

Legal Methods of Furthering Urban Preservation



LEGAL METHODS OF FURTHERING URBAN PRESERVATION

Conference of the International Legal
Committee of ICOMOS,

Papers submitted to the Israel conference,
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ICOMOS ISRAEL



THE COUNCIL FOR
THE PRESERVATION
OF BUILDINGS AND
HISTORIC SITES



ISRAEL NATIONAL
COMMISSION FOR
UNESCO



ISRAEL
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SOCIETY
FOR THE
PROTECTION
OF NATURE
IN ISRAEL

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Introduction

This collection of articles summarizes the lectures presented at the Conference of the International Legal Committee of ICOMOS that took place in Israel in February 2001 and provided a framework for the exchange of professional ideas between preservation experts from many countries.

The conference focused on legal methods of furthering urban conservation. The representatives of the eleven foreign countries attending the Conference contributed much to the Council for the Preservation of Buildings and Historic Sites, and to those responsible for conservation in the local authorities, in understanding the tools and possible solutions for dealing with the preservation of the built heritage of the 19 th and 20 th centuries.

The preservation of historical buildings and sites in Israel received greater impetus with the founding of the Council for the Preservation of Buildings and Historic Sites, in the belief that preservation protect cultural values backed by planning approaches that are expected to afford solutions to the swift pace of development, to budgetary problems and a balance between preservation and development.

The Council for the Preservation of Buildings and Historic Sites is pleased to be one of the conference organizers and is grateful to each of the organizations who were party to its success — the Ministry of Science, Culture and Sport, Israel Commission for UNESCO, ICOMOS — Israel, the Antiquities Authority and the Society for the Preservation of Nature.

We thank our visitors from abroad and the Israeli participants who, together, contributed to an interesting and informative conference.

Humi Novenster
Conference Organizer
Council for the Preservation of
Buildings and Historic Sites

Yossi Feldman
Director General
Council for the Preservation
Buildings and Historic Sites

Dear friends

Throughout the world, those dealing with the preservation of historic sites often encounter opposition and hostility, whether overt or covert, from interested parties, those involved in real estate, building contractors, owner and so on. They view the preservation plan as an infringement of their right to destroy the old building, ignoring its historic or aesthetic value, and instead construct a modern, multi-storied building that will assure handsome profits, or so, at least, they believe.

In Israel, in addition to this "universal" phenomenon, there are further important elements that burden the effort to make the public, and the financial arms of the government, aware of the importance and urgency of preserving buildings and sites of historic value. In Israel preservation is in serious and continuous competition for its place and status in the public awareness.

When the people of Israel began to return to their homeland, after 2000 years of exile, when many tried, and continue to try, to deny their right to Eretz Israel, the topic of archeological excavations became important and significant to the public conscience. Every shard of clay found from the period that the people of Israel lived in its own country, and the remains of every building from that period, especially if it was marked with the Jewish symbol or an inscription in Hebrew, made the people happy, and justifiably so, and provided us with the feeling of security in the justification of our claim. In contrast to these findings, it would seem that preservation of sites 100 years old, or less, pales in contrast.

Even after the establishment of the State of Israel, during the first difficult years during the War of Independence and thereafter, when the waves of immigration, Holocaust refugees and immigrants from countries of the orient, flooded the country, it was, and still is, necessary to quickly find these immigrants a roof over their heads and public buildings for their use. It would seem, however, that the "stubbornness" over preserving these sites and buildings contradicts the need for quick development and absorbing immigration.

During the seventeen years of its activities, the Council for the Preservation of Buildings and Historic Sites has managed, despite these objective difficulties, to not only rescue and preserve tens of buildings and sites of great historic value, but, to a considerable extent, to instill their importance in the public awareness. The urgency and the necessity for preserving these sites that tell the story of the establishment of the new Hebrew settlement in Eretz Israel, the struggles and the difficulties of the first settlers who came to revive the neglected, barren land - a land partly desert-like and partly swampy and malarial - and of the cruel and heroic struggle to come here (between the two world wars and particularly after World War II and the Holocaust) and establish the State of Israel, cannot be exaggerated.

It would appear nowadays that many understand that without preserving these foundation stones, it will be difficult to instill new immigrants, tourists — Jewish and non-Jewish alike - and the younger generation born and bred in an independent Israel, ignorant of the struggles of the founding fathers, with an appreciation of the real significance of realizing the Zionist dream, conquering the desert and the struggle for the establishment of the State of Israel.

