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## The Use of Investment Tax Credits in the Revitalization of the Davol Square Complex and Historic Preservation Zoning With Pertinent Legal Cases

Dale Toomer

*University of Rhode Island*

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THE USE OF INVESTMENT TAX CREDITS IN THE  
REVITALIZATION OF THE DAVOL SQUARE COMPLEX  
AND HISTORIC PRESERVATION ZONING WITH  
PERTINENT LEGAL CASES

BY

DALE TOOMER

A RESEARCH PROJECT SUBMITTED IN  
PARTIAL FULFILLMENT OF THE REQUIREMENTS  
FOR THE DEGREE AND MASTER OF  
COMMUNITY PLANNING

UNIVERSITY OF RHODE ISLAND

1986

MASTER OF COMMUNITY PLANNING THESIS

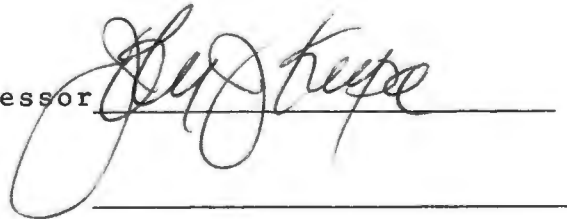
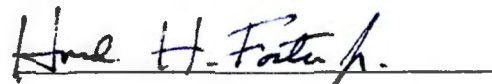
OF

DALE TOOMER

Approved:

Thesis Committee:

Major Professor

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~~Dean of the Graduate School~~  
DIRECTOR - CPAD

UNIVERSITY OF RHODE ISLAND

1986

Special thanks to the following people for their time and expertise:

Thesis Committee:

Dr. John Kupa, University of Rhode Island  
Dr. Farhad Atash, University of Rhode Island  
Andrea Nadel, Hresko Yost, Boston

Jerrold Dorfman, Laventhol & Horwath, Providence

Rob Freeman, Marathon Group, Providence

Karen Jessup, President, Providence Preservation Society  
Revolving Fund

Jeffrey Mowry, Leggat & McCall, Boston

Ken Orenstein, Providence Foundation

Clark Schoettle, Providence Preservation Society Revolving Fund

Martha Werenfels, Rhode Island Historic Preservation Commission

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## THE SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- (1) Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of the building, structure, or site and its environment, or to use the property for its originally intended purpose.
- (2) The distinguishing original qualities or character of a building, structure, 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) All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- (4) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- (5) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, or site shall be treated with sensitivity.
- (6) Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match 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 historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- (7) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- (8) Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to any project.
- (9) 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.
- (10) Whenever possible, new additions or alterations to structures 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 structure would be unimpaired.

FIGURE 1. Source: U.S. Department of Interior National Park Service, "Preservation Tax Incentives For Historic Buildings". (pamphlet)



# Rhode Island Projects Utilizing Economic Incentives for Historic Preservation

<u>CALENDAR YEAR</u>	<u>NUMBER OF PROJECTS</u>	<u>COST</u>
(Based on date application received by RIHPC)		
1977	3	\$ 19,000,000
1978	14	11,076,000
1979	16	3,135,920
1980	29	9,480,900
1981	34	4,521,500
1982	48	26,206,736
1983	50	18,982,353
1984	52	41,147,300
1985	56	37,681,600
1986	<u>20</u>	<u>4,467,791</u>
TOTAL	322	\$175,700,100

Note: This list was compiled July 21, 1986 and is based on applications received at the RIHPC from January 1, 1977 through July 21, 1986.

FIGURE 2. Source: Preservation Action!/Rhode Island and Historic Massachusetts Incorporated, "New England: Federal Investment Tax Credits For Historic Rehabilitations", August 4, 1986.

# Tax Credit Historic Rehabilitation\*

## 1985 Report

### RHODE ISLAND

Town	Projects	Cost	Housing**	Office✓	Mixed✓✓
Bristol	1	\$190,000.	1		
Coventry	1	130,000.	1		
Cumberland	3	150,000.	3		
E. Greenwich	1	90,000.			1
Exeter	1	35,000.			1
Narragansett	3	625,000.	3		
New Shoreham	2	260,000.		2	
Newport	15	5,236,000.	13	1	1
N.Kingstown	2	486,000.	2		
Pawtucket	2	252,000.	2		
Providence	17	28,357,000.	7	9	1
Tiverton	1	100,000.		1	
Warren	3	445,000.	1	1	1
Warwick	1	275,000.		1	
Westerly	3	1,050,600.		2	1
<b>TOTAL</b>	<b>56</b>	<b>\$37,681,600.</b>	<b>33</b>	<b>17</b>	<b>6</b>

\* This report reflects Part II "Historic Preservation Certification Applications" that were filed in Rhode Island in 1985 for the 25 percent investment tax credit for restoring historic, income-producing property. Applications are filed at the Providence office of the R.I. Historical Preservation Commission. The cost figures reflect estimates prior to rehabilitation. The final cost of projects is often as much as a third higher than original estimates.

\*\* Housing refers to number of buildings per town, not housing units.

✓ Office also includes other commercial uses, such as retail.

✓✓ Mixed use refers to projects which include some form of housing in addition to another use.

FIGURE 3. Source: Preservation Action!/Rhode Island and Historic Massachusetts Incorporated, "New England: Federal Investment Tax Credits For Historic Rehabilitations", August 4, 1986.

## Secondary Economic Benefits

The secondary economic benefits of Tax Act projects are frequently considerable and include:

- o Jobs created through the construction process
- o New businesses drawn to the rehabilitated area
- o Increased state revenues created by new retail sales

These benefits can be seen as a result of a project such as Davol Square in Providence, Rhode Island.

### Davol Square - Project Description

The \$12 million rehabilitation of a vacant 85,000 square foot industrial complex, the former Davol Rubber Factory, for mixed use generated:

#### Uses:

Office	25,000 square feet
Retail	40,000 square feet
Restaurant	20,000 square feet

#### Jobs Created:

225 new jobs including retail and restaurant personnel and maintenance

#### New Businesses:

50 new businesses, 30 of which are totally new to the City of Providence

#### Increased Revenues:

1983	\$ 7.5 million
1984	\$12.5 million

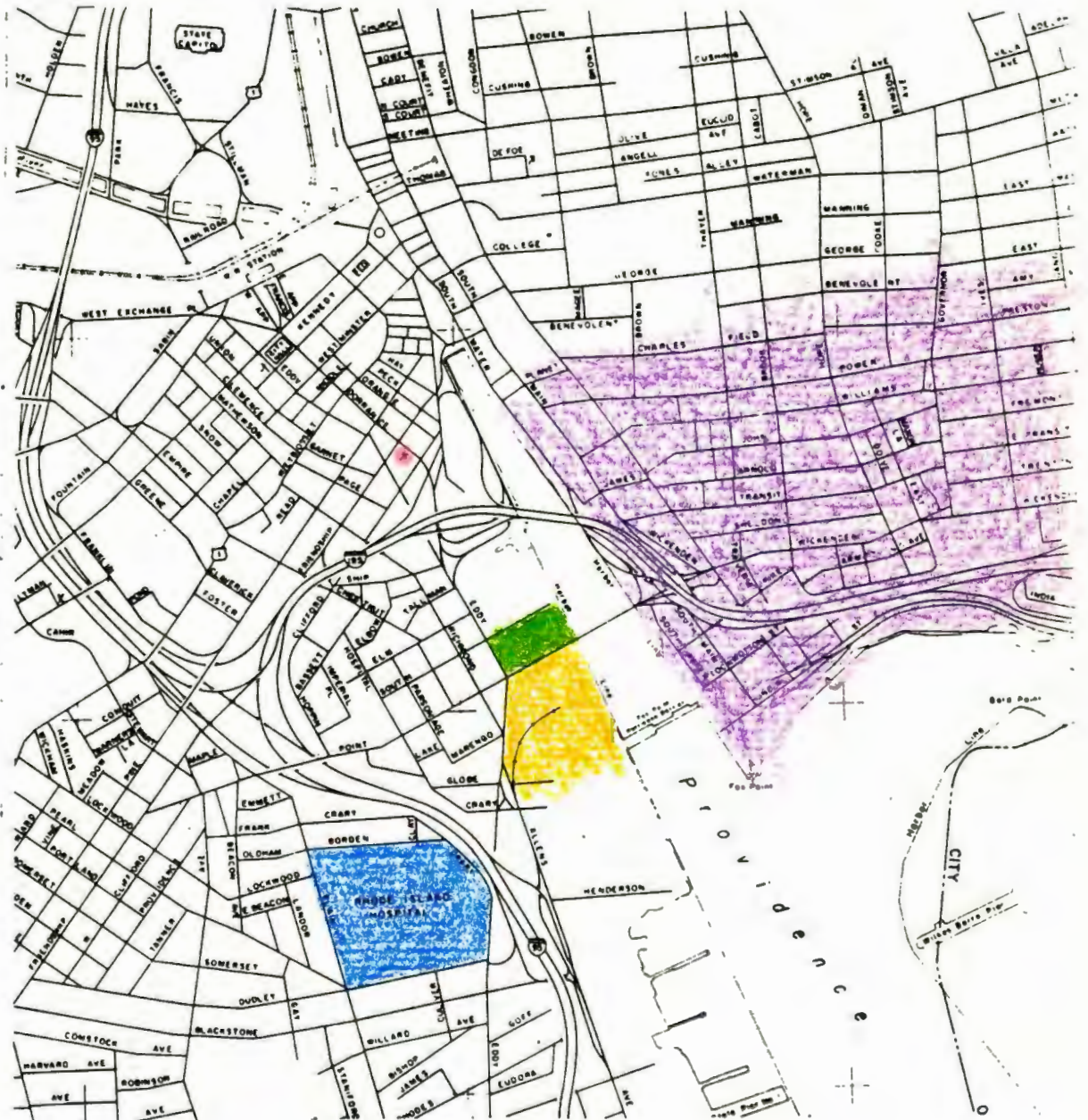
Over and above these secondary economic benefits, this project will produce increased property tax revenues for the City of Providence.

