Design Commission. This means any exterior changes proposed by property owners in these districts must first be reviewed by the Commission and a Certificate of Appropriateness issued before an owner can obtain necessary permits.

Each HCC District has its own individual ordinance with specific zoning regulations, which include design and review standards. This insures that the Commission's decisions will be guided by regulations that have been enacted by law and tailored to the specific require-

ments of each district. In addition, the Commission has the authority to review and act on variances of district regulations.

To become an HCC district requires the submission of an ordinance which must be passed by the City Council as an amendment to the Atlanta Zoning Ordinance. Currently, the City has seven HCC Districts, which include Underground Atlanta, Baltimore Block, Cabbagetown, Druid Hills, Martin Luther King, Jr., Oakland Cemetery and Washington Park. With the exception of Washington Park, all the HCC Districts are listed in the National Register of Historic Places.

The purpose of HCC district designation is stated as follows:

a) to protect against destruction of such areas or structures, or encroachment of structures, and uses likely to have adverse effects on their historic and/or cultural character;

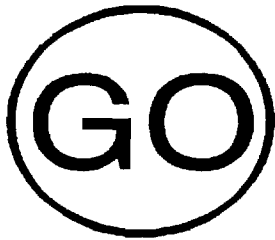
b) to encourage uses which will lead to their continuance, conservation and improvement in a manner appropriate to preservation of the cultural and historic heritage of the City of Atlanta;

c) to prevent developments in the visual environs of such areas or structures which would detract from their character; and,

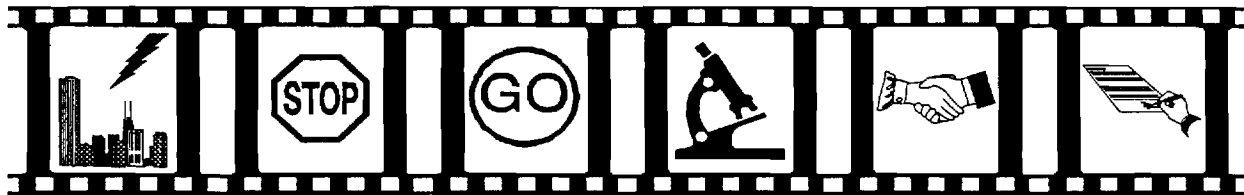
d) to assure that new or altered structures and uses within such districts will preserve and enhance their character.

# The Atlanta Historic Preservation Mediation Process

## Case B: Initiating the Process



### Stage 3. Process Initiation, Part 2



#### I. Designing the Negotiation Process (Original Proposal)

A variety of techniques exists for building multi-party consensus. The degree of sophistication depends somewhat on the number of issues and parties involved, as well as the relationships among the stakeholders. The approach developed for this project was based on the assumptions that the major stakeholders had similar objectives (e.g., that they desired a consistent, comprehensive method for addressing historic preservation in Atlanta) and that leaders who could bind their constituency to an

agreement would be involved in the process.

In response to the original request for proposal issued by the Historic Preservation Task Force, the mediation team envisioned a three-tiered consensus building process: (1) a steering committee composed of the decision makers or leaders of the major stakeholder groups identified, (2) a task force composed of representatives from the steering committee, and (3) work groups of technical experts appointed by the task force to address the technical issues of the study. The steering committee, task force and work groups were to work

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This case was written by Michael Elliott and Gregory Bourne. Respectively, they are Director of Public Policy Programs and Executive Director of the Consortium on Multi-Party Conflict Resolution. The Consortium is a dispute resolution program of the Georgia Institute of Technology, the University of Georgia and Georgia State University. Inquiries should be addressed to the Consortium on Multi-Party Conflict Resolution, Georgia Institute of Technology, Atlanta, Georgia, 30332-1055. Telephone number (404)894-2351. Support for preparing this case and associated materials was provided by the National Institute for Dispute Resolution.

interactively to develop a comprehensive preservation plan.

As originally envisioned, the process called for five meetings of the steering committee and seven meetings of the task force (see Figure 1). Work groups, composed of members of the task force and experts, divided by issue, would meet between meetings of the task force. The steering committee and task force meetings would be co-facilitated by at least two members of the mediation team. Contact before and after major meetings between the mediators and the committee participants was emphasized. Under the guidance of the steering committee, the task force was to develop proposals for consideration. In addition, work groups were to develop the technical basis for the plan. At the appropriate time in the process, a single negotiated text was to be introduced by the mediation team to serve as a focal point for working out the details of the preservation plan. Written by the mediators, it would be refined based on the input and interests of the participants.

While this process served as a roadmap for further discussion, it was altered in significant ways both before and during the negotiation process. During the prenegotiation interviews, three aspects of the conflict became clearer:

- key community leaders desired a more interactive role for the steering committee,
- key leaders from different interest groups generally respected each other, though they differed significantly on viewpoints, and
- many key community leaders had technical expertise in at least some parts of the disputes, and many technical experts were active in the political process.

Under these circumstances, the separation of tasks between the steering committee, the task force and the work groups might create artificial barriers. The original proposal was therefore adapted.

As redesigned in the summer of 1987, the process called for the creation of two groups: a Policy Steering Committee (composed of key community leaders) and a Resource Group (composed of key technical experts, most of whom were also leaders in historic preservation or development). The Resource Group was to be created at the same time as the Policy Steering Committee and was to participate in Policy Steering Committee meetings as well as Work Group meetings. A separate task force would not be created. While increasing the work load of the Policy Steering Committee (by increasing the number of meetings that all participants needed to attend), the more streamlined process facilitated communication and integrated the tasks of the Steering Committee and the Resource Group. This redesigned process is discussed in more detail below.

## **II. Selecting a Negotiation Team**

The following objectives guided the selection of the negotiation team:

1. **Ensure that all major interests are adequately represented.** If the public interest is to be protected, the negotia-

*Steering Committee Meeting 1:* Discuss the issues, expectations of the process and willingness to work toward the goal for which the planning process is being convened. Build consensus on objectives. Discuss and approve the use of a task force to develop the details of the plan and selection of task force representatives.

*Task Force Meeting 1:* Establish and reach consensus on the design of the planning process, expected results, timeframe for decision making and guidelines for conducting meetings.

*Task Force Meeting 2:* Develop work plan, categorize issues and identify additional stakeholders.

*Steering Committee Meeting 2:* Agree on issues to be addressed and their priority. Review the work of the first two task force meetings.

*Task Force Meeting 3:* Identify data needs for the issues identified and establish the tasks of the work groups. Members of the work groups selected from the task force and augmented with technical experts to conduct factfinding. Work groups proceed with their tasks in preparation for the next task force meeting. Agreement over selection of experts selected obtained from the steering committee.

*Task Force Meeting 4:* Discuss results of factfinding conducted by work groups. Provide feedback to the work groups. Work groups refine analyses and generate initial overview of possible alternatives.

*Task Force Meeting 5:* Discuss results of analyses and alternatives generated by work groups. Provide feedback to the work groups. The work groups reconvene to refine or generate alternatives based on comments of the task force.

*Task Force Meeting 6:* Discuss results of work groups efforts. Prepare list of alternatives and their strengths and weaknesses for review by the Steering Committee.

*Steering Committee 3:* A half day meeting. Consider presentations of factfinding and alternatives developed by the task force. Evaluate the findings of the task force and openly exchange ideas.

*Develop Single Negotiating Text (SNT):* Mediators, acting as neutral intermediaries, develop first draft of the SNT. This document forms the foundation of the comprehensive plan by melding together the work of the steering committee, task force and work groups. The mediators incorporate the aspects of the plan for which consensus exists and help identify means for building consensus in areas of disagreement.

*Steering Committee 4:* Evaluate and refine SNT. Develop general agreement over the contents of SNT. Mediators meet with individual members of SNT to further refine text.

*Task Force Meeting 7:* Develop an implementation plan for inclusion into the plan.

*Steering Committee Meeting 5:* Confirm agreement on the contents of the comprehensive plan and adopt the implementation plan.

**Figure 1:** Consensus building process as first proposed by the mediation team.

tion team must be balanced. The absence of an important interest group, or even an excessive imbalance in the negotiation skills of interest groups that are represented, can bias the process. Some multi-party negotiations fail

because they exclude stakeholders who have a major interest or who can make implementation of agreements difficult.

2. Within any single interest group, involve representatives who

provide a range of perspectives. Members representing similar interest groups are likely to be more open to persuasion by each other than they are to members of groups perceived as different. In the business community, the inclusion of a developer of an historic structure, as well as civic leaders and a small developer, provided fresh perspective to the larger developers. Similarly, the presence of a faculty member from a local university and an employee from a state agency provided an alternative perspective to the preservationists. Finally, the city representatives clearly needed to include not only chairs of preservation-related City Council committees, but also differing viewpoints represented by the chair of the Finance Committee and, of course, the mayor.

**3. Within any one interest group, create agreement as to effective representatives.** Selecting workable teams is essential to multi-party mediation. The business community had a clear vision of the negotiating team it wished to put together, based on criteria developed mutually by the mediators and the president of Central Atlanta. On the other extreme, the city team was constituted almost exclusively upon recommendations made by the mediators. Considerable effort was made to ensure that Mayor Young would be an active participant. The preservation community, with its multiple loci of leadership, required assistance in choosing amongst many competent individuals. Furthermore, within the coalition of historic neighborhoods, considerable effort was expended to select the most effective representative.

**4. Keep the negotiating team to a manageable size.** Consensus building,

which is facilitated when participants develop a good understanding of each other, is best served by direct and open communication. Groups of 15 individuals are small enough to allow for direct communication between participants. Groups in excess of 20 typically need stronger facilitation which leads to participants communicating through the facilitator rather than directly to each other.

To maximize involvement of participants, the mediators created a Policy Steering Committee consisting of 17 members. The Policy Steering Committee was the principle negotiating team and had responsibility for developing a recommended historic preservation policy. In addition to the mayor, the Steering Committee consisted of four city council members, the Commissioner of Community Development, the chair of the Urban Design Commission, the director of Central Atlanta Progress (a business alliance), two prominent national developers, two prominent local developers, the director of the Atlanta Preservation Center, the chair of the Preservation Council (a coalition of historic neighborhoods) and three other prominent preservation activists.<sup>1</sup>

To assist the Steering Committee in its deliberations, a Resource Group was also created. The Resource Group consisted of seven professionals with expertise in preservation and development law, programs, design and economics.<sup>2</sup> Most of these experts were well known by leaders of the development and preservation communities. Members of the Resource Group provided information at the Plenary Sessions of the Steering Committee and actively participated in caucuses and working

group meetings. This organization allowed for wider participation while maintaining a core committee size of 17 individuals.

### **III. The Process Redesigned**

As discussed above, the simultaneous creation of the Policy Steering Committee and a Resource Group of highly respected local experts provided an opportunity for a more flexible process design. Meetings with these 24 individuals could be organized around specific needs. Three types of needs were expected. These are shown diagrammatically in Figure 2.

**1. Plenary meetings involving all interested parties for purposes of consensus building and policy decision making.** A large U-shaped table was used to facilitate dialogue among members of the Policy Steering Committee. Members of the Resource Group sat to the side of the table, while the general public sat to the back. Discussion was largely limited to members of the Policy Steering Committee, with information provided by the Resource Group when appropriate. Meetings, facilitated by the full mediation team, focused on identifying major issues and refining agreements developed by the work groups and mediation team.

**2. Work meetings involving smaller groups for purposes of joint problem solving.** Groups were formed to address specific issues when those issues became too complex for the committee-as-a-whole to manage. Members of working groups were drawn from both the Steering Committee and the Resource Group as equal participants.

Each interest group was represented. Meetings, facilitated by two members of the mediation team, focused on joint problem solving.

**3. Caucuses of interest group representatives for purposes of interest identification.** Caucuses were called when participants needed to meet separately from other interest groups. Participants included members from both the Steering Committee and the Resource Group as equal participants. Meetings, facilitated by two members of the mediation team, focused on hard-nosed assessments of emerging agreements as to their benefits and costs, as well as the design of improvements. Three caucus groups were identified:

- the city caucus, consisting of participants from the mayor's office, City Council and city agencies;
- the business caucus, consisting of participants from the business and development communities, and
- the preservation caucus, consisting of participants from nonprofit advocacy groups, state and local preservation agencies and neighborhood groups.

By September of 1987, the process was redesigned, as shown in Figure 3. The Policy Steering Committee would meet as a whole for the duration of the year. The first four monthly meetings would focus on scoping the issues and joint factfinding. Following this phase, both work and caucus meetings would be scheduled as needed.

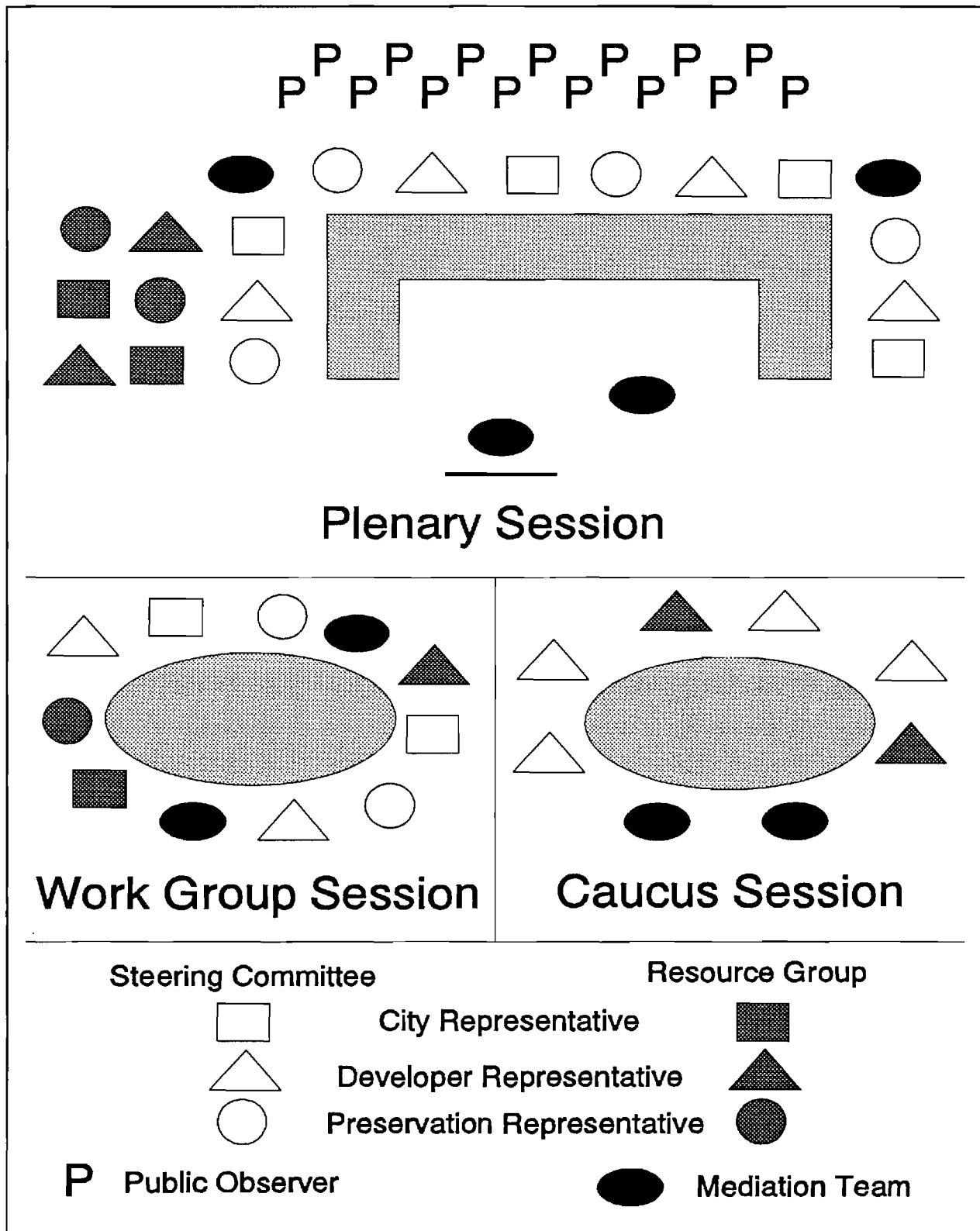


Figure 2. Physical layout for plenary, work group and caucus meetings.



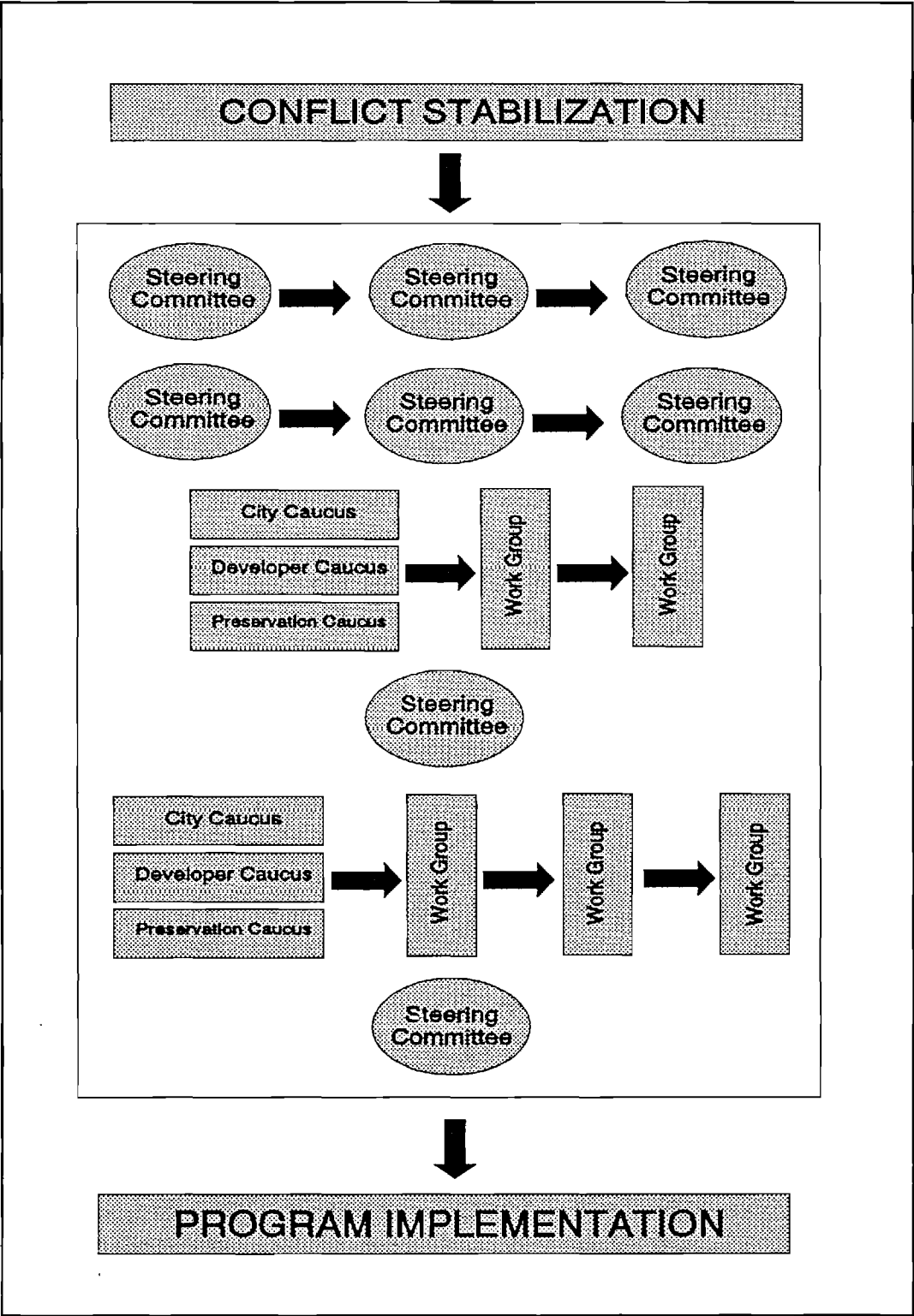
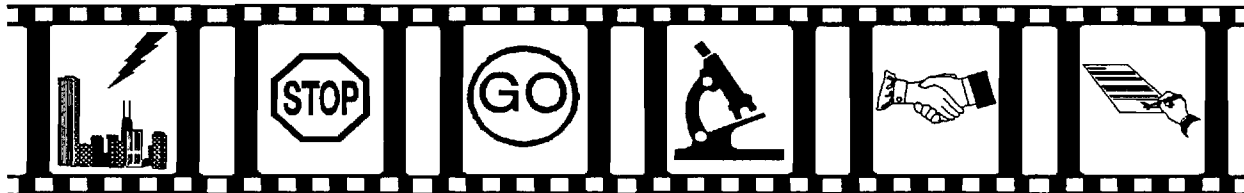


Figure 3. Design for consensus-building process.



## Stage 4. Scoping and Joint Factfinding



From the prenegotiation interviews, several issues emerged as crucial. During the initial phase of the negotiation process, participants examined these issues in depth. Four plenary sessions of the Steering Committee were organized to accomplish this goal. These sessions were held monthly between September, 1987, and January, 1988.

The first session provided an overview of issues and perceptions of the Steering Committee members in a somewhat casual atmosphere. Each of the following three sessions focused on a single set of issues. The sessions lasted three hours each and featured an outside expert selected by the mediators and agreed upon by the Steering Committee. The experts included Robert Freilich on preservation and planning law, Richard Roddewigg on economic impacts of preservation and tools for mitigating those impacts on property owners, and Frederick Williamson on standards for evaluating historic sites and districts. Each speaker wrote a paper addressing the issues raised by members of the Steering Committee, presented an overview of these issues to the Commit-

tee and, with the help of the mediators, facilitated an in-depth discussion of the issues. Each session also featured presentations by members of the Resource Group and discussions of local conditions.

### I. The Initial Meeting

The first meeting of the Policy Steering Committee was held on September 30, 1987, at the Ritz-Carlton Atlanta. Following a two hour introduction and discussion, participants<sup>3</sup> continued the dialogue over dinner. Considerable time was spent identifying issues that needed to be addressed during the negotiation process. Based on interviews with members, the mediation team had drafted a preliminary list of issues.<sup>4</sup> In reacting to this list, members emphasized certain issues and added or restated others.

#### **A. Agreements in Principle**

As is frequently the case in initial meetings, participants tried to accentuate

the positive. Part way through the meeting, Eileen Segrest (a preservationist) joked that, based on what participants had said, "we are all preservationists." The group formally adopted the following agreements in principle as a basis for further discussion.

- With adequate planning, both development and preservation can be successfully accomplished.
- A comprehensive historic preservation plan will benefit the City and its elected officials as well as developers and preservationists.
- Members of the Steering Committee are committed to the consensus-building process to develop guidelines addressing the urban fabric of Atlanta.

#### **B. A Statement of Issues to be Addressed**

Despite this general agreement, discussion clearly showed important differences in perspective. While members did not try to set any boundaries on the discussions or single out areas of emphasis, the issues that emerged can be grouped into four major categories: issues associated with what to save, legal and institutional constraints, economic costs and benefits of preservation, and the goals of preservation.

**1. What should be saved?** The negotiations needed to address criteria and processes for deciding which buildings, districts, and neighborhoods are historic, how they could be protected, and what levels of protection are

appropriate. Opinions were exchanged about whether buildings should be saved for their historical significance, architectural significance, or both; whether at times it is important to preserve uses as well as structures; whether certain structures or districts should be saved regardless of the cost; and when it is appropriate to let certain structures be demolished to allow new development to emerge.

**2. What are the legal and institutional constraints?** In some cases the city's existing zoning laws, building codes and demolition procedures worked against attempts to preserve historic resources. The negotiations would need to identify current or potential inconsistencies in city laws and policies, and suggest ways for preservation laws to work in concert with other policies and laws governing the shape and future development of the city. In addition, the Committee needed to consider the appropriate roles of the Urban Design Commission, the Department of Community Development, the Bureau of Buildings and other entities in carrying out various policies and programs related to preservation and urban design.

**3. What are the economic costs and benefits of preservation?** The economics of preservation emerged as a major focus of the negotiations. Members discussed how preservation activities might relate to current economic development goals such as creating a more vibrant twenty-four hour city. Members suggested that some of the more interesting structures in the city have low economic margins but "are part of the past we want to save and the future we want to get to." Specific

economic issues members wanted to address included:

- the relationship between preservation and the city's over-all economic development goals,
- the proper balance of preservation regulations and incentives to achieve historic preservation and over-all economic development goals,
- the feasibility of refocusing development pressure from historic properties to available vacant land,
- ways to encourage preservation when economically viable alternatives exist,
- how to save valuable buildings if re-use is not economically viable, and
- the risk to Atlanta's downtown economy if development regulations are strengthened to protect historic structures.

**4. What should the City adopt as the goals of preservation?** Goals articulated by members of the Steering Committee included:

- to preserve important parts of Atlanta's history, both social and architectural,
- to contribute to the economic development and vitality of the city,

- to help preserve the character and livability of the city's neighborhoods, and
- to encourage development that maintains the fabric and diversity of the city's streets and districts.

No attempt was made to reach agreement on goals.

### **C. Roles and Procedures**

At the initial meeting, the Steering Committee formally adopted guidelines for the negotiation process. The Steering Committee agreed:

- to meet a total of 10 times and to complete its work by late spring of 1988,
- to restrict participation at negotiation meetings to appointed members only (members unable to attend could send observers but not substitutes),
- to open all plenary sessions to the public, but not to widely advertise the schedule,
- to create a Resource Group, and
- to hire consultants to prepare working papers and to make presentations to the Committee.

The Steering Committee also established the agenda for the next three meetings, including specific meeting times for each of these meetings. These meetings would address (1) legal and institutional issues including a review of Atlanta's current laws and programs; (2)

economic issues including the relationship between preservation and economic development, the proper balance between regulation and incentives, and particular incentive and compensation alternatives; and (3) criteria for establishing historic significance.

## **II. The Legal Basis of Preservation**

On October 29, the Policy Steering Committee<sup>5</sup> met for the second time. The three hour meeting<sup>6</sup> focused on the legal basis of preservation. After the Executive Director of the Atlanta Urban Design Committee and the Commissioner of Community Development described the city's existing preservation programs and comprehensive development plan (see Case A for a discussion of these issues), a broader discussion of legal and economic issues was opened by Robert Freilich. Mr. Freilich, a distinguished professor of law at the University of Missouri and a national expert in preservation and growth management law, made three major points in his opening remarks pertaining to legal and economic issues.

