THE CITY CLUB OF NEW YORK
Advocating For All New Yorkers

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The Preservation Committee of the City Club of New York is pleased to issue *Losing Its Way: the Landmarks Preservation Commission in Eclipse*. Our report examines the state of the agency in the administration of Mayor Bill de Blasio.

In truth, it would be more accurate to say that the City Club of New York is dismayed at having to issue this report. Examining recent decisions by the commission, the agency's proposed new rules, and comments made by the current chair, Meenakshi Srinivasan, we are forced to conclude that today, the Landmarks Preservation Commission has backed away from its mission – designating buildings of historical, architectural, or cultural merit and protecting the city's designated landmarks.

In sum, the commission seems embarrassed by its middle name.

Our report is a critique of the agency's recent actions and a lament for its current direction. We offer no sweeping agenda for reform, nor do we offer suggestions for tweaking this or that procedure or rule. Rather, we hope to spark a broader public debate over the state of the historic preservation in our city and the status of the Landmarks Preservation Commission.

The people, through their elected representatives, have supported the commission in fulfilling its mission to protect the city's heritage. For many decades the commission has met the clarion call of the landmarks law: "as a matter of public policy . . . the protection, enhancement, perpetuation and use of improvements and landscape features of special character or special historical or aesthetic interest or value is a public necessity and is required in the interest of the health, prosperity, safety and welfare of the people." We firmly believe that historic preservation still has an important role in fostering the livable city today

The City Club of New York offers this report in the interests of "good government." From the Landmarks Preservation Commission we have long expected transparency and avenues for public input on issues before it. In recent years the commission has backed away from those admirable standards. We hope it can embrace them anew.

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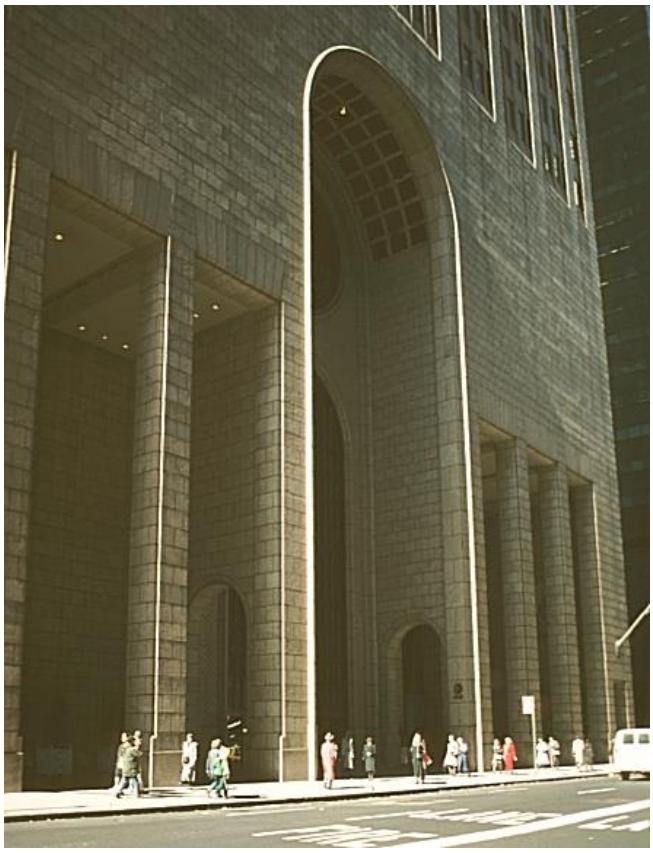
Losing Its Way
The Landmarks Preservation Commission in Eclipse



A Report by the Preservation Committee of
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Losing Its Way

The Landmarks Preservation Commission in Eclipse

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The City Club of New York has serious concerns about how the Landmarks Preservation Commission interprets and carries out its mission. Looking at a series of recent decisions, we have to question whether the commission as currently functioning considers historic preservation, at least preservation as understood by New Yorkers, to be in the public interest.

We begin with a fundamental question: who, or what, is the client of the Landmarks Commission? The owner of a designated property? The landmark itself? The public?

First and foremost, the principal client of the LPC must be the landmark itself. Is this building, site, or district worthy of designation? If so, how best shall it be protected? The commission must act on behalf of the historic city.

Secondarily, the LPC's clients are the citizens of New York. Designation is a public trust. It serves a public purpose and benefits the public. And the Commission is operating on behalf of the public.

We fully appreciate that the preservation of a historic building requires the support of the owner (enthusiastically or otherwise). Regardless, owner consent is neither required for designation nor necessary for regulation. Of course, it is always to be preferred that the process of designation not be adversarial, but characterized by cooperation between agency and owner. Usually, that is the case, and the commission is to be commended for always seeking that end.

In so many cases in recent years, the commission has backed away from what we understand as the preservation ethic, embracing instead efficiency for its own sake, expediency without a consideration of the effects, and most seriously, a disregard of precedent. This has been the predictable result of putting the preferences of the owner of a historic site ahead of the preservation of the landmark in and of itself for the people of New York. Sadly, the Landmarks Preservation Commission seems embarrassed by its middle name.

Our critique falls into three areas:

- Designation
- Regulation and Process
- Commissioners

I. Designation

Issues with designation include:

- What gets heard
- Changes negotiated pre-designation
- Hearing buildings as they become eligible
- Designation solely on the merits

What qualifies as a landmark

New Yorkers are not shy about nominating favorite buildings for designation. The commission receives several *Requests for Evaluation* (RFE) every week. Some nominations are half-baked; other sites are ineligible. But it has become routine to dismiss almost all with an almost predictable determination that the site "does not rise to the level of a landmark at this time," even those which are obviously worthy of designation.

Of course Old Saint James Church in Elmhurst, built before the American Revolution and restored under a Sacred Sites grant from the New York Landmarks Conservancy, qualifies as a landmark. Shockingly, a nomination sent in by State Senator Tony Avella a few years ago received that "does not rise" letter. In specific, the LPC questioned just how much of the original 1735 structure remained. In 2004, the New York Landmarks Conservancy funded the restoration of the church to its 1880 appearance, and supplied ample documentation of its historic integrity. The LPC backtracked in this case, and Old Saint James was designated in September 2017. But why did the preservation community have to jump through so many hoops, providing research that the commission already had? And how possibly could such an historic survivor have not been calendared in the first instance?

Old St. James, 1735. The oldest Episcopal Church in Queens.

This is not an isolated case. RFEs commonly must be submitted repeatedly before the LPC acts. Many times, however, it simply digs in its heels and refuses.