The tens of sites saved and conserved by the Council for the Preservation of Buildings and Historic Sites tell their story to their visitors in a realistic way. But the path is still long to their development, to making them of interest to their visitors and to adding many more sites before they are destroyed, so that we may develop the country while preserving its values and respecting the struggle of the first settlers and their heritage, thanks to whose valor and struggle the State of Israel was established.

I welcome the participants to the annual conference of the International Legal Committee of ICOMOS that is meeting in Israel today and hope the discussions will be fruitful and even provide us with suggestions for preserving these sites.

Shlomo Hillel
President,
Council for the Preservation
of Buildings and Historic Sites

Dear friends

The Israeli committee of ICOMOS welcomes the participants of the LAF & I Scientific Committee Conference, both guests from abroad and local colleagues who have come to this most outstanding location - the lowest place in the world - a place associated with a great number of tangible and intangible cultural values.

It is with great importance that the professional community of this country regards the issues on the agenda of your meetings, as they support our visions and expectations through a legal, administrative and financial reality.

There is no doubt that many of the most important cultural sites in Israel and throughout the world never managed to defuse the risks that endanger their sustainability, and endless legal and financial obstacles prevent any time-bound solutions.

The issue became more critical in recent years with the 20th century heritage regarded as no less important than that of ancient sites, but bearing much higher risk factors. This is mainly due to the fact that most of the modern world is inhabited with privately - owned historic sites. Tremendous difficulties exist in implementing a reliable management plan for them, affording public interest high priority.

This is why we, members of ICOMOS Israel, will try to touch these important issues illustrated by case studies and our experience of profits and loss. But above all, we are eager to listen and share the experience and skills that each of you possesses. Therefore, on behalf of ICOMOS Israel, I wish you a fruitful exchange of opinions and a pleasant and interesting visit to this unique region.

Gavriel Kertesz
Chairman - ICOMOS Israel

Colleagues and friends,

On behalf of the Israel National Commission for Unesco, I welcome you to Israel to the lowest sea level in the world - the Dead Sea.

Since Israel has joined the World Heritage convention (1972) we have been trying to make up for a lost time, starting with establishing a national committee to implement the convention, followed by preparation of Tentative list of Israel potential sites to World Heritage.

We have crossed the "Rubicon" and our efforts are focused on three levels:

- * Preparation of sites nomination
- * Strengthening the professional relation with Icomos Israel.
- * Assimilating the Convention into Israel laws of Town Building and Planning.

Actual steps are taken towards achieving these ends: translating the Convention its guidelines and format to Hebrew, developing a training course for nomination presentation and lobbying the Convention's value to decision makers on all level as well as the faculties of architecture/geography in higher education institutions in Israel.

Icomos Israel provides us with the know how and with a moral support in all these efforts.

Daniel Bar-Elli
Secretary General
Israel National
Commission
for UNESCO

Dear friends colleagues and distinguished guests,

I am bringing you the greetings of ICOMOS International.

Any professional activity of an ICOMOS National Committee is a source of joy and pride for us. Regional activities and meetings of one of our organization's Scientific Committees, causes us all even bigger joy. It is the expression of one of the major objectives of ICOMOS - bringing together colleagues from different parts of the world, to discuss issues of common interest and to advance our professional field. A non less important "by product" of such gatherings, is the strengthening of human and social links among our members.

In the name of Prof. Michael Petzet, The president of ICOMOS, I wish to bring to you the warmest wishes for a successful meeting. We are sure that your discussions will add to the understanding of legal issues and their contribution to the management of our cultural heritage.

I wish to convey greetings and thanks of our organization to Israel's ICOMOS National Committee, and to the sponsors and organizers of this meeting - The Israel National Commission for UNESCO and The Council for the Preservation of Buildings and Historic Sites, and the Israel Antiquities Authority.

