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R E S U L T S M A T T E R

DBYD – REAL ESTATE LAW
MARCH 19, 2010**DEMOLITION OF PRIVATELY OWNED HISTORIC STRUCTURES****THE TENSION BETWEEN PRESERVATION
AND INDIVIDUAL PROPERTY RIGHTS**

What happens when the owner of an historic building seeks to demolish that building in the face of preservationist opposition? An owner, for example, would rather construct a new home on his property which is currently improved with an historic mansion. The general public and local municipality say: “No, you can’t do that, we love that building, it’s really pretty and it has been there for such a long time, you have to keep it there because we love looking at it so much.” But why should one property owner bear the cost and expense of maintaining an historic structure for the benefit of the general public, when the owner himself would rather do something else with the property he owns? If preserving historic structures inures to the benefit of the general public, shouldn’t the general public pay for it, just like the general public pays (in the form of tax dollars) when a municipality purchases open space for a public park?

What can a local municipality do, and what should it do (if anything) through its zoning and land use ordinances to stop the demolition and preserve the historic building? The issue is obviously one of regulation, and how land use regulations interplay with the constitutional prohibition against a municipality taking someone’s property without just compensation.

The first question we must ask is: “When does regulation go too far?” It is well established, for example, that a municipality cannot zone a property so as to effectively make it unusable. For example, a Township may not tell the owner of a legally existing property that, for whatever reason, it is just not permissible to develop that lot and put it to a reasonable use as a single-family dwelling or any other use. If that were to occur, the municipality would be deemed to have “taken” the property for public purposes, and just compensation (i.e. fair market value) must be paid to the owner. So what if a municipality insists that a private property owner maintain an historic structure that the property owner would rather demolish? Does that constitute a taking? And what authority does a municipality have to regulate private property in such a manner?

Typical zoning ordinances, in order to be valid, must in some way further the public health, safety, and welfare. For example, set-back requirements ensure that overcrowding will not occur and that fire separation will be maintained and use “zones” ensure that residential developments will not be constructed immediately adjacent to quarries or other non-conducive uses. But unlike the typical zoning ordinances, a prohibition against demolition does not appear to in any way further the interests of the public health, safety, and welfare. What possible safety and/or welfare concern is advanced by prohibiting a property owner from removing a structure and returning his property to its natural, undeveloped state? Nevertheless, the Pennsylvania Supreme Court, in the case of United Artists Theater v. the City of Philadelphia has ruled that designation of a privately owned building as an historic asset, without the owner’s consent, and thereby prohibiting any demolition of that structure, does NOT constitute a taking. In essence, private property owners may be burdened with the cost and expense of maintaining an historic structure (in this case the historic Boyd Theater at 19th and Chestnut Streets in Philadelphia), so that it may be enjoyed by the general public. The United States Supreme Court made a similar ruling in the Penn Central v. New York City case, where they prohibited the destruction of the privately-owned Grand Central Station, holding that “...historic preservation laws advance a legitimate state interest since preserving landmarks enhanced the quality of life in urban areas...”, and as long as the property owner was left with some reasonable return on their investment—designation of Grand Central Station as an historic landmark and prohibiting demolition did not constitute a “taking” of private property.

Most likely, these rulings will be tested in upcoming years, as owners seek to exercise their private property rights to use their properties as they desire. Whether the current state of the law will stand the test of time remains to be seen. For example, what if the historic structure was in a secluded area, not as visible as Center City Philadelphia, or Grand Central Station? If an owner of secluded rural property seeks to redevelop his parcel with a new state-of-the-art home, should he be forced to instead maintain an existing historic mansion based on the justification that a half dozen people per week might drive by to look at it?

Therein lies the tension between the desire to preserve, and constitutionally protected private property rights.

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