**Historic preservation policies and laws must be part of an over-all growth management strategy for the City.** The over-all development plan is the vehicle a community should use to indicate where it wants growth to occur and what it wants to protect. Once this plan has been adopted it serves as a basis for passing necessary zoning, historic preservation, and other laws to implement it and as a basis for defending these laws in court if need be. An "interim development ordinance" could be employed to preserve designated

buildings from demolition while a plan is being developed.

**Implementing a community's growth management plan, including the preservation element, requires an effective public-private partnership.** Growth management and historic preservation provide "win-win" opportunities in spite of the common assumption that development and preservation are incompatible. The best way to pursue "win-win" solutions is to develop various forms of public-private partnerships designed to encourage and guide growth in mutually beneficial ways.

**U.S. and Georgia law provide considerable latitude in the exercise of the police power -- actions taken to protect the health, safety and welfare -- before damages or compensation must be paid.** Georgia law provides for a range of local powers similar to those upheld in other states. Overlay zones for preservation, incentive zoning, height and shadow ordinances, and view corridor protection have all been upheld in the courts. In fact, courts have often ruled that these enhance rather than diminish value.

Based on the presentations, members of the Steering Committee made the following points:

- the greatest number of historic structures and areas identified in the current Urban Design Commission inventory are Urban Conservation and Development properties rather than Historic and Cultural Conservation districts. This means that while they are subject to review by the Urban Design Commission, the legal

power to determine what will be permitted or prohibited rests with City Council and the Mayor.

- in order to deny a demolition permit for a historic structure, its value must be established through a careful planning and designation process.
- the City needs to explore ways to ensure that new construction is compatible with established areas or neighborhoods, even if these are not considered "historic." It was felt that historic zoning might be too restrictive but that some intermediate form of neighborhood conservation zoning might be needed.
- it would be helpful to know more about what has been lost, what has been saved, and where historic resources are located in relation to where intense development is taking place to show where the greatest conflicts can be expected to occur.
- the City already has a range of programs that have been designed for or could be used for preservation but which need to be brought together and new pieces added.
- at the same time, Atlanta's generous zoning allowances and failure to adequately protect historic resources encourage speculation on land where older structures are located.

At this meeting, preservationists proposed enacting an interim development ordinance to prevent further

demolitions while the negotiations are taking place. Views were exchanged but no agreement was reached on this issue.

### III. Economic Impacts of Historic Preservation

The third meeting of the Steering Committee was held on December 2.<sup>7</sup> The meeting focused on four major points:

- implications of the legal points presented by Robert Freilich at the previous Steering Committee meeting,
- the degree to which historic structures face economic pressure for development, as shown on a map relating historic properties to allowable densities,
- the desirability of creating an interim development review process to protect historic buildings while the negotiations proceed, and a commitment on the part of participants to work with the mediators between this meeting and next to design guidelines for the process, and
- the economic considerations affecting historic preservation and community development, as presented by Mr. Richard Roddewig during the meeting.

Mr. Roddewig, an attorney and real estate consultant, had drafted numerous preservation ordinances as well as conducted a wide range of feasibility studies on preservation projects. As author of "Preservation Ordinances and

Financial Incentives: How They Guide Design" and similar articles, he was nationally regarded as an expert on issues of preservation and development economics.

#### **A. Presentation by Mr. Roddewig**

In assessing the costs and benefits of historic preservation, the city should not focus exclusively on the impact on individual property owners but should also focus on the economic benefits of preservation to the city as a whole. These contributions include improvements to the character of a city, giving it qualities suburbs lack; the role of historic buildings in attracting tourists; the fact that older buildings usually permit lower rents, allowing a diversity of small businesses to survive; and the significant number of jobs produced by rehabilitation activities.

At the same time, potential costs to individual owners requires that fairness be a cornerstone of any preservation program. To ensure fairness a program should bring as much certainty into the development process as possible and assure owners reasonable returns on historic structures. In looking at the economics of preservation, the cost of losing historic structures needs to be considered from the perspective of cumulative loss rather than on a building by building basis; otherwise, the actual effects of lost buildings on the character of an area, and associated economic considerations may be missed.

Given the economics of historic preservation, incentives are needed for three primary reasons:

- to compensate owners who are unfairly burdened by historic properties;
- to counter economic forces against preservation; and
- to provide a process for the systematic restoration of historic buildings.

The city should develop a package of incentives to meet the varying demands created by different situations. Some specific techniques include:

**Tax Abatements.** Tax abatements have been used in a number of cities to encourage preservation of historic structures. Often higher tax assessments serve as a disincentive to improving older buildings. Tax abatements not only remove this disincentive but by offering tax relief for a certain period of time, they make rehabilitation an attractive alternative to new construction. Reduced property taxes can also help secure financing, since reduced operating expenses can lead to lower rents, improving the competitiveness of historic buildings. Since half of all really endangered properties are housing, such a program can serve both preservation and in-town housing objectives.

Austin and San Antonio are good examples of cities where property tax incentives have been used effectively. In San Antonio, for example, historic preservation tax abatements on historic buildings and land they occupy have spurred considerable amounts of re-development and actually increased tax revenues. One caveat is that if one uses tax abatement as an incentive, an annual occupancy permit review or a recapture

program should be used as a mechanism to assure maintenance of the building. If the building is not maintained, taxes could be recaptured.

**Use Value Assessment.** A second incentive related to property taxes involves basing the tax assessment on existing use and income rather than on a higher use that may be allowed under the zoning. A discussion ensued about current activity underway at the state level to try to address this. The major point conveyed was that assessed values should reflect actual income generating value of an historic property rather than the potential of the site. Historic easement donations are also a way of reducing assessed value of a historic property. Atlanta already has a facade easement program in place.

**Investment Tax Credits.** While the Tax Reform Act of 1986 makes investment in historic rehabilitation less attractive to individuals, the full twenty percent tax credit still exists for corporations. Atlanta might initiate a campaign to have local corporations invest in a fund or corporation set up to rehabilitate historic properties. This would allow them to receive tax credits and contribute to Atlanta's future at the same time. It is also possible to combine tax credits for low-income housing and historic preservation.

**Mortgage Insurance and Sales Tax Relief.** Two other incentives might also be considered. First, the city could participate in a co-mortgage insurance program for historic preservation projects. This could promote financing for rehabilitation projects. Second, the city could provide sales tax relief on construction materials for rehabilitation.

In Atlanta, however, this would probably require state action, given the percentage of existing sales taxes assigned to the state.

## **B. Discussion and Agreement**

During the discussion that followed Mr. Roddewig's presentation, agreement was reached on attempting to establish one type of tax abatement for historic properties. Tax abatement zones used by the city to encourage development of new housing in the downtown area could be expanded to encourage the rehabilitation of historic properties into housing. It was recommended by the Committee, with concurrence by the City, that the City seek to amend state enabling legislation to make this possible.

The Steering Committee also found considerable promise in corporate tax credits available for historic rehabilitations and in the potential impact of a preservation expeditor or ombudsman who could provide technical assistance of various kinds to help preserve prominent historic structures. These and other incentive possibilities would be explored at future meetings.

## **IV. Criteria for Designation**

The fourth meeting of the Policy Steering Committee was held on Thursday, January 7th, in the offices of Central Atlanta Progress. Despite a driving blizzard which completely shut down the city, two-thirds of the members of the Steering Committee found their way to the meeting. The success of the meeting required considerable last-minute intervention on the part of the



mediation team, including relocating the meeting to a building which was not locked and notification of each member of the Steering Committee as to the change.

**Recent History of Preservation in Atlanta.** Greg Paxton, Executive Director of the Georgia Trust for Historic Preservation, briefly reviewed Atlanta's experience with the preservation and demolition of historic structures during the last twenty years, including examples of a variety of buildings saved and lost and maps locating remaining historic structures and currently available vacant land in the Peachtree corridor. He urged the Steering Committee to consider the need for a variety of types and ages of buildings in the city to allow small as well as larger businesses to develop and thrive, to seek ways to encourage new development on vacant land rather than on sites currently occupied by historic structures, and to prevent demolition of historic structures for speculative purposes. Developers felt that they were responding to a range of market considerations in selecting sites, and that historic structures frequently occupy premier locations that are more attractive than available vacant land.

**A First Victory.** Based on recommendations made in previous Steering Committee meetings, the city drafted an amendment to the Georgia state legislation enabling the city to establish housing enterprise zones. The Preservation Incentives in the Housing Enterprise Zones initiative would expand tax incentives currently available for new housing to cover renovated historic properties used for housing. The City submitted the amendment to the Georgia legislature as part of its legislative package.

**Criteria for Designating What Should be Preserved.** The discussion began with a presentation by Mr. Frederick Williamson, State Historic Preservation Office for the State of Rhode Island, a former Secretary of the Department of Community Affairs in Rhode Island, and a former member of the National Advisory Council on Historic Preservation. Mr. Williamson offered a range of comments, including the following points:

- preservation and development must work together; both change and continuity are vital to a city's identity and future, they are both in the public interest and mechanisms must be found to make difficult decisions when trade-offs are necessary;
- the purpose of preservation is not to romanticize the past and save only architecturally beautiful buildings but to preserve sites, structures, and areas that represent all aspects of our social, cultural, and artistic heritage;
- the Historic Preservation Act of 1966 serves as a framework for historic preservation at the federal, state, and local levels, it established the National Register of Historic Places, criteria for identifying historic resources, and the section 106 advisory review process governing any federal action affecting a historic property;
- the criteria used to determine eligibility for the National Register of Historic Places are the criteria used by almost all cities in the country to develop a local inventory of historic resources;

- while the federal and state preservation programs provide a basis for determining historic significance, eligibility for certain tax benefits, and some advisory review provisions, the only real protection of historic resources is at the local level where laws can be passed to limit alteration and demolition, and encourage rehabilitation of historic structures;
- most of the action in preservation occurs in the private sector, controlled by local regulation and supported by local programs.

Considerable discussion focused on the proposed demolition of the Margaret Mitchell House. The building, owned by one of the members of the Steering Committee, was an architecturally uninspiring building in which Margaret Mitchell wrote parts of *Gone With the Wind*. Ms. Mitchell herself had referred to the building as "the dump." Members discussed whether association with an important event is sufficient reason to protect a structure even if it is not significant architecturally. They also talked about how to deal with preserving "controversial history." Mr. Williamson, a black historian, spoke specifically to the concerns of Mayor Young and other black leaders concerning the necessity of preserving a complete picture of history -- reflecting all types of places and events -- so that we can use the past as a guidepost for the future. He used Auburn Avenue as a further example. The district, known as Sweet Auburn, served as the commercial center of the black community for much of the city's history. While some black leaders in the city perceived the district as a reminder of the black community's historic poverty, Mr. Williamson emphasized the unique role it played in providing a

transition or first step up for blacks moving from the farms into city life.

#### **The Developer's Perspective.**

Several members of the Steering Committee wished to explore more deeply the economic realities of historic preservation. The mediation team agreed to work with Committee members to arrange a presentation on the economics of an historic building called the Farlinger Building. Built in 1898 as a luxury apartment and fine shops building, the Farlinger Building was an exceptional example of High Victorian Italianate design. The building occupied the triangular block created by the intersection of Peachtree Street and Peachtree Center Boulevard. The site prominently marked the entrance to downtown. The building was owned by one of the Steering Committee members, a developer who wished to demolish the structure to create a plaza for a high-rise commercial development.

**Interim Development Review.** As was agreed at the previous meeting a number of Steering Committee members worked with the mediation team to develop an interim development review procedure. The review procedure was intended to protect historic structures while the Steering Committee developed the comprehensive preservation program. A draft was distributed to members of the Steering Committee. There was no discussion but members agreed a second draft would be prepared for consideration at the next meeting.

## ENDNOTES

1. Members of the Policy Steering Committee included:

- *from City Council:* Myrtle Davis and Carolyn Long Banks (Chair and previous Chair of the Community Development Committee), Ira Jackson (Chair of the Finance Committee), and Debby McCarty (Chair of the Zoning Committee);
- *from the development/business community:* Don Childress (regional partner of Trammel Crowe), Richard Courts (owner and redeveloper of a prominent historic building), Noel Khalil (director of Gilbralter Land, a prominent local minority-owned development firm), Dan Sweat (president of Central Atlanta hill, a business advocacy group), and Sam Williams (executive vice-president of Portman Associates);
- *from the preservation/neighborhood community:* Tim Crimmins (professor and coordinator of the Historic Preservation Program at Georgia State University), Dick Groepper (President of the Neighborhood Alliance, a coalition of historic neighborhoods), Handy Johnson (Preservation Officer at the State Historic Preservation Office), Dan Nall (Chair of the Urban Design Commission), Jim Rollins (a lawyer who had helped draft the city's original historic preservation ordinance), and Eileen Segrest (executive director of the Atlanta Preservation Society); and
- *from the Mayor's Office:* Tom Weyandt (Commissioner of Community Development) and Andrew Young (Mayor of Atlanta).

2. Members of the Resource Group included: Fernando Costa (Director of the Bureau of Planning), Doug Gatlin (Administrative Assistant to the Mayor), Bill Kennedy (Assistant Director of Planning and Zoning Administrator), Liz Lyon (Director of the State Historic Preservation Office), Greg Paxton (Executive Director of the Georgia Trust), Jim Stokes (legal advisor to the development community), and Gail Timmis (Executive Director of the Urban Design Commission).

3. Participants included 15 of the 17 members of the Steering Committee.

4. These issues were identified in Part A of the Case.

5. 15 of 17 members were in attendance.

6. As part of the mediation's team effort to promote a wide range of participation, meetings were hosted by different members of the Steering Committee. Plenary sessions were held in conference rooms owned by the development community, the High Museum of Art, the Atlanta Historic Society, the Martin Luther King Center, Central Atlanta Progress and in historic buildings owned by the city of Atlanta.

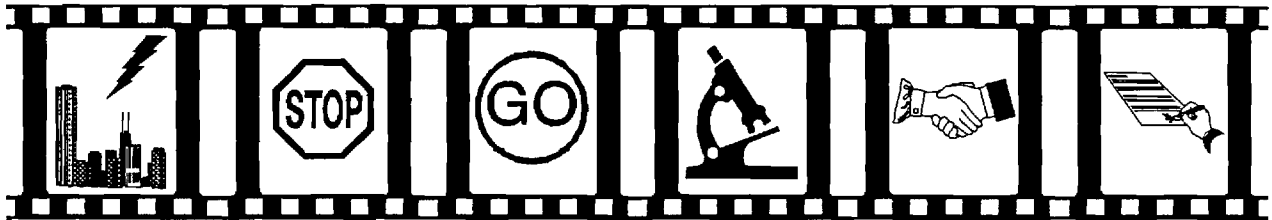
7. 15 of 17 members were in attendance.

# The Atlanta Historic Preservation Mediation Process

## Case C: Negotiating a Consensus



### Stage 5. Consensus Through Negotiation



#### I. Overview

From the first four sessions of the mediation process emerged a clear statement of the goals and a general outline of the substance of the historic preservation program. In late January, the Steering Committee met to begin integrating components of the historic preservation plan and to reach agreement on an interim control ordinance. The transition from general discussions focusing on interests to specific discussions focusing on outcomes proved difficult. Nonetheless, following a raucous February Steering Committee session during which the entire program was outlined and discussed, the goals

and program were committed to a single negotiated text. From this point on, both the pace of negotiation and the depth of discussion increased dramatically. Between the February meeting and the June signing ceremony, the negotiations involved six additional Steering Committee sessions, seven caucus meetings and eight work group meetings.

#### II. From the General to the Specific

The first four meetings of the Policy Steering Committee focused primarily on gaining a shared perception of the issues and an understanding of the different perspectives of the Committee

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This case was written by Michael Elliott and Gregory Bourne. Respectively, they are Director of Public Policy Programs and Executive Director of the Consortium on Multi-Party Conflict Resolution. The Consortium is a dispute resolution program of the Georgia Institute of Technology, the University of Georgia and Georgia State University. Inquiries should be addressed to the Consortium on Multi-Party Conflict Resolution, Georgia Institute of Technology, Atlanta, Georgia, 30332-1055. Telephone number (404)894-2351. Support for preparing this case and associated materials was provided by the National Institute for Dispute Resolution.

members. As such, they remained largely nonconfrontational. As the negotiations moved into the specifics of a historic preservation plan, however, this congeniality became harder to maintain. Differences between groups came increasingly to the foreground.

In this section, we examine the transition from general to specific discussions. This period of transition lasted from the January 27th Steering Committee meeting until the March 3 meeting. Of particular importance to this transition was the development of a draft single negotiated text, the growing concern over the meaning of economic hardship, the attempt to fashion an interim development review process to protect buildings until completion of the negotiations, and the emergence of direct confrontation between Steering Committee members over these issues.

#### **A. Development of a Draft Single Negotiating Text**

A first draft of the single negotiated text (SNT) was developed by the mediation team for the January 27th Steering Committee meeting. The draft, presented in Appendix C-1, was very broad, consisting of six double spaced pages that primarily indicated issues that required agreement. In its early draft form, the SNT provided an overview of the major issues identified by the Steering Committee, Resource Group and technical consultants during the four first meetings.

At its January 27th meeting, the Policy Steering Committee outlined more detailed agreement on the following fundamental issues:

1. *The city of Atlanta should have a comprehensive historic preservation program. This program should seek to:*

- preserve important parts of Atlanta's history, both social and architectural,
- contribute to the economic development and vitality of the city,
- preserve the character and livability of the city's neighborhoods, and
- encourage development that maintains the fabric and diversity of the city's streets and districts.

2. *The preservation program must also be integrated with the overall planning functions of the city. This integration has two aspects:*

- Atlanta should incorporate preservation goals and objectives into its Comprehensive Development Plan, CAS II, and area and neighborhood plans, and
- where possible, historic preservation should be used to promote other broad community goals such as neighborhood stability, economic vitality, lively streetscapes, and in-town housing.

3. *The program should emphasize active rather than reactive approaches to preservation. The*

program should have the capacity to identify threatened buildings and to provide both financial and technical assistance to encourage rehabilitation of valuable structures.

4. *The process developed must be professionally sound, politically accountable and designed to provide a careful weighing of all public costs and benefits.* The process should include a clear means of:

- identifying historic landmarks and districts,
- designating specific landmarks and districts as worthy of protection,
- determining levels of regulatory protection and incentives to be provided for designated buildings, and
- evaluating whether alteration or demolition of a building (designated for landmark protection or located in a district so designated) is in the public interest.

5. *New policies and programs should be integrated with the effective elements of the existing preservation program.* The following elements should be included:

- the program should include a landmarks ordinance that specifies rules for nomination, designation, alteration and demolition. This ordi-

nance would thereby make a distinction between districts (as a collection of buildings or landscapes) and landmarks (individual buildings of historic or architectural significance).

- the program must include an array of financial incentives, including a revolving loan fund and tax abatements to encourage rehabilitation and provide compensation to owners of historic properties when necessary. These incentives will need to be developed.
- National Register criteria should be used to identify historic structures. These criteria have considerable advantages that cannot be duplicated locally, including legal and professional support at the national level.

Based on this meeting, the SNT was significantly revised. While remaining sketchy, the text (partially presented in Appendix C-2) enabled the Steering Committee to register progress, as well as to note specific areas of disagreement remaining. Over time, the document forced the Committee to turn general statements of agreement into specific alternatives for action.

To refine the SNT further, Steering Committee members divided up into work groups to focus on issues related to three major areas: the identification and designation of historic properties, financial incentives and institutional

support for preservation, and administration of preservation policy and programs. Following the February 16th meeting, each group met once to specify proposals for the March 4th meeting.

The Identification and Designation Task Group explored alternatives for identifying, nominating and designating historic properties. The group agreed to use National Register criteria to identify historic properties. Several models for nominating and designating the properties were proposed. On one extreme, all identified properties would automatically be designated to a single category of protection without further review. On the other extreme, identified structures and districts would be nominated for inclusion in one of five categories of protection (Landmark Sites and Districts, Historic Conservation Sites and Districts, and Neighborhood Conservation Districts) by the Urban Design Commission, with designation being conducted by City Council. The categories differed as to the level of regulation and economic incentives that would be available to them.

The Incentives and Institutional Supports Task Group developed a matrix relating incentives and supports to specific goals. The group sought to reinforce market forces to preserve and restore historic properties, to reduce institutional and regulatory forces that discourage historic preservation, and to compensate owners unfairly burdened by historic preservation regulations. The economic incentives identified included: tax abatements, tax credits, interest rate underwriting, rebate of sales tax on materials used for rehabilitation, donation of easements, mortgage guarantees, and freeze tax assessments. Potential

institutional supports included an endangered buildings program, a formalized system for communicating with owners of historic properties, a revolving loan fund, waiver of open space requirements if historic structures were preserved as part of new developments, and relocating city offices into historic buildings.

The Administration Task Group examined the role of City Council, the Mayor's Office, Urban Design Commission, Bureau of Planning, Bureau of Buildings, property owners, developers, residents and preservationists in the administration of preservation policy. In addition to a careful discussion of how to adapt Atlanta's current designation system (one reserving final approval for designations to City Council), the group also examined the systems used in San Francisco and New York. In San Francisco the appropriateness of a designation is based on a quantitative evaluation of the building's characteristics. The quantitative criteria are applied by the Heritage Foundation and city planning staff, and the results assign a building to a particular category. In New York, on the other hand, a Landmarks Commission was established representing a cross section of interests similar to but broader than the Urban Design Commission in Atlanta. The Landmarks Commission has the sole responsibility for the nomination and designation processes. Additional City approval is not required.

#### **B. Economic Hardship Associated with Historic Buildings**

Developers on the Steering Committee expressed concern that meetings focused too extensively on

historic preservation and not enough on alternative development options and market consequences of regulation. A portion of the March 4th Steering Committee meeting was therefore dedicated to a review of the Farlinger Building. The historic building was owned by Portman Associates, which was represented on the Steering Committee by the company's executive vice-president. The developer wished to demolish the building to provide room for a plaza fronting a highrise development.

Built in 1898 as a luxury apartment house with specialty shops located on the first story, the four story structure was an exceptionally fine example of High Victorian Italianate styling. The building followed the contours of the triangular block created by the intersection of Peachtree Street (Atlanta's premier commercial street) and Peachtree Center Boulevard.<sup>1</sup> The site was especially important, as it sat at a highly visible gateway to the downtown.

Warren Snipes, Vice-President for Development with Portman Associates, presented an overview of the problems involved in developing a site with an existing structure, using the Farlinger project as an example. High land costs, structural problems associated with the building, difficulties meeting zoning and building code requirements, percent of usable space realizable, parking requirements, and the needs of future tenants all contributed to above average costs and below average revenues. While Portman Associates generally sought to obtain returns on investment sufficient to support 100% financing of the project, or to provide 12 to 16 percent on equity, the pro-forma developed by Portman

Associates for the Farlinger Building showed a negative return on investment. In Mr. Snipes view, the city would be unable to provide adequate incentives to make this project economically viable.

From the preservationists' perspective, the financial feasibility of saving and rehabilitating the Farlinger - and other similar historic structures located on large redevelopment sites - should be judged not in terms of the rate of return on the individual structure but in terms of the financial feasibility of the entire redevelopment project. In particular, the purchase price for the building was inflated considerably by the proposed high rise development. Preservationists believed that the high land value caused by the redevelopment project should not be used to evaluate the viability of the Farlinger Building. Instead, more intense development could be placed on other parts of the site and the historic building could be saved as part of the larger project. Developers, on the other hand, pointed out that this would require the investor in the larger project to accept a part of the project that was not economical, although in some cases it might be perceived as an amenity that enhanced the attractiveness of the over-all project.

Through this discussion, the differences between the development community's perspective on what constituted economic hardship was at considerable odds with the perspective of the preservation community. While both agreed that the most effective incentives or other actions affecting the economics of preservation would be those that affect land and financing costs, they nonetheless disagreed significantly on



what basis a project's economics should be calculated.<sup>2</sup>

### **C. Interim Development Control Ordinance**

The discussion of an interim development control process was first introduced at the second meeting of the Steering Committee held in October. The purpose of the development control process was to provide protection to historic structures during negotiations over the comprehensive program. To maintain the focus of the Steering Committee and its meetings on the development of the comprehensive program, the mediation team, with the concurrence of the Steering Committee, decided to work on this issue outside the regular meetings. Based on input received from committee members, an interim development control process was drafted and circulated after the January 7th meeting to provide everyone with the opportunity for further comment.

During the January 27th meeting, the slated discussion of the control process was delayed because a blizzard had prevented some committee members from attending. At the end of the meeting, however, a discussion by the remaining members ensued with the understanding that those absent had contributed significantly to the current draft. Furthermore, all member would have the opportunity to review and comment on any subsequent changes. Doug Gatlin, the mayor's assistant, indicated the Mayor's interest in enacting such an interim control process while the negotiations continued. Members of the City Council concurred that an Administrative Order from the Mayor would be

the most effective mechanism for putting the process in place. Figure 1 presents the revised draft, as recommended by committee members.

During the February 16th meeting, however, discussion on the Interim Development Control Ordinance had to be postponed once again. While 15 of the 17 members were present, the representatives of the development community did not feel prepared to agree to the revised wording, nor were they prepared to offer alternative wording. While not explicitly stated by these representatives, the development community was becoming increasingly unsure of its willingness to support the interim control process. This uncertainty became obvious at the March 4th Steering Committee meeting when the developers again were unwilling to commit to a development control process. The preservation community exploded.

### **D. From Congeniality to Confrontation**

The March 4th meeting of the Steering Committee provided a glimpse at the role of emotion and confrontation in mediation. The meeting was conducted at the Gilbert House, a historic residence owned by the city. Because of the constraints on the size of the rooms, the participants were physically seated more closely together than at any previous meeting. As such, the meeting started with an air of intimacy, in which the Steering Committee (with very few members of the public) could talk to each other in a very direct way.

An interim development review process is hereby established, effective the date of this Order, for buildings within the city of Atlanta that are National Register eligible as listed on the attached. Based on surveys commissioned by the Georgia Department of Natural Resources Historic Preservation Section, these buildings meet criteria established by the U.S. Department of Interior for designation of buildings to the National Register of Historic Places. This Order is enacted, not to restrict appropriate development by property owners, but to ensure adequate review of requests for demolition which may reduce the inventory of historic properties in Atlanta. More specifically, it is intended to prevent loss of buildings due to speculation and to encourage developers to preserve historic structures within proposed developments whenever possible.