### SECONDARY ECONOMIC BENEFITS OF ITC, WITH FOCUS ON DAVOL SQUARE

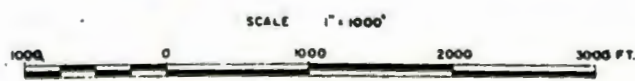
FIGURE 4. Source: Deborah Dunning and Nellie Longworth, ed., Another Revolution In New England: A Case Study of the Historic Rehabilitation Tax Incentives, 1983.







-  DAVOL SQUARE
-  FAMILY COURT
-  FOX POINT
-  FRANKLIN SQUARE
-  RI HOSPITAL



**CITY PLAN COMMISSION  
PROVIDENCE, RHODE ISLAND**

PHOTOGRAMMETRIC COMPILATION AND AERIAL CONTROL  
BY CHARLES A. MAGUIRE AND ASSOCIATES, BOSTON, MASS.

FIGURE 6 PROVIDENCE MAP

## PROJECT DATA

### Land Use Information:

Site Area: 4.43 acres (1.79 hectares)  
Gross Leasable Area (GLA):<sup>1</sup> 188,236 square feet

### Parking:

On-Site Spaces: 495  
Street Spaces: 110

### Economic Information:

Site Acquisition Cost: \$1,000,000

### Construction Cost:

Buildings and Improvements	\$ 8,122,864
Tenant Improvements	230,049
Furniture and Fixtures	108,643
Capitalized Interest and Taxes	173,928
<b>Total</b>	<b>\$ 8,635,484</b>

### Financing:

Industrial Revenue Bonds	\$ 5,700,000
Developer Equity	3,000,000
Private Loan	2,000,000
<b>Total Project Cost</b>	<b>\$10,700,000</b>

### Tenant Information:<sup>2</sup>

Classification <sup>3</sup>	Number of Stores	Percent of Total Tenants	Square Feet of GLA	Percent of GLA
General Merchandise	-	-	-	-
Food	-	-	-	-
Food Service	11	17.19	18,433	11.94
Clothing	13	20.31	17,274	11.18
Shoes	2	3.13	2,089	1.15
Home Furnishings	-	-	-	-
Home Appliances/Music	2	3.13	3,574	2.11
Building Materials/Garden	2	3.13	2,059	1.33
Automotive Supplies/Service Station	-	-	-	-
Hobby/Special Interest	1	1.56	653	0.42
Gifts/Specialty	10	15.62	8,171	5.29
Jewelry and Cosmetics	4	6.25	3,654	2.36
Liquor	-	-	-	-
Drugs	-	-	-	-
Other Retail	-	-	-	-
Personal Services	-	-	-	-
Recreation/Community	-	-	-	-
Financial	-	-	-	-
Offices (other than financial)	15	23.43	96,683	62.56
Other (vacant)	4	6.25	1,954	1.26
<b>Total</b>	<b>64</b>	<b>100.00</b>	<b>154,644</b>	<b>100.00</b>

### Notes:

<sup>1</sup>Includes 154,644 square feet in the main complex and 10,002 square feet in the Simmons Building.

<sup>2</sup>Construction cost for the main complex only.

<sup>3</sup>Projected 1985 operating expenses for the main complex. Projected expenses for the Simmons Building are \$174,700.

<sup>4</sup>Average sales volume. Sales volumes range from approximately \$110 to \$400 per square foot.

### Operating Expenses:

Taxes	\$ 144,000
Insurance	21,000
Operations	267,000
Maintenance and Repair	86,400
Janitorial Services and Supplies	46,200
Utilities	125,000
Legal and Professional	12,000
Management and Administrative	140,000
Land Rent	100,000
<b>Total</b>	<b>\$ 942,200</b>

### Lease Information:

Sales:<sup>4</sup> \$250 per square foot

Rents:<sup>5</sup>

Retail:<sup>6</sup> \$32.50 per square foot

Office: \$16.50 per square foot

Term:<sup>7</sup> 3 years

Gross rents. Tenants pay for their own electricity and for their prorated share of increases in operating costs over the base year.

<sup>4</sup>Average minimum rent. Most tenants do not pay percentage rent.

<sup>5</sup>Average lease term.

<sup>6</sup>Tenants in main complex only. Does not include tenants in the Simmons Building.

<sup>7</sup>Dollars & Cents of Shopping Centers, 1984-Washington, D.C.: 101; the Urban Land Institute, 1984, p. 271.

FIGURE 7. DAVOL SQUARE PROJECT DATA

Source: Urban Land Institute Project Reference File,  
Vol. 15, No. 10, April - June 1985.



## DAVOL SQUARE MARKETPLACE

### Directory

A New Leaf - large assortment of house plants and garden needs  
Cart - First Floor      Store at end of parking lot - 351-4330

Accessories Plus - women's bags, belts, and more  
First Floor - 272-0620

Alberta's Cosmetic & Perfume Boutique - fragrances and cosmetics  
for both men and women  
Second Floor - 351-1940

Attitude - exclusive clothing for women  
First Floor - 272-4479

Baby Watson - yummy cheesecake, desserts, and "stroller" sandwiches  
First Floor - 273-8787

Benetton - updated sportswear for men, women, and children  
First Floor - 521-2890

Bill's Hallmark Cards - cards, gift wrapping, and gifts  
First Floor - 831-6055

Bread & Company - fresh baked croissants, bread, crisp salads,  
and delicious pastries  
First Floor - 331-3350

Campbell's Books - children's books, cookbooks, novels, and more  
all for \$2.00  
First Floor - 331-6999

Chestlibrook, Ltd. - posters, prints, limited editions, and custom  
framing  
Second Floor - 273-9337

City Lights - fine dining in an art deco atmosphere  
First Floor - 421-9331

City Settings - homewares, kitchen gadgets, and gifts  
First Floor - 273-1130

Classic Expressions - women's and junior fun fashions  
Second Floor - 273-6676

Ewe & Eye - fine yarns, needlework supplies, and knitting classes  
Second Floor - 272-1217

F. Bianco - exciting clothing and shoes for today's women  
Second Floor - 331-9013

Foreign Intrigue - fashions and accessories for women from around the world

First Floor - 421-3032

Granny's Folly - distinctive infant and children's clothing  
(Boys 0 - 6X Girls 0 - 14)

Second Floor - 331-4160

Incredible Edibles - fine chocolates and confections

First Floor - 273-7060

The Irish Currach - fine imported Irish clothing

First Floor

Konig-City - European restaurant with a distinctive German touch

First Floor - 521-9600

Laura Ashley - women's and children's clothing plus home furnishings

First Floor - 273-1120

Made With Love - unique handcrafted gifts and collector items

Second Floor - 351-7404

Merry-Go-Round - children's toys and games

Second Floor - 861-1011

Mr. McGoo's - Chicago style pizza whole or by the slice

First Floor - 273-1620

Omnidentix - full range of dental services

Second Floor - 331-7330

Oriental Arts, Ltd. - Oriental furniture and gifts

Second Floor - 521-4646

Papaya Tree - natural exotic fruit drinks, hot dogs, and snacks

First Floor - 861-4270

Paul Michael's - sportswear for the casual man

Second Floor - 351-0320

Preta Porte - imported women's sportswear

Second Floor

The Point Tavern - informal dining in a pub atmosphere

Second Floor - 421-1437

The Renovator's Supply - unusual and hard to find products for your home

Second Floor - 273-2686

Rhode Island Hospital Trust - ATM - banking at your convenience

First Floor

Skin Tight - jumping into the best exercising and sportswear apparel

First Floor - 351-6655

Salon de Fatima - experience, excellence in hair, face, and nails

Second Floor - 273-2400



Sophisticated Lady - intimate apparel for men and women  
Second Floor - 421-4144

Stitches Limited - custom alteration and tailor shop  
Second Floor - 272-8612

The Smoky Gazette - domestic and foreign tobacco products, newspapers,  
and magazines  
First Floor - 273-2414

The Talbots - classic women's clothing and jewelry  
First Floor - Outside - 861-6660

Tanury, Ltd. - contemporary costume and fine jewelry  
Second Floor - 861-7131

Viewpoint - the extraordinary in gifts, cards, stationery, art,  
giftware, and whimsies  
Second Floor - 861-6633

Virginia Bernard, Ltd. - hand painted women's sportswear and apparel  
Second Floor - 831-7474

### Carts

Toppers - hats, accessories, and luxury fiber Alpaca and Icelandic  
sweaters  
First Floor - Gallery

Ornamentals - Christmas ornaments and gifts  
First Floor - Gallery

Sportscage - sports souvenirs from all your favorite teams  
First Floor - Gallery

Sporting Colors - silk screened rugby and t-shirts  
First Floor - Gallery

The Toy Cart - stuffed animals and toys  
First Floor - Gallery

Sunny Times - sunglasses and watches  
First Floor - Gallery

La Mode de Paris - canvas shoes and sneakers  
First Floor - Gallery

Musique D'Amour - radios, tape decks, posters  
First Floor - Gallery

### Simmons Building

Country Curtains - curtains and homewares with a country flair  
First Floor - 331-0148

### Corliss Landing

Puffins - a specialty gift shop with distinctive items  
First Floor - 274-1122

Offices

Alpha Research Associates

Third Floor - 521-6660

Anchor Systems Group, Inc.