Giora Solar
ICOMOS

Colleagues and guests,

The fourth scientific conference of the ICOMOS International Scientific Committee on Legal, Administrative and Financial Affairs, which took place in Ein Bokek, on the Dead Sea in Israel from February 18 - 22, 2001 was for two reasons a great success. In the first place, this success is owed to our very generous Israeli hosts and their perfect organisation of the meeting. Sincere thanks to Gideon Koren, vice president of the Legal Committee who took the initiative of inviting the Legal Committee to Israel and to the partners he found in hosting it namely; the Israeli Council for the Preservation of Buildings and Historic Sites, ICOMOS Israel, the Israel National Commission for UNESCO, the Israeli Antiquities Authority, the Israeli Nature and National Parks Authority and the Israeli Ministry of Science, Culture and Sport.

Secondly, the idea of the organizers of including a large number of Israeli colleagues in the conference presenting their ideas and specific problems on urban preservation, led to a very fruitful exchange of views and experiences between the participating members of the Legal Committee from eleven different countries and their Israeli counterparts. Such an extensive dialogue was practised for the first time and will serve as a model for future conferences.

The publication of the papers of the conference does not only inform about "Legal methods of furthering urban preservation" in different countries, but also gives an overview of the preservation of historic sites and buildings in Israel. It thus reflects the broad scope of subjects discussed. May the reader profit as much from the in depth information contained in this book as the participants of the conference did.

Werner Von Trutzschler,
Chairman of the ICOMOS
Legal Committee



Jerusalem - Zichron Moshe

Changes in the Old Center of the City and their Influence on the Cultural Built Heritage

Irit Amit - Israel

In countries with historical stability over a period of years, urban development is gradual; in other words, the urban facility undergoes processes of change and adaptation in accordance with changing urban needs and technological developments whose influence on urban planning and development is great. But the change and adaptation are not similar in all cities or in different parts of the same city. The processes are particularly different in the city centers identified with the city's historical nucleus; there the change and adaptation are slower and beset by many problems. There are several reasons for this phenomenon; analyzing them makes it easier to tackle them and facilitates a slightly different way of relating to preservation, planning and development of this urban space.

1. In the old center an encounter occurs between two components: urban appearance and urban image. In most cases the urban image is positive, because it is connected with the history of the city, accompanying descriptions and narratives, its status, cultural, economic or social development. In most countries, the old center is described as: "the urban soul", "the urban rings", "the urban onion peels". The visitor to the historical core in Stockholm is said "to leaf through the national and urban pages of history" (Anderson, 1996), and in Prague "the old core is the symbol of stability and urban continuity" (Stankova & Stursa, 1992). Facing this approach is the reality- the appearance. In contrast with the image, the appearance is sometimes negative; an old dilapidated center, whose infrastructures do not correspond with the changes occurring in the entire urban space, the attitude of the population visiting, living in it or needing services. These populations perceive the old as a phenomenon delaying development, something ugly that must be gotten rid of or changed. In order to cope with negative appearance and to take advantage of the positive image, different authorities suggest ways for planning and redeveloping the old center; they see in the historical legacies an important contribution to city planning, appearance, culture, economy and to strengthening the connection between the city and its population.
2. The old center developed in a long and drawn-out process. While other uses of land - industrial areas, shopping centers, peripheries areas for dwelling - were implemented at once and a defined use and function determined for them, the old center underwent social and functional changes. The most dramatic change was the variety of functions inhabiting it over the years, their life expectancy and the transition of functions from the old center outside, and in the last decades the return to the old center. In the years of sub urbanization of dwellings from

the old city center, especially in the populations with economic and social stability, there was a decrease in status, a decrease that contributed to negative appearance. In the eighties and nineties, in most cities of the west world, the historical nucleus is regaining the status of a multifunctional area; the blurring of boundaries and the demand for diversified functions in the old urban space encourage renewal and relating to both the new needs and changes and to the historical legacies existing within.

3. The old center had difficulty undergoing processes of change and adaptation, especially in adapting to technological changes and the development of infrastructures. This difficulty stemmed from the limitations that are part of the characteristics of the old space - its time of establishment and location. Changes in municipal functions require the addition of infrastructure or adaptation of the existing infrastructure, due to time - related technological developments and in accordance with new needs.
4. The old center of the city is also an area lacking land reserves for development, especially in light of the increasing demand for dwellings and services. This causes high land value, and every investment has to justify the price of the land and its development.