Property owners can qualify to receive a demolition permit for a building identified on the attached list, if the following conditions are met:

#### Phase 1

- All necessary zoning changes or variances are obtained from the City.
- Information in support of the demolition request is submitted to the Urban Design Commission, including reasons why a site with a historic structure was chosen for development and why preservation of the existing structure is not capable of earning a reasonable economic return. Plans for the new development should include site plans and schematic drawings indicating the building's floor area, height and ~~visual~~ impact on ~~surrounding areas~~ the historic structure or the surrounding historic district. The developer or owner will also present an analysis of the alternatives to demolition considered. The UDC will make a preliminary demolition permit recommendation subject to completion of phase 2.

#### Phase 2

- All necessary city approval of construction plans will be obtained. The developer will have title to the property, or certification that it will be transferred at construction loan closing.
- All financing is in place. If financing is likely to be contingent upon receipt of a demolition permit, the property owner may request that the other elements of the review process be conducted. If all other provisions of the review process are satisfactorily met, the City will certify that the permit is approved for issuance based on lender assurances of subsequent financing and the receipt of a building permit.

All information required by this Order shall be filed with the Director of the Bureau of Buildings with the application for demolition permit. The Director of the Bureau of Buildings shall transmit the information to the Urban Design Commission which must take action within 30 days of receipt of the information. ~~(All information pertaining to the demolition request must be submitted to the Urban Design Commission for their recommendation.)~~ If new information justifying the demolition is presented to the city after the Urban Design Commission recommendation is made, the new information must also be made available to the Commission for additional review prior to a final decision by the Mayor concerning the permit. Action by the Urban Design Commission shall constitute a recommendation to the Mayor who shall make the final decision on issuance of the demolition permit.

Nothing in this order shall relieve a developer or owner from complying with all other ordinances and regulations with regard to demolition. This Order will be in effect until adoption of the comprehensive historic preservation program currently being developed by the City, or ~~(September 1, 1988)~~ one year from issuance of this order, whichever occurs first.

Figure 1: Revised Interim Development Review Ordinance

Soon after the meeting began, a preservationist asked if consensus had been reached on an interim development control process. Despite considerable effort by the mediation team to broker an agreement, the issues had not been resolved. As with the previous meeting, the preservationist asked the representatives of the development community why they had not been able to come to terms. A developer started to answer. Before he could say much, however, the preservationist exploded. In an angry voice, the preservationist noted that the idea of the interim development control process had been first raised five months ago. Throughout that time, the development representatives had given tacit support to the establishment of such an interim process yet had repeatedly blocked agreement through their unwillingness to make a commitment. He accused the development representatives of negotiating in bad faith, said that as far as he was concerned the negotiations were a sham and (having just driven five hours to return to Atlanta for this meeting) exclaimed that it "felt like such a worthless trip! Why did I do it? For what? For what?" He then threatened to walk away from and end participation in the negotiations.

The reaction on the part of the developers to this outburst was more controlled, but equally angry. The outburst had been accusatory, and the developers argued that they had never agreed to support an interim development control process and that the more they had examined the implications of the process, the more uneasy they had become. They as much as said that the preservationists were pushing their own agenda at the expense of the process.

As the exchange started to escalate, the mediators interrupted the argument to state that what was happening was extremely important to consensus building, that the group needed to address these real points of contention directly, and that if the underlying concerns could be laid openly on the table, significant progress could be made.

As discussions continued, a number of people expressed serious concerns about the failure to reach agreement on interim procedures after months of discussion and the appearance that agreement was close. The developers felt that while they had not taken this issue as seriously as the preservation community, their resistance came from their conviction that an interim development control process should not be established until the negotiations were complete. Furthermore, a list of specific buildings to be protected should be developed. The proposal then under review, which would protect all buildings currently listed by the Urban Design Commission inventory, seemed excessive to the developers.

It became clear that many of the assumptions and provisions contained in the interim development control were at the heart of the negotiations. Ensuing discussions allowed Steering Committee members to delineate these concerns and differences more explicitly. In particular, developers expressed the following concerns about the proposal outlined in Figure 1:

- review of "visual impact" provided inappropriate control over new construction;

- construction plans were costly and could not be efficiently completed before demolition of existing structures and site clearance;
- demolitions of historic structures should be allowed under conditions of a threat to public safety or to remove a dilapidated historic structure, even if a new project is not envisioned;
- demolition of structures and site clearance before transferral of property title to the developer should be allowed to provide the developer with increased financial flexibility; and
- the requirement that financing be in place should be revised since determination of exactly when this occurs is difficult and since financing is often contingent upon obtaining a demolition permit.

A city representative asked whether all Steering Committee members agreed with the general intent of an interim control ordinance designed to delay demolition of historic structures until a developer is ready to go with a replacement project. After some discussion, members generally agreed that development control guidelines should be established to delay demolition of an identified historic structure until:

1. a developer was actually ready to proceed with a replacement project; or
2. a serious problem of public safety or neighborhood blight could be

demonstrated to exist in connection with the historic structure.

Members from the business and development community agreed to propose an alternative "check list" for the control procedure. A Work Group was established to review the ideas before the next Steering Committee meeting. The group consisted of six members of the Steering Committee<sup>3</sup> and four members of the Resource Group<sup>4</sup> distributed as follows:

- for the city: a City Council member, the Commissioner of Community Development, the Administrative Assistant to the Mayor, and the Zoning Administrator;
- for the development community: the executive vice-president of the most prominent development firm in the city, the regional partner for a national development firm, and a development lawyer; and
- for the preservation community: a professional historian and preservationist, a development lawyer and the Executive Director of the Urban Design Commission (a city agency that openly promoted historic preservation).

### E. Transition Completed

The March 4th meeting at the Gilbert House, therefore, marked a dramatic turning point for the mediation process. Three major objectives had been accomplished. First, the Steering Committee had moved dramatically to increase the specificity of agreements

being developed by the group. While the group had previously attempted to create agreement around general principles, it was now seeking to fine-tune policies that specifically addressed the interests of each of the groups represented. Second, while members of the Steering Committee had until now reacted cautiously to statements made by other members, they were now willing to state clearly their objections and to be forthcoming with alternative ways of resolving differences. Third, the Steering Committee had, under the guidance of the mediators, created a structure for joint problem solving that would be of enormous benefit throughout the remainder of the process. The working group established contained a mix of individuals willing to both frankly clarify differences and boldly pursue creative alternatives to resolve their differences. The group would provide a vehicle for resolving all the most difficult issues in the future.

This transition, while dramatic, was not unexpected. The mark of a successful mediation process is the ability of the negotiating team to effectively resolve differences in detail and well as in principle. The development of the draft single negotiated text provided a context for the Steering Committee to work towards greater specificity. The conflict over the interim control process (or any other issue) could not be resolved except by increasing the specificity of the agreement. Finally, the consistency of facilitation and mediation in the early period of the negotiations created a level of trust amongst members of the Steering Committee that increased their readiness to express their interests bluntly, and at times emotionally.

### **III. Building Agreement**

#### **A. The Process of Negotiations**

The Steering Committee sessions provided a forum to work out general policy directives and to provide general feedback on the single negotiated text as it evolved. Following the March 4 Gilbert House meeting, the Steering Committee convened in plenary session on three occasions (March 31, May 17 and June 29). These sessions were open meetings. While discussion was largely limited to the 17 members of the Policy Steering Committee with input from members of the Resource Group, members of the general public attended in increasingly larger numbers. The detail work associated with revising the text, however, was conducted in caucuses and work group meetings.

Caucuses with each of the three interest groups were initiated immediately following the March 4th Steering Committee meeting held at the Gilbert House. Between March 14 and March 18 (and again in mid-April), the mediators met with each group. Caucuses allowed the representatives of single interest groups to explore sensitive issues and possible text refinements to the single negotiated text with the mediators alone. Each caucus (i.e., government, business and preservation) also had at least one member of the Resource Group that took responsibility for conducting further analyses for the caucus and for providing more detailed feedback to the mediators between meetings. The mediators took responsibility for altering the single negotiated text in response to this feedback. Difficult issues were referred to the working group for further negotia-

tions and discussed one-on-one with participants.

The work group was created to facilitate more direct negotiations between the three interest groups. With 17 members of the Policy Steering Committee, seven members of the Resource Group and an average of 15 members of the general public and press, the Plenary Sessions did not provide the environment for extensive face-to-face negotiations. Between mid-March and June, the work group met on six occasions to work out the specifics of agreements.

As noted earlier, the work group involved ten members of the Steering Committee and Resource Group and provided a more conducive forum for negotiating difficult issues. The most frank discussions, the most carefully crafted compromises, and the most creative solutions came from this group. The group focused primarily on clarifying the meaning of economic hardship, establishing a system of redress for conditions of economic hardship, creating an interim ordinance to govern alterations and demolitions of historic structures until implementation of the program, and recommending permanent designations for virtually all of the income-producing historic properties in the central business areas of Atlanta.

Throughout this consensus building period, the mediation team relied heavily on the skills and influence of the members of the Steering Committee and Resource Group that were most concerned about the successful resolution of the conflict. Several leaders, such as the Mayor and the President of Central Atlanta Progress, believed that despite

the obvious difficulties of reaching consensus, such consensus was essential if future conflict was to be minimized. Thus, in April, when members of the Steering Committee were facing their differences squarely but had not yet reached many agreements, the Mayor sent out a letter of encouragement (see Figure 2). The mayor's administrative assistant was very active in trying to broker an agreement. The President of CAP worked to keep the development and business representatives focused on the larger question of the public interest. Other members played similar roles in the preservation caucus. This co-facilitation by Steering Committee members was essential to its success and was strongly encouraged by the mediation team.

Questions requiring further analysis continued to arise as participants delved more deeply into issues. Analyses were conducted locally by either the mediation team or by members of the Resource Group. Examples of locally generated analyses included an appraisal of the impact of various definitions of "economic hardship" and "reasonable return" on historic preservation programs across the country, an analysis of rates of return in several rehabilitated buildings in Atlanta, an assessment of previously demolished historic structures and the disposition of the land thus cleared, and a display of the location and physical characteristics of structures currently designated under the existing preservation ordinances. Graphic displays of information proved most useful in providing participants with tangible examples and visual relationships relevant to clarifying and resolving these issues.

Dear Member:

I know each of you is aware of the value and importance I place on economic development in Atlanta. We need to continue to promote the development of new business, particularly in downtown Atlanta, for the good of the City, the region and its residents. At the same time, I remain concerned about the way confrontations involving historic properties are currently resolved, and am committed to improving the existing laws as soon as possible.

I want to restate my interest in the outcome of the mediated planning effort with which we are currently involved. The current process is simply not satisfactory to the City. It is essential that we outline a process whereby the City can more efficiently and effectively deal with the type of confrontation described above. Furthermore, improved guidelines should benefit all the impacted parties.

The opportunity for developing such guidelines through mediated planning is coming to a close. The City, of course, would like to have consensus on all major aspects of the process, if possible, since having a process that incorporates the interests of the City, the business community and preservation advocates is our goal. In either circumstance, the City must proceed with its initiative to improve this area of City government.

My intention is to propose to city council a process for resolving this issue based on the progress achieved through the mediated planning activities, which if ended today would be significant. If issues remain for which consensus can not be achieved, the City will do its best to adopt a program that reflects the efforts put forth by the Policy Steering Committee.

I look forward to our final meeting on May 17 and anticipate a ceremony highlighting the progress we have made on this issue.

Sincerely,

Mayor Andrew Young

**Figure 2.** Letter from Mayor Young to members of the Steering Committee.

Other issues, however, required more extensive analysis by outside neutral experts. In addition to three papers commissioned early in the process<sup>5</sup>, four additional studies were commissioned to help resolve specific issues of contention. These included reports on creative financing<sup>6</sup>, designation criteria<sup>7</sup>, revolving funds<sup>8</sup>, and the fiscal impact of tax incentives for historic preservation<sup>9</sup>. With the exception of the fiscal impact paper, most of these studies were designed to assist the implementation team in refining the work of the Policy Steering Committee. The

fiscal impact paper, on the other hand, contributed directly to the debate over the reasonableness of city tax incentives.

### **B. The Development of the Single Negotiated Text**

An updated SNT was prepared in early April. This version of the SNT described the basic components of the comprehensive historic preservation program in significantly greater detail (see Figure 3). It improved upon the previous document by incorporating input

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Figure 3. Outline of SNT as revised on April 8.

from the March caucuses, the work group meetings addressing demolition review issues and the March 31 Steering Committee meeting.

By this time, strong consensus had been built around the overall structure of the comprehensive historic preservation program. The Steering



Committee strongly supported the need to:

- preserve and maintain sites and structures that serve as significant visible reminders of the city's social and architectural history,
- employ historic preservation tools that contribute to the economic development and vitality of the City,
- preserve the character and livability of Atlanta's neighborhoods and strengthen civic pride through neighborhood conservation,
- maintain the fabric and diversity of Atlanta's streets and districts, and
- integrate historic preservation more fully into Atlanta's city planning system.

Strong agreement existed on principles such as these either because (1) the negotiating parties held common interests (e.g., all members of the Steering Committee wished to reduce future conflict between historic preservation and development regulations and therefore supported a more complete integration between the city's historic preservation system and the city's planning and zoning system) or (2) the negotiation parties shared a common sense of the public interest (e.g., all members of the Steering Committee believed that protection of the vitality of Atlanta's residential neighborhoods was in the public interest and therefore supported historic preservation programs that would contribute to that vitality).

In keeping with these basic goals and perspectives, the Policy Steering Committee developed a clear sense that the Comprehensive Historic Preservation Program needed to consist of the following elements:

- a process for identifying, nominating and designating historic properties and districts;
- several categories of historic properties and districts that would provide different degrees of protection and incentives to historic structures based on the importance of the structures to the city;
- city and state programs to support preservation efforts;
- a system for integrating historic preservation into comprehensive planning;
- an implementation plan that explicitly delineated the changes needed to implement the new historic preservation system; and
- a transition plan which explicitly delineated interim controls governing historic structures until the new system could be fully implemented.

At the same time, important areas of disagreement were obvious. The five most important areas of contention at this time included:

1. *The levels of protection associated with the various categories of historic protection.* While general agreement existed over the need

for a designation system that protected exceptional buildings as landmarks and prominent buildings as historic sites, as well as to protect historic districts as landmark, historic or urban conservation districts, the specific regulations to be applied to each category remained controversial.

2. *Standards of what constituted economic hardship.* While much progress had been made on the issues pertaining to demolition review and controls, the task group was having considerable difficulty creating guidelines acceptable to each party.
3. *Rules governing the treatment of properties purchased under the old system.* The Committee remained uncertain as to the appropriate approach to implementing the Comprehensive Historic Preservation Program, especially during the transition from existing to new City policies and guidelines.
4. *The interim development control process.* The Committee did not yet agree on a mechanism for protecting buildings between the time consensus was reached on a comprehensive historic preservation program and its adoption by City Council.
5. *Incentives and the need for more detailed administrative procedures.* These issues had not received as much detailed attention as the other sections of the text. Considerable work was needed on these topics.

As consensus was built, the single negotiated text continued to be revised. Negotiations occurred over virtually every aspect of the document.

To illustrate these negotiations, two issues are described below. These issues include the development of the interim development control process and the determination of what constitutes an economic hardship. For brevity and clarity, other equally important issues are excluded.

### C. The Interim Development Control Process

As became apparent at the March 4 Gilbert House meeting, institution of an interim development control process was highly controversial. As discussed above, the Steering Committee established a Work Group specifically to deal with this issue. This group quickly refocused the issue away from protection during the mediation process (which was scheduled to end in three months) to protection after the Steering Committee reached agreement. The comprehensive historic preservation program being fashioned by the Steering Committee would require a state constitutional amendment, state enabling legislation, and adoption by City Council. Implementation would require a full year. During this implementation period, an interim development control process would be needed to protect historic resources. The Steering Committee therefore worked to write such an ordinance.

As of late April, three different options for interim controls were still under discussion:

1. *Preferred by preservationists:* Establish a moratorium on demolition of any building listed on the existing inventory of historic structures until one year after City Council adopted the full ordinance. This would protect over 200 historic buildings for sufficient time to designate many of them under the new ordinance.
2. *Preferred by developers:* For most buildings on the inventory, maintain current rules until implementation of the new ordinance. The current process left the decision to issue a demolition permit in the hands of the mayor. For a select few buildings, provide additional protection.
3. *A compromise promoted by the City:* Allow issuance of a demolition permit to any building in the existing inventory if the owner of the land obtained a foundation permit for a replacement building. This was equivalent to the protection recommended for properties designated as "historic sites" in the new program.

All members agreed that some kind of interim protection was needed and would require adoption by City Council. Members disagreed on which buildings the control process should cover, how long the interim provisions should be in place and whether a sunset provision was needed.

By early May, a fourth proposal for creating the interim control process was emerging from the Work Group. While attempting to resolve a related issue (i.e., the economic hardship issue), the Work

Group developed a list of commercial buildings located in the central business district that were likely to be subject to the ordinance. Based on an evaluation of both a building's historic importance and the development pressure on the building, the group developed a tentative assignment of buildings to landmark or historic categories of protection. As shown in Figure 4, preservationists and developers were able to agree on the appropriate designation of most buildings. Properties outside the central business district, as well as non-profit and public buildings within the district, were not included on list because they were neither as controversial nor as likely to be demolished.

The process of selecting the buildings, while difficult (especially for the preservationists<sup>10</sup>), nonetheless occurred efficiently. The Work Group proposed that the buildings and districts identified be incorporated into the Steering Committee's agreement. The list would represent prototypical buildings for each of the categories. Listed buildings would be the "first wave" to be pushed through the nomination/designation process, in the categories indicated. This list was later refined, and a series of prototypical commercial and residential districts added for similar consideration.

The development of this list also laid the foundation for resolving differences concerning the interim demolition control process. In early June, the Work Group agreed upon the following guidelines:

1. Protection would be afforded to all downtown and midtown commercial buildings identified by the

<b><u>Proposed Landmarks</u></b>	<b><u>Proposed Historic Sites</u></b>
Dixie Coca-Cola Bottling Co. Brookwood Station Garnett Station Place J. P. Allen Southern Bell (AT&T) Bona Allen Building Candler Building Carnegie Building Crum & Foster Building Davison's/Macy's Glenn Building Hurt Building W. W. Orr Building Rhodes-Haverty Building Regenstein's Ponce de Leon Methodist Church Academy of Medicine Capital City Club Spring Hill The Varsity Luckie Street Y.M.C.A. The Castle Gay House Mitchell King House Peters House William Green Raoul House Rufus M. Rose House The Wimbish House Biltmore Hotel Belvedere Cox-Carlton Hotel Granada Apartments Palmer House Apartments Reid House Winecoff Hotel Ponce de Leon Apartments Georgian Terrace Hotel Bass Furniture Building Rich's Store for Fashion Cottongim Building	Georgia Power Substation Brother Juniper's Commercial Row C & S Branch Bank Kress Building Rager Industrial Sewing Machine Building Saul Brothers & Co. Rhodes Center Jett House Picture House, Inc. 1106 West Peachtree 652 West Peachtree Blackstone Court Apts. Winwood Apartments Crawford W. Long Hospital Atlanta Life Insurance Co. Odd Fellows Building Flatiron Building C & S Bank Building Georgia Railway & Power Grant-Prudential Building Healey Building William Oliver Building Western Supermarket Muses Building Concordia Hall Terminus District Mark-Connally Building Bookhammer/Mirror Building Rich's-Grant Building Original Bass Dept. Store Bldg.
<b><u>Proposed Landmark Districts</u></b>	<b><u>Proposed Historic Districts</u></b>
Sweet Auburn and Martin Luther King Biltmore Block Fairlie Poplar Hotel Row	Crawford Long Hospital Grady Memorial Hospital
	<b><u>Buildings Remaining Controversial</u></b>
	Medical Arts Building Olympia Thornton Building Atlanta Union Mission Imperial Hotel Peachtree Manor

Figure 4. May 13 working list of buildings with probable designations.

Steering Committee on its May 17th meeting (an update of the list presented in Figure 4) as well

as all buildings and districts previously designated as Urban Conservation and Development

properties. Protection would therefore be afforded to 150 of the 235 buildings and 27 of the 43 districts *identified* by the Urban Design Commission as historic, including many that had never been officially *designated* by the city as historic.

2. All properties proposed as Landmark Sites on the list would be protected as Historic and Cultural Conservation Districts under existing HCC regulations. These regulations provided a high degree of protection to these buildings. As discussed in Case A, alteration or demolition of these buildings required a Certificate of Appropriateness from the Urban Design Commission.
3. All other properties either on the list or previously designated as Urban Conservation and Development properties would be protected under the new regulations designed for Historic Sites. Buildings for which demolition permits had been requested before May 17, 1988 were excluded from this protection. As noted above, Historic Sites protection required that a foundation permit for a replacement building be obtained before a demolition permit for the protected structure could be issued.
4. The Ordinance would have a sunset of July 1, 1989.

#### **D. Economic Hardship Associated with Decline in Property Values**

In many areas near downtown Atlanta, high-density zoning allowed for floor-to-area ratios (FARs) of up to 25. Land prices of properties within these areas had increased dramatically as downtown and midtown properties became more desirable. For many recently sold historic properties located in these areas, the property was purchased for redevelopment to more intense uses allowable by zoning. Developers were clearly concerned that if such a property had sufficient historic significance to be designated a landmark, a real problem of economic hardship would exist.

After full implementation of the program, provisions which linked historic preservation to the City's planning and development objectives would reduce the likelihood of this condition occurring. In the short run, however, the Steering Committee as a whole was concerned about the fair treatment of property owners caught in the transition from existing zoning and development guidelines to new guidelines which incorporate more stringent historic preservation provisions. Despite a shared sense of concern, however, members of the Committee differed significantly as to the appropriate way to address this problem. Suggestions made for resolving this issue included:

- create incentives that would apply only to property owners in this situation, including tax credits for a new development that preserved an historic structure, use of the historic property for the 15% open space provision required in Special Public Interest Zones<sup>11</sup> which would encourage building around or adjacent to historic structures, or a facade program where the

facade would be incorporated into the new development;

- at the point of nomination, assess the economic viability of the property; and
- upon a request for a certificate of appropriateness to demolish a designated building, conduct a case-by-case analysis of reasonable economic return.

While members of the Steering Committee all sought to improve incentives, the point and type of evaluation which would indicate a condition of economic hardship was highly controversial. In the original language of the SNT, the provision for economic hardship was as follows:

*In every case in which the commission shall deny a certificate of appropriateness, the commission shall find that the structure of property as it exists or as it is permitted to be modified under this article and the HC regulations is capable of earning a **reasonable economic return**; provided, however, the burden of proving that the property and structures are not capable of earning a reasonable economic return shall be upon the applicant.*

As of early April, this original text suggested a consensus that something needed to be done, but virtually no consensus as to what action to take.

An examination of the economic hardship provisions of other major cities across the United States offered little help. Virtually no city had specifically

defined what was meant by economic hardship. In most cities, hardship was determined on a case-by-case review by the commission responsible for historic preservation. New York City defined economic hardship as any rate of return less than six percent. The preservation officers of many of these cities felt that their inability to develop a more objective process of evaluation was damaging preservation efforts.

The Work Group was able to reach general consensus that the Urban Design Commission should issue a certificate of appropriateness for demolition or for alterations under conditions of economic hardship. Further, the group found it relatively easy to state the types of information that the property owner should submit to the Urban Design Commission for its review (see Figure 5). They also agreed on the necessity of making economic incentives available to the applicant through city run programs. The development of the details of how economic hardship would be determined, and the relative power of the Urban Design Commission and the property owner in this determination, proved significantly more difficult. As an indication of the difficulty of these decisions, the group spent considerable time and energy debating the semantic distinction *allowing for reasonable economic return* or *prohibiting economic hardship*.

After extended discussions, the group realized that the uncertainty surrounding future market conditions and the unique features of individual buildings made it impossible to specify rules that could apply to all future requests for certification of economic hardship. Not only will the reasonableness of various

To demonstrate evidence of economic hardship, an applicant shall submit to the Urban Design Commission evidence relevant to the following issues:

1. The applicant's knowledge of the landmark designation at the time of acquisition, or whether the property was designated subsequent to acquisition.
2. The current level of economic return on the property as considered in relation to the following:
  - a. the amount paid for the property, the date of purchase, and party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant and the person from whom the property was purchased.
  - b. the annual gross and net income (if any) from the property for the previous three years; itemized operating and maintenance expenses for the previous three years; and depreciation deduction and annual cash flow before and after debt service, if any, during the same period.
  - c. remaining balance on any mortgage or other financing secured by the property and annual debt-service, if any, during the prior three years.
  - d. real estate taxes for the previous four years and assessed value of the property according to the two most recent assessed valuations.
  - e. all appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property.
  - f. form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or both.
  - g. any state or federal income tax returns on or relating to the property for the past two years.
3. Any listing of the property for sale or rent, price asked, and offers received, if any, within the previous two years, including testimony and relevant documents regarding:
  - a. any real estate broker or firm engaged to sell or lease the property.
  - b. reasonableness of the price or rent sought by the applicant.
  - c. any advertisements placed for the sale or rent of the property.
4. The infeasibility of profitable alternative uses for the property as considered in relation to the following:
  - a. a report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation.
  - b. estimate of the cost of the proposed construction, alteration, demolition, or removal, and an estimate of any additional cost that would be incurred to comply with the recommendation and decision of the Urban Design Commission concerning the appropriateness of proposed alterations.
  - c. estimated market value of the property in the current condition; after completion of the proposed construction, alteration, demolition, or removal; and, in the case of a proposed demolition, after renovation of the existing property for continued use.
  - d. in case of a proposed demolition, the testimony of an architect, developer, real estate consultant, appraiser, or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property.

**Figure 5.** Information required of property owners in applying for a permit to demolish or alter a Landmark Building.

rates of return vary with market conditions, but approaches to calculating the rates would vary as financing and

partnership deals change over time. The group therefore shifted its attention to the development of a reliable procedure

for determining economic hardship on a case-by-case basis.

A breakthrough occurred in early May, with the suggestion that an independent tribunal be used to decide issues of economic hardship. The three-member Economic Review Panel would serve as an arbitration board. Expertise in real estate development or financing was required. One member of the Panel would be selected by the Urban Design Commission, one by the property owner and the third by the first two arbitrators. The ordinance was to provide clear direction concerning the question the Panel was to resolve.

Following the development of this idea, virtually all discussion focused on refining the process. The Work Group and the Steering Committee focused on the relationship between the Panel's decision on economic hardship and the Urban Design Commission's certificate of appropriateness process. On one extreme, the Panel's decision would be advisory to the UDC, while on the other extreme the Panel's decision would be appealable only to the courts.