Third Floor - 751-6630

Richard A. Ciccone, Esquire

Third Floor - 351-7800

Commonwealth Mortgage

Third Floor - 351-0900

Davol Square Information/Security

Second Floor - 272-7211

Interior Designs - Janice Barracelli

Third Floor - 861-4900

The Marathon Group

Third and Fourth Floors - 273-9700

Nachtmann U.S.A., Inc.

Third Floor - 273-7720

Office Specialists

Third Floor - 831-1234

Anthony F. Pennacchia, Esquire

Third Floor - 421-8700

Rhode Island Group Health Association (RIGHA)

Third and Fourth Floors - 421-4410

Schaeffer, Bates & Co.

Third Floor - 273-7710

Specialty Health Care Services

Second Floor - 273-4940

Shapiro & Colangelo

Third Floor - 351-7807

FIGURE 8. DAVOL SQUARE MARKETPLACE DIRECTORY

## Experience Gained

- Davol Square's excellent access from major highways and its on-site parking have been important factors in its success: shoppers today are accustomed to easily accessible suburban malls with convenient parking. Obtaining a Davol Square exit sign for the highway has been important to the project's visibility.
- In the restoration of historic structures it is important to communicate early and often with local preservation authorities.
- The special nature of many of the retail shops created a greater than expected demand for smaller tenant spaces. Most of the retail spaces range from 300 to 1,200 square feet.
- Prospective tenants, both retail and office, frequently have a difficult time visualizing how a renovated mill building can be transformed into individual offices and shops. Renderings and model spaces can be helpful to prospective tenants and can expedite the leasing of space.
- Prospective tenants are very hesitant about the potential success of an innovative project within their own backyard. Local tenants are particularly cautious until a recognizable national or regional tenant is signed.
- Merchants, particularly first-time merchants, frequently misunderstand the role of a merchants' association and believe that it will take care of all their individual advertising needs. Many tenants do not fully understand that the function of the association is to coordinate events and to promote the image of the center and that merchants must themselves promote their merchandise.
- The likelihood that unexpected expenses might occur during the renovation of older buildings makes it important to have a fixed-price contract with the general contractor.
- In a project that accommodates a large number of both retail and office tenants, clearly visible directories and signs are essential. In addition, signage should be attractive and in place before the project's opening.
- Many design elements in such a project—high ceilings, thick brick walls, large windows, and so forth—must be restored to create an intimate yet festive atmosphere for visiting and shopping. The development team achieved this by using banners, lighting, benches, and other features.
- The presence of a security guard 24 hours a day has been a significant factor in creating a feeling of security for both shoppers and tenants.
- In an adaptive use project involving older industrial and commercial structures, it is important to recognize that such structures, because of their size and configuration, often are better suited to mixed-use or multiuse purposes than to a single use. A combination of uses not only provides variety and more interesting development, but also allows risks to be spread among several sectors.

FIGURE 9. EXPERIENCE GAINED IN THE REVITALIZATION OF DAVOL SQUARE

Source: Urban Land Institute Project Reference File, Vol. 15, No. 10, April - June 1985.

FIGURE 10 PROVIDENCE EMPLOYMENT 1960 - 1985

EMPLOYMENT  
CITY OF PROVIDENCE  
1960-1985

CATEGORY	1960	1970	1980	1985	CHANGE 1960-1970		CHANGE 1970-1980		CHANGE 1980-1985		CHANGE 1960-1985	
					Number	Annual %	Number	Annual %	Number	Annual %	Number	Annual %
<u>SIC #1</u> Agri., forest, fish.	78	329	166	64	251	32	(163)	(5)	(102)	(12)	(14)	(1)
<u>SIC #2</u> Construction	4,523	3,218	2,821	2,854	(1,305)	(3)	(397)	(1)	33	<1	(1,669)	(1)
<u>SIC #3</u> Manufacturing	47,509	39,304	33,346	29,509	(8,205)	(2)	(5,958)	(2)	(3,837)	(2)	(18,000)	(2)
<u>SIC #4</u> Transportation	8,974	6,670	5,886	5,741	(2,304)	(3)	(784)	(1)	(145)	(41)	(3,233)	(1)
<u>SIC #5</u> Wholesale/Retail Trade	30,112	22,991	19,232	19,579	(7,121)	(2)	(3,759)	(2)	347	<1	(10,533)	(1)
<u>SIC #6</u> Fin., Ins., Real Est.	11,283	13,785	12,337	13,768	2,502	(2)	(1,448)	(1)	1,431	2	2,485	1
<u>SIC #7</u> Services	15,527	33,504 (1)	20,744	28,076					7,332	7	12,549	3
<u>SIC #8</u> Govt., Hosp., Univ.	20,724	17,186 (1)	32,400	33,746					1,346	1	13,022	3
SUM #7 & #8	36,251	50,690 (1)	53,144	61,822	14,439	4	2,454	1	8,678	3	25,521	3
CITY OF PROV. TOTAL	138,730	136,186	126,932	133,347	(2,544)	(41)	(9,254)	(1)	6,415	(1)	(5,383)	(41)
STATE OF R.I. TOTAL	329,147	382,106	420,107	442,914	52,959	2	38,001	1	22,807	1	113,767	1

SOURCE: RI Dept. of Employment Security, RI Statewide Planning, RI Dept. of Transportation

(1) In 1970, Private Hospitals and Colleges were mistakenly included in SIC #7 rather than SIC #8. Therefore, comparisons of SIC #7 and #8 employment between 1970 and other years is not possible. Comparisons can be made between the totals of SIC #7 and #8 in 1970 and the totals of these categories in other years.

Sept. 16, 1986

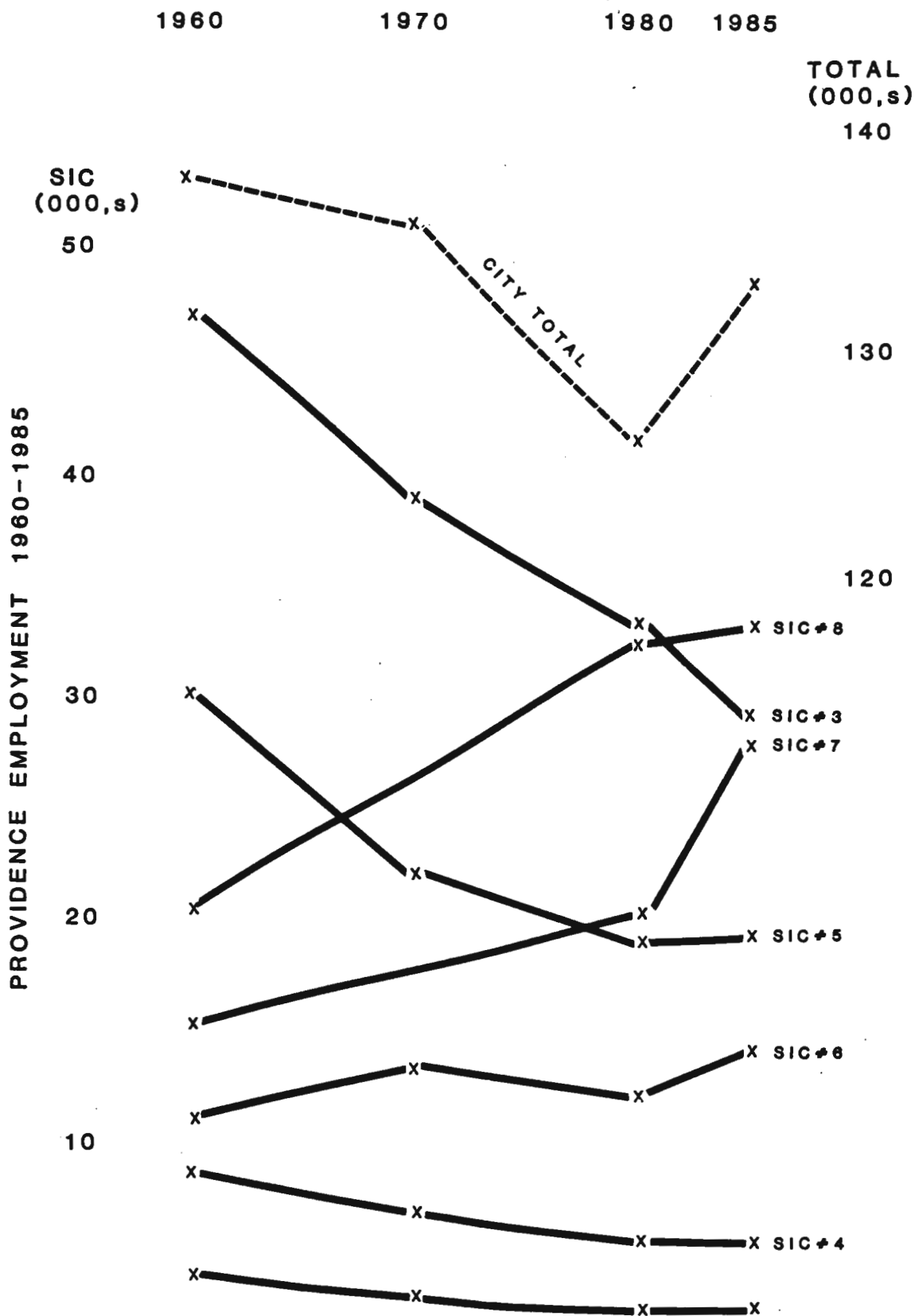


FIGURE 11. PROVIDENCE EMPLOYMENT 1960 - 1985  
Source: Ken Orenstein, Providence Foundation



