



## The Café

Twenty colleagues convened at the Neighborhood Preservation Center for the fourth Preservation Vision Café on Monday, December 10, 2012. The focus of the Café was on unpacking current issues effecting the state of New York City's Landmarks Law.

## The Conversation

By Julianne Wiesner-Chianese

As rain slowly drizzled outside, guests trickled into the warm and inviting historic Ernest Flagg Rectory, which is home to the Neighborhood Preservation Center. They proceeded to gather into the meeting rooms, greeting one another and selecting one of the beverages generously provided by Brooklyn Brewery. Soon, everyone was invited to take their seats. Alexis Stephens introduced discussion leaders David Schnakenberg\* and Randall Mason\*\*, signaling the beginning of what would prove to be a spirited, informative and important conversation.

To introduce the subject, and to provide some context, Mr. Schnakenberg gave a description of private property regulation from the perspective of the law. Essentially, individual states are vested with police powers which allow them to regulate the safety, health and general welfare of the people. Private property regulation in New York City has been universally shaped by the City's preservation law, via the 1978 decision in *Penn Central Transportation Company v. New York City*. This extended the State's police powers and, although it may not be a traditional use, most states have recognized the importance of private property regulation as a tool for preserving the built environment and, by extension, its cultural heritage.



In the 1954 case of *Berman v. Parker*, the Supreme Court recognized that aesthetic regulation was a proper use of the police and the "takings" power, marking a groundshift in the regulation of private property across the United States. "Takings" power refers to the constitutional clause in the Fifth Amendment: "nor shall private property be taken for public use, without just compensation". Mr. Schnakenberg noted that notwithstanding broad recognition that historic regulation is within the sphere of the police powers, preservation ordinances must not run afoul of due process or effect a taking of the property they are regulating. In New York, the State has granted power to local governments, enabling the City to write its own laws regarding landmarking and by doing so they promote the "tangible and non-tangible benefits" of preservation. Some of these laws have recently come under review, prompting questions like, "Is this where we want to go with our preservation policy?" and "Should we make changes to the law and if so, what kinds of changes should we be considering?" As he turned the floor over to Randall Mason, Mr. Schnakenberg pointed out that now is a critical time to be talking about shaping the future of preservation.

Prof. Mason echoed this sentiment in his opening remarks, reflecting that the history of preservation up to this point will certainly inform its future. He suggested that the previous generation of preservation professionals could be referred to

as the “regulation generation”, as they were among the first to defend and interpret the federal and state legislation that is now approaching its 50<sup>th</sup> anniversary. While laws will continue to play an important role in preservation, Prof. Mason proposed that the next generation may transition away from a focus on regulation and instead employ marketing tools and “branding” design or public history to help further engage the public in preservation initiatives.

But even more crucial than defining how this group of preservation professionals will operate, he said, is to consider whether they will be able to develop better ways of working together in order to avoid the intense polarization that sometimes leaves debates at a standstill. While not confined to preservation, polarization and the fierce defense of individual positions are very unlikely to result in legislation that will benefit the ultimate goal of creating and supporting good design and urban spaces, both of which are tenets of historic preservation and, arguably, the general welfare.



From this thought-provoking challenge, the discussion turned towards the main subject matter of the meeting: identifying and interpreting new bill proposals that are under review by New York’s City Council. Specific details of Intro 846 were read aloud, including those that would require City Planners to provide an economic impact study for a proposed historic district and that would change the ability of the City Council to veto or modify landmark designations based on criteria about the “developmental potential” of the district. This sparked a lively conversation about whether prioritizing the economic analysis of a property over other considerations weakens the integrity of historic preservation. Using an economic report as a criteria for measuring the benefits of designation (or lack thereof) places time and fiscal pressures on the

Landmarks Preservation Commission staff to provide detailed reports to try to counter arguments being made by more well-funded real estate interests on their turf. And ultimately, Prof. Mason interjected, such economic reports would be “as malleable as storytelling”, and could always be crafted to produce the desired result. Further, generating new reports would slow down the designation process, which would contradict other concerns raised in the bill proposals (Intros 222A and 850) that attempt to impose time limits on LPC processes in the name of efficiency. In all three bills, could anything crucial be lost in efforts for expediency? While the audience did not suggest a cure-all, it was clear that many people in the group were concerned for the future of property designations should Intro 846 become a new law.