Case in point: Richard Upjohn's 1848 St. Saviour's Church in Maspeth. Sitting on a wooded site that had been virtually undisturbed since the eighteenth century, the church was an obvious candidate for designation. The LPC had already designated Upjohn's Trinity Church at Wall Street, (1846), Church of the Holy Communion (1846), Grace Church in Brooklyn Heights (1847), Christ Church in the Bronx (1866), and the Green-Wood Cemetery Gates (1861). If there was a quota for Upjohn churches, it was met before the only Upjohn in Queens could be designated. True, it did suffer damage from a fire in 1970 and was repaired in an inexpensive and expedient way. But the structure retained its integrity and was certainly not beyond restoration. The LPC would not be moved. In the end, the church was. St. Saviour's was dismantled and placed in storage in 2008, pending reassembly in All Faith's (formerly Lutheran) Cemetery in Middle Village. Ten years later it remains in pieces, awaiting funds for its reconstruction.

The most celebrated case, of course, was 2 Columbus Circle. Designed by Edward Durell Stone and completed in 1964, Huntington Hartford's Gallery of Modern Art was never exactly embraced by the architectural community, and it never overcame the verdict of Ada Louise Huxtable, architecture critic of the *Times*. She dismissed it as a "die-cut Venetian palazzo on lollipops."[1] While architects and historians could certainly argue about the merits of the design, no one could deny that it was a significant building. And the LPC is charged with protecting our architectural heritage, not ratifying taste.

Maddeningly, the LPC refused all pleas for a public hearing, and those entreaties came from established preservation groups – Municipal Art Society, Landmark West, Historic Districts Council, Docomomo – and prominent architects, among them Robert A.M. Stern, then Dean of the Architecture School at Yale, and Robert Venturi. The World Monuments Fund put 2 Columbus on its Watch List! The *Times* published a scathing two-part op-ed by Tom Wolfe (who can imagine the *Times* publishing such a thing today?), and Herbert Muschamp, the paper's unpredictable architectural critic, called out the LPC for "a shocking dereliction of public duty."[2]

The new owner, the Museum of Art and Design, objected to designation. They intended to strip Edward Durell Stone's marble skin and apply a new façade designed by Brad Cloepfil. Representing the museum was Laurie Beckelman, former chair of the Landmarks Preservation Commission. Through a freedom of information request, Landmark West! obtained email exchanges between Beckelman and Landmarks Chair Robert Tierney in which they discussed how to keep advocates of designation at bay.[3] No hearing was ever held.

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[1] Ada Louise Huxtable, "Architecture: Huntington Hartford's Palatial Midtown Museum," *New York Times*, February 25, 1964. In that review, Huxtable also wrote that "its plan is an accomplished demonstration of one of the basic principles of architectural design – the expert manipulation of space by an expert hand … the theme is dignity and formality, rather than exhilarating spatial fireworks. This interior planning is the building's conspicuous success, an achievement to command considerable admiration."

[2] Tom Wolfe, "The Building that Isn't There," *New York Times*, October 12 and 13, 2003, http://www.nytimes.com/2003/10/12/opinion/the-building-that-isn-t-there.html; http://www.nytimes.com/2003/10/13/opinion/the-building-that-isn-t-there-cont-d.html; Herbert Muschamp, "Banner Year for Lost Opportunities," *New York Times*, December 28, 2003, http://www.nytimes.com/2003/12/28/arts/architecture-the-lows-banner-year-for-lost-opportunities.html.

[3] Tom Wolfe, "The 2 Columbus Circle Game," *New York Magazine*, Vol. 38, Issue 24, July 4-11, 2005, http://nymag.com/nymetro/news/people/columns/intelligencer/12156/ .

Inwood, Richmond Hill, East Harlem, Tin Pan Alley – these neighborhoods and more have petitioned the LPC for designation as historic districts. In each case they have been rebuffed.

How is it decided whether a building or district is or is not worthy of consideration? Do the commissioners vote on whether to hold a hearing on this item or that? If so, is it the entire body, or only a committee, and if a committee, is that meeting subject to the open meetings law? In sum, there is an arrogant absence of transparency in the designation process.

Mike Holmgren, former coach of the Green Bay Packers, originated the "50 guys in a bar" standard, as in, "If 50 guys in a bar say it's a fumble, it's a fumble." Likewise: if 50 prominent architects, historians, preservationists, and elected officials say it's a landmark, it's a landmark. Or more exactly, it deserves a public hearing.

The Landmarks Preservation Commission needs to make the process for determining what merits a public hearing more transparent, and needs to take into account informed voices earlier in that process.

Designation should not mean demolition

A disturbing pattern is emerging at the commission. In some instances, the LPC has approved drastic alterations to a new landmark immediately after designation, while in others the designation report excluded certain features. In such cases the architecture is drastically altered, or even lost.

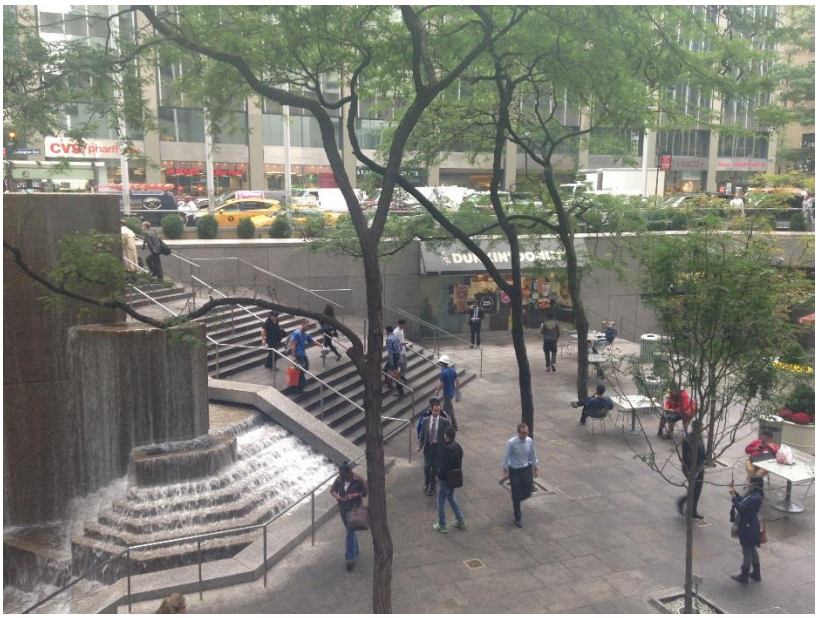
The 1954 Manufacturers Trust Building at 510 Fifth Avenue, designed by Gordon Bunshaft and Charles Evans Hughes III of Skidmore, Owings & Merrill, is the first sordid example. The LPC designated the exterior of this International Style gem in 1997. Fourteen years later, the Commission designated the interior, including the sculptural elements by Italian-American designer Harry Bertoia. The LPC then promptly issued a permit for the entire space to be gutted, which it was, down to the steel girders. Representing the owner, Vornado Realty Trust, was Meredith Kane, a former Landmarks Commissioner. Preservationists could not but suspect that the owner had negotiated an approval for their proposed changes prior to designation.