FIGURE 12. RHODE ISLAND EMPLOYMENT 1960 - 1985

EMPLOYMENT  
STATE OF RHODE ISLAND  
1960-1985

CATEGORY	1960	1970	1980	1985	CHANGE 1960-1970		CHANGE 1970-1980		CHANGE 1980-1985		CHANGE 1960-1985	
					Number	Annual %	Number	Annual %	Number	Annual %	Number	Annual
<u>SIC #1</u> Agri., forest, fish.	4,430	2,668	3,687	4,279	(1,762)	(4)	1,019	4	592	3	(151)	(41)
<u>SIC #2</u> Construction	15,930	14,369	14,322	16,463	(1,561)	(1)	(47)	(41)	2,141	3	533	41
<u>SIC #3</u> Manufacturing	128,305	121,935	132,210	121,781	(6,370)	(41)	10,275	1	(10,429)	(2)	(6,524)	(41)
<u>SIC #4</u> Transportation	13,762	13,312	13,429	13,847	(450)	(41)	117	41	418	41	85	1
<u>SIC #5</u> Wholesale/Retail Trade	68,506	78,234	85,351	96,899	9,728	1	7,117	1	11,548	3	28,393	2
<u>SIC #6</u> Fin., Ins., Real Est.	14,675	18,787	22,536	24,612	4,112	3	3,749	2	2,076	2	10,027	3
<u>SIC #7</u> Services	31,492	75,933 <sup>(1)</sup>	66,858	80,799					13,941	4	49,307	66
<u>SIC #8</u> Govt., Hosp., Univ.	52,047	56,868 <sup>(1)</sup>	82,607	84,234					1,627	41	32,187	2
SUM #7 & #8	83,539	132,801 <sup>(1)</sup>	149,465	165,033	49,261	6	16,664	1	15,568	2	81,494	4
	=====	=====	=====	=====	=====	=====	=====	=====	=====	=====	=====	=====
STATE OF R.I. TOTAL	329,147	382,106	421,100	442,914	52,959	2	38,994	1	21,814	1	113,767	1
CITY OF PROV. TOTAL	138,730	136,186	126,932	133,347	(2,544)	(41)	(9,254)	(1)	6,415	(1)	(5,383)	(41)

SOURCE: RI Dept. of Employment Security, RI Statewide Planning, RI Dept. of Transportation

(1) In 1970, Private Hospitals and Colleges were mistakenly included in SIC #7 rather than SIC #8. Therefore, comparisons of SIC #7 and #8 employment between 1970 and other years is not possible. Comparisons can be made between the totals of SIC #7 and #8 in 1970 and the totals of these categories in other years.

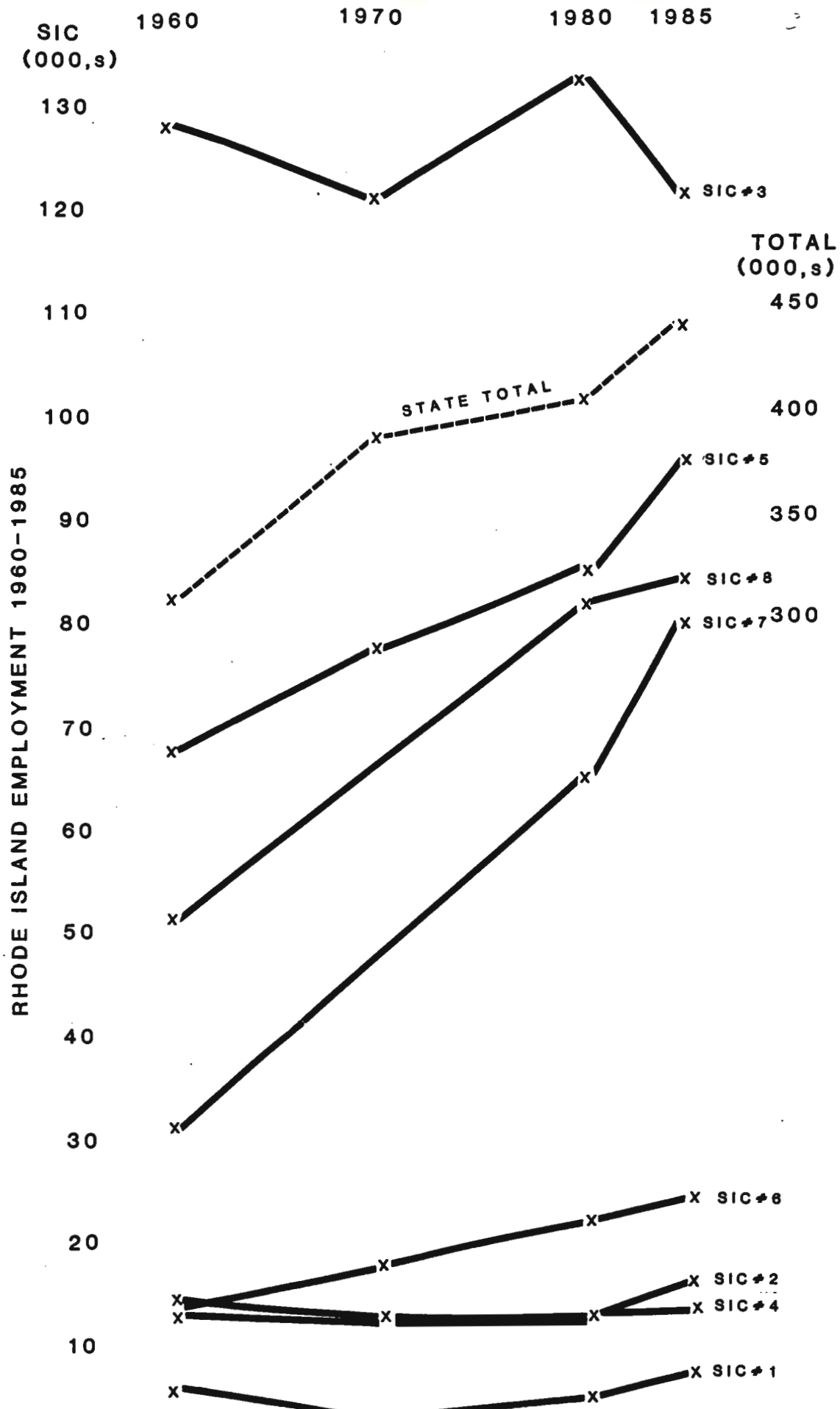


FIGURE 13. RHODE ISLAND EMPLOYMENT 1960 - 1985  
 Source: Ken Orenstein, Providence Foundation

## INTRODUCTION

To many, in the not so distant past, the subject of historic preservation brought to mind musty records in cobweb laden books, under the watchful eyes of caretakers who could themselves be considered relics of the past. Historic preservation today involves more than sites of historic events or buildings with outstanding architectural qualities. On the contrary, historic preservation today is recognized not only for its ability to preserve the past, but also for the positive effects generated from the preservation effort including commercial/economic ventures, city revitalization, recreation and ethnic pride. Historic preservation touches almost all our lives.

In 1978 a U.S. Supreme Court ruling in Penn Central Transportation Co. v City of New York, 438 U.S. 104 (1978), marked a turning point in preservation history, resulting in stronger ordinances and increased public awareness. From 1978 to today the number of cities and towns with preservation ordinances doubled from 500 to 1,000 and many have the strength to<sup>1</sup> protect structures from demolition.

The popularity of historic preservation has continued with the aid of generous tax incentives and renewed national interest in architecture and cultural heritage. Today it is difficult to find a small town or large city in the United States without some sign of preservation activity.

Currently there over 20,000 entries on the National Register of Historic Places - a nationwide inventory of significant properties. The list includes for example, houses designed by



Frank Lloyd Wright; Civil War battlefields; State Capitol buildings; and historic districts such as Boston's Beacon Hill and the New Orleans French Quarter.

Approximately 1,500 of the historic districts included on the Register are significant to local citizenry, for example, Chinatown in Honolulu and Pioneer Square in Seattle. Also, some small towns, like Castine, Maine and Corning, New York, are<sup>2</sup> listed whole or in part on the Register.

The Register is also concerned with ethnic groups and local traditions. Beale Street in Memphis is listed for its association with development of the Blues music and musicians.

Rapidly vanishing vernacular architecture of America has found a home on the Register. (Vernacular in this context means commonplace, everyday, nonexceptional architecture.) Objects in this category on the Register include row houses in Baltimore and Philadelphia; the Modern Diner (Pawtucket) and Quonset huts in Rhode Island; and a 1920's gas station in Saratoga Springs, New<sup>3</sup> York.

This paper examines how incentive tax credits may be used for the rehabilitation of structures. Changes in the tax laws in 1987 will also be discussed and its effects on the incentive tax credit program. The Davol Square complex is the incentive tax credit project that is featured. The complex is structurally described, as is the history of the surrounding neighborhood, and preservation trends in Southern New England.

This paper summarizes the objectives of historic preservation regulations and briefly reviews the relationship

between federal, state and local approaches to historic preservation ordinances. Legal cases on the federal, state and local levels are summarized to illustrate and define the taking issue, police power and anti-demolition as related to historic preservation ordinances. The cases demonstrate the strength of historic preservation ordinances today.

## CHAPTER 1

### TAX CREDIT OVERVIEW

Investment tax credits (ITC) have been used over the last decade by people interested in rehabilitating structures for re-use while receiving a tax break. This chapter discusses the concept of ITC along with anticipated changes in the program.

#### Legislation and Provisions

In 1976 the Internal Revenue Code made available incentives to stimulate capital investment in income producing historic buildings and to encourage the revitalization of historic neighborhoods. The Tax Reform Act of 1976, the Revenue Act of 1978, and the Tax Treatment Extension Act of 1980 created and expanded incentives including accelerated depreciation, rapid amortization, and an investment tax credit (ITC), while denying incentives to projects involving demolition of historic buildings.<sup>4</sup> Speedy five year depreciation was the primary focus of the 1976 action.