By early June, the agreement on Economic Hardship shown in Appendix C-3 was nearly complete. If demolition of a Landmark for reasons of economic hardship was requested, the request would be given to the Economic Review Panel for their deliberation as to the merits of the request. Upon completion of the Panel's deliberations, the finding would be forwarded to the UDC for their action. If the Panel found that no economic hardship existed, the UDC could deny issuance of the Certificate of Appropriateness. The property owner, however, could appeal this decision to

Superior Court. If the Panel found that an economic hardship did exist, the UDC could (1) engage in preparing a plan to improve the economic viability of the building (as outlined in the historic preservation program) and submit this plan for review by the Economic Review Panel, (2) issue the Certificate of Appropriateness or, (3) override the Panel by a supermajority vote (three-quarters majority of a quorum) and deny issuance of the Certificate of Appropriateness. The property owner could appeal the latter decision to Superior Court.

The use of the override was restricted to situations where the UDC could document that the Panel's finding "was based on an erroneous finding of a material fact, or that they acted in an arbitrary manner." To override the decision of the Economic Review Panel, the UDC must document the information and conclusions on which the decision was based.

Part of this agreement by the Work Group was conditioned on the reconstitution of the Urban Design Commission. The reconstituted UDC would have 11 members (down from the existing 16) with membership to include two architects, a historian, an artist, landscape architect, real estate expert, neighborhood representative, planner, developer, lawyer and preservationist. Furthermore, program guidelines stipulated that practicing, recognized members of the professions outlined should fill those positions. The UDC would be reconstituted in a timely manner to reflect the distribution of professionals proposed.

Equally importantly, the agreement was conditioned upon development of a



list of commercial buildings to be designated as Landmark and Historic Sites. As the discussion of economic hardship evolved, members of the working group began to wonder exactly what buildings were likely to create economic hardship if designated. A developer suggested that if the building was not in a position to be redeveloped within five years, it was unlikely to pose a major problem. The mediation team had previously developed a six-foot tall map of the business district with a picture of each historic building located on its appropriate site. The Working Group discussed each building, with preservationists noting the historic merits of each site and developers noting its economic potential. Over two meetings, the set of buildings were classified by their historic significance and their redevelopment potential. Out of this list grew the tentative list of designations, as previously shown in Figure 4. By creating this list, the developers and preservationists were able to reduce the uncertainty around how much economic impact the ordinance would entail. Designation of a surprisingly large number of buildings was mutually acceptable to both preservationists and developers, with more extended discussions necessary on the 15 percent of buildings over which they disagreed.

Consensus on the issue of economic hardship, then, required the delicate balancing of interests and the effective management of uncertainty. The agreement shown in Appendix C-3 provided for the mutual interests of the parties and addressed the uncertainty that made reconciliation of those interests difficult. It is unlikely that the agreement could have been constructed except through direct negotiations

amongst highly informed and motivated representatives of the stakeholder groups. As an avenue for public policymaking, it demonstrates the potential for creativity through constructive confrontation.

#### IV. Agreement Reached

The mayor was the first to sign. Nine months earlier, he had initiated the consensus building process by describing his vision for the rebuilding of Atlanta as a "new international city." He had also gained national attention by describing two controversial historic structures as "a hunk of junk" and "a dump." To the mayor, they threatened to impede progress. But on June 29, 1988, after considerable dialogue and negotiation, Mayor Andrew Young declared historic preservation to be in the public interest, praised the consensus building process as being in the best tradition of Atlanta's style of open political dialogue, and signed a statement outlining a comprehensive program designed to preserve historic properties and districts throughout the city. The executive summary of the agreement, as signed by the mayor and remaining members of the Policy Steering Committee, is shown in Appendix C-4.

As each of the remaining members of the Steering Committee joined the mayor in signing the agreement, they acknowledged that the historic preservation program they had developed was a significant improvement compared to the one in place. Working together, these representatives of the mayor's office, City Council, property owners, developers, preservationists and neighborhood interests had fashioned a detailed

program that included (1) a new system for categorizing, designating and protecting historic properties, (2) incentive programs to encourage and support historic preservation, (3) an innovative process for evaluating claims of economic hardship resulting from landmarks designation, (4) recommendations concerning the disposition of 91 income-producing historic buildings in the bustling midtown and central business areas of the city, and (5) an interim development control ordinance to protect historic structures and guide the evaluation of demolition requests while the City Council implemented the program. The Executive Summary and the Agreement (the Table of Contents of which is shown in Appendix C-5), while requiring considerable hard work and perseverance, formed the basis upon which preservation, development and city interests could more effectively be achieved.

## ENDNOTES

1. Atlanta Urban Design Commission, *Atlanta's Lasting Landmarks*, (Atlanta: Urban Design Commission, 1987), p. 27.

2. Negotiations, we might note, do not solve all problems. Shortly after this meeting, a fire broke out in the Farlinger Building. The fire destroyed the top floor and damaged the mortar throughout the four story building. Developers estimated that renovation costs would add \$2 million to the purchase price of \$4 million, and result in an annual loss of \$325,000. Preservationists developed an alternative plan for restoration. During the final three months of the mediation process, at least five members of the Steering Committee were publicly involved in the decision making process, with two preservationists and the chair of the Urban Design Commission active in trying to save the building, the developer seeking a demolition permit, and the mayor eventually approving issuance of the permit.

3. Carolyn Long Banks, Don Childress, Tim Crimmins, Jim Rollins, Tom Weyandt, and Sam Williams.

4. Doug Gatlin, Bill Kennedy, Jim Stokes and Gail Timmis.

5. Robert Freilich (Professor of Law in Urban Affairs at the University of Missouri) and Terri Murren (Associate of the Kansas City law firm of Freilich, Leitner, Carlisle & Shortlidge), "Growth Management and Historic Preservation," February, 1988.

Richard Roddewig (Senior Principal of Pannell Kerr Forster, Chicago), "Economic Incentives for Historic Preservation in Atlanta," December 1987.

Frederick Williamson (Director of the State Historic Preservation Office for the State of Rhode Island), "Atlanta and Historic Preservation," January 1988.

6. Joseph Howell (Principal of Howell Associates, a Washington D.C. real estate development firm), "Creative Financing Techniques to Facilitate the Renovation of Historic Properties in Atlanta," May 1988.

7. Norré Winter (a preservation consultant working out of Boulder Colorado), "The Atlanta System of Definitions and Criteria for Designating Historic Preservation Resources," May 1988.

\_\_\_\_\_, "Design Guidelines for Historic Districts in the City of Atlanta," July 1988.

8. Myrick Howard (Executive Director of the Historic Preservation Foundation of North Carolina), "Using a Revolving Fund for Downtown Preservation: Recommendations for Atlanta," May 1988.

9. John Petersen and Susan Robinson, "The Effectiveness and Fiscal Impact of Tax Incentives for Historic Preservation: A Reconnaissance for the City of Atlanta,"

(Washington, D.C.: The Government Finance Research Center of the Government Finance Officers Association, May 1988).

10. One preservationist had to leave the room during a May caucus of preservationists when these decisions were made. Acknowledging the necessity of clarifying how commercial buildings were likely to be designated, she nonetheless did not want to personally make these decisions.

11. The areas of most intensive development within the city were zoned as SPI zones. Such zones required that 15% of the site be left as open space.

## Appendix C-1

### First Draft of the Single Negotiated Text

#### ATLANTA HISTORIC PRESERVATION STEERING COMMITTEE

January 27, 1988

*Note: The single negotiated text shown in this appendix represents little more than an issue-identification outline. While extremely general, responses still provide the mediator with highly useful feedback. Details can be quickly added to the single negotiated text based on concurrence to the general outline. Compare the extreme generality of the discussion of identification and designation in Section II.1 in this appendix with the same section, revised two weeks later, presented in Appendix C-2. The text of the first "Issues and Options" outline is as follows:*

The purpose of these negotiations is to reach consensus on the various elements to be included in a comprehensive historic preservation program for the City of Atlanta. Currently, the City has some procedures in place for dealing with preservation. The following is a list of major issues to be addressed in a comprehensive approach to historic preservation. Specific suggestions made in the negotiations thus far are indicated.

#### I. GOALS FOR HISTORIC PRESERVATION IN ATLANTA

(statements to be included in comprehensive and downtown development plans)

1. Preserve important parts of Atlanta's history, both social and architectural
2. Contribute to the economic development and vitality of the city
3. Preserve the character and livability of the city's neighborhoods
4. Encourage development that maintains the fabric and diversity of the city's streets and districts

##### Specific suggestions to date:

- The above goals were identified at the first meeting of the Steering Committee

#### II. COMPONENTS OF THE HISTORIC PRESERVATION PROGRAM

##### 1. Identification of Historic Properties

- Criteria for determining what has historic significance
  - National Register criteria

- Additional criteria?
- Classification of significance
  - All buildings have the same level of significance?
  - Buildings have different levels of significance?

Specific suggestions to date:

- Retain use of National Register criteria alone

## 2. Regulatory Protection

- Elements of protection
  - Demolition; conditional or disallowed
  - Alterations to structure; rehabilitation or restoration of facade/interior
  - Relationships to adjacent development
- Levels of protection
  - All buildings offered same level of protection?
  - Buildings have different levels of protection based on significance?

Specific suggestions to date:

- A landmark program governing alteration or demolition of designated landmarks
- A neighborhood conservation program designed to protect neighborhood integrity and encourage compatible infill development

## 3. Economic Incentives

- Available incentives
  - Tax abatement
  - Tax credit
  - Abatement of sales tax on rehab materials
  - Mortgage insurance
  - Facade easements
  - Reduced tax assessment valuation
- Application of incentives
  - Counter economic forces against preservation
  - Compensate owners who are unfairly burdened
  - Encourage systematic restoration of historic buildings

Specific suggestions to date:

- Combine preservation goals with goals for maintaining and increasing in-town housing through use of tax abatements for historic properties currently used in housing enterprise zones
- A revolving loan fund to help finance rehabilitations
- A corporate investment program where corporations receive historic preservation investment tax credits for investing in rehabilitation of historic properties

## 4. Administration and Coordination

- Existing/new agency responsibilities
- Existing/new methods for designation
- Existing/new review policies
- Existing/new methods of appeal

Specific suggestions to date:

- An expanded section on historic preservation in the Comprehensive Development Plan, setting out ways in which preservation will be integrated into other city planning and development objectives such as neighborhood commercial revitalization projects, in-town housing strategies, and urban design guidelines among others.
- "Early warning" system identifying historic properties to property owners and developers and identifying "threatened" properties
- An historic preservation assistance officer in city government who would identify important threatened structures and provide technical assistance on rehabilitation projects including assistance in obtaining financing and information on available tax and other incentives
- Incorporation of preservation goals and incentives into the design guidelines proposed for the Central Area and Peachtree Street in the CAS II study using preservation as one way to make "Pedestrian Peachtree" a reality
- Change existing city codes and procedures which currently act as disincentives to preservation and rehabilitation efforts

## Appendix C-2

### Excerpt from the Second Draft of the Single Negotiated Text

#### ATLANTA HISTORIC PRESERVATION STEERING COMMITTEE

February 16, 1988

*Note: This appendix excerpts those sections of the second draft of the single negotiated text that dealt with a legal and regulatory framework for identifying, nominating, designating and protecting landmarks and districts. In addition, the single negotiated text also covered incentives, institutional supports and the administrative processes for making historic preservation decisions. This draft was significantly more detailed than the issue outline shown in Appendix C-1.*

*The text is as follows:*

#### 1. Identification

##### A. Criteria for identifying historic structures

National register criteria will be used for identifying those buildings or districts that have historic significance. National Register criteria state that: "The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association, and:

- a) are associated with events that have made a significant contribution to the broad patterns of our history; or,
- b) are associated with the lives of persons significant in our past; or,
- c) embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or,
- d) have yielded, or may be likely to yield, information important in prehistory or history."

##### B. Age of property

Listing on the National Register of Historic Places requires that a property be at least fifty years old. This is also the basis for identifying historic properties in the city of Atlanta. Buildings meeting all other criteria but between thirty and fifty



years old may also be identified for potential non-historic, urban design designations.

### C. Levels of significance

The identification of a property as historic confers nothing but recognition that it has some historic value. Inherent in the National Register criteria is the understanding that identified buildings have historic significance. Levels of historic significance, however, are not distinguished. The identification process is the mechanism for surveying and identifying those properties that the City may wish to confer some level of review or protection. The nomination and designation processes are the mechanisms for conferring review or protection for particular properties.

## 2. Nomination and Designation

### A. Determination of categories of historic properties

Before historic properties can have local review guidelines or protection conferred upon them, a system for identifying different categories of review, protection and available economic assistance is required. This system is based on the evaluation of the public costs and benefits to be derived from providing institutional supports for individual properties. At least three categories of properties have been suggested: landmarks, historic districts, and urban conservation and development districts. The need for differentiating between commercial and residential, or income producing and non-income producing properties requires attention as it relates to the types of review, protection and economic assistance. Criteria defining the characteristics of each category need to be developed.

Possible levels of review, protection and economic incentives might include:

- Landmarks - would be offered a high level of regulatory protection against alterations and demolition. Detailed review process for alteration or demolition requests. A full package of economic incentives would be available to maintain the character of the property.
- Historic districts - basically the same review and protection guidelines as for landmarks. A district would imply the need to oversee activities involving contributory income-producing buildings or historic residential areas. The need may exist to differentiate between income producing and non-income producing properties related to economic incentives offered.

- UCD districts - would provide a review process and guidelines for areas where the urban-design character of properties is valuable. Would not qualify for local protection or economic incentives.

A range of regulatory protection might be considered to provide protection and/or incentives for preservation of appropriate properties. For example, current zoning and allowable floor-to-area ratios are a disincentive for preservation. Under the current guidelines, the benefits of tools such as transfer of development rights (TDRs) are not applicable. The use of enterprise zones and overlay zoning may be useful tools under certain circumstances. If the institution of new regulations could potentially cause undue hardship on property owners, then methods of compensation would be appropriate through the transition period where property values might be affected.

#### B. Nomination process

A process needs to be developed whereby individual properties or districts are nominated to one of the identified categories. Properties might be nominated by property owners, preservation commission staff, preservation professionals, City Council members, City staff, CAP or others. Issues such as the need for the property owner to consent to nomination and compensation to property owners who may be burdened by such designation need to be addressed. More specific information beyond that used for identification may be appropriate as part of the nomination process. Nomination guidelines or criteria might also need to be developed. One example might be incorporation of an assessment of the economic viability of a property and, related to economic incentives, criteria defining when a building is past the point of assistance.

### 3. Alteration and Demolition

#### A. Review Process

A review process is required for alterations of historic properties and for demolition requests for those buildings and districts where demolition is allowed. Decisions are needed concerning how guidelines or criteria for approval might differ for different categories of properties.

## Appendix C-3

### Final Agreement: Sections Pertaining to Economic Hardship Issue

#### **I. CERTIFICATES OF APPROPRIATENESS FOR DEMOLITIONS AND ALTERATIONS**

##### A. Certificate of Appropriateness for Demolitions

For a designated Landmark, a building or structure in a Landmark District or a contributory building in a Historic District, a certificate of appropriateness must be issued by the Urban Design Commission before a demolition permit is issued by the Bureau of Buildings. The applicant for the demolition permit shall provide the information required by the Urban Design Commission for its deliberations. This information shall be filed with the Director of the Bureau of Buildings in the application for the demolition permit and with the Urban Design Commission. The Commission must take action within 60 days of receipt of a completed application in which all necessary information is attached. The Urban Design Commission shall make the final determination concerning the request for demolition. Appeals of these decision will be made to the Superior Court.

A certificate of appropriateness for demolitions shall be issued by the Urban Design Commission to (1) alleviate a threat to public health and safety or (2) rectify a condition of unreasonable economic return:

1. To prove the existence of a **threat to public health and safety**, the applicant must demonstrate
  - through independent analyses and supporting information that a major and imminent threat to public safety problem exists. Alternatives for rectifying the problem must be presented and analyzed. The Bureau of Buildings shall evaluate evidence submitted by the applicant concerning the nature and imminence of the threat to public health and safety. And
  - that the costs associated with rectifying the threat to public health and safety would create a condition whereby the investments in the project are incapable of earning a reasonable economic return, as described in Section V, Determining Unreasonable Economic Return.
2. To prove the existence of a **condition of unreasonable economic return**, the applicant must demonstrate to an Economic Review Panel (as described in Section VII, Unreasonable Economic Return).
  - that the property is incapable of earning a reasonable economic return and that alternatives other than demolition do not alleviate this condition, and

- that the owner seeks
  - to construct with reasonable promptness a new building as demonstrated through conditional approval of a foundation permit or
  - to terminate operation of a building that is operating at a sustained loss and for which the Urban Design Commission cannot generate a plan to stem the loss without demolishing the building.

After certification by the Urban Design Commission that the conditions described in either (1) or (2) have been met, the Urban Design Commission may, within 90 days, prepare a plan under which the landmark:

- is preserved in a manner to effectuate the purposes of the ordinance, and
- is capable of providing a reasonable economic return to the property owner(s). The plan may include complete or partial tax abatements, tax credits, authority for alteration or construction not inconsistent with the purposes of the ordinance and other actions allowable by law. The Endangered Properties Program described in Section VI-C is specifically designed to assist in development of these plans.

This plan will be reviewed by the Economic Review Panel to determine if the plan is capable of providing a reasonable economic return. If the Urban Design Commission does not produce a plan within 90 days, the Commission must issue a certificate of appropriateness for demolition. If the Urban Design Commission develops a plan which is judged by the Panel as capable of earning a reasonable return, the Urban Design Commission may deny the certificate of appropriateness for demolition.

If a plan is developed, but the plan is deemed by the Economic Review Panel as incapable of earning a reasonable return, the Urban Design Commission may, within 30 days, recommend to the Mayor that the city or a willing private buyer acquire a specified appropriate protective interest, including obtaining title or easements in the structure or parcel involved. If, within an additional 15 days, the City does not initiate eminent domain proceedings to obtain ownership of the appropriate protective interest and neither the City nor a private buyer has made a firm offer to enter into a contract with the owner to acquire such interest, the Urban Design Commission must issue a certificate of appropriateness for demolition. The Urban Design Commission must also issue a certificate of appropriateness if an offer is forthcoming but is not equal to or greater than the fair market value of the property immediately prior to designation adjusted for inflation between the time of designation and the time of application for a demolition permit.

The owner may reject any offer for purchase. However, the Urban Design Commission may deny a certificate of appropriateness if the owner rejects an offer which is equal to or greater than the fair market value of the property immediately prior to

designation adjusted for inflation between the time of designation and the time of application for a demolition permit.

### B. Certificate of Appropriateness for Alteration

In considering whether to recommend approval or disapproval of an application for a permit to alter, restore, rehabilitate, or add to a building, object, site or structure designated an historic landmark or located in an historic district, the Urban Design Commission shall be guided by the following general standards:

1. Every reasonable effort shall be made to adapt the property in a manner which requires minimal alteration of the building, structure, object, or site and its environment.
2. The distinguishing original qualities or character of a building, structure, object, or site and its environment, shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
3. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, object, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
4. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, object, or site shall be kept where possible.
5. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should reflect the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historical, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
6. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood or environment.
7. Wherever possible, new additions or alterations to buildings, structures, objects, or sites shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the building, structure, object, or site would be unimpaired.

A certificate of appropriateness for alterations shall be issued by the Urban Design Commission to alleviate a threat to public health and safety or to rectify a condition of economic infeasibility, as described in the section on Certificate of Appropriateness for Demolitions.

## **II. UNREASONABLE ECONOMIC RETURN**

### **A. Objectives of Unreasonable Economic Return Provision**

This ordinance seeks to provide adequate protection for historic properties which the community deems worthy of lasting protection. The ordinance therefore requires a certificate appropriateness for demolition or alteration of Landmarks, buildings in Landmark Districts and contributory buildings in Historic Districts. It is recognized, however, that under some conditions preservation of historic properties provides an unreasonable economic return for which property owners should be granted relief.

The objective of this section is to provide guidance concerning the conditions under which a property owner who claims an unreasonable economic return should be granted permission to demolish a designated historic property, to alter a designated historic property in a manner inappropriate to historic preservation, or to be granted other forms of relief. The objectives of this determination should be:

- to sustain the viability of the historic preservation ordinance as a vehicle for protecting historic structures designated by City Council as worthy of lasting protection and
- to maintain fairness to property owners who cannot obtain a reasonable economic return from the property as a consequence of this preservation

### **B. Process for Evaluating the Reasonableness of Economic Return**

A property owner may apply to the Urban Design Commission for a certificate of appropriateness for demolition or alterations under conditions where the owner can demonstrate that the historic property is incapable of earning a reasonable economic return in the absence of such demolition or alteration. Evidence that an historic structure is incapable of earning a reasonable return shall be evaluated by an Economic Review Panel comprised of three redevelopment experts. The Panel will consist of one person selected by the Urban Design Commission, one person selected by the applicant and one person selected by the first two appointees. If the first two appointees cannot agree on a third person within 30 days of the initial application to the Urban Design Commission, the third appointee shall be selected by the Commissioner of the Department of Community Development. Appointees must be real estate and redevelopment experts

knowledgeable in real estate economics in general and more specifically in the economics of renovation, redevelopment and other aspects of rehabilitation.

After the Panel has completed its deliberations on the demolition request, the finding will be forwarded to the UDC for their action. If the Panel finds no economic hardship exists, the UDC may deny issuance of the Certificate of Appropriateness. The property owner, however, may appeal this decision to Superior Court. If the Panel finds that an economic hardship exists, the UDC may (1) engage in preparing a plan to save the building (as currently outlined in the program), (2) issue the Certificate of Appropriateness or (3) override the Panel by a supermajority vote (three-quarters majority of a quorum) and deny issuance of the Certificate of Appropriateness. The property owner can appeal the latter decision to Superior Court.

The use of the override is restricted to situations where the UDC can document that the Panel's finding "was based on an erroneous finding of a material fact, or that they acted in an arbitrary manner." If the UDC overrides the decision of the Economic Review Panel, they must document the information and conclusions on which the decision is based.

### C. Evidence of Unreasonable Economic Return

To demonstrate that an historic property is incapable of earning a reasonable economic return, an applicant shall submit to the Urban Design Commission and to the Economic Review Panel evidence relevant to the following issues:

1. The applicant's knowledge of the landmark designation at the time of acquisition, or whether the property was designated subsequent to acquisition.
2. The current level of economic return on the property as considered in relation to the following:
  - a. the amount paid for the property, the date of purchase, and party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant and the person from whom the property was purchased.
  - b. the annual gross and net income (if any) from the property for the previous three years; itemized operating and maintenance expenses for the previous three years; and depreciation deduction and annual cash flow before and after debt service, if any, during the same period.
  - c. remaining balance on any mortgage or other financing secured by the property and annual debt-service, if any, during the prior three years.
  - d. real estate taxes for the previous four years and assessed value of the property according to the two most recent assessed valuations.

- e. all appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property.
  - f. the fair market value of the property immediately prior to its designation and the fair market value of the property (in its protected status as a designated historic structure) at the time the application is filed.
  - g. form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or both.
  - h. any state or federal income tax returns on or relating to the property for the past two years.
3. Any listing of the property for sale or rent, price asked, and offers received, if any, within the previous two years, including testimony and relevant documents regarding:
- a. any real estate broker or firm engaged to sell or lease the property.
  - b. reasonableness of the price or rent sought by the applicant.
  - c. any advertisements placed for the sale or rent of the property.
4. The infeasibility of alternative uses that can earn a reasonable economic return for the property as considered in relation to the following:
- a. a report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation.
  - b. estimate of the cost of the proposed construction, alteration, demolition, or removal, and an estimate of any additional cost that would be incurred to comply with the recommendation and decision of the Urban Design Commission concerning the appropriateness of proposed alterations.
  - c. estimated market value of the property in the current condition; after completion of the proposed construction, alteration, demolition, or removal; and, in the case of a proposed demolition, after renovation of the existing property for continued use.
  - d. in case of a proposed demolition, the testimony of an architect, developer, real estate consultant, appraiser, or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property.
5. Economic incentives available to the applicant through federal, state, city or privately run programs.

The Urban Design Commission and the Owner may submit to the Economic Review Panel such additional evidence as they deem worthy of consideration.



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## **Appendix C-4**

### **ATLANTA HISTORIC PRESERVATION NEGOTIATION PROJECT Executive Summary**

## **Appendix C-5**

### **Table of Contents for the Final Agreement**

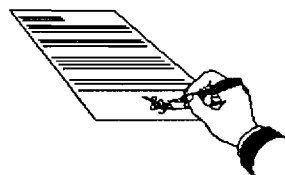
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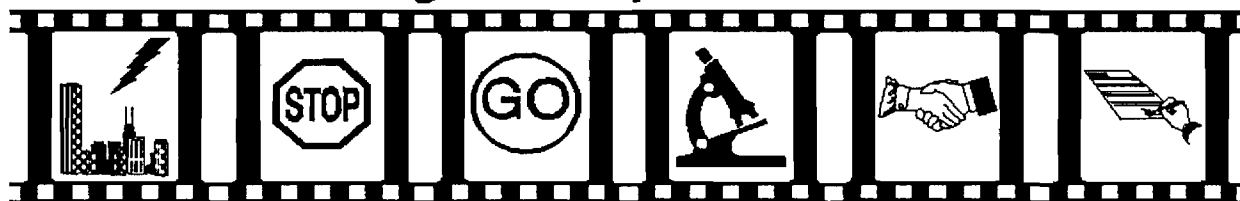
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  - C. Notification and Endangered Buildings Programs
    - 1. Preservation Information Program
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  - D. Preservation Marketing Program
- IX. INTEGRATION OF HISTORIC PRESERVATION INTO CITY COMPREHENSIVE PLANNING OBJECTIVES AND AGENCY RESPONSIBILITIES
  - A. Coordination with Comprehensive Planning Activities
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- X. IMPLEMENTATION PLAN
  - A. Summary of Implementation Plan
    - 1. Process
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# The Atlanta Historic Preservation Mediation Process

## Case D: The Implementation Phase



### Stage 6. Program Implementation



#### I. DESIGNING THE IMPLEMENTATION PLAN

By the June 29, 1988 signing ceremony, the negotiated text provided a detailed description of the historic preservation program. Its 57 pages of text, including the interim development control ordinance, represented the result of extensive problem solving and consensus building.

Implementation of the plan would be complex. It required changes in the state constitution, state law, city law, city institutions, and activities of developers and preservationists. Consequently, an implementation strategy was an essential element of the

negotiated text. This strategy specified a process for translating the programmatic and planning elements of the agreement into legislation necessary to implement the program. It further specified responsibilities and a timetable for implementation. An implementation team was established to oversee city staff in carrying out the process, to be assisted by the mediators on an "as needed" basis.

