ARCHITECTURE VIEW

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A 'Landmark' Decision on Landmarks

The announcement of the Supreme Court decision in the Grand Central Terminal case last week, in which New York City was upheld both on the landmark designation of the terminal and the constitutionality of its landmark law, was accompanied by sighs of relief by preservationists around the country and alarms of disaster from the real estate community.

Sentimental building buffs would now have carte blanche to protect everything in sight, stalemating development in older commercial centers, said the builders. At the least, the decision would set off a rash of ill-considered and obstructive designations. Developers would flee from the center city to less shackled areas, taking their money with them. Any new buildings would have to be enormously big to make up for lost property and profits. At worst, the decision could destroy the investment economics of cities, and ailing downtowns would be in greater trouble than ever.

That kind of scare talk serves little except the needs of speculation. Investment is not going to be suddenly choked off in center cities. Developers are always pushing for bigger buildings; in Manhattan right now the city's planners are being strong-armed into destructive zoning concessions that are hopelessly eroding midtown's sidestreet scale and variety.

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Overreaching has always been the name of the building game. "They're killing us" is its motto.

The facts do not support the figures. First, any city that makes irresponsible designations with inadequate criteria is going to find itself right back in the courts again. All designations are subject to judicial review, and capricious or arbitrary selection of landmark structures and sites will no more be upheld by the courts than capricious or arbitrary zoning. By finally equating landmarks preservation with zoning—an interpretation many had devoutly hoped for—the Supreme Court has no more given a blank check to preservationists than it has to any other appropriate exercise of the police power for the general public welfare.

What it has done is to settle some very basic issues of law that have been uncertain until now. The highest court has accepted the principal that regulation of private property for historical, cultural and esthetic values, if it is done in accord with a comprehensive plan that provides benefits to all, is in the public interest.

That equation, in fact, between landmarks law and zoning, is the heart of the matter. Until now, there has been great legislative uncertainty about whether landmarks law could be considered a form of zoning, for which compensation is not required, or whether it was a "taking" of property, in violation of the Fifth and Fourteenth Amendments, for which "full compensation" or cash payment for market value was necessary.

Obviously, the latter interpretation would bankrupt any city that wanted to protect its heritage, and would vastly diminish the means with which landmarks could be saved (purchase of facade easements, for example, a very useful but limited tool). But it has been that critical unresolved issue that has had landmarks commissions and municipalities hanging on the ropes.

Many, including New York, have been extremely cautious in their designations, for fear that testing their laws in the courts might destroy them. The certainty now is that they are constitutional, provided they are properly constructed. This does not mean that cities will now proceed with rashness. Responsible professionals will be as careful as ever, unless a city wants its prime property endlessly tied up in court cases.

The specific question posed by the Grand Central case was whether a city may, as part of a comprehensive program to preserve historic landmarks and districts, place restrictions on the development of individual landmarks without effecting a "taking" requiring the payment of "just compensation."

> 'This country is finally recognizing its urban assets and the need to protect them for livable cities.'

As everyone must know by now, Penn Central and its developer had proposed that a huge office tower be constructed on top of the Terminal like Venus rising out of the sea, using the air rights over the Terminal, which, of course, represent part of the property's value and a great deal of money. The Landmarks Preservation Commission had turned the plan down and Penn Central had sued.

The decision of New York State's highest court, the Appellate Division, which was being reviewed by the Supreme Court, held that Penn Central had not been unconstitutionally deprived of its property, because the law's restrictions did not deny the owner a "reasonable return," but only affected the exploitation of the property for its most profitable use. Moreover, the law's restrictions were deemed necessary for the public purpose of protecting landmarks.