In 1981 the Economic Recovery Tax Act was created, providing a drastic change and liberalization in the Federal tax treatment of investment in historic property. This law was amended by the Tax Reform Act of 1984.

The following is a general account of provisions made possible by the 1981 Act:

- A 25% ITC for the substantial rehabilitation of historic commercial, industrial and rental residential buildings (All must be income producing)

- A 20% ITC for the substantial rehabilitation of non-historic, non-residential buildings over 40 years old
- A 15% ITC for the substantial rehabilitation of non-historic, non-residential buildings 30-39 years old

The 25% credits apply to buildings on the National Register of Historic Places or within a certified historic district. A certified historic district may be a building located in a state or local historic district that has been certified by the Secretary of the Interior; if the district has been certified as meeting National Register criteria; and if the property is certified as being of historic significance to the district. <sup>5</sup>

The lesser credits are not available for certified historic structures. <sup>6</sup> No review is necessary upon completion of the project.

Generally, the 25% ITC and associated provisions apply to rehabilitation expenses incurred after January 1, 1982. Incentives from prior tax laws apply to rehabilitation costs incurred between June 1976 and December 1981. <sup>7</sup>

Perhaps the most dramatic change in the tax credit program is the passive loss rules. These laws limit the amount of credit in which an investor can claim, and also the number of investors in a given project. Because of this, the tax credit might not be as valuable as it has been in the past.

## How ITC Works

Section 212 of the Economic Recovery Tax Act of 1981 allows an owner of record or lessee with a lease term of 15 years or more to select a 25% ITC on qualified rehabilitation expenses incurred from January 1, 1982, associated with a certified rehabilitation. The buildings can be used for industrial, commercial, or rental residential operations. The structure must be substantially rehabilitated with costs exceeding the greater of either \$5,000 or the adjusted basis of the building (actual cost minus any depreciation already taken).<sup>8</sup>

Take for example the rehabilitation of a building in the 25% ITC category. The developer must spend, for rehabilitation purposes, at least the value of the building. For instance if the building was purchased for \$120,000 and the land value is \$20,000, the developer must invest at least \$100,000 (\$120,000 minus \$20,000) in rehabilitation. In this 25% ITC category, if \$100,000 is spent on rehabilitation, \$25,000 (25% of the cost) may be subtracted directly from the developer's tax liability and spread over 5 years.

The tax credit is essentially a cash payment that reduces the owners' federal tax bill, a difference from a deduction, which only reduces taxable income. Therefore if one is in the 50% tax bracket, a deduction is worth 50 cents on the dollar.<sup>9</sup> But with credit one would get the full dollar benefit.

Usually if a qualified rehabilitated building is held by the tax payer for more than 5 years after the completion of rehabilitation and the building is placed in service, there is no

recapture of the ITC. If the owner sells the property in less than 1 year after it is placed in service, 100% of the ITC is recaptured. For properties held between 1 and 5 years, the ITC<sup>10</sup> recapture amount is reduced by 20% per year.

Under current law a building can be depreciated over 19 years. This allows an annual tax deduction of approximately 5%<sup>11</sup> of the investment in the building.

### Building Qualification for ITC

Two alternative tests exist for determining whether a rehabilitated building qualifies for ITC. The Economic Recovery Tax Act of 1981 requires that during rehabilitation, 75% of the existing external walls must remain in place as external walls. The 1984 Act relaxed the requirements for rehabilitation proceedings. The Tax Reform Act of 1984 requires that (1) 50% of the existing external walls must remain in place as external walls; (2) 75% of the existing external walls must remain in place as internal or external walls; and (3) 75% of the internal structural framework must remain in place during the<sup>12</sup> rehabilitation process.

### ITC Rehabilitation Standards

The lists presented in Figure 1 were developed by the Office of the Secretary of the Interior. They are by no means a comprehensive account of the necessary procedures resulting in qualification for ITC. For detailed literature on rehabilitation standards consult the most current Secretary of the Interior's booklet entitled, "Standards For Rehabilitation and Guidelines

# For Rehabilitating Historic Buildings".

## Coming Changes in ITC Legislation

There are changes in the ITC program due to a new tax bill which will go into effect on January 1, 1987. The new tax law primarily affects renovations in three ways (1) through a sharp reduction in the investment tax credit; (2) a lengthening of the depreciation schedule; and (3) by the introduction of passive loss rules.

Congress has rewritten the tax law, reducing ITC to 20% (from 25%) for historic buildings. Non-historic buildings (currently with ITC at 20% and 15% depending on age) were combined to one category with an ITC of 10%. Non-historic buildings must predate 1936 to qualify. The matrix below makes a comparison between the current ITC with the January 1, 1987 changes.

TABLE 1 INVESTMENT TAX CREDIT  
COMPARISON OF CURRENT PROVISIONS AND 1987 CHANGES

<u>Building Type</u>	ITC as of 1981 Economic <u>Recovery Tax Act</u>	ITC as of 1987 <u>Tax Bill</u>
Historic, commercial, industrial, and rental residential buildings	25%	20%
Non-historic, non-residential buildings over 40 years old	20%	combined category 10% (building must pre-date 1936)
Non-historic, non-residential buildings 30-39 years old	15%	



The depreciation schedule has been extended to 31.5 years, reducing the annual deduction to less than 3% of the<sup>14</sup> investment.

#### How Tax Credits Have Served Providence

According to a 1985 survey conducted by the Providence Foundation (an affiliate of the Greater Providence Chamber of Commerce), approximately 1 million square feet of rehabilitated office space have been established in Providence since ITC were introduced in 1978. Most of the projects occurred after 1981 when the tax benefits were expanded. Major projects included the CE Maguire, Inc. building and the old Davol rubber plant in Davol Square; Richmond Square Technology Park on the East Side; the old Journal Building<sup>15</sup> downtown; and Corliss Landing on South Main Street.

Most of the City's rehabilitated office space is utilized. Based on the 1985 Providence Foundation survey, the vacancy rate is merely 5%. Contrasting this is the 20% vacancy rate<sup>16</sup> for new Class-A office space in downtown Providence.

In Providence, rents on renovated office space range from \$10 to \$14 a square foot, in comparison with \$17 to \$24 a square foot in new buildings. Small business and high-tech start up<sup>17</sup> firms in particular find the lower rates attractive.

The savings benefits acquired by the rehabilitated building owners, due to the current ITC program, is passed along to the renters, making rental space in those buildings marketable.



## Anticipated Impact on Providence Due To Upcoming ITC Revisions

More than \$25 million has been spent since 1978 on converting old Rhode Island factories to office space. The new ITC program will certainly affect Rhode Island. The impact will be most evident in the commercial real estate market of Providence.  
18

Incentive tax credit (ITC) revisions will result in a reduction of benefits as they now stand for participating in this program. Rehabilitation will become more expensive. Because of this benefit reduction less building owners will choose to rehabilitate. For those who choose to renovate, the generation of income from rents or condominium sales will have priority over the tax aspects.

The ITC revisions may also have an effect on the number of available rentals in converted buildings. Office condominium units may outnumber rentals because condo sales allow investors a quicker cash return.

For developers who lease rather than sell space in converted buildings the reduction of benefits will be reflected in higher rent for office, retail and residential space. Landlords often pocket the tax benefits from renovation projects. Lowering the benefits means cutting into their profit margins. The landlords will raise rents to preserve the same return on investment.  
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Providence is a city that has been enhanced by building rehabilitation projects using ITC. The coming changes in the ITC program will be more restrictive than the program as it exists

now. The change will effect the type of rehabilitation that will occur, most likely leading to an increase in rehabilitated buildings to be used as office space as opposed to residential.

## CHAPTER 2

### REHABILITATION TRENDS IN SOUTHERN NEW ENGLAND

This chapter discusses the public and economic benefits of rehabilitating buildings. Also examined are major trends in rehabilitation in Connecticut, Massachusetts and Rhode Island.

#### New England's Benefit of Incentive Tax Credits

Some critics say that ITC benefits only developers and owners of historic buildings with few benefits for the public and community. A study published by Preservation Action<sup>20</sup> refutes this. According to the study's findings tax incentives have made key projects possible that otherwise would have been economically unfeasible; projects with acceptable but not enormous profit margins.<sup>21</sup>

Other advantages of ITC include preservation development projects with broad social and economic benefits and the creation of public/private partnerships which aid nonprofit,<sup>22</sup> profit and public interests.

#### New Investment

Because of the number of historic structures in New England the level of certified rehabilitation investment has been significant. In Connecticut, Massachusetts and Rhode Island approximately \$500 million has been invested in certified rehabilitation and adaptive re-use of structures between 1977 and 1982. Money spent on rehabilitation in these three states more than tripled between 1977 and 1982 from \$31 million in

1977 to \$111 million in 1982. More recent figures depicting the cost of ITC projects in Rhode Island between 1977 and 1986 and the cost of ITC projects in Rhode Island cities and towns for 1985 may be found in Figures 2 and 3 respectively.

### Major Trends

Five major trends have been uncovered involving certified rehabilitation in Connecticut, Massachusetts and Rhode Island. They are as follows:

1. Preservation development activity has been intense in this region. The number of projects have increased rapidly over the years illustrating a variety of development approaches and geographical location.

2. With the increase in projects and use of ITC the time frame required for state and federal level review process has increased. Federal level review is more vulnerable to delays as developers become involved with larger, more complex projects which need involved documentation.

3. State preservation bodies in New England play a primary and positive role in early design decisions and project planning. State involvement enhances the quality of preservation work being done along with facilitating the federal review process.

4. Since 1978 interest in certified historic rehabilitation has spread outward from New England's larger cities to smaller communities.