The Citizens Emergency Committee to Preserve Preservation sued, and won a negotiated settlement (remarkably, the court recognized that this self-selected group of preservationists had standing). The Bertoia screen and ceiling sculpture were reinstalled on the second floor. Predictably, Joe Fresh, the client for whom the landmarked interior was demolished, occupied the building for only a couple of years.

Recently the LPC designed two other modernist landmarks, the Citicorp Tower (Hugh Stubbins & Associates, 1978) and the Ambassador Grill (Kevin Roche John Dinkeloo & Associates, 1976 and 1983). With Citicorp, the Commission simply abdicated its responsibility.

The Citicorp site features a sunken plaza at Lexington Avenue and 53rd Street, the work of Stuart Dawson, principal in the landscape architecture firm of Hideo Sasaki. It featured a cascading fountain beside the angled stairway, providing a sound buffer from the street above and a cooling

respite in summer. That significant feature was called out in the designation report, but at the same time the LPC disowned it in a curious and shameful bit of bureaucratic reasoning. The report stated that the LPC "recognizes that the sunken plaza and other architectural elements, public benefits and amenities and subsequent alterations to them were designed with the approval of the City Planning Commission in connection with the granting of floor area bonuses, and that future changes to these public spaces will remain under the City Planning Commission's jurisdiction."[4] Landmarks withdrew without firing a shot.



The sunken plaza at Citicorp Center (Municipal Art Society).

To say that with regard to legally mandated public spaces only the square footage matters and not aesthetics do not diminishes the landmarks law and insults the public it is intended to serve. Architectural features can be, and in this case ought to have been preserved, regardless of City Planning's role approving the shape of the public space when the building was conceived. City Planning does not govern aesthetics, Landmarks does. This decision sets a dangerous precedent for the fate of other privately-owned public spaces (POPS) that will come under LPC purview.

The commission's justification also runs counter to law and precedent. In 2013, the LPC designated the 1967 Marine Midland Building at 140 Broadway, designed by Gordon Bunshaft of Skidmore, Owings & Merrill. The 51-story skyscraper sits in the middle of the block, surrounded by a public plaza regulated by City Planning as a POPS. Here, the LPC designated the plaza fully aware of City Planning's authority over the space, and here the LPC does indeed have authority over changes to scale and materials, street furniture, paving, and lighting. By excluding the Sasaki Fountain in the designation of the Citicorp Building, the LPC has once again disregarded its own recently established precedent.

[4] Landmarks Preservation Commission, "Citicorp Center (now 601 Lexington Avenue) including Saint Peter's Church," December 6, 2016. http://s-media.nyc.gov/agencies/lpc/lp/2582.pdf

But there was more to it. Justifying the exclusion of the plaza, Chair Meenakshi Srinivasan said at the public hearing, "The Citicorp Building has a long history of changes … We recognize that these spaces will continue to change."[5] First, the Sasaki plaza had not been altered in any fundamental way, and second the changes she so blithely referenced predate designation, and the commission designated anyway. With designation comes the mandate to protect, not to facilitate changes which obliterate key features.

Frankly, the preservation community was surprised when the commission voted to designate the Ambassador Grill as an interior landmark, but then dismayed to realize that the designation cut out a significant portion of the whole. Architect Wesley Kavanagh, a principal with Kevin Roche John Dinkeloo & Associates, testified that the spaces connecting the lobby and the Grill, as well as the sitting area attached to the lobby, spaces omitted from the designation, ought to have been included. "This is one architectural space and should be designated as such," he argued.[6] Again, preservationists wonder: did the LPC make a quiet arrangement with the owners prior to designation in order to obtain their quiescence? The Commission is obliged to designate a site in its entirety. The owner can come forward with proposed alterations and present them at a hearing. That is the public process.

If demolition of the landmark is the price of designation, then why bother with the charade at all?

Prior to designation, the LPC should not negotiate with owners as to what changes will be approved afterwards.

Future Landmarks

With its distinctive Chippendale top, the 1984 AT&T Building by Philip Johnson and John Burgee was the first post-modern addition to the city's skyline. It is as emblematic of its time as the Woolworth Building (Cass Gilbert, 1913) and the Chrysler Building (William Van Allen, 1930). The AT&T Building became eligible for designation in 2014, thirty years after its completion. But the LPC did not act and was caught flat-footed when a new owner, Chelsfield America, announced major changes to the façade and the lobby, changes that would render Johnson and Burgee's design unrecognizable. Such cosmetic surgery was as unbecoming as it was unnecessary.

To its credit, the LPC calendared the building for a public hearing soon after the news broke that new owners were proposing drastic changes to the façade. To the dismay of architects and preservationists, however, the Commission declined to include the lobby. This is inexplicable. There are certainly precedents for designating both façade and lobby. In 1978, the Commission designated the Chrysler Building, both the exterior and the glorious Art Deco lobby. In 1983, the Woolworth Building was designated, again, both the exterior and the richly appointed Gothic lobby.[7]

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[5] Jason Sayer, "Sasaki fountain at Citicorp Center may be demolished," *The Architects Newspaper*, March 21, 2017.
[6] "City's Newest Landmark also its Youngest," *CityLand*, January 31, 2017, http://www.citylandnyc.org/un-hotel/; United Nations Hotel, http://www1.nyc.gov/site/lpc/about/pr2016/09-20.page
[7] To be fair, there are also examples where the LPC did not designate a lobby, the Chanin Building and Socony Mobil, for example.

The commission informed the owner that the lobby would not be designated (and twisted itself into a remarkable yoga pose to justify that pronouncement), and the scaffolding went up immediately after. How was it that the lobby was not included in the proposed designation? We have to ask: did the owner agree to delay work on the exterior pending designation in return for the LPC's refusal to include the lobby? That the architect representing Chelsfield is Sherida Paulsen, former chair of the Landmarks Commission, gives one pause.