As early as the May 17 meeting, the issue of implementation was being addressed seriously. The following steps were suggested:

- Create a small implementation team, consisting of Steering

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Committee members with representation from each interest group.

- Together with the mediators and other City staff, the implementation team should work with appropriate Council Committees and the full City Council on adoption of the plan as the City's official preservation policy and plan.
- The implementation team, with key staff from the Department of Community Development and the Urban Design Commission, should work with City Council, the City Attorney, and other City agencies on drafting new ordinances, modifying existing ordinances, making administrative changes and seeking any state enabling legislation needed to implement the plan.

Between mid-May and mid-June, considerable detail was added to these ideas. Most of this plan was developed by the mediators in conjunction with the Resource Group. The Steering Committee remained largely focused on resolving substantive issues; members had little energy for focusing on the specifics of implementation.

Appendix D-1 presents the implementation plan as finalized by the Steering Committee. The plan presents a general outline of actions and responsibilities. Between the signing ceremony and passage of the historic preservation ordinance in Atlanta, the integrity of the implementation process was threatened by the resignations of the Executive Directors of both the Urban Design

Commission and the Atlanta Preservation Center. In addition, financial resources necessary to retain the mediators to oversee the process were not forthcoming as expected. Yet, despite these unexpected changes in personnel, the plan remained largely intact. The next section describes some of the challenges that faced the implementation team and actions taken to manage these obstacles.

## II. IMPLEMENTATION PLAN ACTIVITIES

### A. Interim Control

As discussed in Case C, the most pressing implementation issue was to establish an interim development control process. Such a process was necessary to foreclose irrevocable damage to historic buildings during the year required for implementation. On the same day that the agreement was signed by members of the Steering Committee, the mayor initiated the interim control process by administrative order. After review, the interim control process was enacted by City Council on August 1, 1988. With 14 council members in affirmation and only one in opposition, the vote was one of the most one-sided in Council history. The ordinance included a sunset clause of July 1, 1989 to allow sufficient time for needed legislation and administrative initiatives to be enacted.

### B. State Enabling Legislation

As a first obstacle to passage of the comprehensive plan, several of the economic provisions of the plan were unconstitutional. The Georgia Constitution therefore required changing. A

Constitutional referendum empowering the state to authorize appraisal of historic structures at existing use rather than highest and best use, and providing for a property tax abatement for buildings on or eligible for the National Register of Historic Places, was approved by the voters in November, 1988.

In February of 1989, the state legislature authorized Atlanta to abate property taxes on the increased value of historic properties that had been renovated. The abatement for a renovated property was limited to eight and one-half years. The city did not ask for authorization to similarly freeze property taxes on non-rehabilitated historic properties, despite the fact that such a freeze was necessary to implement the plan. Fearing that the state might not pass both changes, it opted instead to introduce the required changes piecemeal in two legislative sessions rather than one. In 1990, At the request of the city, the state further enabled the city to create an eight and a half year tax freeze for income-producing landmarks and contributing buildings in landmark districts.

The choice to delay passage of the second part of the economic incentive package had important implications for enactment of the local ordinances by City Council.

### C. Local Legislation

After state authorization was received, the city staff met to draft local legislation. On May 10, the Commissioner of Community development called a meeting of the full historic preservation Steering Committee

to review this draft legislation for consistency with the Steering Committee's agreement. The draft included two major pieces of legislation:

- a proposed amendment to the city's charter to respecify the powers of the City Council and the Urban Design Commission with respect to historic preservation, and
- substitution of existing historic preservation and zoning ordinances with new ordinances governing the nomination and designation of buildings and districts, as defined in the agreement, and changes in the make-up of the Urban Design Commission.

Following this meeting, two legislative issues emerged. The first concerned continuation of interim protection after enactment of the new law. As originally envisioned, the Urban Design Commission was to initiate research necessary to nominate buildings before enactment of the final law and to therefore be prepared to initiate nomination proceedings soon thereafter. The Commission had, however, focused its limited resources on commercial structures. Neighborhood representatives requested that Urban Conservation and Development District status be retained for two years, thereby providing some degree of protection to the 27 existing neighborhood districts during this period. The neighborhood representatives believed that this period would be sufficient to redesignate the neighborhoods under the new ordinance. This change was noncontroversial, and a two year extension of the old Urban

Conservation and Development Districts was added to the ordinance.

The second issue proved more difficult to resolve. Implementation of the economic package developed as part of the Steering Committee agreement required additional action by the State legislature. As mentioned above, only half of the changes necessary had been instituted. At the same time, the interim control ordinance which protected historic buildings was scheduled to expire on July 1. Legal staff for the city counseled against the legality of extending an "interim" control ordinance. Furthermore, City Council remained divided on the tax incentive components of the proposed law. Some members of Council, not those associated with the Steering Committee, were concerned about lost tax revenues resulting from a tax freeze. More than any other feature, this clause would have a direct impact on the city, possibly forcing the city to raise taxes on other property owners. Facing the July 1 deadline, City Council moved to enact the ordinance without specific reference to tax incentives.

The decisions being made by City Council placed considerable stress on the consensus that had developed in finalizing the historic preservation program. The business community, which had supported the ordinance until this point, opposed uncoupling the tax abatement measures from the preservation ordinance. The historic preservation plan contained two major economic cornerstones. The first of these, the creation of a revolving fund for the purchase and renovation of endangered buildings, stood little chance of being established due to city budget problems. Preservationists, while agreeing to the

importance of the economic measures, insisted that the preservation ordinance needed to be implemented before expiration of the interim control ordinance.

The implementation team was able to break this deadlock. After heated last-minute negotiations, members of the Steering Committee agreed to support the City Council ordinance if it included a sunset provision. The provision would eliminate landmark and landmark district categories on July 1, 1990 unless preferential tax treatment was authorized by that time. Based on this assurance, the business members of the Policy Steering Committee offered at least grudging support for the bill. The bill passed City Council unanimously before being sent to the mayor for his signature.

#### **D. Signing the Ordinance Into Law**

On June 27, 1989, Mayor Andrew Young signed the historic preservation ordinance into law. Surrounded by both historic preservation advocates and business leaders, he quipped: "This is almost like Camp David." The mix of incentives and restrictions established by the law greatly altered the dynamics of historic preservation in the city. As a city once reviled by historic preservationists for its attitude of unchecked development, the city was emerging as a national example of preservation.<sup>1</sup> Ian Spatz, director of the Center for Preservation Policy Studies at the National Trust for Historic Preservation noted "Atlanta is creating a national model for how to get these things done. Today, the mayor is signing one of the strongest historic preservation laws in the coun-

try... Preservation really is making progress in Atlanta."

During the next three months, the city's Finance Department conducted an analysis which demonstrated that the potential cost to the City, even assuming designation of all eligible buildings, was minimal over the time period of the freeze. Furthermore, this loss represented only potential revenue rather than existing revenue. In September, 1989 the City Council adopted a policy statement putting the Council on record that the city should pursue state enabling legislation to adopt the economic incentives necessary. The state legislature adopted and the governor signed into law the necessary authorization in April of 1990. Following this, City Council enacted a tax freeze consistent with the approach defined by the Steering Committee agreement on June 4.

In one year, Mayor Young had moved from signing 10 demolition permits for historic structures to being instrumental in saving two controversial buildings and enacting an innovative historic preservation ordinance. This transition in the Mayor demonstrates the broadened perception gained by many members of the Steering Committee through numerous discussions and debates. At the signing ceremony Mayor Young noted "I'm for historic preservation, but only so long as it preserves values and quality and not just age." What the dialogue had altered was not what the mayor valued, but rather his perception and understanding of how preserving historic structures could contribute to what he valued. His conception of "the good city" now included room for the historic city.

### III. ACTIVITIES UNDERTAKEN SINCE ENACTMENT OF THE PLAN

For commercial buildings (conflict over which instigated the dispute resolution process), the designation process has gone forward largely as contemplated. To date, approximately 40 buildings have been designated, with only a handful rejected by City Council. The six districts which were already in existence under the previous ordinance were also designated as Landmark Districts. One nomination for an historic district, Tuxedo Park, was rejected by Council after a long and divisive battle that involved several issues not related to preservation. Several other neighborhoods are now researching background data for nomination, but no additional proposals have been formalized.

On the other hand, nominations of neighborhoods for historic district protection have proven more conflictual, despite the fact that neighborhood issues were not thought to have been as potentially troublesome by members of the Steering Committee and by neighborhood preservation advocates. In fact, when considering the transition between the old and new ordinances, the Steering Committee explicitly rejected a rollover of the old Urban Conservation and Development Districts into a new Conservation District. Both the members and neighborhood advocates believed that a rollover into the relatively weak review and comment powers of the Conservation District might inhibit neighborhoods from seeking a higher level of protection under the Historic District designation. Currently, however, while several neighborhoods are almost ready to go through the nomination



process, none has successfully been designated. Since the old district designations are now defunct, 27 neighborhoods have lost the protection they had under the old ordinance.

The delay is caused by two problems. First, significantly greater protection is afforded by the new Historic District as compared to the old Urban Conservation and Development District designation. As such, the administrative processes are more stringent. Volunteer organizations within neighborhoods have found these processes cumbersome. Furthermore, neighborhoods have had to engage in internal consensus building to build the support for designation. Second, additional resources and personnel earmarked for the Urban Design Commission have largely failed to materialize. The city has been able to provide \$30,000 a year for the Commission to hire additional consultants on an as-needed basis, but has not expanded the staff of the Commission. Technical assistance to the neighborhoods has therefore been difficult to provide as the Commission has focused on the nomination of more threatened commercial buildings.

Both the Urban Design Commission and neighborhood advocates believe the law will eventually be a significant improvement over the old ordinance. Once designated as an Historic or Landmark District, a neighborhood will be afforded a significant degree of protection against incursion, compared to advice and comment under the old system. The process of redesignation, however, has proven more difficult than expected.

#### IV. EVALUATION OF THE PROCESS AND CONCLUSIONS

##### A. Questionnaire

In September, 1988 the mediation team distributed an evaluation questionnaire to all the members of the Policy Steering Committee. As shown in Appendix D-2, the questionnaire was designed to help the mediation team understand the Committee members' perceptions, in retrospect, about the process used and the outcome reached.

Overall, the participants agreed with the way in which the mediators were selected, felt that joint funding by each of the interest groups was important, and that mediation effectively facilitated the packaging of alternatives and resolution of the conflict. While highly supportive of the process as a whole, however, several significant issues emerged. Most importantly, approximately one-third of the participants perceived that the early part of the process had been biased in favor of the preservation perspective. Several reasons were cited: (1) the three experts who presented at the first meetings, including the developer, were widely perceived as "preservationist" experts; (2) the preservationists team included several full-time preservation advocates; and (3) the Resource Group did not include a development expert until January. All but one of these participants felt that the bias had little impact on the process and had been rectified by the time that the Work Group was established.

In addition, approximately a quarter of the participants expressed frustration with the length of the initial

fact finding section of the process (October through January), and thought that issue oriented task groups should have been created and disagreement confronted earlier. This highlights the tension that exists between the urge of negotiators to leap to solutions and the need for developing a shared understanding of the problem (and each others interests) before exploring solutions.

### **B. Professional Peer Review**

The dispute resolution process was recognized for its innovative application of dispute resolution techniques, as well as for the preservation ordinance that resulted. The awards are as follows:

- the Meritorious Planning Process Award of the Georgia Planning Association, 1988;
- the Bronze Medal Award of the Georgia Chapter of the American Institute of Architects, 1989; and
- the Historic Preservation Award of the Georgia Trust for Historic Preservation, 1989.

### **C. Critique of the Process**

The development of the comprehensive historic preservation program for the City of Atlanta shows the great potential of mediated negotiations and consensus building for developing and implementing public policy. The success of this process was due to several tangible and intangible characteristics, including:

- leadership in key positions within city government, the business community and the preservation community, evidenced through strong support at crucial points in the process;
- facilitation role played by the Mayor's administrative assistant and several other members of the Steering Committee and the Resource Group;
- meeting management, which depended primarily on extensive planning and preparation by the mediators and resource people before each meeting;
- a deliberative factfinding process, legitimized by national experts, enabling members of the Steering Committee to reassess the issues;
- use of the single negotiated text, which through its specificity helped resolve some difficult issues and move the agreement beyond general agreements in principle;
- creation and management of the Work Group as a vehicle for more directly confronting difficult issues; and
- persistence.

At the same time, several aspects of the process might have worked better if redesigned. For this particular group, the process might have worked more smoothly if the mediators had:

- shortened the initial factfinding phase and established caucuses and the Work Group earlier;
- managed the interim development control issue by integrating it more directly into the process; and
- worked to establish a stronger rapport with members of the interest groups, especially the business community, earlier in the process.

While there are no guarantees of success, the universe of public policy disputes resolved through mediation and consensus building is ever increasing. As the trend toward participatory democracy in decision making continues to grow, these techniques may be even more elemental in resolving public policy issues.

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## Endnotes

1. Jim Newton, *Preservationists See History in the Making and the Unmaking*, The Atlanta Constitution, June 28, 1989 at B5.

## **Appendix D-1**

### **Implementation Plan as Incorporated into the Final Agreement**

An important element of any negotiated agreement is assurance that the intent of the agreement will be carried out. To achieve this, an implementation plan is necessary to define what tasks need to be accomplished, who will accomplish them and when they need to be accomplished.

#### **A. Summary of Implementation Plan**

##### **1. Process**

The Steering Committee has agreed to three elements of the plan which will guide its implementation.

- a. The Zoning Administrator and Executive Director of the Urban Design Commission will direct the implementation of the comprehensive program on a day-to-day basis.
- b. An Advisory Group comprised of members of the Steering Committee will serve to oversee the remaining tasks in the development of the comprehensive program and its implementation.
- c. A member of the mediation team and additional consultants will assist the City as needed. Each participating group will be asked for financial assistance to pay for these additional services.

##### **2. Tasks**

Several activities must be undertaken in preparation for and conjunction with submittal of the comprehensive program to the City Council.

- a. Meet with the City Attorney to establish logistics and appropriate procedures for implementation.
- b. Complete refinements to the negotiated text which summarizes the details of the Program.
- c. Meet with the Zoning Committee of Council in preparation for submittal to the full Council.
- d. Submit the Program to City Council for adoption as part of the amendments to the existing Comprehensive Development Plan.

- e. Prepare the ordinances/legislation required at the city, county and state levels to enact various elements of the plan. These include modifications to the existing HCC zoning ordinance, a landmarks ordinance, state enabling legislation for incentives, and ordinances for other potential tax incentives.
- f. Work to obtain passage of ordinances and enabling legislation as well as proposed increases in city staff allocated to supporting preservation activities. This includes transmitting the plan to Central Atlanta Progress for inclusion into the Central Area Study II Plan; developing an outreach program to inform neighborhoods, businesses, developers, city agencies and other interested parties concerning the content of the program; working for inclusion of these historic preservation goals into the Peachtree Corridor Urban Design Competition; etc.
- g. Oversee the nomination/designation process to assure it is moving along at a timely pace as anticipated.
- h. Oversee the development of the marketing, endangered buildings, revolving loan and other preservation programs.

### **3. Responsibilities**

The City staff previously mentioned and the Advisory Group will take responsibility for coordinating the above tasks. The City will take the lead role for tasks a,d and e. The Advisory Group will primarily provide assistance with tasks b,c,f,g and h. The Zoning Administrator will take responsibility for identifying and enlisting the assistance of the appropriate legal staff of the City for tasks a,d and e. The City will work closely with the Atlanta Preservation Center, the business community and other appropriate organizations in accomplishing task h.

### **4. Timeframe**

Some tasks need to be finished before others can be started. Other tasks can be conducted simultaneously. While the completion dates of some tasks is difficult to predict, the Steering Committee has expectations that the program be adopted and implemented in a timely manner. This has been explicitly defined by establishing a one year sunset for the Interim Development Control Ordinance of July 1, 1989. Every element of the program, including those elements needing state enabling legislation, can and should be enacted by July 1, 1989.

The following identifies some of the timeframes for as many tasks as possible.

June 88 - reach agreement on the major elements of the Program.

- July 88 - meet with zoning committee of City Council; complete refinements of the Program; present to City Council as part of CDP modifications; begin initial round of nomination process.
- August 88 - draft Landmarks ordinance; draft HCC zoning ordinance modifications; detail city staffing needs.
- September 88 - draft state enabling legislation for incentives; work on preservation support programs.
- October 88 - continue nomination/designation process; increase efforts to pass state legislation.
- April 89 - draft incentive ordinances based on state legislation; meet with City Council committees.
- May 89 - submit remaining ordinances to City Council.
- June 89 - all elements of the comprehensive historic preservation program in place.
- July 89 - Advisory Group meets to evaluate status of Program, remaining problems and achievement of program objectives; Advisory Group makes recommendations for modifications, if needed, and continued evaluation of the Program.

#### **B. Issues Requiring Additional Attention**

The major elements of the Comprehensive Program were resolved before or during the final meeting of the Steering Committee on June 29, 1988 as reflected in the signed Executive Summary and the remaining sections of this document. A few details of the program, however, were left for the Advisory Group to resolve during the implementation phase of the process. These issues are summarized below for action by City staff and the Advisory Group.

1. Develop a list of neighborhood districts to be put forth in the first round of nominations by UDC
2. Identify conditions under which nomination may be resubmitted if designation has been denied
3. Define district boundaries and transition zones.

4. Clarify the procedure, timetable and way of establishing a price for the City purchase option in hardship cases
5. Define "major alteration"
6. Clarify level of incentives/revolving loan funding to which the City will commit
7. Clarify the meaning of "incentives available at the time of designation"
8. Develop a marketing strategy for the City's preservation program and resources
9. Clarify how membership of the restructured UDC will be selected
10. Define the role of the Atlanta Preservation Center in the marketing and endangered buildings programs, and funding related to these programs
11. Emphasize the importance of implementing incentives to the acceptability of the over-all program
12. Define the process to identify qualified candidates to serve on economic hardship tribunals.



## **Appendix D-2**

### **Process Evaluation Questionnaire**

#### **Preparing for the Negotiations**

1. Was adequate attention given to identifying the issues prior to the first negotiation session? If not, what additional actions could have been taken?
2. Was the process for selecting members of the Steering Committee effective and appropriate? If not, how would you change the process?
3. Was the size of the Committee too large or too small? If so, how would you have changed the make-up?

#### **Conducting the Negotiations**

4. Was the format and timing of meetings effective (the steering committee augmented with caucuses and issue-specific task groups)? Would you have emphasized or de-emphasized certain types of meetings?
5. Were the issues approached in the correct order? If not, what would you have changed?
6. Which of the technical experts do you think added the most to the process and why?
7. Were any of the technical experts not helpful to the process? If so, why?
8. What particular event(s) or activity(ies), if any, do you think most threatened achievement of the steering committee's objectives?
9. What particular event(s) or activity(s), if any, do you think was most significant in reaching agreement on the program?

#### **Reaching Agreement**

10. From your perspective, were the original objectives of this undertaking met? If not, how so?
11. Did the final package of agreements incorporate greater or less detail than you originally anticipated?

12. Do you think that a well designed plan for implementing the agreement is primary or secondary to the overall agreement? Was sufficient attention given to this phase of the process?
13. Was shared funding by all three major interest groups necessary to accomplish a sense of fairness and a sense of neutrality of the mediation team (ie., if funding had only come from one organization would that have affected your sense of the mediation team's neutrality)?
14. Did you enter into the process thinking you or other participants might be able to manipulate the process? From your perspective, did this occur, and if so, what was the result?

### Mediation Team

15. Do you think the mediation team adequately understood the interests of each major interest group? If not, how could that have been improved?
16. Do you think the mediation team in whole or in part displayed a bias to a particular viewpoint? If so, did that bias affect the process in any discernable way?
17. What role(s) of the mediation team do you think were most important to the success of the process (factfinding, facilitating meetings, generating alternatives, packaging alternatives, etc.)?
18. Do you think the type of process used, or similar processes, has application to other issues with which you are or have been involved? If so, what is the nature of those issues?

# **Training Exercise: The Terminus Historic Preservation Case**

## **Teacher's Guide to the Negotiation Exercise**

### **Background**

The Terminus Historic Preservation Negotiation Exercise is a six-party, multi-issue exercise. It is intended to provide lessons about the dynamics of multi-party, multi-issue negotiations. Specifically, the exercise focuses on issues pertaining to historic preservation. While applicable to any set of students or participants interested in public policy negotiations, the exercise should be particularly useful for professionals and students in historic preservation, development and planning. The exercise is based on actual mediated negotiations that occurred in Atlanta, Georgia during 1987-1988. The negotiations resulted in a new historic preservation program and ordinance for the City.

### **Integration with Teaching Cases**

This training exercise is design for use either alone or in tandem with the teaching cases included in these materials. See the teacher's guide associated with the case studies for instructions on how to integrate the exercise with the teaching cases.

### **Setting-Up the Exercise**

To undertake this exercise, the general instructions should be distributed to all participants and at least forty-five minutes of preparation time should be allocated. Those less familiar with historic preservation should be given more time. Ideally, these materials should be distributed the day before the exercise. The exercise can be conducted with each group having either six or twelve people. We recommend using six participants per group, unless you wish to explore some of the dynamics associated with dual negotiators. The exercise can be conducted with or without a mediator. We suggest using the mediator option for advanced mediation training only. Optional instructions are included below if the use of a mediator is desired.

If the number of participants is not divisible by six, pairs of participants will need to share some roles. The following matrix provides a suggested pattern for assigning these pairs. This matrix applies to multiples of six, plus the number of additional participants. With 20 participants, for example, groups could be configured as two groups of six and one group of eight ( $M6 + 2$ ), or one group of twelve and one group of eight. In either case, the group of eight would have two participants in the roles of ZAP and PAST.

	BUILD	ZAP	PAST	PURE	BIG	DIBS
0	X	X	X	X	X	X
+1		X				
+2		X	X			
+3		X	X			X
+4	X	X	X			X
+5	X	X	X	X		X

While not recommended, the exercise could be used with just five participants if necessary. Under this condition, the exercise is best conducted without the PURE role.

After assigning participants to groups, allow 10 to 15 minutes to respond to questions about the general instructions. If you provide an opportunity for questions about confidential instructions, this should be conducted separately for representatives of each role. You will need at least two exercise leaders to manage this efficiently, as each group will take approximately five to ten minutes.

If two participants are playing the same role in the same group, allow some time for those individuals to prepare before the negotiation begins. Indicate that caucuses are allowed during the course of the negotiation as part of the ground rules. Also indicate that once the exercise begins you will be observing the exercise for the purpose of de-briefing and that you will not answer any questions about the exercise. Allow one hour and 45 minutes to complete the negotiation, informing participants when 45 minutes and then again when 15 minutes remain. Have each group provide a written statement of agreements, indicating which person(s) played which roles.

### Debriefing the Exercise

Numerous aspects of multi-party, multi-issue negotiations are demonstrated by this exercise. This section summarizes some of the lessons to be learned - many other lessons will be apparent as the patterns and individual responses exhibited during the exercise are observed. Many of these lessons pertain to the use of specific tactics or strategies, communication styles, listening abilities and linguistics used in the negotiation. At least thirty minutes should be allocated to debriefing the exercise upon its completion, noting the observations which will enhance participants understanding of negotiation and improve negotiation skills. In particular, the debriefing should provide an increased awareness of the interface between negotiation theory and practice, indicating the importance and impacts of having a solid framework from which to engage in negotiations. In addition, participants should be

given the opportunity to examine how their own styles and abilities influenced the outcome of the negotiations.

The following outline provides a guide to help facilitate discussions of the lessons that can be drawn from this exercise. It is assumed that the leader(s) of the exercise is experienced and has sufficient knowledge of negotiation theory and practice to conduct the debriefing.

### **Beginning the Negotiation**

Did the group talk about groundrules before proceeding with the negotiation (eg. how to manage time, introductions, expression of issues of concern, statement of positions/interests, etc)?

Did a group leader emerge to facilitate how the group would proceed in accomplishing the task at hand? What was the impact?

Was any effort made to prioritize the issues or orchestrate the order in which issues would be addressed? What was the impact of this?

### **Conducting the Negotiation**

Several sub-issues are incorporated into the discussion of protecting historic resources. Was any effort made to unbundle these issues (eg. inventory, nomination, designation, etc.)? What was the impact of this? How were discussions about economic incentives and property rights managed?

What efforts were made to identify where trade-offs could occur? Was it recognized that people have different subjective utilities on specific issues, and that this provides a basis for tradeoffs? How was this communicated?

Were issues and alternatives packaged to maximize joint gains as well as differing subjective utilities? For example, the composition of the UDC could be linked to how economic hardship will be determined.

One of the difficulties in negotiation is moving from contentious to cooperative attitudes. Was an environment established which led to brainstorming and creative problem-solving? How does the quality of the solution relate to the ability to conduct creative problem-solving, in terms of thoroughness and specificity?

For creative problem solving to be most productive, an understanding of the interests of each party is required. Was the negotiation interest-based or position-based? Cite examples of positional bargaining observed during the negotiation and explore their impact on the negotiation. Give examples (based on observing the negotiation) of how participants can transform a positional to an interest-based approach.

Concerning time management, did the group succeed in allocating appropriate time to the most important issues or was an inordinate amount of time spent on issues of lesser importance (such as the use of National Register criteria, which economic incentives to adopt)? How did time management affect the outcomes?

### **Closing the Negotiation**

One of the major elements of the negotiation process is dealing with uncertainty and identifying issues which cannot be resolved immediately (for example, acceptance of economic incentives by City Council). Was the issue of uncertainty acknowledged by the participants during the negotiation? How did the group deal with issues of uncertainty - was agreement prevented? did the entire agreement become a conditional or contingency agreement? was the issue of uncertainty dealt with separately?

### **Generic Issues**

What would have been the potential benefits, or drawbacks, of using a mediator in this negotiation? Would the process have been more efficient? Would it have more focused on interests? Would issues have been packaged more effectively?

Were incentives to negotiate and/or Best Alternatives To a Negotiated Agreement (BATNAs) discussed explicitly as the basis for proceeding with the negotiation? If not, could that discussion have created a more positive environment for creative problem solving?

Discuss the dynamics of having six parties and numerous issues involved in the negotiation. What are the potential advantages and disadvantages associated with having numerous parties and issues? Was coalition building an important part of the negotiation? What possible problems are associated with creating coalitions?

### Time Summary

The following time allocations and activities should be considered in planning for and conducting the exercise.

**Preparing for the exercise:**

Forty-five minutes for participants with knowledge of historic preservation issues to read instructions, analyze the issues, prepare a strategy; one and one-half hours for those not knowledgeable of historic preservation issues.