Development in the old center and its adaptation to new needs can be done in two ways: destroying the old and renewed building, or - preserving the old facility, refreshing and adapting it to functional changes. There are different expressions of this renewal and adaptation: elevation of structures, compacting and filling spaces in the old municipal area, utilization of existing building bulk - non-used - and their adaptation to new functions. Architecture also offers solutions: it integrates between old buildings, parts of or single elements of old buildings and the new construction. It reconstructs historical atmosphere using elements unique to the period and style; it preserves the building and the entire facility and proposes technological solutions for underground and above ground building. In this type of planning and building, the authority, architect and entrepreneur relate to historical values as a product following economic rules. But that's not enough. In order to preserve the historical built legacies, we need a legal protection system; a system that appreciates the uniqueness of the cultural and architectural characteristics of the city. This legal protection does not ignore the fact that the old center faces difficulties, when one wants to develop and adapt it to gentrification processes, the growing demand for accommodations, commerce, public utilities and tourist services. But it underlines the role of urban planning in taking into account urban uniqueness and its expression in built space. This legal system presents planning solutions to the encounter between preservation of the built-up heritage and developmental needs of the built space in the old urban center. It also meshes with the wider movement of sustainable development, which espouses controlled development and preservation of landscape value and cultural value, not only for the current population but also for the coming generations.

Israel, ICOMOS and the World Heritage Convention

Giora Solar - Israel

When countries started to join the "Convention for the Protection of the World's Cultural and Natural Heritage", the Israeli Ministry for Foreign Affairs was hesitating. The question was whether if Israel ratifies the convention it will be able to nominate The Old City of Jerusalem as a World Heritage site. The issue was seen politically so important that it took Israel 27 years to finally ratify the convention in 1999.

The Old City of Jerusalem has been nominated in the meantime, following a submission by Jordan. It is now the only site on the World Heritage list without a name of country attached to it. The logic behind nominating a site against the wish or without the commitment of the only country who at the moment of nomination is able to manage the nominated cultural heritage, is to be questioned. For the speaker it is not a political nor a legal question, but rather a professional one. What is the point, unless a political one, of nominating a site without the approval of the state which has at the time of nomination the management role and authority? If the role of nomination is to help conservation and cultural heritage management efforts, it certainly did not help Jerusalem.

This is how the common history of Israel and the World Heritage Convention started. The consequences were that Israel did not ratify the convention and that UNESCO was seen by Israelis as a political rather than professional organization.

In the mid 1980's ICOMOS Israel National Committee started a campaign, trying to convince the Ministry of Foreign Affairs to ratify the convention. It became an annual ritual for some members of the committee to meet the people in charge at the ministry, to repeat the previous year's explanations and justifications for such ratification and to receive the negative reply. All these years, the only contact we had, indirectly, with the convention, were almost regular meetings with the late Prof. Lemeire, during his annual or bi-annual official visits to Jerusalem. As an NGO and professional colleagues, some of us even accompanied Prof. Lemeire and provided explanation, when he came under the title of "personal representative of the Director General of UNESCO".

To our biggest surprise and joy Israel ratified the convention at the end of 1999 and became a member of "the club". None of us, professionals in the field of conservation, were as naive as to believe that we managed to convince the ministry. We know that the reasons to ratify were very similar to those for not ratifying - but for us the consequences and not the reasons were important. With strong support by the national committee for UNESCO and its Secretary General, we moved to a fast track, trying to compensate for some of the lost years. In an extremely short time, but with input from as many professionals and organizations as possible, Israel's Tentative List was

prepared, published and sent to The World Heritage Center. A sub committee of the national committee for UNESCO, dedicated to World Heritage issues was created and a very active chairman was nominated. By chance, through international ICOMOS activities of the speaker, we had also some closer knowledge of the convention, it's guidelines, processes of nomination and preparation of nomination files. Again, in an incredible short time, not the most desirable for proper work, four nomination files were prepared and submitted. An archaeological site (Masada), a natural site (Makhteshim), a historic town (Akko) and an extension of the Old City of Jerusalem (Mt. Zion) were submitted and later discussed by The World Heritage Committee. We all hope that this time, based only on professional considerations and in the spirit of the idea of the World Heritage Convention, for the first time Israel will sit on the prestigious and important World Heritage List. We see it as an important step in the protection of the heritage of the country, in raising awareness towards heritage management and protection, in giving more strength to the ICOMOS national committee, in improving our contacts with colleagues in the world, in possibly contributing to the work of The World Heritage Committee and last (and may be least) in having the personal satisfaction for some of us who for years were considered as naive and "not understanding the real issues" when trying to convince our ministry to ratify the convention.