The Commission offered its reasons. None was convincing. Some were untrue. "In our evaluation the lobby does not hold the same level of broad significance," explained Kate Lemos McHale, Director of Research at the LPC, and with "the removal of 'Golden Boy,' alterations within the lobby itself, and its diminished relationship to the overall design of the base, we have determined that it does not rise to the level of an interior landmark."

To be clear: the lobby today is just as designed by Johnson and Burgee. When the building opened, the lobby featured as its centerpiece "Spirit of Communication," better known as "Golden Boy." The 24-foot statue had stood atop the company's old headquarters downtown at 195 Broadway. In 1992, AT&T sold the building to SONY and removed the statue to its new suburban campus in New Jersey. "Golden Boy" graced the lobby for only 8 years.

Other alterations are cosmetic. What makes the Commission's refusal on such pedantic grounds even more infuriating is that they have routinely approved much more destructive alterations to designated landmarks.

This situation was avoidable. Had the LPC actively researched the architecture of recent decades they would have been poised to consider the AT&T building as soon as it was thirty years old and thus eligible for designation. Many preservation organizations have compiled such lists.

Richard Meier's Bronx Development Center opened in 1976; the *AIA Guide* called it "a **consummate work** of architecture and is sure to be ranked among the great buildings of its time."[8] In the late 1990s, this "elegant summation of modern technology" was sold and the new owners stripped the "tightly stretched skin of natural anodized aluminum panels" and installed a banal and inoffensive façade. In the wake of that loss, the Municipal Art Society issued "30 Under 30: The Watch List of Future Landmarks."

MAS was not alone. Robert A.M. Stern compiled a list of 25 modernist landmarks in 1996, an undertaking highlighted in the *New York Times* (unimaginable today, surely).[9] In 2001, Friends of the Upper East Side Historic Districts produced an exhibit and catalog titled "Modern Architecture on the Upper East Side: Future Landmarks." Such efforts offer a natural starting point for the LPC.

The Landmarks Preservation Commission must compile a list of buildings crossing the 30-year eligibility line, AND proactively designate important sites as they become eligible.

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[8] Willensky and White, *AIA Guide to New York City*, Third edition, 544.

[9] "A Preservationist Lists 35 Modern Landmarks-in-Waiting," *New York Times*, November 17, 1996, http://www.nytimes.com/1996/11/17/realestate/a-preservationist-lists-35-modern-landmarks-in-waiting.html.

East Midtown: Pre-emptive Rejection

The fate of East Midtown raises a final troubling question about the designation process. Under Mayor Bloomberg, City Planning proposed to upzone Midtown between Madison and Third Avenues, 41st to 59th Streets. In response, the Historic Districts Council, the Municipal Art Society, and the New York Landmarks Conservancy each produced a list of potential landmarks. There was some overlap, but the lists included many different sites. For this the Real Estate Board and the anti-preservation press ridiculed the effort. If even preservationists don't agree, well then.

In actuality, the differences only demonstrated the depth and breadth of preservation advocates. Taken together, the lists showed that there was no shortage of historic architecture in East Midtown, ranging in style from the Beaux Arts to Post-Modernism. How did the LPC respond? The Commission designated only twelve buildings.

Astonishingly, after designating the twelve landmarks, Chair Srinivasan announced that there would be no more designations in East Midtown, providing a green light to Mayor de Blasio's upzoning and rejecting in advance any and all Requests for Evaluation. What this meant was that every building, no matter how big, no matter how historic or how beloved a part of the fabric of New York, was now a development site. Such a betrayal of the public trust was unprecedented. Every site suggested for designation deserves to be considered ON THE MERITS, not presumptively rejected in deference to owner opposition or its economic potential.

The rezoning was accomplished in the fall of 2017.[10] We all knew it was only a matter of time before the first tower fell, and in February 2018 it did: JPMorgan Chase announced that they would demolish their 52-story headquarters at 270 Park Avenue, between 47th and 48th Streets, and build a 70-story tower in its place, adding a million square feet of office space. Originally the Union Carbide Building, it was designed by Natalie DuBois and Gordon Bunshaft of Skidmore, Owings & Merrill and completed in 1960, the building was "articulated with bright stainless steel mullions against a background of gray glass and black matte-finished steel panels,"[11] The skyscraper was on several lists of potential landmarks, and not unknown to the LPC. More than one Request for Evaluation had been submitted. Did anyone expect that only buildings of lesser quality would be targets of redevelopment?

[10] For a critique, see John West and Michael Gruen, "A Better Path for East Midtown," *CityLand*, June 19, 2017, http://www.citylandnyc.org/better-path-east-midtown/.
[11] Willensky and White, *AIA Guide to New York City*, Third edition, 245-246.


270 Park Avenue

In a letter to the Historic Districts Council, Chair Srinivasan explained that the Union Carbide Building "is not a priority due to the lack of broader stakeholder support." In fact, the only stakeholder who matters is JPMorgan Chase, and they oppose designation. The chair went on to explain that the Commission had already designated 12 sites in East Midtown. Furthermore, 6 buildings by SOM have been designated across Manhattan, as well as other examples of mid-century modernism. And that is more than enough. "We considered existing designated landmarks and how well they represent each various eras [sic] of development and whether additional historic resources could enhance the reading, understanding and preservation of the area's development history."[12] Thus the Commission declared its work complete.

By stating in advance that the LPC would consider no additional structures in East Midtown, Chair Srinivasan eliminated all public participation in the process. But there is simply too much money at stake in East Midtown to trifle with such matters as preservation or the public interest. In return for being allowed this development bonus, JPMorgan Chase has pledged $40 million in public improvements. Actually, it is required to do so in order to take advantage of the new zoning.[13] The city thus has a financial interest in approving all such upzonings, without regard to their planning purpose or impact on the quality of life. And make no mistake: our historic streetscape contributes to our quality of life.

[12] Letter from LPC Chair Meenakshi Srinivasan to the Historic Districts Council, March 9, 2018.
[13] Charles V. Bagli, "Out With the Old Building, In with the New for JPMorgan Chase," *New York Times*, February 21, 2018, https://www.nytimes.com/2018/02/21/nyregion/jpmorgan-chase-headquarters.html .

Without question, the Union Carbide Building is worthy of designation. It is up to the Landmarks Preservation Commission to make that determination, not JP Morgan Chase. There is a public process. Hold a hearing. Designate (or not). The City Council must then ratify (or reject) the LPC's decision. At the City Council the decision is political. At the Landmarks Commission, the decision has to be made *on the merits*.

The Landmarks Preservation Commission has the obligation to consider each and every request for designation on the merits, not on the basis of a site's development potential.