**Conducting and debriefing the exercise:**

Approximately two and one-half hours

- 10 minutes for questions on general instructions
- five minutes for dual participants of the same role to discuss strategy
- five minutes to discuss groundrules, instructors role, move into groups
- one hour and forty-five minutes to complete the negotiation
- thirty minutes, minimum, to debrief.

### Optional Use of a Mediator

As indicated above, the use of a mediator is recommended only for mediation training or if comparisons are desired between groups with and without a mediator. If a mediator is used for comparison of group efficiency and effectiveness in a negotiation, however, a person with some degree of mediation experience should be assigned the role. If the major focus is to develop negotiation skills, the mediator option should not be used.

If the objective is to provide mediation experience for mediation training then two options are suggested. One option is to use one set of mediators, allowing only one hour for the negotiation. Finishing the negotiation is not as important as examining the efficiency (time management) and effectiveness (establishing priorities, packaging alternatives, assessing the main issues) of using a mediator.

The second option is to have two sets of mediators. If this option is selected, have the one set of mediators manage a negotiation targeting only the issues of protecting historic resources and a second set of mediators involved with the remaining two issues. If this option is used, allow only forty-five minutes per negotiation and conduct the debriefing after both are complete.

Important debriefing questions include:

- did the mediator establish his/her role?
- did the mediator gain the explicit acceptance of the group?
- was the authority of the mediator questioned or rejected at any time during the negotiation?
- if so, how was that handled and what was the impact?

Set-up the negotiation in the same manner as if the mediator is not involved. Indicate explicitly, however, that each group will be assigned a mediator to help facilitate the negotiation. Also indicate that the mediator has been selected by the Historic Preservation Task Force. Meet with all representatives of each role, confidentially, to convey the following information.



- BUILD -** the Mayor's representative welcomes and supports the mediator because s/he realizes that bringing the developers and preservationists together could be difficult, and without a mediator the job would fall to BUILD
- ZAP -** ZAP is ambivalent about the use of a mediator; if the mediator seems to be organized, ZAP is supportive and should indicate that support; if the mediator is not well-prepared, ZAP should let their concerns about a mediator be known
- PAST -** PAST does not see the need for a mediator but will remain silent and listen to others perspectives; if the negotiation does not go well, the mediator might be a good scapegoat
- PURE -** the PURE representative has seen mediation work well before and is very supportive, particularly with the size and diversity of the negotiation participants
- BIG -** BIG is not sure about the need for a mediator; as a result, the BIG representative should question the mediator about what s/he can add to the process
- DIBS -** DIBS thinks the mediator might get in its way with maintaining a strong relationship with BUILD; on the other hand, DIBS does not want to stand out as the only group opposed to a mediator; therefore, concern should be expressed but muted.

If only one set of mediators will be used, provide the above information to each group. If two sets of mediators are to be used, provide the information to BUILD, PAST and BIG for one negotiation and to ZAP, PURE and DIBS for the second negotiation.

The mediator instructions provided should be distributed to mediators if you choose to involve a mediator in the negotiation. A list of the key issues should also be provided to the mediator to assist with his/her with preparing for and conducting the negotiation session.

### Mediator Instructions

You have been selected as the mediator for these negotiations by the Historic Preservation Task Force. The Task Force is comprised of a representative from the city, the development community and the preservationists. As explained to you, three major issues need to be addressed in this negotiation: protecting historic resources, providing economic incentives and protecting property rights.

Over the years, you have worked on many public policy issues related to planning. This is the first time you have mediated a dispute concerning historic preservation. Nonetheless, you have worked with similar interest groups and have been involved with issues much more controversial, including siting a hazardous waste treatment facility and establishing an annexation policy between a city and county.

Based on pre-negotiation interviews, the following 14 issues emerged as the most important to various groups. This list should help you organize the issues and conduct the negotiation session about to begin.

1. Use of National Register Criteria
2. Adoption of modifications to National Register Criteria
3. Categories of protection
4. Nomination initiation
5. Determination of classification
6. Designation responsibility
7. Number of Landmarks
8. Appropriate economic incentives
9. Criteria to receive incentives
10. Restrictions associated with incentives
11. Conditions defining economic hardship
12. Responsibility for providing evidence of economic hardship
13. Determination of economic hardship
14. Composition of the UDC

In this negotiation, you should encourage creative problem-solving so that new solutions can be generated and evaluated. At the end of the session, the group should be well on its way to identifying solutions to the key issues and deciding how to proceed with the remainder of the issues.

# **Training Exercise: The Terminus Historic Preservation Case**

## **General Information**

### **Background**

Terminus is the central city of a large metropolitan area. In the late 1970's, a weak regional economy combined with development of three major suburban areas brought downtown growth to a halt. New businesses were locating in suburban areas rather than downtown Terminus.

As such, the first order of business for the mayor-elect in 1980, Mayor Olde, was to restore the economy and vitality of the downtown business district. Without a competitive and growing downtown, the city's image would be tarnished. More importantly, if the economy of the city could not be improved, the residents of the city would suffer the consequences of a declining tax base and reduced urban amenities. Therefore, Mayor Olde sought to create an attractive business environment. He worked with the existing business leadership to develop policies which would stimulate the growth of downtown Terminus, including economic incentives, expanded amenities and increased support from city government.

In the five years since Mayor Olde took office, the city has experienced a dramatic turn-around. Three headquarter buildings for major Fortune 500 corporations and four new skyscrapers have added more than seven million square feet of new office space. Demand for properties throughout the downtown area has increased dramatically. With the cultural attractions of downtown, and the ease of pedestrian access, downtown Terminus is now attracting more major corporations than the suburban areas.

In seeking to enhance its competitiveness for new development, the city rezoned areas around the downtown rapid rail stations. These nodes allow for dense development with few restrictions around the stations, although property owners of new developments must negotiate set-backs and other design features with the city. To create a transition between these nodes and lower density neighborhoods nearby, allowable densities decrease quickly with distance from the stations. A transition zone is therefore created between high density commercial developments and low density residential areas.

As a by-product of the success of these policies, however, the development pressure on properties throughout downtown Terminus greatly increased. Speculative

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This case was written by Gregory Bourne and Michael Elliott. Respectively, they are Executive Director and Director of Public Policy Programs of the Consortium on Multi-Party Conflict Resolution. The Consortium is a dispute resolution program of the Georgia Institute of Technology, the University of Georgia and Georgia State University. Inquiries should be addressed to the Consortium on Multi-Party Conflict Resolution, Georgia Institute of Technology, Atlanta, Georgia, 30332-1055. Telephone number (404)894-2351. Support for preparing this case and associated materials was provided by the National Institute for Dispute Resolution.

land buying began in earnest in the mid-1980's. Numerous "historic" properties were purchased for the sole purpose of demolishing the existing structure to provide a handsome package for prospective builders and developers. Many of these speculatively purchased buildings were demolished, resulting in a series of vacant lots. Other lots were left with deteriorating buildings.

Historic preservationists became increasingly alarmed with the rash of purchases and demolitions of historic properties. As such, the local historic preservation community began mobilizing its resources, largely public opinion, to oppose what they viewed as flagrant speculation and over-development in the city. The preservation community argued that the availability of numerous empty lots and parking lots made the destruction of the city's historic resources unnecessary.

Property owners and developers, on the other hand, believed they were merely doing business in an environment created by the city to encourage new development. Policies protecting historic properties were weak and inconsistently enforced. Few buildings were actually protected by the existing ordinance and the city's inventory of historic properties was the subject of considerable debate. The Mayor could allow or disallow demolition permits based on the ordinance, but great uncertainty existed concerning the conditions under which the Mayor would either approve or deny a request for a demolition permit. As such, designation of historic structures by the Historic Preservation Commission were largely ignored by the development community.

This environment created great uncertainty. While actively promoting development, the city created a situation which pitted the interests of developers against those of preservationists. Policies developed to encourage both were generating conflict. As development intensified and more "historic" properties were lost, animosity increased among the various parties involved. Ultimately, the outcry from individuals interested in historic preservation presented a dilemma to developers as public opinion and the press increasingly characterized developers as pillagers rather than the purveyors of progress.

The results of these debates on historic preservation left city government in an untenable position. Both the downtown property owners/developers and historic preservationists had legitimate reasons to be concerned and actively involved in promoting their interests. The situation had escalated and was not about to disappear. Furthermore, the city's existing historic preservation program was not sufficiently sophisticated to deal with the issues. As both parties could apply significant resources to the upcoming elections, the Mayor and City Council were interested in having these issues resolved.

Within this environment, a series of events occurred which brought the issues to a head. A certain section of Terminus called Partridge Point, located on world famous Peartree Street, was characterized by low-rise office and apartment buildings. The street in front of these buildings was lined with pear trees and many buildings had large courtyards. The ambience of this area was generally regarded to provide the downtown area with a great deal of character. The area included the arts center, museum and several other structures with generally acknowledged historic significance.

About two years ago, the building considered by many to be the heart of Partridge Point was purchased. The building was then speculatively demolished in the hope that the property would become the location for the southeast headquarters of the worlds fifth largest corporation. Unfortunately for the developer, the publicity raised by the demolition of the building created a stigma which could not be overcome. The corporation certainly did not want to build its office on property which was so controversial. This decision resulted in the property lying empty, creating a visual blight on the area.

Four months ago, a developer obtained a demolition permit for another building in the Partridge Point area. This time an historic eight floor apartment building was the target. Two months ago, two more demolition permits were issued for similar buildings within four blocks of each other. This trend appears to doom Partridge Point as it has been known, and from the perspective of nearby residents and preservationists, affects forever the character of the city.

This has placed the Mayor and City Council members in a precarious position. On the one hand, property owners and developers are doing nothing more than what is within their rights given current zoning guidelines and development policy. On the other hand, elected officials are hearing from neighborhood organizations who oppose the pace and location of demolitions. After the two most recent demolition permits were issued for sixty year-old apartment buildings in Partridge Point, more than five hundred people picketed both sites.

Reacting to the public outcry, City Council passed legislation which would halt demolitions of historic properties for one year, until further studies could be undertaken to determine the impact of losing these purportedly historic buildings. The development and business community, however, objected and the Mayor vetoed the legislation. The veto was sustained by one vote. Divisions clearly exist amongst elected officials. The issues of economic expansion, growth management and historic preservation are now intertwined such that a clear solution to the problem is not evident. Both sides of the historic preservation issue seem to doubt that the rapid pace of new development and historic preservation can co-exist. Something has to change.

In response to the escalating nature of this problem, representatives from the major interest groups have agreed to convene a Task Force to address the issues. After careful consideration of several options, the Task Force is recommending that negotiations be undertaken involving the major interest groups to resolve these issues.

### Structure of Negotiation Process

Three months have past. A structure for the negotiations has been established by the Task Force. A steering committee comprised of representatives of the major interests groups has been formed. The steering committee is responsible for negotiating an agreement, if possible. The steering committee is comprised of the following representatives:

- 1) President of the Business and Industry Group (BIG) of Terminus. BIG represents the major business interests in downtown Terminus. BIG also works closely with the city on planning, development and downtown improvement activities. While developers and downtown property owners are prominent members of BIG, the organization is also concerned and interested in the overall vitalization of downtown and in enhancing its desirability. Some of its members have been involved in restoring and preserving historic properties.
- 2) Executive Vice-President of Terminus Properties and President of the Development, Investment and Building Society (DIBS). Terminus Properties is the largest land owner and developer of downtown Terminus. DIBS is an alliance of the major development companies and property owners in downtown Terminus. DIBS is generally regarded as representing the development community in these negotiations.
- 3) President of Preservation and Antiquity Society of Terminus (PAST). PAST is the primary preservation advocacy group for the city of Terminus. It has over 5000 members, many of whom are community leaders. PAST was primarily responsible for organizing the demonstrations against the demolition of the Partridge Point buildings and actively lobbies city government on preservation issues.
- 4) President, Preservers of Urban Residential Environments (PURE). PURE is the umbrella organization comprised of all the city's neighborhood organizations. Several neighborhoods have an interest in receiving the protection and prestige that comes with an historic designation. Other neighborhoods have little interest in the issue. PURE is the primary advocacy group for neighborhood interests and serves as a springboard for political activists seeking to influence City Council.
- 5) Commissioner, Bureau of Urban, Industrial and Land Development (BUILD). In essence, the Commissioner of BUILD represents the interests of the Mayor. In addition, BUILD has worked closely in the past with both BIG and DIBS in major development and downtown re-vitalization projects. Although BUILD and the Urban Design Commission work closely together on many issues, some tension has existed in the past around issues of historic preservation and who should be providing oversight on these issues. As part of the executive branch of city government, BUILD must also be responsive to the broader interests of the community.
- 6) Chair of the Zoning Assessment and Planning (ZAP) Committee of City Council. To represent the city council, the chair of the ZAP committee has been selected. This person is also on the powerful finance committee. Although the Council can be fractious due to its size, the chair of ZAP is generally perceived to be in neither the preservation nor development camp, and is widely respected by other council members. The Council has come under increased scrutiny on this issue, particularly with an election year approaching.

## Major Issues

In the debates that have taken place to date, numerous issues have emerged pertaining to historic preservation in Terminus and the implementation of historic preservation policies. The issues fall in three broad categories: protecting historic resources, providing economic incentives and protecting property rights. The following perspectives have been identified for each of these issues.

### 1. Protecting Historic Resources

The major aspects of protecting historic properties include identifying properties worthy of preservation, nominating properties based on a classification system, and designating properties based on appropriate criteria. Identification involves research to determine whether a building or district meets National Register Criteria. The nomination process leads to recommendations about whether specific properties should be considered for protection, and which level of protection is most appropriate. Designation is the process by which nominated properties are either approved or denied legal protection.

The purpose of an identification system is to establish which buildings, structures or objects have historic significance. The inventory prepared by the Urban Design Commission is an attempt to identify the major historic resources of Terminus. Such an inventory can then be used to identify which buildings, structures and objects should be protected for the cultural integrity and well-being of the community. The existing inventory prepared by the Urban Design Commission contains more than 250 properties. This inventory, however, is controversial since some believe many properties on the list are not significant. While 250 properties seems like a large inventory to some, it is a comparable number to many other cities the size of Terminus.

The definition of what constitutes a significant historic resource, however, is an important element of the negotiations. As such, the method(s) by which structures and properties are determined to be historic needs to be resolved. The various parties to this dispute have essentially agreed that the criteria established for being placed on the National Register of Historic Places should be used as the basis for the historic inventory. Some discussions have occurred about modifying the criteria to provide the flexibility needed to respond to the unique attributes of Terminus but this idea has not been broadly supported.

Viewpoints differ considerably concerning what degree of protection should be provided for different properties. One perspective suggests that all properties meeting National Register criteria should be placed in a Landmark category with strong constraints on modifying or demolishing these properties. In essence, this could lead to all properties on the UDC inventory being classified as a Landmark. A second perspective agrees that having a Landmark category which affords a high level of protection is appropriate, but suggests limiting such protection to a few "classic" properties. A third perspective

recognizes that a gradation exists between historic properties, even if they meet National Register criteria, and that varying degrees of restriction should be applied.

For a building, structure or object on the historic inventory, a process must be established for designating properties to their appropriate category(ies) within the classification system. A systematic process should be developed for nominating as well as designating historic properties. The main issues that have emerged are (1) who can initiate the designation process and (2) who approves the designations. Should the property owner, the Urban Design Commission, any citizen in the community, or some combination of these be involved in the nomination process? Concerning the designation process, should this be accomplished the Urban Design Commission, the City Council or the Mayor?

## 2. Providing Economic Incentives

Under most circumstances, some form of financial assistance is necessary to assure that historic properties are maintained once they are designated. Furthermore, some argue that having a property designated and protected reduces its value since its redevelopment is then regulated. Options for economic incentives such as facade easements, mortgage guarantees, revolving loan funds, tax freezes and tax abatements have been used in other cities around the country.

All the parties, to some degree, agree that economic incentives are necessary to support historic preservation. The type and impact of incentives seem to be the major concerns, as well as which properties qualify. The options being considered are:

- 1) Tax abatement. A tax abatement eliminates or reduces the amount of property tax paid for some designated period of time. One additional option would be to base taxes on pre-rehabilitation value of the property. A certain percentage of property taxes is paid each year, beginning at zero percent and gradually increasing (perhaps linearly) during the period of abatement until 100 percent is reached. The time period could range from five to twenty years.
- 2) Tax freeze. Property taxes are based on a combination of millage rates and assessed values. This option would freeze the assessed value for a specific period of time.
- 3) Tax reassessment. Currently, property taxes must be based on the highest and best use of the property given its zoning category. The development community would like a tax freeze to be based on the property's current or most recent use rather than its highest and best use. This would require state legislation to achieve.



- 4) Revolving loan fund. This would provide funds at low interest rates to rehabilitate historic properties needing repairs and upgrades to meet building codes. This could be established through funds obtained from the City, foundations, funding sources such as Community Development Block Grants and private sector contributors.
- 5) Mortgage guarantee program. This program would be sponsored and funded by the city. It would provide mortgage protection to owners of historic properties who need funds to restore or rehabilitate properties, and then operate that property.

Other options such as facade easements should also be given due consideration.

### 3. Protecting Property Rights

The United States Supreme Court has established the legality of placing limitations the demolition and modification of properties with recognized historic significance. On the other hand, property owners have certain property rights which cannot be violated. In essence, government may regulate the use of a property unless such regulation removes all economic worth of the property and creates a demonstrable economic hardship to the property owner. If all economic worth is removed, the courts have declared such regulation is equivalent to taking the property.

The primary point of concern is the definition of a taking. The degree to which property values are affected by a designation controls whether or not the courts will uphold a claim that a taking has occurred. While the courts have upheld the constitutionality of designating and protecting historic properties, the specific conditions under which a taking can be legitimately claimed remain unclear. No other city has dealt explicitly with how to resolve the issues of property rights and associated claims in their historic preservation ordinance.

Property rights is an issue that acutely affects both commercial and residential property owners. A method is needed to determine what constitutes economic hardship as well as how to proceed if a condition of economic hardship is established. Several options have been discussed but none of the options has been broadly accepted. Alternatives expressed to date include giving property owners, based on their own analysis, the ability to prevent their historic property from being designated, either at the time of designation or thereafter, if their analysis can document economic hardship resulting from designation. Another alternative suggests that either the Urban Design Commission or the City Council should make the final determination. Opinions differ concerning who should bear the burden of proof in these instances.

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As a member of the Steering Committee you are preparing for the next meeting during which alternatives addressing these three major issues will be discussed. Extensive progress must be made toward identifying the substance of an agreement at this meeting. Without substantial progress, the negotiations are in danger of faltering. Along with the other members of the Steering Committee, you have one hour and 45-minutes to reach a framework for agreement.

If an agreement can be reached which includes the representatives of both the Mayor and City Council, and at least three of the remaining four members of the Steering Committee, the Mayor and City Council have indicated they will support the agreement. If an agreement cannot be reached meeting these conditions, City Council will seek to pass its own ordinance. Any ordinance passed in this manner will probably be litigated because political support from neither the development or preservation community can be assured. Open political skirmishing and litigation are not particularly attractive options to any group.

### **Proposed Plan for Resolving Historic Preservation Issues**

To provide a framework for continuing the negotiations, the historic preservation ordinances of several cities have been examined and evaluated for their applicability to the major issues facing Terminus. Based on this evaluation, the Urban Design Commission has developed the following recommendations for how each issue might be resolved given the experiences of other cities around the country. This proposal should help guide the negotiation session about to begin.

## **Urban Design Commission Proposal**

### **PROTECTING HISTORIC RESOURCES**

National Register Criteria will be used to establish the historic inventory, from which properties will be nominated. The inventory will be continuously updated using these criteria. Historic resources will be classified as Landmark Sites for individual properties, and as Landmark or Historic Districts for larger assemblages of properties.

A quantitative system of designation will be developed in which historic and architectural attributes of buildings and districts will be assigned a numeric value. The classification of individual properties or districts will be determined automatically based on the numeric values calculated. The Urban Design Commission will be responsible for making this numeric calculation and for assuring the appropriate designation. (This system is currently being used in San Francisco.)

### **PROVIDING ECONOMIC INCENTIVES**

For all designated properties, tax assessments will be frozen at current levels. For rehabilitated historic properties, assessments will be based on the pre-habilitation value. A revolving loan fund of \$5 million will be established as a public-private partnership by the City and private sector to assist property owners renovate historic structures.

### **DEFINING CONDITIONS OF ECONOMIC HARDSHIP**

Any return on investment greater than or equal to six percent will be considered an acceptable return, and will not constitute a taking. (This standard has been successfully upheld in court in New York City.) This criterion will be used by the Urban Design Commission in evaluating and determining claims of economic hardship. The burden of proof is on the property owner if a claim of economic hardship is made.

**Attachment A****NATIONAL REGISTER OF HISTORIC PLACES****CRITERIA FOR EVALUATION**

The quality of *significance* in American history, architecture, archaeology, engineering and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

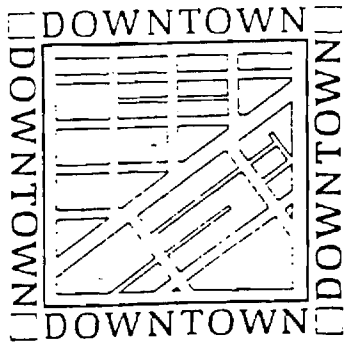
- A. that are associated with events that have made a significant contribution to the broad patterns of our history; or
- B. that are associated with the lives of persons significant in our past; or
- C. that embody the distinctive characteristics of a type, period, or method of construction or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. that have yielded, or may be likely to yield, information important in prehistory or history.

\*\*\*\*\*

Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years *shall not be considered eligible* for the National Register. However, such properties *will qualify* if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

- A. a religious property deriving primary significance from architectural or artistic distinction or historic importance; or
- B. a building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or
- C. a birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with his productive life; or

- D. a cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or
- E. a reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or
- F. a property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance; or
- G. a property achieving significance within the past 50 years if it is of exceptional importance.



# PRESERVING THE PAST

(from: San Francisco Department of City Planning, "Downtown Plan Proposal" as Adopted by the City Planning Commission as a part of the Master Plan, November 1984)

## BACKGROUND

Buildings in San Francisco's downtown were, until recently, the product of a short period lasting from 1906 until about 1930. After the earthquake and fire there was a rush to rebuild. By 1910, the area now considered the retail and financial districts was largely rebuilt with little evidence of the disaster remaining. Many of the new buildings were designed by architects trained in the same tradition (at the Ecole de Beaux Arts in Paris or under instructors trained there) and responding to a new building technology. As a result, the downtown had a coherent, unified appearance.

Downtown was characterized by light-colored, masonry-clad structures from six to twelve stories in height with rich, distinctive, and eclectic designs.

Conscious efforts were made to relate buildings to both the street and adjacent buildings by use of similar cornice and belt course lines, and sympathetic materials, scale, and color. Large areas of glass, made possible by steel frame construction, were often used to allow light to penetrate into interiors. Buildings were constructed to the street and property lines, defining the street edge and producing a sense of enclosure. The relatively low structures incorporated a considerable amount of ornamentation and articulation, creating a pedestrian scale. Later development, up until the mid-1920s, continued this style and character.

During the late 1920s, though, many skyscrapers (for example, the Russ, Shell, and Pacific Telephone buildings) were of a more monumental size. But by use of a similar scale, style, materials, color, solid to glass ratio, detailing, and belt courses, they blended with buildings built right after the earthquake and fire.

From the Depression until the 1950s, no major buildings were constructed downtown. When construction resumed, buildings were of a much different character. Increasingly, they were much larger in scale than earlier buildings, often dark in color or with reflective glass, with few details to relate the building to pedestrians or to adjacent buildings. The new 'International Style' architecture made an office building a rectangular box with sheer, unornamented walls without setbacks or cornices. Continuity of the building form along the street was lost as buildings were set back and placed in plazas, each creating a "tower in a park."

In recent years, there has been increasing concern over the loss of older buildings and the failure of their replacements to blend into the established character of their surroundings.

The U.S. Supreme Court in Penn Central Transportation Company vs. New York City, 438 US 104 (1978), which upheld the constitutionality of mandatory retention of landmark buildings, clearly outlined the importance of preservation:

Over the past 50 years, all 50 states and over 500 municipalities have enacted laws to encourage or require the preservation of buildings and areas with historic or aesthetic importance. These nationwide legislative efforts have been precipitated by two concerns. The first is the recognition that, in recent years, large numbers of historic structures, landmarks, and areas have been destroyed without adequate consideration of either the values represented therein or the possibility of preserving the destroyed properties for use in economically pro-

ductive ways. The second is a widely shared belief that structures with special historic, cultural, or architectural significance enhance the quality of life for all. Not only do these buildings and their workmanship represent the lessons of the past and embody precious features of our heritage, they serve as examples of quality for today. "[H]istoric conservation is but one aspect of a much larger problem, basically an environmental one of enhancing--or perhaps developing for the first time--the quality of life for people."

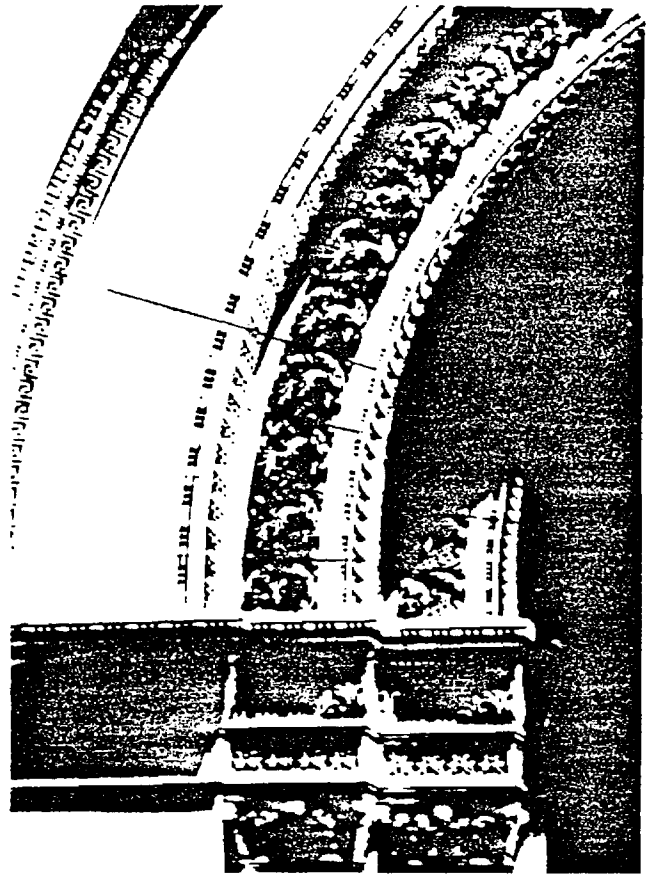
The Foundation for San Francisco's Architectural Heritage (Heritage) in a survey in which the Department of City Planning participated systematically evaluated and rated all buildings in the C-3 district constructed prior to 1945. For each building, architectural qualities (such as its style and design), environmental qualities (such as its continuity with surrounding development), and historic qualities (such as the architect or age of the structure) were considered.