Let us hope that we will be able to prove that even if it was naive, at the end it served a great objective and that after all the convention was really created to protect the cultural and natural heritage of the world - and is not just another tool for politicians. We had a traumatic start, but may be we are therefore more mature and ready to deal with some of the issues.

Legal Forms of Financing Urban Preservation — the Israeli Situation

Gideon Koren - Israel

A. Introduction

The State of Israel is 53 years old. The land of Israel, however, has a heritage dating back centuries. The history of the country stretches over a period of some five thousand years. During this time the land of Israel was governed by many different nations, each one leaving its influence on the legal system existing today.

It is thus that attempting to answer a simple question, or describing the legal situation regarding a specific issue can be rather complicated. This may seem very "unofficial" to those accustomed to a more "mature" and comprehensive legal system.

Consequently, it should be clear that dealing with preservation and trying to promote it within the context of the entire different legal wording, is the basis of a lot of confusion and uncertainty. The problem is aggravated due to the youth of the Israeli legal system and its understandable relative underdevelopment.

Many will agree that the best example of the complexity of the Israeli legal system is real property law. Here, one can find a microcosm of almost every traditional legal system. The "Land Law" is a modern Israeli law, yet some questions are still governed by Ottoman rules. Contract law, trust law and the law of gifts are based upon continental concepts. The law of association and company law is based upon common law traditions while administrative law is based on the American concepts.

As many legal forms of furthering preservation are somehow related to real property laws, one might expect the Israeli legal system to have incorporated a large scale of ideas and methods from the different laws encountering with it's legal history. One could imagine that a country so rich with sites worthy of preservation would adopt many legal forms of financing preservation efforts into the local legal system.

This has not happened. As explained later on, a few Authorities have the responsibility, or the possibility to further preservation in Israel. However, these options are hardly ever related to the urban environment, which is dominated by municipalities and local authorities lacking the will to aid or promote preservation under the present legislation, which enables these authorities to preserve buildings and sites located in urban areas under their jurisdiction, but in no way forces doing so.

Hereunder, I shall try to present the options which do exist in Israel and enable urban preservation, as well as the main reasons why these options are not implemented

sufficiently. I will also try to discuss some of the legal forms recently suggested to change the fact that Israel has not yet formed substantial tolls to promote and financially support urban preservation.

When looking for ways to financially aid urban preservation, a very clear distinction must be made between the activities of the authorities and the incentives given to private people and organizations. Therefore, in this presentation I shall address these two issues separately, although they share two similar characteristics. Primarily, the economic impact of financing preservation will be quite the same in both cases. Secondly, since the incentives are always drawn from the public budget, and the country still has other financial priorities, there never seems to be sufficient allocation of funds for the important goal of preservation.

B. Public Authorities

The building culture in the land of Israel of ancient times is anchored in the "Law of Antiquities". Under this law an antiquity is defined as any asset, which was manmade before 1700 A.C. Under this law a special Antiquities Authority was created. Any antiquity found in Israel is immediately and automatically owned by the state. The land in which it was found or excavated will also become automatically state owned and the antiquities authority is entitled to the possession of such antiquity or land. The only duty of the state is to pay expropriation damages to the owner of the land once the land is expropriated from him under this law.

Any building or site which are classified as an antiquity are therefore protected from any destruction and any physical change, unless the Antiquities Authority allows the owner to take minor steps, which shall not cause damage to it. Thus the antiquity is relatively protected, but since it is in the hands of a government authority, the level and quality of the preservation will be based on the financial ability of the authority to preserve this building or site. Since Israel is so rich with antiquity sites, the definition of antiquities is a technical one — not related to the real importance of the site, and the budget allocated to the antiquities authority is limited, the result is that some urban buildings are well preserved, while others do not enjoy the same quality of preservation.

Another related problem is a result of the fact that many urban situated buildings and sites date later than 1700 A.C. As a result, they remained without any legal protection. It is regrettable that Israel was not successful in creating such protection for the material heritage built up in recent centuries, as it did for the built up heritage of earlier times. A public awakening to the importance of preserving these buildings made itself felt only following the destruction of historic sites over a period of several decades, and yet, no public authority was vested with the responsibility for the preservation of such buildings and sites.