II. Regulation and Process

Designation may be where the glamour lies, but most of the Landmarks Commission's work is in the realm of regulation. Each year thousands of applications are filed with the commission for work ranging from a window replacement to a rooftop addition, from demolition to new construction. Each year, the number of applications increases, placing greater burdens on the agency's small staff.

Over its first half century the LPC has created a sizeable body of precedent. We are now concerned that in some cases these precedents are being ignored. And at the opposite extreme, the Commission is enacting rigid rules to apply to all landmarks, regardless of the specific context. This is the contradiction between too loose and too strict application of standards.

Issues with regulation include:

- Accommodating needs of the moment over historical integrity
- Regulating cultural landmarks
- Scenic Landmarks
- Arbitrary categories and standards
- Public comment throughout the process
- Staff-level regulation versus decisions by Commissioners

Regulating for Use, not for Preservation

Increasingly, the LPC has approached regulation from the perspective of use, with historic features and context a decidedly secondary consideration. What else can explain the Certificate of Appropriateness awarded to 510 Fifth Avenue to demolish the entire designated interior, move the entrance from 43rd Street to Fifth Avenue, and reposition the escalators?

The commission made a similar decision regarding the 1898 Jamaica Savings Bank. Rather than insist that the historic façade be respected, the commission in 2017 accepted the applicant's argument that the historic façade impeded commercial use and allowed new windows to be carved out of the stone. Representing the owner, former Landmarks Chair Sherida Paulsen offered two arguments by way of justification. First, such an incursion into the original fabric was "reversible" (which suggests, of course, that the proposal was unwise to begin with). Secondly, she pointed out that this was, after all, only Jamaica Avenue, not Madison Avenue.

Where to begin. Should the commission set a lower standard for regulating Beaux Arts buildings in Queens as compared with Manhattan? Or perhaps, we should consider that the New Yorkers strolling Madison Avenue have a more refined sensibility than those on Jamaica Avenue? Or is it that Jamaica just doesn't rise to the level of importance of the Upper East Side? The LPC approved the alterations.

The standard ought to be what best suits the landmark, not what appeases the owner. Decades ago, Burger King applied to demolish a historic storefront on Montague Street in Brooklyn Heights. The old building just didn't look like a Burger King, they argued. The Commission rejected their plans and compelled them to fit their business with the existing façade. Within a few years Burger King had vacated the site, leaving intact the historic streetscape. Would that the LPC maintained that approach today.

Witness the fate of the oldest house in Chelsea. Sold in 2015 for a reported $6.5 million, 404 West 20th Street was a Federal style row house; a small plaque affixed to the façade read: 404, Oldest Building in Chelsea, Frame House with Brick Front, 1830. The plaque disappeared soon after the building was sold. And then the owner filed an application to make the building disappear. They would preserve the façade but demolish the rest, and fill in the side alley where the original clapboard siding was visible. The result would be a much grander, entirely new structure. The LPC approved the application in July 2016, with only Commissioner Michale Devonshire voting against "obliterating" the house. Representing the applicant was Valerie Campbell of Kramer Levin, formerly the general counsel of the LPC. The decision evoking cries of disapproval, to no avail. One citizen commented online, ""If the Landmarks Preservation Commission cannot see fit to reject this proposal to raze the oldest house in Chelsea, it should disband and cease its façade of preserving landmarks."[14]

By accommodating the temporary needs of applicants, the LPC compromises the integrity of the historic site.

Cultural Landmarks

The landmarks law authorizes the commission to designate places of architectural, historical, or cultural significance. Over its first fifty years, the LPC has done itself proud in the recognition of architecture and history, but it has been less successful in designating cultural landmarks. The supposed stumbling block is: How can we regulate?

In 1990 the LPC designated 327 East 27th Street, the row house where Antonin Dvorak lived during his American sojourn (September 1892 – April 1895). It is where he composed his famed Ninth Symphony, "From the New World," and his Cello Concerto. Beth Israel Medical Center owned the building. They lobbied to have the designation overturned and then demolished the house for something not much bigger. The *Times* crowed in an editorial, "Dvorak Doesn't Live Here Anymore." To which Brendan Gill penned an outraged rejoinder: "Dvorak doesn't live here anymore! Mozart doesn't live in Salzburg anymore: should the house in which he lived be torn down? Should we tear down the Jumel Mansion in Manhattan because Washington doesn't live

[14] "New plans still say 'teardown' for Chelsea's oldest house," *ArchiTakes*, 2016, http://www.architakes.com/?p=14432.

in it anymore? You pretend to fear the city will be 'dotted with shrines because a celebrity passed through.' Is Dvorak to you merely a celebrity? Is three years passing through?"[15]

Had the designation stood, how would the commission have regulated? It would have emphasized its period of significance, just as it does with all other landmarks. And it would have accommodated new uses required by the hospital within the historic envelope.

This is the question now confronting the LPC regarding the Walt Whitman House. America's greatest poet (all right, there is some room for debate there) was a Brooklynite. He lived at 99 Ryerson in Wallabout, and that house still stands. In fact, it is the only home he lived in that survives in the five boroughs. Would any New Yorker question whether that structure was of cultural significance? Yet the LPC refuses to hold a public hearing, or rather the staff has sent out a letter stating that it "does not rise to the level of a landmark" (noting by way of explanation that there is a Walt Whitman House in Camden, New Jersey!). In this case, the LPC contends that the house has been altered over time; that it is covered in siding; that Whitman would not recognize it.

In the first place, Walt Whitman would certainly recognize it, as the door and window openings are original. Clearly, the Walt Whitman House was nominated for designation on the basis of its cultural significance, not its architectural merits. As such, the specific architectural details should be of secondary importance in the consideration of whether it qualifies as a landmark. Still, the commission objects that the building is too changed to qualify, but at the same time questions how it could be regulated. As a starting point, regulate to bring it back to what Whitman might recognize.

By rejecting 99 Ryerson Street, the Commission is turning its back on its own precedents. Hamilton Grange was designated despite the house having been moved and remodeled. Yes, but it was Alexander Hamilton's home! The Lewis H. Latimer House in Flushing was designated for its connection with the African-American inventor, not its architecture. That house, too, had been moved, and "at the time of designation, the building's original clapboards were concealed by asbestos shingles." The idea is not that designation honors a pristine site, but that designation would spur restoration.