Of the 1,700 buildings downtown, 127 were rated A--highest importance, 241 were rated B--major importance, and 789 were rated C--contextual importance.

In recent years, an average of eight A- and B-rated buildings a year have been demolished to make way for new development. In the absence of stricter controls, seven or eight significant buildings a year can be expected to be demolished in the future.

Article 10 of the Planning Code provides a process whereby a building can be declared a landmark. Demolition of landmarks can be delayed for only a year. Of the remaining 344 A- and B-rated buildings, only 35 have been declared landmarks. Since the landmark designation process began in 1967, an average of 2.3 downtown buildings a year have been designated. It is clear that more comprehensive and far-reaching steps need to be taken.

In the recent past a number of developments have been approved that preserved facades of significant buildings. While an important step, this limited form of preservation is no longer



MILLS BUILDING DETAIL

Amit Ghosh

seen as sufficient. The more desirable approach is to shift development to sites other than those occupied by important structures.

While it would be desirable if many or most of these A, B and C rated buildings were retained, it was concluded that, given the large number, only those that make the most important contribution to the visual quality of downtown could reasonably be required to be retained. Adopting the rating system designed by Heritage, the Department of City Planning examined each of the buildings within the C-3 District for architectural, cultural, and environmental significance and using a review panel comprised of Department staff with expertise in the field reassessed the Heritage ratings on the thirteen criteria employed in the Heritage methodology. That methodology is explained on the following pages.

# BUILDING RATING METHODOLOGY

Buildings were rated "A-Buildings of Highest Importance", "B-Buildings of Major Importance" and "C-Buildings of Contextual Importance" according to the total number of points awarded for ratings on 13 criteria as follows:

A - Buildings of Highest Importance	70 points and above
B - Buildings of Major Importance	45-69 points
C - Buildings of Contextual Importance	25-44 points

The criterion, ratings, and points assigned to various ratings, are as follows:

Criterion	Ratings	Points	Criterion	Ratings	Points
A. ARCHITECTURE			B. HISTORY		
1. Style			7. Person		
Significance as an example of a particular architectural style, type or convention.	E Especially fine or extremely early example if many survive; excellent example if few survive.	12	Associated with the life or activities of a person, group, organization, or institution that has made a significant contribution to the community, state or nation.	E Person of primary importance intimately connected with the building.	15
	VG Excellent or very early example if many survive; good example if few survive.	6		VG Person of primary importance loosely connected, or person of secondary importance intimately connected.	8
	G Good example.	3		G Person of secondary importance loosely connected.	4
	FP Of no particular interest.	0		FP No connection with person of importance, or unknown.	0
2. Construction			8. Event		
Significance as an example of a particular material or method of construction.	E Especially fine or extremely early example if many survive; excellent example if few survive.	12	Associated with an event that has made a significant contribution to the community, state, or nation.	E Event of primary importance intimately connected with the building.	15
	VG Excellent or very early example if many survive; good example if few survive.	6		VG Event of primary importance loosely connected, or event of secondary importance intimately connected.	8
	G Good example.	3		G Event of secondary importance loosely connected.	4
	FP Of no particular interest.	0		FP No connections with event of importance or unknown.	0
3. Age			9. Patterns		
Of particular age in relationship to the periods of development of buildings in the area.	E Built between 1889 and April 1906.	10	Associated with, and effectively illustrative of, broad patterns of cultural, social, political, economic, or industrial history, or of the urban development of the city.	E Patterns of primary importance intimately connected with the building.	12
	VG Built between May 1906 and 1930.	5		VG Patterns of primary importance loosely connected or patterns of secondary importance intimately connected.	6
	G Built between 1931 and 1945.	2		G Patterns of secondary importance loosely connected.	3
	FP Built since 1945.	0		FP No connection with patterns of importance or unknown.	0
4. Architect					
Designed or built by an architect or builder who has made a significant contribution to the community, state, or nation.	E Of particular importance to the history of the community, state, or nation.	8			
	VG Of considerable importance.	4			
	G Architect or builder identified and known, but not of particular importance.	2			
	FP Unidentified or unknown.	0			
5. Design					
Architectural quality of composition, detailing, and ornament measured, in part in originality, quality as urban architecture, craftsmanship, and uniqueness.	E Excellent.	25			
	VG Very good.	12			
	G Good.	6			
	FP Fair or poor.	0			
6. Interior					
Interior arrangement, finish, craftsmanship, and/or detail is/are particularly attractive or unique.	E Excellent	8			
	VG Very good.	4			
	G Good.	2			
	FP Fair, poor or unknown.	0			
		Max. 50			



Criterion	Ratings	Points
<b>C. ENVIRONMENT</b>		
10. <u>Continuity</u> Contributes to the continuity or character of the street, neighborhood or area.	E Of particular importance in establishing the character of the area.	25
	VG Of importance in establishing or maintaining the character of the area.	12
	G Compatible with the character of the area.	6
	FP Incompatible with the character of an area.	0
11. <u>Setting</u> Setting and/or landscaping contributes to the continuity or character of the street, neighborhood or area.	E Of particular importance in establishing the character of the area.	8
	VG Of importance in establishing or maintaining the dominant character of the area.	4
	G Compatible with the dominant character of the area.	2
	FP Incompatible with the dominant character of the area, or unimportant.	0
12. <u>Landmark</u> Significance as a visual landmark.	E A structure which may be taken as a symbol for the city or region as a whole.	25
	VG A conspicuous and familiar structure in the context of the city or region.	12
	G A conspicuous and familiar structure in the context of the neighborhood.	6
	FP Not particularly conspicuous or familiar.	0
		Max. 25
<b>D. INTEGRITY</b>		
13. <u>Alterations</u> Has suffered little alteration and retains most of its original materials and design features.	E No changes or very minor changes.	0
	VG Ground floor remodeled, cornice removed, or minor alterations which do not destroy the overall character.	-4
	G Overall character changed, but recognizable through removal of major cornice/parapet, alteration of upper floors, or gross alteration of any major element.	-8
	FP Altered beyond recognition.	-15

Application of this methodology produced a list of buildings rated "Buildings of Individual Importance"<sup>1</sup> or "Buildings of Contextual Importance" based on their architectural, historical and environmental qualities. It was decided that for the purposes of the Downtown Plan only those buildings which contribute to the physical appearance of downtown should be required to be retained or should be given TDR to encourage their retention. This contribution was determined by a building's ratings in Architectural Design<sup>2</sup> and Contribution to the Environment<sup>3</sup>.

Another step taken was to analyze the Buildings of Individual Importance to determine whether an addition in height could be accommodated on the site without damaging the buildings' integrity (this is more fully explained on p. 65).

#### Footnotes

<sup>1</sup>For simplicity the Heritage category of "A-Buildings of Highest Importance" and "B-Buildings of Major Importance" were combined into a single category "Buildings of Individual Importance".

<sup>2</sup>The criteria "Design" and "Integrity", which took into account the effect of alterations on the original integrity of the building (criteria 5 and 13 of the Heritage methodology), were combined into a single criterion "Architectural Design". This criterion measures the present quality of the design, including its alterations.

<sup>3</sup>The term "Contribution to the Environment" was substituted for the criterion "Continuity" (number 10 in the Heritage methodology); this is perhaps a more generally understood term for this attribute of the building.

## **Attachment C**

### **TAX INCENTIVES FOR HISTORIC PRESERVATION**

(Adapted from: John Petersen and Susan Robinson, "The Effectiveness and Fiscal Impact of Tax Incentives for Historic Preservation: A Reconnaissance for the City of Atlanta", Government Finance Officers Association, May 1988)

#### **Property Tax Abatement**

Tax abatement provides a method by which a local government entity decreases or delays the taxes due on a property over a certain period of time. The rationale for instituting such a program comes from the concept of lessening the tax burden on property owners of historic preservation projects. By reducing the property taxes due on a project, property owners are able to lower a major operating cost. Also implicit in the establishment of a tax abatement program is the concept that often the property tax may function as a disincentive for building rehabilitation or improvement because such activity often results in revaluations and steep increases in assessment for property tax purposes.

Tax abatement programs can be structured in many ways. First, the program can be structured to provide a "full" tax abatement. Although called an abatement, a 100 percent tax abatement on a specific property would essentially constitute a tax exemption. Abatement programs are typically structured as a reduction of a lower tax rate than usual. A program that is structured as a reduction of a specific percentage would, for example, be defined as a 25 percent abatement of the property taxes due. A variant is a program structured to provide a lower effective tax by assessing at a lower ratio than other property (e.g., at 30 percent of actual market value rather than 40 percent). In either approach, the local government must determine the length of time for which the tax abatement is available: i.e., five, ten, or more years. The analytical aspects of how abatements work as incentives are discussed later in this report.

#### **Property Tax Credit**

Another Approach that can be taken to provide relief for historic property owners involves granting a credit upon fulfillment of certain conditions, such as rehabilitation or restoration. The tax credit allows for the subtraction from a presented tax bill, so that as Richard Westin in Lexicon of Tax Terminology defines it, a credit is "an amount that directly offsets tax liabilities, as opposed to a deduction that only offsets income." The primary advantage of a tax credit is that it specifically links the amount spent on improvement to the tax subsidy. Credit programs are also relatively easy to administer, since the burden of providing documentation is shifted to the property owner and the amount of the credit can be determined once, at the time the property qualifies.

A few states--New Mexico, Montana, and California--provide for credits on state income taxes to encourage historic preservation. New Mexico established its program

because its property tax exemption was found to be unconstitutional. Property owners can now claim a credit equal to one-half of their rehabilitation costs up to a maximum of \$25,000, or five years of tax liability, whichever is less.

In the State of Maryland, local governments are allowed to provide a credit against real property tax up to ten percent of maintenance and restoration costs for properties in locally designated historic districts, and a credit of five percent of expenses incurred in constructing buildings that are architecturally compatible with the historic district in which they are located. Both credits may be spread over a period of up to five years

### **Property Tax Freeze**

The tax freeze approach provides tax relief to a historic preservation project by holding tax payments at pre-rehabilitation levels and not taxing increases in value for qualifying properties. In this approach, a rehabilitated building has its assessment frozen at the level before rehabilitation and retains that value for a specified period of years. The length of time of the freeze ranges from five years in some states to as many as 15 years in others.

According to various authors, this type of financial incentive for historic preservation appears to be the most widely used approach. Some programs or state statutes provide that assessment freezes be limited to residential buildings, others solely to commercial buildings; and still others are for any building type.

### **Other Financial Incentives**

The list of other financial incentive tools used by communities seeking to spur development of rehabilitation of central business districts, main streets, and important buildings includes mortgage guarantees, low interest loans and grants, and transfers of development rights (TDRs). Below, these three incentives are briefly touched upon.

A common characteristic shared by the tools mentioned above is that all are traditionally associated with the results of feasibility analysis that is conducted on a project-by-project basis. While localities that utilize these programs have established formal programs that are open to participation to a wide group of candidate projects, the localities provide the incentive only after an analysis is done that demonstrates the need for the incentive.

Each one of these methods is geared toward making the project "feasible" through a distinct approach. A **mortgage guarantee** approach provides insurance on the mortgage loan made to finance the project. The rationale for this approach emerges from the notion that mortgage money is scarce for rehabilitation projects because of the level of risk involved. Accordingly, lenders are more willing to fund rehabilitation projects with a mortgage guarantee from the local government.

The mortgage guarantee is designed to free up and increase the sources of capital required for renovation work. This type of program puts the local government in the position of real estate banker. The local government needs to establish strict criteria for making mortgage guarantees because it does not want to place itself in a position of providing insurance for projects that fail. As the mortgage insurer, the local government would likely require a first lien on the property being financed. In a default situation, the local government entity would have the power to take over the project while it pays off the lender to the project.

On the positive side, mortgage guarantees offer project sponsors the access to capital that would otherwise be unavailable. But local government entities considering a mortgage guarantee program must be prepared to face issues that will determine the success of this type of program. First, the jurisdiction must establish criteria and create an institution capable of making mortgage insurance decisions. Second, it must have the ability and willingness to act as real estate manager if a project fails.

Using **low-interest loans** as financial incentives works more directly as an assistance program than does the mortgage guarantee approach. In the case of low-interest loans, the historic preservation project receives funds directly from the local government entity. Capital financing is provided, but at a discounted rate--A rate intentionally lower than market rates otherwise available to the project sponsor. This approach is designed to provide a "cheaper" source of funds (at lower interest levels) to projects that would theoretically be infeasible at higher rates.

Unlike the mortgage guarantee, where funds are only required from the local government in response to a project default, this type of financial incentive requires that an "upfront" pool of funds is available to make project loans. Depending on loan repayment experience and future loan demand, the program may also require future allocations of funds. Similar to the mortgage guarantee, a low interest loan program requires a process and an organization capable of making real estate lending decisions.

A **grant program** for historic preservation works as a direct subsidy to a project since it does not require the repayment of funds. Under the low-interest loan, the subsidy provided to the project is solely the difference of "spread" between the low-interest loan and market rates. A grant program would likely require the commitment of greater City resources. Again, this type of program attempts to lower project costs to make historic preservation economically feasible. Since this money is an "interest free" source of capital, it offers project sponsors an attractive vehicle for funding projects.

A few cities, most notably New York, Denver, Seattle, San Francisco, Los Angeles, New Orleans, San Diego and Dallas, have created programs involving **transfers of development rights (TDRs)** for landmark buildings. TDRs are a method of land use planning used to relieve the market pressure that threatens lower density uses by offering developers high-density substitutes in other areas. In simple terms, the owners of land where development is restricted (in this case, for historic preservation), are issued TDRs in lieu of the forfeited development potential. The TDRs may be sold away from the

"donor/sender" site to owners of property in other areas of the city designated as "receiver" sites.

The TDR approach is complex. It can be an effective preservation technique, but only under the right market conditions. The steering committee should examine this incentive as well as other land use planning tools which provide financial incentives somewhat more indirectly than tax abatement programs.

Each of these approaches may be useful--whether implemented separately or in conjunction with other financial or regulatory incentives.

### **Revolving Funds**

A revolving fund is a pool of monies used by a nonprofit organization or a governmental agency to buy and sell (or to lend to others to buy and sell) historic properties in order to preserve them. The properties may be rehabilitated with revolving fund monies. Proceeds from sales replenish the pool. A revolving fund is a tool to preserve historic properties through direct intervention in the real estate process.

A revolving fund can operate in a number of different ways. That flexibility is one of the beauties of this preservation tool. The fund can be tailored to fit the needs of a locality or an organization. A revolving fund, for example, can be used to purchase historic properties and resell them with protective covenants; acquire properties by gift and sell them after rehabilitation; or lend money to other preservation groups or to individuals for property purchase or rehabilitation.

In considering what kind of revolving fund to establish, preservationists must first examine their objective in setting up a revolving fund and the available resources. The most common goal for a revolving fund is to save endangered historic properties from destruction or deterioration. Another goal may be to obtain long-term protective covenants or preservation easements on historic properties which are presently in good condition or under rehabilitation. This goal will be particularly appropriate where the real estate market for older buildings is so strong that historic structures are being replaced for more intensive uses, or where the properties are of great historical or architectural significance. These goals may require different ways of establishing and operating the revolving fund.

When working to save historic properties, an organization may acquire properties outright and resell them under protective covenants. It can vary that procedure by obtaining a lease or an option on the property. The revolving fund may have to move a property to save it. Once the revolving fund owns a property, it has the choice of rehabilitating the property, stabilizing it against the weather, or doing no work.

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**Attachment D****Existing Composition of the Urban Design Commission**

The Urban Design Commission currently has sixteen members, with the following representation. Each member is appointed to a three-year term by the Mayor. The terms are staggered so that each year four new members rotate on the Commission. Certain sectors of the community submit nominations to the Mayor for Commission membership, some of which are honored.

Historians - 2

Architects - 2

Artists - 2

Neighborhood Representatives - 4

Planner - 1

Landscape Architect - 1

Chamber of Commerce - 2

Preservationist - 1

Citizen-at-large - 1

## **Training Exercise: The Terminus Historic Preservation Case**

### **Business and Industry Group of Terminus**

#### **CONFIDENTIAL INFORMATION**

As President of the Business and Industry Group (BIG) of Terminus you have responsibility for representing the interests of the business community in these negotiations. Your constituency is comprised of major corporations, including several development companies, and has considerable clout when it comes to policy initiatives which impact downtown Terminus.

Your organization has worked closely with the Mayor on many issues, including developing and implementing strategies for revitalizing the downtown economy and vibrancy of Terminus. As such, you are skeptical of the perspectives of many of the preservationists who have no understanding of or appreciation for the conditions necessary to re-build the economy of Terminus. If the preservationists had their way, downtown Terminus would be a ghost town. At the same time, you have actually helped initiate a couple historic preservation projects in the interest of re-vitalizing downtown.

While you understand the potential benefits of well-conceived historic preservation, you believe the business community should be cautious of potential restrictions on new development. In recent months, however, the community atmosphere has not been positive. Developers have been portrayed in the press as plunderers and pillagers interested only in their own economic gain. The weak existing historic preservation ordinance does little to help property owners and developers ascertain if a particular property is considered historic. City government is obviously much more nervous about this issue than they once were and this has translated into several pieces of reactionary legislation which might prove negative to the business and development community.

At the negotiation session about to be convened you will be discussing the three general issues which have been identified as most important; protecting historic resources, providing economic incentives and protecting property rights. Your organization has helped identify the issues and desirable outcomes which should guide you in these negotiations. You may generate options not listed, but new options must not be contradictory to strongly held interests.

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## 1. Protecting Historic Properties

You have some problems with the UDC recommendation for resolving this issue. You are concerned that the system used by many cities around the country, the National Register of Historic Places criteria, might be too liberal for Atlanta. More importantly, you believe that too many marginally historic buildings will be classified using National Register criteria. Three alternatives are available. First, have the Steering Committee define the most historic periods of Terminus, along with the architects who have made a major contribution to the city. These determinations can then be used as guidelines of what is or is not historic. Second, have the Steering Committee, with the assistance of technical experts, define criteria specifically for the City of Terminus. Third, use National Register criteria but lengthen the required period from fifty to sixty or sixty-five years. That will cut out most of the marginal buildings built in the 1930's. Under no circumstances should a building less than fifty years-old be on the inventory which serves as the basis for designating historic properties. Ultimately, this is not the most important issue to the business community but it could set the tone for the remainder of the negotiations.

The idea of having several categories of historic properties is not appealing due to the concern that too many restrictions will be placed on too many properties. Additionally, extreme caution should be exercised concerning the idea of districts which would include a number of secondary buildings rather than one building which has particular merit. Also, neighborhoods trying to protect their interests might attempt to protect areas bordering their neighborhood which could inhibit otherwise appropriate commercial and retail development. This could just be used as just another mechanism to unjustly control development.

A major concern which has recently surfaced is the attempt by the preservationists to protect all of the buildings identified in their survey of historic resources. This survey includes about 250 buildings and districts. The business community has a major concern with this proposal. You agree along with most that several buildings in downtown Terminus have the characteristics which typify a Landmark. Ultimately, the business community recognizes that protecting such buildings is good for the downtown environment as long as the list of buildings is not too long and the protection is not too restrictive. The number of Landmark buildings, therefore, should be limited to 10-15 percent of the buildings identified in the inventory. You are certainly not willing to adopt the entire inventory. Ultimately, however, it is not the number of buildings as much as the type and extent of restrictions that is of concern.

The quantitative system proposed by the Urban Design Commission will not work for Terminus. This is based on your assessment that the development restrictions in San Francisco are excessive. At the same time, you are strongly opposed to the idea of anyone in the community being able to initiate the designation process. Your preference is to have the responsibility lie with the landowner. Regardless of the system for initiating the designation process, you want the Mayor to have oversight and veto power over what is ultimately designated. You believe he will be responsive to the concerns of the



business community. You clearly believe the business community will have more clout with the Mayor or other elected officials than with the Urban Design Commission (UDC). You are not enthusiastic about the prospect of the UDC being responsible for the process.

## 2. Providing Economic Incentives

You support the recommendation of the UDC on the provision of economic incentives. The issue of economic incentives is crucial to your support of the negotiated package. If sufficient economic incentives are not included, the business community cannot possibly accept the plan. You support an economic incentives system that applies to any and all buildings designated to any category of protection established.

A tax freeze such as that proposed by the UDC would be helpful for those properties which have not already been rehabilitated. The freeze should be based on pre-rehabilitation value since a freeze based on the property's highest and best use will be of little assistance to most property owners. From your perspective, however, the most important form of incentive is a tax abatement. You support a 15 year tax abatement, with payments graduated from 0 to 100 percent during the 15 year period. A shorter timeframe (perhaps ten years) might be acceptable if other forms of economic assistance are also made available.

You would also like to see a mortgage guarantee fund underwritten by the City, an easement donation program and a low-interest revolving loan fund accessible for rehabilitation of historic properties. You could assist raising banks awareness of the need for their participation in establishing the fund, but expect assurances from the City about their contribution to the fund.

## 3. Protecting Property Rights

In combination with economic incentives, this is the most important issue to the business community. If property owners experience economic hardship as a result of designation, they should have recourse which is not time consuming or cumbersome. Since it is primarily in the City's interests to have historic properties protected, the City should bear the primary responsibility for assuring that an undue economic hardship will not be caused by designation. You are adamantly opposed to the standard of a six percent return for determining economic hardship. Terminus is not New York. You believe a standard of at least a ten percent return on investment should be adopted. This is a minimum banks would be expecting on a pro-forma used to discuss financing a new development.

The process of determining economic hardship should include a simple, pre-determined formula if at all possible. However, if agreement cannot be reached on a formula which is largely determined by the business community (who are the ones that know the actual costs and realities of development), you would opt for a case-by-case

determination in which the city would have to prove that designation is not causing an undue economic burden. Although you have some concerns about how City Council might react to claims of economic-hardship, you think they would be the best entity to make the determination. You oppose the recommendation that the UDC have this responsibility primarily because of the composition of the UDC. You view the UDC as slanted heavily towards artists, architects and others who are sympathetic to preservation. If the UDC had appropriate business representation, your views on this issue might change. For the purpose of creating a UDC that is more sympathetic to business and development perspectives, you would like to encourage a re-formulation of the composition of the UDC. As you have observed the UDC in action, you also believe that the UDC is too large. Debates are endless primarily because of the size of the membership. In essence, you favor a streamlined UDC that not only has more representation from the business community but also is much smaller (perhaps 9 or 10 members).

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It is in the best interests of the business community to resolve these issues through the negotiation process. Your goal is to maximize the interests of the business community given the general guidelines and constraints outlined above. You must, however, be able to assure the business community that economic incentives will be available to support historic preservation efforts and that the issue of determining economic hardship is adequately addressed. These are deal makers or breakers.

## **Training Exercise: The Terminus Historic Preservation Case**

**Development, Investment and Building Society**

### **CONFIDENTIAL INFORMATION**

As President of the developers association, the Development, Investment and Building Society (DIBS), you have been selected to represent the interests of the developers (and property owners) of downtown Terminus. As Executive Vice-President of Terminus Properties, which is the largest property owner in downtown Terminus, you have significant clout with developers and city leaders. DIBS has much in common with the Business and Industry Group (BIG) of Terminus but you have somewhat different perspectives on some issues which your constituency believes are important. Your constituency is comprised of major development corporations, architectural firms and construction companies.

DIBS has worked closely with the Mayor on many issues, including developing and implementing strategies for revitalizing the downtown economy and vibrancy of Terminus. While you understand the potential benefits of well-conceived historic preservation, you believe the development community should be cautious of potential restrictions. You are concerned that in recent months the community sentiment has turned against the development community. Developers have been portrayed in the press as destroyers of the city's character and as interested only in their own economic gain.

The weak existing historic preservation ordinance does little to help property owners and developers ascertain the historic significance of a particular property. Furthermore, it is never certain whether the city will allow or prevent the demolition of an historic structure. This uncertainty has frequently assisted developers in obtaining demolition permits in the past. Currently, however, the development community is paying the price for this uncertainty in terms of public opinion. Your concern is that the prevailing uncertainty is now becoming a liability. City government is obviously much more nervous about this issue than they once were and this has translated into several pieces of reactionary legislation which might prove negative to the development community.

Although you personally support historic preservation on a limited scale, you do so only if it can stand on its own and is economically viable. You and your constituency do not believe that the city can put forth the type of financial support necessary to make

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historic preservation happen on a wide-scale basis. Privately funded revolving loan funds would be useful but the city should not place restrictive guidelines governing historic preservation. If a project is financially sound, it will happen on its own. Otherwise, it is unlikely to happen at all.

At the negotiation session about to be convened you will be discussing the three general issues which have been identified as most important; protecting historic resources, providing economic incentives, and protecting property rights. The following guidelines have been developed with the assistance of the DIBS Board. You may generate options not listed, but new options must not be contradictory to strongly held interests. Although not part of DIBS perspective, you are personally opposed to the type of speculative land purchasing that has been occurring in Terminus. You would not oppose recommendations that curtail that type of activity. You see it in neither the best interests of Terminus Properties or the city.

### 1. Protecting Historic Resources

In its entirety, you cannot support the UDC recommendation. You do support some elements, however. For the purpose of identifying historic properties you firmly support the use of National Register criteria. You are interested in assuring that only truly historic properties are identified and not just those that happen to be fifty years old. As such, you want clarification on how the criteria will be applied and assurances that the criteria will not be applied loosely to expand the roster of historic properties.

If a classification system is developed, you would prefer a simple system that would protect only the most important structures. Your constituency is concerned that in the application of a classification system, their buildings might be classified and then unduly restricted for further development. Therefore, you want to be sure that the number of buildings with some type of restriction is limited to "special" properties and does not cause undue impact on those buildings which are ideal for further development and which would be too expensive to rehabilitate.

A major concern which has recently surfaced is the attempt by the preservationists to protect all of the buildings identified in their survey of historic resources. This survey includes about 250 buildings and districts. While some advantage exists to identifying specific structures that are either included on or excluded from any list of protected buildings, the list of protected buildings should be limited to those for which broad community consensus exists, perhaps between 25 and 30 properties. You want a limit on how many buildings are given Landmarks status and you would like input on which buildings are on the initial list so that you are certain that some buildings will not be on the list. In exchange for such clarity, you might be willing to increase the number of Landmarks by 50 percent.