Having discussed the economic aspect from a legislative point of view, the conversation then shifted to the role of homeowners. For many people, the issue of landmarking—which would require owners to maintain a home based on certain historic standards—comes down to a question of money. Slow or inconsistent designation or maintenance approval processes have financial consequences that are often weighed against other life events such as vacations and healthcare costs. Convincing skeptical property owners about benefits is not simple and New York City is not the only place to struggle with these kinds of issues. For example, a nearby municipality has some promising preservation legislation in the works, but its officials are very hesitant about the designation process. Many of them anticipate that people will find it so onerous that they may not think the effort worth attempting at all. While one can imagine the kinds of situations that would make people unhappy about preservation regulations, there are many arguments and economic benefits for upholding certain preservation standards. For example, tax credits provide an incentive that helps motivate people to put preservation into action. The goal, then, should be not to be too strict or too compliant but to maintain an, albeit delicate, balance.

These weighty matters led to the final, and perhaps most challenging, issue of the evening. Through the years, there has been research into the economic, social, and cultural impact of the practice of historic preservation. Yet this research still continues to be challenged by opponents. Are the studies not convincing enough? To quote directly from the

meeting: “Why doesn’t the message get across or is it not true?” While this question has probably crossed the mind of many preservation professionals, formulating a response is almost as unsettling as the question itself.

Prof. Mason made an attempt at answering the question. Although he has never seen an economic impact study on a proposed historic district come out negative, the issue is more about how positive the report is. “There is an essential difference between economic value and cultural value...and at its core that’s irreconcilable,” he said, but we must try to remember that there are many different factors framing the reports that will impact preservation differently at the policy level than at the individual level and we must measure our successes accordingly. And, Mr. Schnakenberg submitted, ultimately it may not matter what the answer is because the point is that we have broad and inclusive legislation that by its very existence means we are getting the message across. Prof. Mason continued that we should generate more research—qualitative and humanistic as well as quantitative—that shows preservation as a good investment, not just those that calculate what will provide the biggest return. While the value of these studies is undeniable, we are still figuring out how to utilize scientific data to make compelling arguments to our best advantage.

There was much speculation over the course of the evening about how to address some very challenging topics that are at the heart of historic preservation policy. Although no definitive answers were reached, everyone agreed that having this discussion introduced many perspectives that they might not have heard otherwise. Suddenly, the future of preservation seemed to get a lot closer.

\*David Schnakenberg is an associate with Rosenberg & Estis, P.C. Before joining R&E, David was the Ralph C. Menapace Legal Fellow at the Municipal Art Society of New York, where his work focused on the legal issues surrounding land use and planning, historic preservation and New York City governance. Mr. Schnakenberg is a member of the New York City Bar Association's committee on Land Use, Planning & Zoning, and is an Adjunct Associate Professor of Historic Preservation Law at Columbia University's Graduate School of Architecture, Planning and Preservation.

\*\*Randall Mason is Associate Professor and Chair of the Graduate Program in Historic Preservation at the University of Pennsylvania's School of Design. He earned a PhD in Urban Planning from Columbia University. Prof. Mason's current research focuses on socio-economic impacts of preservation policies and urban conservation strategies in the U.S. and abroad. His current work includes two books - *How Priceless is the Past? Economics and Historic Preservation* (under contract with W.W. Norton); and a book on North Brother Island with the photographer Christopher Payne - and he is the recipient of the 2012-13 National Endowment for the Arts Rome Prize.

### **The Drink**



Brooklyn Brewery provided two of their beers for the evening—their East India Pale Ale and Brooklyn Brown Ale. Their East India Pale Ale “a deep golden beer brewed from British malt and a blend of hops featuring the choice East Kent Golding variety. It is traditionally dry-hopped for a bright aroma of hops, lemongrass, pine and citrus fruit, and has a robust bitterness, a warming malt palate and a clean hoppy finish.” Brooklyn Brown Ale is “a blend of six malts, some of them roasted, give this beer its deep russet-brown color and complex malt flavor, fruity, smooth and rich, with a caramel, chocolate and coffee background. Generous late hopping brings forward a nice hop aroma to complete the picture.”

The Neighborhood Preservation Center is a unique place, office space and resource center that shares information and facilitates exchange among those working to improve and protect neighborhoods. The Preservation Vision Cafés continue the discussions initiated during Preservation Vision NYC and aim to strengthen the future of preservation in New York City by fostering more conversation within and outside the field. If you would more information about the Cafés, email [info@neighborhoodpreservationcenter.org](mailto:info@neighborhoodpreservationcenter.org) or call 212-228-2781.