Not infrequently, in approving an alteration to a designated landmark the LPC will justify the decision by saying the work is "reversible." If that standard is appropriate for work on an existing landmark, a site the commission is specifically charged with protecting, then surely the unfortunate changes to the Walt Whitman House can be seen as likewise "reversible." Under the guiding hand of the commission the building could be brought back to its Whitmanesque glory. What is not in doubt is that this building is only a Department of Buildings filing away from being lost.

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[15] Jeffrey A. Kroessler, *New York, Year by Year: a Chronology of the Great Metropolis* (New York: NYU Press, 2002), 335.

Tin Pan Alley, 2017.

Tin Pan Alley is another cultural landmark in waiting. It may be hard to believe, but Tin Pan Alley still exists in a row of buildings on West 28th Street, just east of Sixth Avenue. Not the musical entrepreneurs, of course, as the music industry moved on decades ago, but many of the original buildings remain more or less as they were at the turn of the twentieth century. Given the magnificent creation known as the Great American Songbook, the place where it was created is certainly of historic and cultural significance. Questions about regulation here are but smoke. Oddly enough, the owner of these buildings has sold the air rights, so the row is not even a development site at this point.

But the LPC has refused to consider Tin Pan Alley. Rather, a staff person has refused to consider Tin Pan Alley. They claim that while these survivors were part of what comprised Tin Pan Alley, they were not the most important ones, and the best songs were written in other, now vanished buildings. We might quibble over which songwriters were more important, but we cannot deny that the remaining blocks are in peril.

Finally, designating cultural landmarks is a way for the city to recognize the diversity of its history its people, and its cultures. In 1996, the Municipal Art Society issued a report on cultural landmarks, *History Happened Here*, highlighting recent controversies like the Dvorak House and arguing for a more aggressive approach to designating places of cultural significance. Two decades later the preservation community is confronting the same questions.

The Landmarks Commission must more aggressively designate cultural landmarks and not stumble over questions about regulation.

Scenic Landmarks

Scenic Landmarks occupy a peculiar position in the LPC's portfolio. To begin with, only publicly owned spaces can be designated, which in practice means public parks. The

commission's decisions were always merely advisory, as the city is exempt from its own landmarks law. Nonetheless, the LPC spoke with authority. Landmarks took its responsibility to consider proposed changes to Central Park and Prospect Park seriously.

The most wonderful example goes back to a proposal to rebuild the Wisteria Pergola, located above the bandshell in Central Park. In 1985, the Parks Department proposed a rebuilding of the pergola and approached the LPC for a permit. The staff could not issue a permit for minor work for such a work and so it was sent on to the full commission for a public hearing. By that time, however, eleven of the twenty ancient vines had already been cut, information the Assistant Parks Commissioner neglected to share with the commission. At the hearing, Chair Gene Norman asked why, when the commissioners specifically requested that the 120-year old vines not be disturbed, they were not informed they had. They were "twisted," was the reply. At that point Commissioner Elliot Willensky inquired as to whether she had developed a "new, Mies van der Roe wisteria which grows straight."[16]

The Parks Department applied for a permit, and Landmarks rigorously scrutinized that proposal. Discussion among the commissioners at the hearing was vigorous. Parks did not gain approval for what it originally wanted and modified its proposal accordingly.

Alas, such a scenario is unlikely today, and by the LPC's rules, impossible. The Commission has announced that henceforward they will only regulate buildings within scenic landmarks. The rest, including presumably the designated landscape itself, will be under the purview of the Public Design Commission (formerly known as the Art Commission). The LPC's report will be only advisory, and they do not accept public testimony on advisory reports.

Here again the LPC breaks long-established precedent, and again, abdicates its authority by yielding its legal powers to other agencies. In so doing, they also exclude the public from what has always been a very public process.

In 2017 the Central Park Conservancy presented plans for changes to the Belvedere Castle, including a major reconstruction of the pathway leading to it. They proposed straightening and widening the path in order to comply with ADA requirements. The design showed a solid retaining wall where there is now Olmstedian landscaping. The proposal generated opposition from the Municipal Art Society, Landmark West!, and Friends of the Upper East Side Historic Districts. They understood the proposal to mean that the Conservancy wished to redesign the landscape so the Belvedere could be utilized as an event space. The Commission approved the changes to the structures but deferred decision on the walkway. That proposal will surely return.

Now the Parks Department has grand plans for Fort Greene Park, coming under its progressive-sounding program, Parks Without Borders (Fort Greene Park is not actually a scenic landmark; it was included in the designation of the Fort Greene Historic District in 1978.[17]) What it means in practice is the elimination of historic features to make the park less "unwelcoming" to nearby residents by eliminated a wall along the edge of the park and creating a broad open space with a

[16] "Cutting Down the Old Wisteria," *Village Views*, Vol. 3, Number 1, Winter 1986, 3-11.
[17] Landmarks Preservation Commission, Fort Greene Historic District Designation Report, 1978, http://s-media.nyc.gov/agencies/lpc/lp/0973.pdf.

water feature in the center. This would eliminate elements of the design by Clarke and Rapauano from the 1930s and A.E. Bye Jr. from 1971, and remove dozens of stately trees. In the end we would see the loss of a historic park design to accommodate the preferences of the present.

In March 2018 the LPC voted to calendar the Coney Island (Riegelman) Boardwalk – incredibly, not as a scenic landmark but as a cultural landmark. Counsel Mark Silberman emphasized that the LPC had binding authority only over existing *buildings* within scenic landmarks. All else fell within under the authority of the Public Design Commission. With regard to the Boardwalk, the point was made that there have been so many changes over time, of materials (wood to concrete being the most egregious) and even of the level of the beach below, therefore the LPC could not regulate with any energy or authority. This is not the kind of preservation those who long advocated the Boardwalk's designation expected from the Landmarks Preservation Commission.

The Landmarks Preservation Commission must protect the historic landscaping of our scenic landmarks, preserve the layering of design elements, and push back against efforts to redesign spaces for convenience or commercialization. Further, it must reassert its authority to regulate all features of scenic landmarks.

Period of Significance; Contributing/Non-Contributing; Style-none – nowhere in the law

In *Undoing Historic Districts*,[18] a deeply critical analysis of the procedures of the Landmarks Commission, Christabel Gough explains how the commission is relying more and more on concepts that appear nowhere in the landmarks law: period of significance; style-none; and contributing/non-contributing. Over the years designation reports have incorporated these concepts. Under the current chair, however, this soft and vague descriptive terminology has been reinterpreted as a hard definition with strict standards for regulation. As a result, many structures that give historic districts their character, their "sense of place," are at risk.