It should also be noted, that local authorities in Israel, such as municipalities and regional councils, have no legal obligation to preserve buildings within their geographical jurisdiction. The decision whether to promote preservation in any municipality, even as important as Jerusalem, lies solely at the discretion of the local municipality. On the other hand, the municipality is obligated by other laws to be responsible for the education, health, street lighting and maintenance, and many other duties, to which it must allocate sufficient funding. Since preservation is costly and the local authorities always seem to lack sufficient funds, preservation is found, if at all, at the bottom of the municipalities "priority list".

The result of this situation is very frustrating to everyone concerned with the preservation of the physical heritage in Israel. Many buildings owned by private individuals could be and have been destroyed in many ways. Sometimes the owners themselves altered the buildings and even replaced them with new modern buildings. In other cases, the land was sold to entrepreneurs. The result was the same. Several decades passed by before a public awareness forced the Israeli Parliament to deal with this issue and to create new mechanisms which enable to preserve these buildings. I will concentrate hereunder on the amendments, which created some financial incentives contributing to urban preservation. It should be noted, that these different incentives have not proven to be sufficient, as preservation itself continues to be a result of authority decisions, with no incentive for the authority itself to further preservation.

C. Tax Incentives

Naturally, the various tax ordinances in Israel do not relate directly to preservation. The basic principle in tax law is usually, that tax is imposed on all of a taxpayer's income. On the other hand, all expenses wholly and exclusively incurred in the production of the income, may be deducted from it. This principle applies to private people, companies, and other forms of conducting business alike. In general, "spending" money on preservation of sites or conservation of heritage cannot be deducted from income, since there is no direct connection between the expense and the production of income, but there are a few exceptions:

First, if the preservation is that of a building owned by the same legal entity, which advances the money for preservation, the expense will, in general, be tax deductible.

Second, a business legal entity, such as a company, may gain some publicity or "image improvement" in the eyes of the public, as a result of investing efforts in preservation. In general, any amount spent on advertising the company can be tax deductible. Thus, a company may claim that its involvement in preservation improved the public attitude towards the company and should, therefore, be recognized as advertising. Since the company will still have to prove the existence of a direct connection between the expense and its income, it may find itself, at the end of the day, with an expense not recognized by the tax authorities. Therefore, a company, or any other legal form of business, will probably prefer to invest in a different area of public benefit, such as

the sponsorship of sports or cultural activities, where the expense is more likely to be tax deductible.

Unlike many other countries, Property tax and Inheritance tax do not exist in Israel. Therefore, no incentives connected to these taxes can be made.

D. Non-profit Organization

Israel is very unique in the legal form for recognizing the existence of a legal entity for the purpose of non-profit activities. It does not have the legal form of a "charity" known in many countries. In Israel, the legal entity for non-profit organizations is called "amuta" and is not quite equivalent to the legal forms known in many countries as "trust", "public endowment", "association" or "foundation".

One of the objectives of an "amuta" is the furtherance of a public purpose. The term "public" is to be contrasted with "personal". The meaning of the word public is that the beneficiary from the activities of such a legal entity is not a particular person or institution. As a whole it can also refer to a specific group of persons with a particular characteristic, for example, a group of persons interested in preserving a certain building or site, or in the preservation of a certain cultural heritage, such as language, style of music, dance etc. It must be noted that Israeli society is comprised of people belonging to a large variety of religions: many are secular, coming from different countries in the Jewish Diaspora. Each group maintains different forms of cultural and religious customs and traditions. Therefore, the mere definition of "heritage" in Israel is a very difficult task. Many sectors of the population nevertheless maintain their own heritage under such "amuta"s.

Under Israeli law, the government may decide to allocate a part of its budget for the purpose of supporting public organizations and "amuta"s. Within the scope of this article, we cannot go into the complex bureaucracy connected with such financial support. Nevertheless, it should be noted that in Israel it is almost impossible to get any financial support, from government or municipal authorities, unless the application is submitted to the authority by a non-profit organization. Creating the legal form of an "Amuta" is basically the only way to get such government or municipal grants.