5. A significant portion of more recent projects would not have been initiated without the 25% ITC. An example is 78 Hudson Street in Providence (Armory District), a 3-story Victorian house that was up for mortgage sale by a local bank. Intervention by the Providence Preservation Society Revolving Fund using ITC and loan assistance from the National Trust resulted in the building's development into a four unit rehab.<sup>24</sup>

#### Public Advantages

When one or more historic buildings are rehabilitated, it often generates private investment with public incentives and public benefits. Efforts of the Providence Preservation Society Revolving Fund in the Armory District of Providence has resulted in a turnabout in this once deteriorating neighborhood. More than thirty five other properties in this area have been rehabilitated, over 25% using assistance of the Revolving Fund. The result is more neighborhood stability, upgrading of surrounding open space, increased property and land value, and new neighborhood businesses.

#### Secondary Economic Benefits

Figure 4 is a direct reproduction from the Deborah Dunning and Nellie Longworth study entitled Another Revolution In New England: A Case Study of the Historic Rehabilitation Tax Incentives. The excerpt highlights the secondary economic benefits associated with ITC projects with a focus on Davol Square.<sup>25</sup>

## Improved Housing

Approximately one half the rehabilitation work being conducted in the nation creates new or better housing. Since the establishment of tax credits in 1976, more than 35,547 housing units have been rehabilitated including over 25,755 new housing units. Of these residential units, more than one half are reserved for low and moderate income families.

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## New Interest in Old Places

The creation of ITC has changed some public and professionals' (namely city planners and developers) opinions about older structures. In the past such buildings were considered eyesores or barriers to economic development. New uses for these buildings such as Davol Square and the Arcade in Providence have proven the potential for economic growth and recreational use out of structures that were previously under-utilized.

Due to the ITC projects, new partnerships have developed allowing community based groups to implement their social goals. Such partnerships have worked with developers who seek to merge tax credits with economically productive construction projects. These developers are willing to work within guidelines created by the nonprofit or preservation group because they provide preservation expertise to the real estate process.

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Building rehabilitation can add new life to the surrounding area. New England is just one region of the country that has benefitted greatly from revitalization since the introduction of

ITC. Building re-use due to rehabilitation has resulted in new money for localities and increased housing opportunities.

## CHAPTER 3

### DAVOL SQUARE AND CE MAGUIRE PROJECT OVERVIEW

Davol Square is a retail/office development in Providence that was made possible through use of incentive tax credits. This chapter will examine the structural characteristics of the complex, along with the businesses it houses.

#### General Description

Davol Square is a 188,236 square foot specialty retail and office development on a 4.4 acre site in Providence, Rhode Island. The developer/manager is the Marathon Development Corporation of Providence. Five three- and four-story historic mill buildings comprise the development with a mix of retail shops, restaurants and first class office space. The \$10.7 million renovation was conducted in a manner to preserve the building's basic architectural features. The buildings have been certified as historic structures and are listed on the National Register of Historic Places.

The complex contains approximately 63,000 square feet of retail space on the first and second floors, occupied by 45 tenants. Approximately 125,000 square feet of office space is located on the upper levels. Four sit-down restaurants and two national women's apparel stores anchor the retail space. The complex is enhanced by an interior gallery, an outdoor courtyard, and a clock tower. Davol Square contains 495 on-site surface parking spaces and the 50,000 square foot headquarters of CE Maguire, Inc., a major planning, architectural and engineering



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firm. Figure 5 depicts the floor plan for the Davol complex.

#### Location

Davol Square is located just north of the Providence central business district at the intersection of Point and Eddy Streets. These heavily traveled streets are the major east/west and north/south arteries through this area. The historic complex is bounded on the west by the Providence River and on the north and south by utility plants.

The complex is conveniently located within a 10-minute walk from the central business district, Wickenden Street and South Main Street commercial areas, Rhode Island Hospital, and the new Family Court facilities. It is also near Providence's historic, affluent East Side and Brown University. The site has access  
30  
from Interstate 95 and Route 195. Figure 6 depicts the location of the Davol Square complex as it relates to the aforementioned areas of Providence.

Previously an older, neglected neighborhood, the area surrounding the site is now undergoing significant redevelopment and revitalization due to Davol Square. Other redevelopment in this area includes Corliss Landing, a complex containing luxury residential condominiums and retail uses, converted from historic  
31  
factory buildings.

## Development Strategy

Davol Square differs from many other urban specialty centers in several ways. First, Davol Square was unable to obtain an early guarantee of direct public subsidies for the project. Public subsidization came following the developer's firm commitment to the project and the start of construction. Second, the project was not preceded by significant residential development in downtown Providence or the area adjacent to the site. Third, the project is located in a small city with little experience in structuring public/private undertakings and with minor tourist trade. Davol Square could not rely on tourist spending that has successfully supported other such urban specialty centers.<sup>32</sup> Figure 7 lists the project data for the Davol Square complex.

The property was purchased in April 1980. A major factor in the decision to purchase the site was the availability of investment tax credit (ITC) for the rehabilitation of certified historic structures. Other factors that made the project a reasonable development risk included the location and accessibility of the property, the physical condition of the buildings, on-site parking availability and additional land at reasonable prices, and strong market demand for specialty retail development.<sup>33</sup>

The first development phase focused on finding a major user to one of the main buildings to create an immediate image and identity for the project. At that time CE Maguire, located in downtown Providence, was seeking new headquarters for its 200

employees. In March 1982 Maguire purchased the 50,000 square foot building fronting on Point Street.

Maguire received \$3 million in industrial revenue bond financing, a portion of which was used toward common area improvements for the entire complex. At this time the developer obtained public assistance to ensure project completion. The State, through the Rhode Island Industrial Facilities Corporation, issued \$5.7 million in industrial revenue bonds for project completion. The City provided \$270,000 for physical improvements to the area including traffic signal installation,<sup>34</sup> street lights and street landscaping.

In the spring of 1982 construction on the Maguire building began. The building was occupied in June 1982. The remaining project was completed in stages; the first of the remaining four buildings was partially opened in December 1982 and construction on the final building began in the spring of 1983. Leasing began<sup>35</sup> in April 1982. Today the project is over 95% leased.

### Architecture and Renovation

The Davol Square complex consists of four inter connected buildings - the Maguire building, the Gallery building, the Courtyard building, and the East building - and an additional building, the Simmons building, diagonally across from the main complex. The buildings are three- and four-story flat-roofed, red brick mill structures built to house the rubber manufacturing operations of the Davol Company. Most of the buildings were built between 1880 and 1913. The original structure is three stories high with heavy timber framing, segmented-arched windows,

a five bay front with large, round arched windows and a central  
36  
arched doorway.

In renovating the complex the developer's goals were to expose unique architectural features, to accommodate multiple uses, to create public spaces and to comply with historic preservation requirements. The primary focus of the retail component is an enclosed gallery that connects the Gallery building with the Maguire building and the other buildings in the complex. The Gallery is enclosed by a translucent fiberglass roof and glass end walls. The roof is supported by light weight steel trusses designed to be compatible with the original mill structure. Large industrial glass refractors hang from the roof trusses, enhancing natural light. The Gallery floor is covered  
37  
with granite pavers.

The Gallery is the primary focal point of the complex. This area was designed to serve as an activity center for meeting, shopping and special events. Pedestrian circulation and observation points are augmented by a variety of passageways and balconies. The balconies use heavy timber framing which complements the exposed wood beams of the original buildings. Three large staircases and elevators provide access between the first two levels. The second, third and fourth floors are connected by steel truss bridges that cross the Gallery, enabling office workers and shoppers to walk from one area of the complex to another. Bridges and catwalks provide excellent observation  
38  
points.

Entrances to the Gallery exist on the Eddy Street side of the Courtyard building and at its north end. A covered drop off/waiting area is located on the Point Street side of the Gallery.<sup>39</sup>

To maximize the visibility of retail spaces, windows on the first and second floors were removed on the sides of the buildings facing the Gallery. Third and Fourth floor windows were replaced with mahogany framed, fixed-sash windows that match the building's exterior windows.<sup>40</sup>

The main entrance to the complex is an exterior courtyard bounded by the Maguire building, the Courtyard building, the East building and the parking area. Most people arrive by car and enter through the courtyard. This area serves a variety of purposes including entertainment, special events, outdoor dining and pushcarts.<sup>41</sup>

### Market and Tenants

The trade area of the Davol complex has a population of over 1 million, extending throughout Rhode Island and into Massachusetts. Approximately 600,000 people live within a 30 minute drive of the site. A market analysis indicated that many people in the trade area were traveling to Faneuil Hall in Boston. Because of this analysis the project's retail tenants were selected accordingly to meet a strong demand in the trade area for specialty retail goods and to create a festival specialty theme.<sup>42</sup>

Distinctive retailers were sought to occupy key locations within Davol Square. Anchor tenants include four full service

restaurants and two well known women's apparel retailers - Talbots and Laura Ashley. Restaurants occupy roughly 11,000 square feet, located at both ends of the Gallery and adjacent to the main entrance of the complex. Pushcarts selling food, gifts, flowers and other merchandise are located on the first floor of the Gallery area. Other retail tenants offer clothing, accessories, gifts and books. Approximately one-half of the retail tenants are first time merchants. Individual shops range from 300 to 4,000 square feet.<sup>43</sup> Figure 8 is a directory of all stores in the Davol Square marketplace as of December 1986.

### Experience Gained

Figure 9 is a reproduction from the Urban Land Institute Project Reference File. This literature highlights the knowledge and experience acquired from the Davol Square project.

Davol Square is a unique, attractive complex. Great care was taken to preserve the building structurally and provide an attractive shopping and office space. The complex provides its patrons with a variety of specialty shops and prices, while providing many first time businesses with an outlet for their merchandise.