You understand that some neighborhoods are trying to protect their interests through the establishment of historic districts. You live in an historic neighborhood and

fully support the use of districts in residential areas. You question, however, how neighborhoods will agree on the restrictions that will protect the neighborhood, and what is being protected. This needs to be resolved.

You do not favor the San Francisco system of designation. Ultimately, it is your preference that City Council be responsible for the actual designation of buildings. Council at least has to respond to the wishes of the electorate, including developers and the business community. This should give your constituency some clout if they are adamantly opposed to a particular building being designated. Having some numeric system could make over-ruling a designation more difficult.

Some have suggested that anyone in the community should be able to initiate the designation process for a building or a district. You are strongly opposed to the idea of anyone in the community being able to initiate the designation process for a privately held income-producing building. You support the idea when it comes to neighborhoods, i.e. anyone within a neighborhood may nominate their neighborhood.

## 2. Providing Economic Incentives

You are not willing to accept any outcome of these negotiations that does not include some economic incentives or other forms of financial compensation. You firmly support any incentives package that could be developed but you have little hope for anything that will make much difference. A tax freeze such as that proposed would need to be in place for at least ten years to provide a real difference, and should not require or be tied to rehabilitation in any way. You are aware of several properties which have already been rehabilitated. They should not be disqualified because the work has already been completed. Besides, state law already allows for a tax freeze if properties on the state register are rehabilitated.

A good revolving loan fund which provides low interest loans for purchasing and rehabilitating buildings would be a great step forward. You believe banks could help establish the fund, and know that DIBS could be instrumental in raising funds. You are not interested in undertaking the effort, however, unless the City finances at least half the fund. Guidelines on how money from the fund is used should not be overly restrictive.

You support an economic incentives system that applies to any and all buildings designated to any classification scheme established. In other words, if both Landmark and Historic classifications are established, incentives should be available for both. You would also like the establishment of a mortgage guarantee fund underwritten by the City. This could improve the likelihood of financing certain projects.

### 3. Protection of Property Rights

This is perhaps the most important issue to the development community. Those who currently own property want assurances that if their property is designated, undue economic hardships will not result from that designation. In fact, DIBS strongly believes that properties should be de-designated if economic hardship can be demonstrated.

You are concerned about how economic hardship will be determined. Clearly, the standard of a six percent return on investment is not sufficient. Given the risks involved with a major new development, a minimum of fifteen percent should be considered appropriate.

In the absence of an acceptable standard rate-of-return which establishes the condition of an economic hardship, you have grave concerns that an agreement can be reached. As a last resort, you might be able to agree to a system that provides a fair hearing for a property owner on their conditions, but not at the hands of preservation advocates. A case-by-case determination might actually provide more flexibility for a property to present a good defense for an economic hardship.

Initially, the idea of City Council being involved in the economic hardship determination seemed the best approach. You are now a bit skeptical about this, however, given that political winds could eventually shift in favor of preservationists. As such, you would like to devise a system of dealing with disputes which is relatively independent of potentially changing political positions. Furthermore, the system should be strongly linked to having members of the business community involved in the decision, since they understand the conditions required to make a property profitable. You are concerned that whatever system is established will result in litigation.

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You would like to see the number of protected buildings governed by restrictive development guidelines limited to only those that are universally agreed upon as important and worth saving. Without adequate protection of property rights and economic stability for owners of historic properties, however, you cannot accept an agreement.

## **Training Exercise: The Terminus Historic Preservation Case**

### **Preservation and Antiquity Society of Terminus**

#### **CONFIDENTIAL INSTRUCTIONS**

As Executive Director of the Preservation and Antiquity Society of Terminus (PAST), you have been selected to represent the preservation interests of the community in these negotiations. You are convinced that the outcome of these negotiations are crucial to maintaining the few historic resources that exist today. The type of speculative land development that has occurred during the last years is atrocious. Many beautiful and historic buildings have been turned into parking lots and unsightly open fields which contribute to urban blight.

Originally, you were of the opinion that the best way to resolve this dispute was to have a widely-respected preservation expert write a new ordinance. You are now convinced that the negotiations may work, but only if technically sound approaches and appropriate preservation expertise is utilized. People unschooled on the issues of historic preservation should not be making decisions in the absence of an adequate understanding of the issues. On the other hand, in the absence of a negotiated settlement of the problems, including the support of the business community, the political skirmishes are likely to continue. Since many historic resources have been lost on the political battlefield, a negotiated settlement may be the only way to assure the future of Terminus' remaining historic properties.

You have the latitude in the negotiations to speak for your constituency. At a recent meeting of the PAST Board, and in discussions with various chairpersons of PAST committees, you have been given a sense of those issues which are of greatest importance to the preservation community. This input provides a basis for guiding your strategy in the negotiations.

At the negotiation session about to be convened you will be discussing the three general issues which have been identified as most important; protecting historic resources, providing economic incentives and protecting property rights. You may

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generate options not listed below, but new options must not be contradictory to strongly held interests.

### 1. Protecting Historic Resources

In essence, you support the UDC's recommendation for protecting historic resources. Your constituency believes that the National Register of Historic Places criteria should be used to develop the inventory of historic resources. They are adamant about this. These criteria have been used and tested around the country and provide a standard that preservation experts have spent years developing and refining. The idea that the Steering Committee by itself could improve these criteria is naive. As such, you will oppose any alternative that suggests modifying or replacing National Register criteria. You are somewhat sympathetic to the historic neighborhood's desires to protect the two or three unique neighborhoods built within the last fifty years, but you are not sure how to achieve this. Perhaps you could consider linking this with the classification system, whereby some categories do not require the fifty year minimum. You are not willing, however, to sacrifice the overall use of National Register criteria for a few unique homes.

The existing catalogue of historic resources in Terminus includes over 250 properties. You desire protection for all of these properties. If possible you would like Landmark status for each of these properties, although you realize that this may not be politically possible since you support strong and restrictive safeguards for Landmark properties. As such, your constituency realizes that more than one category of historic property is likely to be required. Your first goal, however, is to have all 250 buildings established as Landmark properties. Failing this, you would like to see all 250 properties included in some system of protection. This issue is clearly tied to using National Register criteria as well.

You very much favor the San Francisco approach to designating historic properties. A quantitative system is an objective measure that reduces the political influence. After all, this should be a technical not a political decision. You believe that the Urban Design Commission, as the historic preservation agency for the City, is the appropriate agency for establishing which buildings should be protected, and the degree of protection for each. This is in keeping with the interests to have professionals make these decisions. You are not averse, however, to having anyone in the community be able to initiate the process of evaluating a building for designation. You are adamantly opposed to any system which would result in a purely political process.



## 2. Providing Economic Incentives

In general, you go along with the UDC recommendations. You firmly support the use of economic incentives to bolster the likelihood of preserving and maintain historic resources. You have a real concern about designating properties as historic but then have them become dilapidated because of the costs of maintenance. Your constituency believes that the City has long shirked its responsibilities to support the goals of historic preservation in Terminus. You have little concern whether the incentives are in the form of easement donations, mortgage guarantees, or loan funds. You do believe that some form of a tax abatement and/or a tax freeze, however, is crucial to historic preservation.

Concerning which properties receive the benefits of financial support, you would like to see all protected properties qualify for some type of support. Realistically, you believe it is unlikely to have the same set of incentives apply to all categories of preservation (if more than one is established), which is why you primarily support a Landmark designation only. If additional categories are established, push to establish some level of funding for each category.

## 3. Protecting Property Rights

While you have some concerns about the New York system, you in essence agree with the UDC recommendation concerning conditions of economic hardship. The issue of property rights is not a major concern. Your constituency has closely followed the evolution of legal interpretations concerning historic preservation. It is quite clear and broadly accepted that designating properties as historic and affording them protection are legal. The question arises about what constitutes an economic hardship on a property owner. The historic preservation community believes strongly that the community good far outweighs the concerns of individual property owners. As such, you want to minimize the opportunities for the "taking" issue to be used as a loophole for removing properties from the catalogue of protected properties.

You basically support the suggested standard of a six percent return as an indicator for economic hardship. Despite the fact that New York has had some problems with that standard, you would still prefer to develop a simple system based on a standard with which everyone agrees. If that is not possible, you would like the Urban Design Commission to be given the responsibility and authority for making decisions about economic hardship. After all, they are professionals and understand the issues better than any other agency or decision-making body. The burden of proof, however, ought to be with the property owner, and not incumbent upon the city or its agencies. It is your opinion that involvement by the UDC on this issue is even more important than their role in designation. This issue should remain out of the political realm and be decided on an objective basis.

You have heard some rumors that an attempt will be made to change the complexion of the UDC. Your interest is in assuring that the UDC remains a force for preservation. While you are concerned that changes might weaken UDC's position on preservation, some changes might be acceptable if you can be sure that the power of decision-making remains with the UDC. Certainly, achieving the decision-making power without changing the UDC would be your preference.

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Your major objective is to advance the interests of the preservation community and historic preservation. Primarily, that involves technical analysis and objective standards for making decisions, not political expediency.

## **Training Exercise: The Terminus Historic Preservation Case**

### **Historic Neighborhood Coalition**

### **CONFIDENTIAL INSTRUCTIONS**

Preservers of Urban Residential Environments (PURE) is a coalition of historic neighborhoods in Terminus. As President of PURE, you have been selected to represent the interests of historic neighborhoods in these negotiations. You are convinced that the outcome of these negotiations are crucial to maintaining the few historic resources that exist today. Originally, you were of the opinion that the best way to resolve this dispute was to have a widely-respected preservation expert write a new ordinance. You are now convinced that the negotiations may work, but only if technically sound approaches and appropriate expertise is utilized.

Your constituency is concerned that without a new and strong historic preservation ordinance the development community will continue to have its way. Demolitions during the past two years have not only resulted in the loss of significant buildings, they have also detrimentally effected the character of neighborhoods. While some progress has been made, you remain skeptical of the willingness of City Council and the Mayor to oppose the development community. As such, the citizenry needs to make their feelings known, which you can in part accomplish during these negotiations.

You have the latitude in the negotiations to speak for your constituency. At a recent meeting of PURE, and in discussions with committee chairpersons, you have derived a list of issues which are of greatest importance to neighborhoods. This input provides a basis for guiding your strategy in the negotiations.

At the negotiation session about to be convened you will be discussing the three general issues which have been identified as most important; protecting historic resources, providing economic incentives and protecting property rights. You may generate options not listed, but new options must not be contradictory to strongly held interests.

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## 1. Protecting Historic Resources

While you agree in part with the recommendation of the UDC, you would like to see some modifications. Your constituency believes that the National Register of Historic Places criteria should be used for individual properties. These criteria have been used and tested around the country and provide a standard that preservation experts have spent years developing and refining. As such, you will oppose any alternative that suggests criteria less stringent than the National Register criteria for individual properties. You would, however, like a set of criteria which allows for some of the historic homes built about forty years ago in the Druid Hills area to be saved while still possible. As such, you support the idea that for residential districts, 40 instead of 50 years be used as the age requirement. To improve the responsiveness of other interest groups to this idea, the Steering Committee perhaps could identify particular architects, historic areas or unique characteristics that would limit the application of the shorter time period to those truly unique areas.

The existing catalogue of historic resources in Terminus includes over 250 properties. You desire protection for all of these properties. If possible you would like Landmark status for each of these properties, although you realize that this may not be politically possible since you support strong and restrictive safeguards for Landmark properties. As such, your constituency realizes that more than one category of historic property is likely to be required and that you may need to highlight the prime historic properties for Landmark status. From your assessment this should be about fifty buildings. According to the UDC inventory, another 25-30 buildings could also fall into this category. Most importantly, you would like to have provisions for fifteen landmark neighborhoods included in the agreement. You want neighborhoods to be able to define the areas to be designated and develop guidelines by which all residents would adhere.

You are ambivalent about supporting the San Francisco system of designating historic resources. On one hand, you like the objectivity of the process if conducted by those knowledgeable in historic preservation. On the other hand, you would not want such a system to exclude a neighborhood that, from the perspective of its residents, has historic qualities which should be protected. Since members of City Council must be directly responsive to neighborhoods, you would like to see City Council play a major role in the designation process. Your constituency believes that anyone residing in the neighborhood (for neighborhood districts) or any citizen in the community (for commercial buildings), should be able to initiate the designation process. Since historic properties represent the cultural resources of the city as a whole, anyone should be able to initiate the designation process to save these resources.

## 2. Providing Economic Incentives

You firmly support the use of economic incentives to bolster the likelihood of preserving and maintain historic resources. You believe the likelihood of gaining financial support for property owners in neighborhoods, however, is unlikely. As such, you are in favor of providing financial support for property owners of commercial properties, providing that the funds are used to make such properties economically viable and to maintain them for the long-term. You favor penalties for property owners who receive economic incentives and then at some later time let the building deteriorate. You have little concern whether the incentives are in the form of easement donations, mortgage guarantees, loan funds or tax abatements.

## 3. Protecting Property Rights

Property rights issues are likely to be encountered with residential as well as income-producing property owners. Since your organization is concerned with the survival of neighborhoods as a whole, however, you have limited interest in the exaggerated claims of property rights from individual property owners. You realize, however, that this is an issue of great importance to commercial property owners. As such, your general position is that the Urban Design Commission be given the responsibility and authority for making decisions related to property rights and economic hardship. After all, they are professionals and understand the issues better than any other agency or decision-making body. Furthermore, you believe that the burden of proof ought to be with the property owner, and not incumbent upon the city or its agencies.

The standard of a six percent return, as suggested by the UDC, seems appropriate. Why should developers or any property owner have any guarantees that they should be able to make an exorbitant profit on any particular development? Certainly the determination of economic hardship should not be a basis for designating a protected building or district. Rather economic incentives should invoked to assist the property owner.

You have heard some rumblings about prospective changes in the make-up of the UDC resulting from these negotiations. Currently, one-quarter of the UDC is comprised of neighborhood representatives. As such, you would oppose efforts to weaken the role of neighborhoods. If the basis for changing the composition of the UDC is achieving other PURE objectives which otherwise might be difficult, you might be willing to consider minor modifications. Retaining a strong voice on the UDC is absolutely essential, however, since the primary purpose of the UDC is to approve or disapprove structural and landscape modifications to houses. This is the main reason for retaining a strong neighborhood representation on the UDC.

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Your main interests are to assure a classification scheme and an appropriate designation process to maximize the interests of historic neighborhoods. You are willing to back the developers interests on some issues if they are willing to support your major interests. You may certainly develop options other than those listed, but they should meet your primary objectives in the negotiation.

## **Training Exercise: The Terminus Historic Preservation Case**

### **Bureau of Urban, Industrial and Land Development**

#### **CONFIDENTIAL INFORMATION**

As the Commissioner of the Bureau of Urban, Industrial and Land Development (BUILD), you have responsibility for representing the interests of the Mayor and, as such, the entire community. In fact, you believe the best interests of the community are served by increasing economic development in downtown Terminus. To date, your policy of creating a relatively unbridled and dynamic environment for growth has been successful. You have worked closely with the business community (with both BIG and DIBS) on many issues, including developing and implementing strategies for revitalizing the downtown economy and vibrancy of Terminus. You are skeptical of the perspectives of many of the preservationists who have no understanding of or appreciation for the conditions necessary to re-build the economy of Terminus. While you personally see few historic properties worth saving in Terminus, you also realize that a growing number of citizens do have an interest in this issue.

The benefits of well-conceived historic preservation are clear. You have read several reports indicating the potential economic benefits of historic preservation to cities like Terminus. At the same time, you believe the city and the business community should be cautious of restrictions. Under any circumstance, the existing historic preservation ordinance has not provided the teeth for the city to either clearly deny or approve demolition permits. You would find it advantageous to develop clearer guidelines to assist both the city and prospective developers. City officials are obviously much more nervous about this issue than they once were. This has translated into several pieces of legislation from proponents on both sides of the issue and has fractionated City Council. You are coming under increased pressure to resolve this dilemma.

At the negotiation session about to be convened you will be discussing the three general issues which have been identified as most important; protecting historic resources, providing economic incentives and protecting property rights. You may

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generate options not listed, but new options must not be contradictory to strongly held interests.

### 1. Protecting Historic Properties

You are willing to accept the recommendation of the UDC on this issue. You are concerned, however, about the classification of historic properties. You anticipate that the preservation community will seek to have many properties classified as Landmarks. As such, more than one or two categories may be necessary in order to limit the number of Landmarks. Perhaps a gradation of four or five categories with different levels of protection could be proposed, with only Landmarks afforded significant protection. This most likely would appease the business community's interests as well.

Historic districts are okay as long as insignificant buildings in prime locations are not included in those districts. If neighborhoods want to be classified as historic districts that is fine as long as the districts do not include transition areas at the border of neighborhoods that would otherwise be appropriate for commercial and retail development. As far as you are concerned, majority rules for those neighborhoods that seek designation.

You are also concerned by the UDC's interest in protecting all of the buildings identified in their survey of historic resources. This survey includes about 250 buildings and districts. You already know of development plans for some of those properties and you would not want to restrict their development given their prime downtown location near the financial district. You could imagine protecting 20 or 25 buildings that everyone agrees have great historic significance but even then you would not totally foreclose the option of those properties being developed.

Whatever is developed as the system for designating properties, you would like to have some veto power. The UDC, however, is arguing against any veto power primarily to insulate Mayor Olde from the political implications of making such decisions. Given this, you might be willing to let City Council have some veto power knowing you can probably impact the decision if it is a particularly important situation (i.e., a prime development site for which interest has been indicated).

You are intrigued by the San Francisco approach to designation given your background in planning. From the perspective of the Mayor, however, this may be too "clinical" and not provide sufficient political flexibility. Basically, you are interested in a simple and equitable system for designating buildings that is not overly restrictive and that will not result in wholesale designations of properties, some of which are not clearly historic. You are fully satisfied with UDC initiating the



designation process as long as "veto" power rests outside UDC. You have to be somewhat careful in appearing too heavy handed concerning any "veto" power.

## 2. Providing Economic Incentives

In general, you support the recommendations of the UDC concerning economic incentives because you realize this is a crucial element of the negotiations to the business community. You must be cautious, however, about what the city can afford to "pay" for historic preservation. Nonetheless, you realize that some incentives will be necessary if a solution is to be found that is satisfactory to the business community.

A tax freeze at pre-rehabilitation levels, as being proposed by the UDC, is potentially acceptable but not to exceed a ten-year period. Your preference is to limit the freeze to five years to be consistent with the time period for tax abatements created by the city for Housing Enterprise Zones. You are also willing to consider a tax abatement for historic buildings similar to that which exists for the enterprise zones. Your limited financial analyses indicate that the city could perhaps live with a ten-year abatement, but certainly no more than that. You are willing to exceed more than five years only if absolutely necessary to reach an agreement. Ideally, this should be extended only to those properties that are landmarks in need of major renovation (ie. that are not currently able to produce income).

## 3. Protecting Property Rights

You realize that in combination with economic incentives, this is the most important issue to the business community. They believe that if a property owner encounters an economic hardship due to their property being designated historic, the property owner should receive relief. You understand their perspective on this issue. The difficult question, however, is how economic hardship should be determined. You are yet to be convinced that the six percent standard used by New York is appropriate for Terminus.

The final decision concerning whether economic hardship exists, however, should rest with city government. This could be the responsibility of either City Council or the Urban Design Commission. The problems associated with City Council having the responsibility are 1) they do not really have the technical expertise and 2) decisions would likely lead to ongoing conflicts between the parties if they believe the decisions are politically motivated. You believe that sufficient control can be exercised during the designation process and therefore prefer to sidestep direct involvement on this issue. The UDC has the appropriate technical expertise but is viewed as pro-preservation by the business community. This perception likely stands

as a barrier to the option of the UDC making the economic hardship determination. Even though you would not mind the UDC having less power, some form of compromise will probably be necessary for resolution of this issue. You should be open to facilitating the discussion of new options, keeping in mind the basic interests of the Mayor.

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Your major objective is to have the business and preservation communities come together on a plan which they can mutually support. This is the only way that the pressure on city hall can be reduced. Having these two sides reach an agreement is more important than the substance of the agreement to you, although you want to be sure that economic development policies are not adversely affected. You have the power to veto any agreement that you believe is not in the best interest of the city.

## **Training Exercise: The Terminus Historic Preservation Case**

### **City Council**

#### **CONFIDENTIAL INFORMATION**

As Chair of the City Council committee on Zoning Assessment and Planning (ZAP), you have been selected to represent the interests of City Council in this negotiation. Along with the Commissioner of BUILD, you have responsibility for representing the interests of the entire community in these negotiations. You are deeply concerned about the rhetoric and the actions taken recently related to historic preservation. You personally, along with your colleagues in City Council, have been approached repeatedly by members of both the development and preservation communities. Since most City Council members depend on the support of neighborhoods for their election, citizen groups must be given attention. On the other hand, the business community has created lots of jobs in Terminus and represents a powerful force themselves. City Council is evenly divided between those who are sympathetic to the business community and those who are sympathetic to preservationists. You have been selected in part because you are not solely affiliated with either group and understand these dynamics.

You are convinced that one of the problems is the existing historic preservation ordinance, which has not provided sufficient guidance for the city to either clearly deny or approve demolition permits. You would find it advantageous to develop clearer guidelines to assist both the city and prospective developers. City officials are obviously much more nervous about this issue than they once were. This has translated into several pieces of legislation from proponents on both sides of the issue and has fractionated City Council. You are coming under increased pressure to resolve this dilemma.

At the negotiation session about to be convened you will be discussing the three general issues which have been identified as most important; protecting historic resources, providing economic incentives and protecting property rights. With the assistance of your staff and the leadership of City Council, the issues of greatest

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importance have been identified below. You may generate options not listed, but new options must not be contradictory to strongly held interests.

### 1. Protecting Historic Resources

You are not terribly concerned about this issue. You are willing to take the advice of the Urban Design Commission concerning the best way to proceed. You support an approach that is well-documented and will not be challenged in court. You believe that the use of National Register Criteria meets that objective. If this is true, you fully support its implementation.

You are somewhat concerned, however, by the UDC's interest in protecting all of the buildings identified in their survey of historic resources, particularly if financial support will ultimately be needed to protect those buildings. This survey includes about 250 buildings and districts.

Given the likely degree of protection afforded Landmarks status, you support the idea of having more than one classification of historic structures. This seems to reflect community interests. You would like one category which provides protection for the buildings and districts which community consensus defines as important. A second category may be needed which provides less protection for those buildings on which consensus cannot be obtained but which add to the cultural character of the City. Finally, some system which promotes a thorough assessment of the properties remaining on the UDC inventory might prove alleviate the concerns raised by some members of the community. You do not want to be the one to propose this system. Despite your concern that three categories may be too cumbersome to administer, you will raise this three-tier approach if no other solution seems to be evolving.

Districts (as opposed to singular buildings) are acceptable as long as insignificant buildings in prime locations are not included in those districts. If neighborhoods want to be classified as historic districts that is fine as long as they are able to reach agreement among themselves concerning what is to be protected and how that will be accomplished. You want clarity on how such decisions will be made to avoid conflicts in the future.

Whatever is developed as a classification system, you would like to have some veto power. The UDC, however, is arguing against any veto power from the Mayor or City Council in order to de-politicize the issue. Nonetheless, you believe that given the potential implications of designation, City Council cannot shirk its responsibility.

You are fully satisfied with UDC initiating the designation process as long as "veto" power rests outside UDC. A purely technical approach such as used in San Francisco would not be acceptable unless veto power exists. You believe some

control has to be provided over who initiates the designation process yet are concerned that if left solely to property owners, the good of the community may not be served.

## 2. Providing Economic Incentives

This is the issue of greatest concern to you. While it might be the most important issue to the business community, and thus crucial to reaching an agreement, this has potentially significant implications to the city budget. As such, you believe the city should be extremely cautious of the economic incentives it issues to owners of historic properties.

If incentives are provided, you are convinced that only Landmarks should be eligible for financial support, and only for income-producing properties. These conditions must be part of any agreement. Otherwise, incentives would be afforded to neighborhoods and residential property owners which simply is not feasible. You also want assurances that incentives will be used for historic preservation and will result in the long-term use and maintenance of the property. How this can be accomplished needs to be explored.

You are willing to consider a type of tax abatement similar to that which currently exists for housing enterprise zones in the city (this would provide income producing properties undergoing substantial renovation a five-year tax abatement, applied to the increased value of the property due to renovation). Ideally, this should be extended only to Landmark properties that are in need of major renovation (i.e., that are not currently able to produce income).

Concerning the remainder of UDC's recommendation, you could potentially support a low-interest revolving loan fund but only if the private sector and other non-city sources contribute the majority of the fund. The idea of the city underwriting mortgages for historic properties is not realistic at this time.

You do not have specific information on the financial implications of any of the tax incentives at this time. As such, while you support the concept of economic incentives you cannot commit to actual conditions (eg. term of abatement or tax freeze, percentage of revolving fund) until financial analyses are conducted that demonstrate the implications of these incentives.

## 3. Protecting Property Rights

You realize that in combination with economic incentives, this is the most important issue to the business community. The business community believes that

if a property owner encounters an economic hardship due to property being designated, the property owner should receive relief. You understand their perspective on this issue. The difficult question, however, is how economic hardship should be determined. The standard posed by the UDC, borrowed from New York, seems reasonable to you, but you are willing to accept any agreement on this issues reached by the other parties.

Concerning the issue of burden of proof, you agree with the UDC recommendation that the burden of proof should be on the property owner to prove that an economic hardship exists. The final decision about whether economic hardship exists should rest with the courts. You and other members of City Council have suggested that this should be the responsibility of City Council. This presents potential problems, however, associated with making the issues too political which could create future problems for you and your colleagues in City Council. From your perspective, the most impartial solution is the best solution.

Apparently, some groups are suggesting that the UDC should be modified to reflect a broader cross-section of the community. You happen to believe that the current make-up accomplishes that objective. Another rumor has circulated that a new historic preservation commission should be established to deal solely with the issues of preservation. While you find some merit in that concept, you believe that the City Council would be questioned about the efficiency of having both the UDC and an historic preservation commission. As such, you are basically satisfied with keeping things the way they are currently.

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Your major objective is to have the business and preservation communities come together on a plan which they can mutually support. This is the only way that the pressure on city hall can be reduced. Having these two sides reach an agreement is more important than the substance of the agreement to you. At all times, keep your primary objectives in mind.