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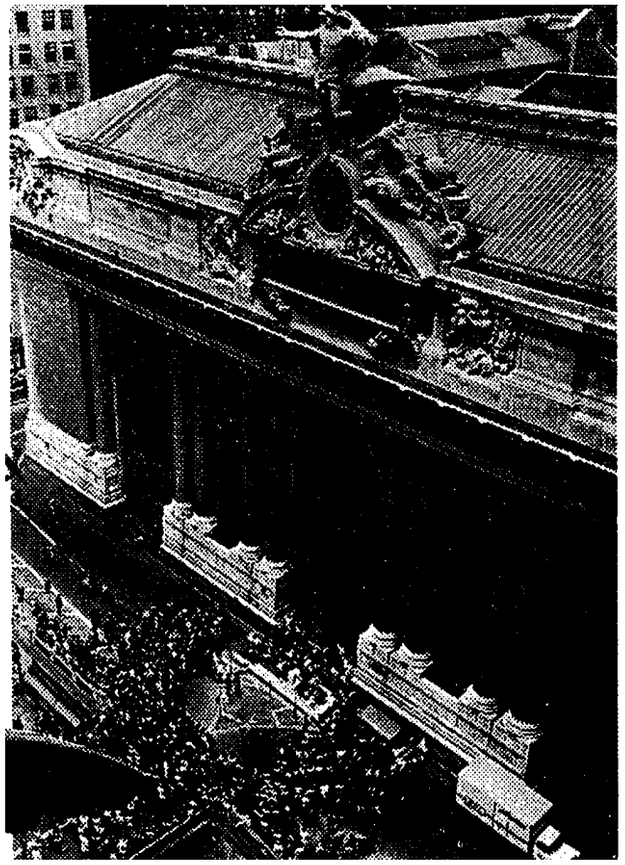
The Supreme Court not only accepted the validity of this public purpose, but it called the railroad's claim that its property had been taken on the basis of the denial of the exploitation of a particular development possibility "simply untenable." The Court held that interference with the rights of the parcel as a whole must be considered, not just one part alone—in this case, the air rights.



The New York Times/Chester Higgins Jr.; Neal Boenzi

Above, Grand Central Terminal; at left, a detail of facade sculpture

It also noted that the railroad had not been deprived of the building's current use, and that it was assured a "reasonable return" by the New York law, which also contained machinery and techniques for adjustments to make this possible, as well as providing the greatest latitude for the property's use in keeping with preservation. In this case, the city had gone even farther, amending a zoning law that permitted the transfer of air rights from a landmark structure to another site, so that the Terminal's rights would be available to any other Penn Central properties in the area.

Penn Central's use of its Terminal air rights, therefore, had not been abrogated, and while the transfer program may be far from ideal and the rights were less than on the Terminal site, said the Court, they are still valuable air rights. Their transfer might not qualify as "just compensation" if a "taking" had occurred, but they substantially modified any financial burden the law had imposed. In addition, the Court observed that the Landmarks Preservation Commission had not foreclosed the possibility of a more modest and more appropriate addition to the Terminal; it had only refused the railroad's specific submission.

As for the financial burden that Penn Central still must bear, the decision points out that legislation designed to promote the general welfare commonly burdens some more

Continued on Page 34

Landmarks

Continued from Page 21

than others, and that these laws have not been held invalid on that account.

The railroad's contention that selection of the Terminal was arbitrary, and therefore similar to discriminatory zoning, was rejected because the designation was part of a comprehensive city plan for landmark protection under which some 400 buildings had been listed. The related argument that "the decision to designate a landmark is arbitrary or subjective because it is basically a matter of taste" was also denied. Judicial review is available for any Landmarks Commission decision, the judges said, and the courts will have no more difficulty identifying arbitrary or discriminatory action than in the context of classic zoning.

Obviously, the Court recognized the problems of landmark legislation and tried to deal with them fairly. The word "reasonable" appears repeatedly both as a modifier for economic exploitation of property and to set limits to individual economic burdens. Still another word that occurs to the reader of the decision is "maturity"—this is a country that is finally recognizing its urban assets and the need to protect them for livable cities. ■