In addition, one of the major advantages of an "amuta" is that it is entitled to operate, tax-wise, as a non-profit organization. Under Israeli tax law, one of the major advantages of being a non-profit organization is that private people and commercial legal entities (such as companies, partnerships and co-operative societies) are entitled to contribute funds to such endowments and declare the contribution as tax deductible. Thus, whenever funds are needed for the preservation of a certain building or site, the financing of the conservation or the restoration of heritage, an "amuta" may be created and its existence may encourage financial contributions from those interested in it. A few conditions limit this option:

1. The non-profit organization must be a separate legal entity. In relation to some buildings and sites which need preservation, such a legal entity does not necessarily exist.
2. The legal entity, known as "Amuta", must be formed by private individuals, interested in promoting the preservation of a site or the conservation and restoration of heritage, and in creating the legal entity to which money can be donated. There is no incentive for establishing such a legal entity, and no way to enforce the existence of one.
3. If the entity is established, it has to be recognized by the tax authorities as a non-profit organization. There are a few conditions the entity has to fulfill to get such recognition, some of which limit the scope of activities such an entity may engage in.
4. The amount one can contribute to a non-profit organization is limited, both by the total amount and by the percentage of the contributor's income it represents, which may be tax deductible. These conditions vary from one legal form of the contributor to another, but in any case an unlimited contribution is not possible and the amounts are very limited especially with relation to the high costs of renovation and preservation.
5. The non-profit organization may not be involved in any business activity. If it conducts any activity, which is undertaken by business entities as well (such as selling products, tickets, etc.), it may forfeit its recognition. This creates a lot of difficulties for groups interested in forms of cultural heritage.

Thus, an "amuta" may be utilized as a legal form for a variety of interests, including preservation. Nevertheless, the problems mentioned above apply to many other "amuta"s as well, making this legal form not easily applicable for encouraging private participation in preservation.

E. Planning and Building Law

Due to the fact that the "traditional" legal forms are not sufficient for the preservation of buildings and sites, a search for the location of a suitable "hostel" for dealing with the legal needs of preservation was initiated.

The partial solution was eventually found in the planning and building law. This law's main thrust was to establish a network of national, regional, local and detailed planning schemes and to ensure that all buildings and development took place within the framework of an approved scheme.

Even though this law established a relatively complex planning bureaucracy including the government itself and "going down" to ministers, councils and commissions: national, district and local, it was felt that within its scope, many solutions to problems connected to preservation of building may be found.

In 1991 the Israeli parliament passed an amendment to the Planning and Building Law. The amendment deals with the preservation of sites. Under this amendment, governmental authorities or interested parties, such as owners of land or organizations recognized for this purpose, may propose that a site should be preserved.

The definition of "site" is "a building, or group of buildings or a part of them, including their immediate surroundings, which in the opinion of a planning institute are of historical, national, architectural or archeological importance."

The amendment directs every local authority to establish a committee for the preservation of sites. All such committees were to prepare a list of sites worthy of preserved within the local authority's jurisdiction and advise various governmental bodies with respect to the preservation of such sites. In addition, the committees have the authority to prevent immediate damage to or destruction of existing sites, and to expropriate sites worthy of preservation.

Once a proposal for the preservation of a site is submitted, such a fact is published, and restrictions are placed upon the granting of building permits in connection with the site for a period of one year. The period of the restrictions may be extended for an additional year.

A proposal for the preservation of a site must be deposited, and notice of such sent out to all owners or possessors of the site. If the owners or possessors do not act upon receipt of such notice, they will be estopped from voicing objections at a later time.

This law became the "host" for dealing with the legal needs of physical preservation of buildings and sites. This law's main thrust is to establish a network of national, regional, local and detailed planning schemes and to ensure that all building and development will take place within the framework of an approved building plan. Any proposal for the preservation of a building or a site has to be approved under the legal mechanisms governed by this law.

Funding problems connected with proposals for the preservation of sites are dealt with very carefully in this law. One can find four categories of funding problems connected with the preservation of sites, according to this law:

1. Monetary Damages Awarded by Law

By law, there is a right to compensation for devaluation of property as a result of the approval of a scheme. Property is not considered devalued should the proposal contain certain conditions, such as restrictions on changes to regions and the use of land within them, and restrictions on changes to uses of buildings. No compensation is paid if the infringement is not unreasonable in the specific circumstances and it would be unjustified to award compensation.