The concept of designating a historic district according to a tightly defined "period of significance" flies in the face of not only preservation theory but also the history of the city. Best practice in preservation today encompasses layers of architecture, history, and culture, especially in historic districts. It is this palimpsest, this juxtaposition of buildings from different eras and with different characteristics which enlivens our city.

In a very few cases, the idea of a period of significance makes sense. All of the Sunnyside Gardens Historic District, for example, was built between 1924 and 1935. That history provides a very clear direction for regulation. But what is the period of significance for Greenwich Village? The buildings date from the early 1800s to the 1960s, and styles range from the Federal Period to post-war modernism. The 1969 designation report tackles this very question: "From the totality of Greenwich Village emanates an appearance and even more a spirit and character of Old New York which no single block thereof and no individual Landmark could possible provide. It is this collective emanation which distinguishes an Historic District, and particularly Greenwich Village, from a Landmark and gives it a unique aesthetic and historical value."[19]

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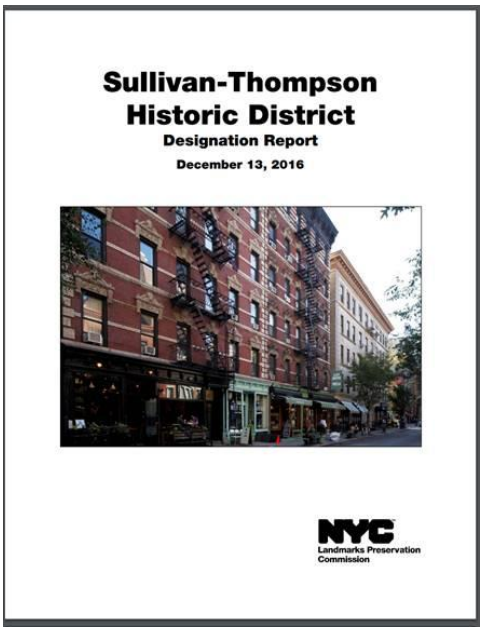
[18] Christabel Gough, *Undoing Historic Districts*, Society for the Architecture of the City, 2017.
[19] Landmarks Preservation Commission, *Greenwich Village Historic District Designation Report*, 1969. http://www.nyc.gov/html/lpc/downloads/pdf/reports/GV.pdf.



Sullivan-Thompson Historic District Designation Report, LPC, 2016.

By contrast, the 2016 designation report for the Sullivan-Thompson Historic District locks the commission into a tightly constrained definition of significance. Using that definition as the basis for regulation puts buildings within the historic district at risk. This is unprecedented, and in terms of historic preservation, heretical.

The "Purpose of Designation & Statement of Regulatory Intent" in the Sullivan-Thompson designation report exclaims: "The period of significance in this historic district is the early 19th century to the Great Depression, when most of the development within the district occurred." It goes on to define "the buildings from this period that contribute to the streetscape." Such a statement is clearly intended to exclude all other structures. Never before has a designation report, the legal document voted on by the City Council to ratify a designation, denoted certain structures as being outside the sphere of protection. Furthermore, the report specifically calls out "immigrant history" as the characteristic giving the district its sense of place. Historians and architects would certainly counter that there is more than one layer of history in any city block.

Had this been merely a description of a key aspect of the historic district, there would be no issue. But what the Commission has done here is to use that very limited historical description as the basis of regulation: "Buildings that were developed after this period do not convey the history of immigration in this district, as expressed through the earlier residential, institutional, and commercial architecture of the historic district. Therefore, the buildings that were constructed, reconstructed, or heavily altered after the 1930s, and vacant lots and lots on which new buildings are being constructed are non-contributing to the historic district. In some cases, these buildings have been given a style in the designation report; however, the style field does not attribute significance to the building within the historic district."[20] One need only stroll the

[20] Landmarks Preservation Commission, *Sullivan-Thompson Historic District, 2016*, p.29, http://s-media.nyc.gov/agencies/lpc/lp/2590.pdf.

district to understand just how many buildings fall outside of the Commission's exclusionary "period of significance."

Whew. By limiting protection to "contributing" buildings only, the LPC, for the first time, has declared that some buildings will be held to a higher standard than others within the district and that the so-called "non-contributing" structures can be removed without compromising the whole. Nonsense. Preservationists do not evaluate a historic district on the basis of this building or that, but on the total effect.

This concept originated in the Vieux Carre in New Orleans and has been ratified in the courts. As far back as 1941, the Louisiana Supreme Court ruled against a property owner who wanted to erect a large sign on his building. "The purpose of the [preservation] ordinance is not only to preserve the old buildings themselves," the court declared, "but to preserve the whole French and Spanish quarter, the tout ensemble, so to speak, by defending this relic against iconoclasm and vandalism."[21] A federal court affirmed this principle in 1975 in a case where a property owner in the historic district sought to demolish his building. "The Vieux Carre Ordinance was enacted to pursue the legitimate state goal of preserving the 'tout ensemble' of the historic French Quarter."[22]

What the LPC has done in the Sullivan-Thompson designation report is to violate the long-established precedent of regulating with an eye toward protecting the "tout ensemble," not individual buildings.[23]

Certainly one may find a dominant architectural style in any historic district. And one can likewise see many buildings that do not conform to that style. Over the years, the authors of designation reports have attributed a particular style to each building in a historic district. When architectural details have been stripped over time, or a structure has no clear defining characteristic, the authors relied upon "style – none." But that is merely a short-hand description, and was never intended to suggest that the building should then be regulated to a lower standard. Now, unfortunately, the LPC is doing just that. Because a designated building is denoted as "style – none," the Commission has decided it merits no protection whatsoever.

The proposed rules, for the first time, intend to regulate buildings in historic districts to a less rigorous standard than applied to individual landmarks. Again, this is nowhere in the law and contradicts generations of preservation practice.

The LPC must not regulate on the basis of contributing and non-contributing; nor should buildings in historic districts be regulated according to looser standards. Work on all landmarks must be to the highest standards of restoration or adaptation.

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[21] City of New Orleans v. Pergament, Supreme Court of Louisiana, 1941; 198 la. 852; 5 So. 2d 129; 1941 la. LEXIS 1171.

[22] Maher v. New Orleans, United States Court of Appeals for the Fifth Circuit, 1975; 516 F 2d 1051; 1975 U.S. App LEXIS 13385; 5 ELR 20524.

[23] For an overview of the legal basis of preservation, see Dorothy Minor's remarks in Kroessler et al., "In Defense of Preservation," 2014 (2001), https://academicworks.cuny.edu/jj_pubs/47/.