## CHAPTER 4

### HISTORY AND DYNAMICS OF THE AREA SURROUNDING DAVOL SQUARE

This chapter examines the historic, commercial and residential pattern of the Davol Square area as affected by local and state economic trends.

#### CE Maguire and Davol Square Development

The Davol complex was bought in 1982 by the current owner/developer Robert Freeman and the Marathon Group. Davol closed the plant and moved to a newly built facility in Cranston, Rhode Island.

The Davol complex consists of 150,000 square feet of office and retail space. One building was torn down for the conversion. This was the largest renovation using tax credits in Rhode Island when it was developed. CE Maguire later bought its building from the owner in order to move its headquarters from a crowded Canal Street facility in Providence.

#### Local and State Employment Trends

Providence employment trends between 1960 and today reflect the movement of manufacturing industries. In Providence, those employed in the manufacturing sector steadily dropped from 47,509 in 1960 to 29,509 in 1985. Sector 3 in Figure 10 illustrates this change. This change represents a loss of 18,000 employees or a 40% decrease in the work force. The dramatic plummet can be viewed in Figure 11.

Overall Rhode Island employment between 1960 and 1986 has also shown a decrease in the manufacturing sector not nearly as dramatic as the decrease in Providence. Those employed in the manufacturing sector in Rhode Island dropped slightly from 1960 to 1970 with a marked increase from 1970 to 1980. Once again the numbers dropped between 1980 and 1985. Sector 3 of Figure 12 illustrates this trend. From 1960 to 1985 the number of people employed in manufacturing in Rhode Island has decreased by 6,524, resulting in a 5% decrease. This change over the last two decades can be viewed in Figure 13.

#### History of the Point Street Area

The demolition of an elevated highway in the Point Street bridge area (near which Davol is located) opened up the location for new and creative development.

The Point Street area contained many businesses engaged in heavy manufacturing up to the late 1970's. However during the 1960's and 1970's the availability of lower land prices in the suburbs attracted many of these manufacturing firms. Firms following this out-migration trend included Bryer Manufacturing, Imperial, Hedison Company, Corro, Textron and Davol.

#### Impact on Surrounding Land Use

Route 195 divided the Providence jewelry district and separated existing residential areas. The areas south of Route 195 were dramatically affected by the loss when jewelry companies moved out.



Davol Square assists in filling in the gap between the Point Street area and the downtown financial district. The construction of the new Family Courthouse between Davol and downtown also achieves a transition between Point Street and downtown. The Courthouse has expanded the financial district to Route 195 providing good access from north and south.

With rents characteristically higher north of Route 195, people and businesses moved south and under the highway to the Davol area. The area south of Davol, between it and Rhode Island Hospital is known as Franklin Square. This section of Providence is almost fully developed and contains many medical offices resulting from the expansion of Rhode Island Hospital services, as shown in Figure 6.

During the 19th century, more residential units were to be found near the Davol complex, usually housing those who worked in the nearby industrial facilities. The manufacturing companies took over residential areas by the end of World War II. Today few live in this location except along Pine Street.

The Davol project has created residential opportunities, for example the Corliss Landing luxury condominiums. Unfortunately there have been no development of low to moderately priced housing units.

The revitalization of the Fox Point neighborhood (also considered part of the East Side) is attributed to waterfront development efforts more so than the establishment of Davol Square.

The Davol Square area has changed as the local and state employment trends fluctuated. Once a busy manufacturing region, the area lost much of its businesses in the 1960's to the 1970's when industries moved to more suburban locations. The new Davol Square complex has filled a gap left by the manufacturers' departure, resulting in new commercial and residential interest in the area.

## CHAPTER 5

### THE ROLE OF HISTORIC PRESERVATION ZONING AND LEGAL STANDING OF HISTORIC LANDMARK ORDINANCES

The legislative authority of municipalities for instituting regulations regarding historic areas and landmarks of historic or architectural significance is usually set forth in zoning enabling acts. Since local authority regarding zoning enabling acts flows from the state, the strength of local ordinances is a reflection of state strength.

This chapter presents a description of the historic zoning concept as it exists in the United States. Also discussed are the options and powers available on federal, state and local levels for historic preservation. The chapter examines various court cases that have tested historic preservation regulations. Specific issues discussed are taking, police power and demolition.

#### Historic Zoning Overview

The historic district is a neighborhood, not just a collection of single historical sites and buildings. It is the general area where the particular sites and buildings are located. The area as a whole is historically significant, usually because of the architecture of the buildings within it.

The objective of historic area regulations is not to make uses and buildings conform to today's concept of the general welfare, or to serve the purposes set up by other zoning ordinances.

The objective of historic area regulations is solely to keep an area looking as it has in the past, whether or not it is representative of today's concepts of good design and aesthetics. The only stated purpose in view, as set forth in the zoning enabling act, which historic area zoning serves, is the general welfare. But its relationship to general welfare does not lie in those matters on which other zoning regulations depend.<sup>44</sup>

Briefly speaking, the zoning of historic areas requires that plans for building erection, alteration and/or additions within the historic district must be approved by a commission. This procedure prevents the intrusion of any building that would be destructive to the nature of the district. The scope of preservation controls range from demolition of exterior features to daily upkeep.

An historic district zoning ordinance or one regulating landmarks is not primarily concerned with whether the subject of regulation is beautiful or tasteful, but rather with preserving it as is, (or should be) representative of what it was, for such educational, cultural, or economic values as it may have.<sup>45</sup>

An example of this is the World War I Veterans monument in the center of "Suicide Circle" in downtown Providence. The road around it is set for redesign. Some feel it is an ugly monument, but along with that opinion is the knowledge that it has sentimental and historic value, signifying an honor for veterans. As an alternative to demolition, the monument will be moved within the next two years.

There is a paradox here because ordinances are not concerned with beauty, but attractiveness often surfaces as an issue in

litigation involving the ordinances. The U.S. Supreme Court in  
Penn Central v. the City of New York<sup>46</sup> made it clear that  
preservation ordinances enacted solely for aesthetic purposes are  
valid under the U.S. Constitution.

Cases dealing with purely aesthetic regulations are  
distinguishable from those dealing with preservation of an  
historical area or an historical style of architecture. Historic  
zoning is therefore, a proper subject of the exercise of the  
police power, but certainly not entirely for the same reasons as  
other type ordinances based upon aesthetics.<sup>47</sup>

#### Federal, State and Local Levels

The federal government has long maintained a leadership role  
in the preservation movement. As a result, there exists a well  
established body of federal preservation law. The federal  
government exercised no direct regulatory authority over historic  
properties, but has two major functions regarding preservation  
law: (1) Provide support and guidance for historic preservation  
programs at the state and local level and (2) Promote protection  
and enhancement of historic properties when federal activities  
are directly or indirectly involved.

The central legislative authority for the federal  
preservation program is found in the National Historic  
Preservation Act of 1966. This Act is the basis for the bulk of  
the administrative apparatus, protective devices and financial  
incentives employed by the federal government to carry out the  
National Historic Preservation Policy.<sup>48</sup>

Many federal legal techniques and administrative systems are mirrored in state legislature, primarily due to close partnership between states and the federal government in administering the national program under the 1966 Act. State surveys and inventories of historic properties are similar in nature to the National Register and its criteria of eligibility. Many states possess their own register of historic places, authorized and maintained with state laws.

Preservation ordinance power varies from state to state. Massachusetts, one of the first states to move rapidly into historic preservation, developed legislation in a piecemeal fashion and now has effective legislation covering nearly all aspects of the field. Vermont has weak historic preservation laws even though it has a large tourism interest and strong environmental legislation. There are no historic districts in Vermont.<sup>49</sup>

The dynamic edge of historic preservation law today is at the local level. More than 500 communities, using their police power, have adopted ordinances, controlling what the owners of historic buildings can do with their property. Basically, local preservation regulations requires owners of designated property to get approval of the historic preservation commission for proposed property alterations. There are multiple variations of ordinances, which may apply to individual designated landmarks or to all properties within a designation.<sup>50</sup>

The power of local preservation ordinances varies by location. In some jurisdictions, local commissions can exercise only those powers specifically granted to them by the state. In

these situations, the state enabling preservation must be followed very closely. The state defines and limits the power a locality may exercise. In some localities, for example counties in Ohio, there is no power to adopt preservation laws. Local governments in other states such as Illinois have several options. Here, communities might rely on the state preservation enabling law or on the general zoning power, which the state<sup>51</sup> allows to be used for preservation purposes.

The objective of historic preservation regulations is to preserve a part of the past for the present and future enjoyment. Power for developing preservation regulations may lie on federal, state and local levels. Federal legislation is strong. The power of states' historic preservation regulations varies throughout the country, as do local powers.

### Taking

Historic and landmark ordinances have often been challenged on federal, state and local levels citing unconstitutionality, taking and arbitrariness. But the validity of the ordinances and use of police power in enforcing them has often been successfully argued in court.

Maher v. City of New Orleans<sup>52</sup> and Penn Central v. City of New York, are principal cases dealing with taking issues in landmark regulation. The court in Maher held that restriction on demolition did not amount to a taking when a reasonable use of the building remained. Aesthetic and other regulatory purposes served by historic landmark preservation were expressly upheld by



the U.S. Supreme Court in Penn Central. This case was a turning point in the world of historic preservation, beginning a trend for cities and towns to adopt strong preservation ordinances.

In the Penn Central case, a proposal was made to build a high rise office building on Grand Central Terminal in Manhattan, which had been designated an historic landmark. The court rejected a broad taking claim against a refusal to allow construction of the building. The court rejected the rule that a taking occurs when a land use regulation creates a public benefit rather than preventing a harm, and required proof of no reasonable remaining use as the basis for taking.