Gaming the Process

Despite all efforts to have most decisions made at staff level, some applications still must go before the eleven appointed commissioners for a public hearing. In recent years, applicants with especially controversial projects have learned to game the system, with the cooperation of the commission itself. They appear at the hearing with their proposal, and the public testifies. The commissioners neither approve nor reject, and the applicant is instructed to work with staff and return with a modified proposal. The rub is that when the proposal does return, the public is prevented from commenting on what is in many ways a new proposal, the outcome of negotiations between staff and applicant.

In such instances, when considering what is in essence a new proposal, the LPC must reopen the hearing to accept new testimony. Alas, that would only slow down the approval process.

When applicants return to the LPC with a modified proposal, the public must be granted an opportunity to comment in a public hearing.

New Rules trust staff to enforce the landmarks law, not the Commissioners

The LPC has proposed new rules governing the process of regulation. It is a detailed and comprehensive proposal intended to streamline the application process. As LPC Counsel has often said, "We regulate work." With each additional designation comes increased regulatory demands. Applications take weeks and months to wend their way through the approval process, not necessarily because of inefficiency but by the sheer number of applications.

The new rules, however, do not serve a clear preservation purpose. In sum, the proposed changes are intended to speed approvals of Permits for Minor Work and Certificates of Appropriateness. The focus is on making the process smoother for the applicant. The quality of work proposed on the landmark itself is a secondary consideration. Moreover, one can imagine a future scenario in which a member of the preservation staff will be evaluated on the basis of the number of applications approved in a given period, as opposed to the quality of the work approved or the reasons for rejecting an application.

The new rules can be taken apart and criticized in detail. They suggest that rooftop additions and rear yard additions might be minimally visible. Well, how much can be built and still be considered minimal? But that misses the big problem.

The intent of the rules is to improve efficiency, and the way to do this is by having more and more decisions taken out of the public process and handled at staff level. If so much will be decided at staff level, what will be left for the commissioners to do?

That is not a rhetorical question. The eleven appointed commissioners are charged with enforcing the landmarks law. The new rules give much of this authority to the staff. Will the commissioners even know what is being decided in their name?

With the bulk of the regulatory decisions made at staff level, often the result of negotiation with the applicant, the public is cut out of the process. When efficiency is prized over preservation, preservation cannot but suffer. If staff members are evaluated on the basis of their efficiency, will they not have an interest in granting swift approvals regardless of their impact?

In recent years there has been significant turnover among the Commission's staff. Much institutional memory has been lost, and new staff members are often charged with overseeing dozens of projects. They are not necessarily familiar with precedents set over decades of regulation. To prize efficiency over precedent compromises the integrity of the process and diminishes public respect for the agency's decisions.

Ultimate authority for enforcing the landmarks law lies with the appointed commissioners, and relegating so much work to staff (no matter how well-trained and dedicated) betrays the intent of the law.

III. The Commissioners

Issues with Commissioners
- Commitment to preservation
- Exclusion from staff-level decisions
- Expired terms

Landmarks Preservation Commissioners unsympathetic to Preservation

Perhaps this is viewing the past through a rose-tinted lens, but it seems that in decades past the Landmarks Preservation Commission consisted of individuals who were actually preservationists, or at least were sympathetic to preservation, or at bottom, understood what it meant. In recent years, it has seemed that an embrace of the preservation ethic immediately disqualifies a candidate.

Such an attitude actively diminishes the role of historic preservation and undermines any concept of a livable city. Further, sidelining informed preservationists greatly enhances the influence of voices antagonistic to preservation, particularly in the realm of real estate. This is not to say that preservationists are anti-development; rather, they are for the historic city, a city that respects layers of history rather than clear-cutting the past to make way for the future. The recent rezoning of East Midtown certainly was a defeat for preservation and a victory for untrammeled development.

Unless the mayor appoints committed preservationists to the LPC, it will be increasingly marginalized in decisions of public concern.

The Mayor must appoint as Chair a committed preservationist, someone who will advocate on behalf of the agency and its mission, and commissioners must have demonstrated experience in or appreciation for historic preservation.

The regulatory process marginalizes appointed commissioners

Once, hearings at the Landmarks Preservation Commission offered intense debate, controversy, and animated discussion. They were at times exciting, as the commissioners actively participated in the process of regulation. No more. LPC hearings today are orchestrated affairs, and more often than not the resolution has been completely written out before the public testimony.

Further, more and more applications for Certificates of Appropriateness are being decided at staff level, meaning that the commissioners are not at all involved, even though they are legally responsible for the decisions. One could argue that once a precedent has been established it is redundant and inefficient for the commission to hear a presentation on every such item. But this runs the risk of an arbitrary and bureaucratic application of the rules as opposed to a thoughtful evaluation of each application in its own particulars. The proposed new rules will further distance appointed commissioners from regulatory decisions.

Commissioners must be involved in the process of regulation to assure it is open and public, rather than an over-reliance on staff-level decisions.

Commissioners serving beyond their terms

Too many sitting commissioners are serving with expired terms. The mayor appoints them for three years, and then forgets about them. This presents several problems. First, because commissioners can be dismissed at any time, with or without a replacement, they may be hesitant to contradict the chair, or to support a preservation decision opposed by the administration. Second, the absence of timely reappointments eliminates the public role in the appointment process. Confirmation hearings are an opportunity to support or object to a nominee.

During the Bloomberg administration, the Citizens Emergency Committee to Preserve Preservation sued to force timely reappointments. Remarkably, the court agreed, and more remarkable still, the administration complied. For a brief moment no commissioner was serving in an expired term. But since then, nothing. And now most members of the Commission sit with expired terms. That legal victory proved to be a singular event, not a portent of change.

The Mayor has an obligation to maintain commissioners with current terms, and to appoint commissioners in a timely fashion. The LPC Chair must insist on this to assure the independence of the agency.

Conclusion

The LPC has played a vital role in fostering the livable city. Today, it has ceased being an advocate for the historic city and instead strives to accommodate the owners of designated properties. Further, the commission has backed away from proactively designating landmarks and in too many instances pre-emptively rejects requests for evaluation.

Further, the LPC has moved ever more decisions out of the public eye. The proposed new rules will intensify this lack of transparency. We are troubled that the Commission has abdicated its responsiblity to regulate, particularly with regard scenic landmarks.

The public has the right to expect that the Landmarks Preservation Commission will embrace the idea of historic preservation and protect our historic, architectural, and cultural landmarks.

It has come to this: a Landmarks Preservation Commission actively rejecting the idea of preservation.

It was not always thus. And that must not be the inescapable future.