The court pointed out that present use as a terminal could continue and owners could make a reasonable return on the facility. Also, owners had not fully exhausted possibilities of using air rights because they had not reapplied for a shorter building. (Owners were not denied all forms of construction, only one so tall.) Owners were given an opportunity for transfer development rights in airspace to other property near the terminal and this further mitigated the taking burden.<sup>53</sup>

The 5th Amendment to the U.S. Constitution requires that landmark owners not be denied all reasonable use of property by landmark regulation. The U.S. Supreme Court indicates that this determination must be made on a case by case basis.<sup>54</sup>



## Police Power

The validity of architectural zoning ordinances has been upheld in most instances against claims of unconstitutionality; questioning of the administrative body's authority to make such decisions; and building owners' charge of discrimination and denial of equal protection.

Although the argument that such ordinances are invalid as unrelated to the legitimate objectives of the police power has occasionally been accepted by the courts (Hankins v. Rockleigh),<sup>55</sup> it has more often been rejected, the latter courts reasoning that the ordinances promoted the general welfare of the communities.<sup>56</sup>

Preservation of the image of an historical area as it was in the past falls within the meaning of general welfare of the public and consequently, the scope of police power. This was upheld in Bohannon v. City of San Diego<sup>57</sup>; Lutheran Church in America v. City of New York<sup>58</sup>; Mayor and Aldermen of the City of Annapolis v. Anne Arundel County<sup>59</sup>; and City of Dallas v. Crown Reich.<sup>60</sup>

Courts have repeatedly held that architectural control ordinances, particularly when historical or touristic areas are concerned, are within police power. Maher v. City of New Orleans<sup>61</sup> exemplifies this holding.

Architectural control for aesthetic, economic, educational and cultural purposes are not the only issues involved in the argument for the validity of police power regarding historic ordinances for the general welfare. The use of police power has

been upheld in matters of historic ordinances involving demolition.

### Demolition

There have been cases that focus on the demolition of buildings within historic districts. As the following cases illustrate, frequently the demolition is denied. The outcome depends on the property's function and owners' reasonable use of the land.

In a few cities, the historic district regulations prohibit demolition of buildings in such districts. These regulations are uncomfortably close to the outer boundaries of police power. It also creates a problem when an owner decides to let the building deteriorate. Only recently have court decisions come down regarding the validity of such restrictions. Several decisions in early 1974 have substantially strengthened the legal position of anti-demolition ordinances.

Perhaps the most important of these demolition cases was Mayor and Aldermen of the City of Annapolis v. Anne Arundel County. The Mt. Moriah Church located behind the county courthouse in downtown Annapolis was a small Victorian gothic structure built in 1874. The church was placed on the National Register of Historic Places and given the highest ("outstanding") rating in 1970 by a private historic preservation organization. The structure was built and long owned by a congregation of free blacks, founded in 1799. County authorities bought the premises in 1970, intending to demolish the church and use the land for a courthouse addition and/or parking lot.

The Annapolis Historic District Commission refused permission for demolition on grounds that the building was historically and architecturally valuable. County authorities appealed to courts on the ground that the Commission had no jurisdiction over their governmental operation. Most of the resulting opinion was concerned with the jurisdiction question, but the opinion of Judge Wilson Barnes regarding the ordinance stated that protection was needed against anyone who wished to demolish such a structure. It was also held that the limitation did not prevent reasonable use of the site by its owner and is "far removed from unconstitutional confiscation" because many  
62  
protections were provided for the property owners.

63  
Similarly, in *City of Ithaca v. County of Tompkins*, it was held that where a county building had been designated an historic landmark by the city, it was subject to the jurisdiction of the city's landmark preservation ordinance. The county was not entitled to demolish the building unless it obtained a permit to  
64  
do so from the Commission.

A case arose in Norwich, Connecticut in which a building not architecturally significant, but fronted on an historic green (Norwichtown), was proposed for demolition. Over the years the owners neglected to make needed interior repairs even though the building inspector notified them to correct the violations.

The Norwich Historic District Commission refused to authorize demolition based on the building's significant contribution to the importance of Norwichtown Green as an historic landmark; and hardships presented by the owner were not

great enough to warrant granting approval for demolition. Building owners appealed to the courts claiming that a variance should have been granted, and a violation of constitutional rights, *Figarsky v. Historic District Commission*.<sup>65</sup>

The lower court upheld the Commission's order, holding that: (1) The power to prohibit demolitions is set forth explicitly in the Connecticut statute (Connecticut General Statutes Ann 7-147d), and (2) The restriction did not preclude any and all reasonable use of the property. There is no confiscation if repairs are made because the property can continue to be used for residential purposes.<sup>66</sup>

One of the strongest opinions involving demolition arose from the Vieux Carre, after more than a decade of litigation. The case, *Maher v. City of New Orleans*, a Victorian cottage and an adjacent home owner who intended to demolish the cottage and replace it with an addition to his house in "Spanish style", indistinguishable from other typical buildings nearby. The addition would contain seven apartments for rental.

After extensive proceedings in lower court, the owner took the matter through state courts and lost. The present suit was started anew in federal courts. The court reaffirmed the general principle of Vieux Carre regulations and rejected as irrelevant an argument based upon balancing the benefits involved. Court held that there was no evidence to indicate that restriction precluded any reasonable use of the land.<sup>67</sup>

The previously described demolition cases held in favor of restrictions on demoliton, primarily holding that the use of land was not taken away. Following are two cases where demolition

restrictions were successfully challenged, largely because the owners' reasonable use of land was sufficiently reduced.

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In *Trustees of Sailors' Snug Harbor v. Platt*, the court held as constitutional an amendment to the New York City Charter and Administrative Code which established a landmarks commission with power to designate landmarks that could not be demolished or exterior altered without commission approval.

But, the court in this case also pointed out that applying the restrictions to tax-exempt buildings on a site well adapted for use as a home for retired seamen resulted in an unconstitutional application of the ordinance. The reason being that prohibition of demolition of old buildings and preventing new buildings in their place resulted in undue burden on plaintiff owners. The Appellate Division reversed, but only to remand for further proceeding to see if the unconstitutional application argument was valid.

The New York Appellate Division in *Trustees of Sailors' Snug Harbor v. Platt*,<sup>69</sup> later concluded that where restrictions implementing the designation of a building owned by a charitable corporation as an historic landmark would prevent or seriously interfere with the carrying out of the charitable purpose, they<sup>70</sup> would be invalid.

The New York Appellate Division's conclusion in *Trustees of Sailors' Snug Harbor* was confirmed and approved (by the same court) in *Lutheran Church in America v. City of New York*. In this case the court invalidated the historic landmark designation of an old mansion used by the United Lutheran Church as offices for religious purposes.

The historic landmark designation of the mansion prevented alteration or demolition of the building, thereby preventing construction of more adequate office facilities without the landmark commission's consent, which was refused. The court held that where such a property is owned by a charitable corporation and not being used for production of income and is exempt from payment of real property taxes, that measures provided in legislation for removal of hardship imposed by the restrictions of landmark designation were not adequate.

The court further reasoned that the restrictions left the owners unable to replace the building with another to meet its growing needs, compelling them to retain it as is without relief or adequate compensation. This constitutes a taking in violation of the owners' constitutional rights under the 5th and 14th Amendments to the U.S. Constitution and Sections 6 and 7 of Article I of the New York Constitution.<sup>71</sup>

Over the years there have been a multitude of challenges to historic preservation regulations on the federal, state and local levels. The regulations have often stood the test of the challenges, demonstrating a strength in these regulations and a willingness of courts to uphold well written and thought out preservation laws.

## CHAPTER 6

### RECOMMENDATIONS/CONCLUSION

Historic preservation is a growing and diversifying phenomenon in the United States today. Public sector support and involvement has been increasing steadily over the last several years. The private sector has demonstrated accomplishment in historic preservation with numerous business ventures and commercial successes.

Historic preservation has become part of many urban revitalization and city planning efforts. There are two broad reasons that explain why cities and individuals are becoming involved with this process.

First, as part of a city's redevelopment scheme, owner initiated preservation is changing the physical appearance and image of cities. Washington, D.C., Baltimore, Philadelphia, and the Providence Armory District are examples of cities that have benefited. Neighborhoods once thought lost are given new lives. Blighted and decayed areas are rescued.

The second reason for the growing interest in historic preservation involves commercial ventures. Renovating historic buildings and plazas to serve as shopping, entertainment and recreational centers has become extremely profitable. Successful examples include the Ghiradelli Chocolate Factory in San Francisco, Davol Square and the Arcade in Providence, and Boston's Quincy Market which has one of the highest revenues per square foot of any shopping center in the United States.



Historic preservation projects now rival new construction in  
73  
dollar volume. But, the boom may be in danger when the  
incentives for renovation are reduced beginning January 1987.

Characteristically, historic preservation ordinances are strong due largely to solid and careful formation. When lowered tax incentives slow the surge of preservation projects, hence effective protective ordinances should continue to be drafted (with equitable treatment for those who must bear the burden), in order to protect vulnerable areas not yet under their wing. More local government involvement could serve to maintain and enhance progress in the field of historic preservation.

The changing tax laws will impact the use of ITC in many ways. It is likely that developers will find it more attractive to rehabilitate for office space as opposed to residential to get a faster return on their investment. Also, rehabilitation of large buildings like the Davol Square complex will not be as attractive.

Federal money cannot be solely relied upon for the funding of historic preservation projects. State and local government should take the reins to assure the preservation of historic places, through the drafting of strong ordinances, bonds and/or land trusts. Private and public organizations may cooperate with each other to fund and raise money for the rehabilitation and preservation of historic places.

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