The courts in Israel have concluded that there is a difference between compensation due for devaluation of property and compensation due for expropriation of property. Since the ultimate decision as to the entitlement to compensation rests with the courts,

and since such a procedure may take many years, a local authority considering preservation of a building and even holding some funds that could compensate the owner for the devaluation of his property, cannot estimate correctly the cost of awarding compensation. Consequently, the local authority may decide that the cost of preservation is unjustified and therefore may, at any time, withdraw the proposal or cancel the scheme.

We must emphasize, that this is still the main obstacle laying under the feet of those furthering the preservation of urban sites in Israel. Many of the buildings are privately owned, and as preservation rules are usually connected to limiting the owners ability the use his asset at his own discretion, he is entitled to receive compensation. As the local authority is in no way obligated to preserve any buildings at all, and is forced to compensate the owner out of it's own pocket, it has a "negative" incentive to further preservation.

2. Betterment Tax

The levy of betterment tax serves local councils as a source of funding not necessarily connected to the preservation activities. This tax could have been used as a source for compensating owners of properties for which proposals for preservation have been approved. This has not happened. Many authorities just saw this tax as a vehicle to raise the budget and actually use it for their daily expenses. Thus, it does not have any influence on the furthering of urban preservation.

3. Maintenance and Renovation Expenses

The preservation of sites committees have the authority to interfere with the property rights of landowners and possessors. There must be awareness that conditions warranting the intervention of the committee for preservation exist. The first condition is that an engineer of the local council must give an opinion with respect to the state of the property stating that there is a real danger to the preservation of the building. Only then, the preservation committee may decide that there is in effect a danger to the preservation of that building. Should the committee decide that such a danger exists, it may require the owners to undertake maintenance work within a prescribed period of time. Should the owners fail to do so, and there is a danger that the building may be destroyed, the committee may undertake such work as is necessary, in order to prevent the destruction of the building. The committee can then, at its discretion, bill the cost of such work to the owners

4. Expropriations

The most serious infringement upon property rights is expropriation. Expropriation is mandated only in cases where the owners or possessors of property have failed to undertake maintenance works necessary for the preservation of a building or the prevention of its destruction. Another pre-condition for expropriation is that a real

danger exists that the building will be damaged in such a way as to endanger the goal of preservation. Expropriation may be made to all or part of a site. Since expropriation is such a drastic action taken against owners or possessors of property, it may be carried out only with the permission of the local authority.

Under Israeli law, once a land has been expropriated, the local authority may sell it or lease it, on condition that the buyer or tenant guarantees the preservation of the site. For a period of 60 days, the previous owners or tenants of the site have the exclusive right to purchase or lease the site, as the case may be. Of course such right is conditional to the same guarantee of preservation mentioned above. It can be assumed that if the previous owners or possessors did not undertake the actions necessary for the preservation of the site upon being requested to do so originally, a strong guarantee will be requested of them should they wish to exercise their exclusive right to re-purchase or re-lease the property. This is not always the case. In fact, the ability to re-purchase is considered as the main obstacle in forcing the owner to take the necessary steps once being asked to do so.

It is regrettable that the main effect of these amendments still lies exclusively in the various local authorities. If these authorities wish to promote preservation, the legislation supplied them with additional legal forms to do so. But yet, the scope of urban preservation still depends on the good will and the monetary willingness of each local authority. The ones wishing to devote resources to preservation, could have done so before the amendments were approved, and the ones reluctant to include preservation on their public agenda, are still under no obligation, whatsoever, to promote preservation. The fact remains that in relation to the subject of this presentation, this amendment did not create any significant incentives for urban preservation.

G. Future Options

It is clear that the situation in Israel regarding the possibilities to encourage preservation of buildings is not satisfactory. Any amount of money devoted to these important goals will be at the expense of public resources. From a financial point of view, the government officials see the allocation of money to the government authorities dealing with these goals as equal to giving up any taxes due to them. Therefore, it all focuses eventually on one basic question - how much money is the government willing to devote to urban preservation. The same is true with regard to local authorities.

Therefore, it is the belief of those concerned with these important goals that it is important to create new mechanisms to support and encourage financial participation in urban preservation. Among the suggestions being discussed are the granting of exemptions from municipal taxes, reducing betterment taxes, recognition of expenses connected with preservation for the purposes of deduction from land appreciation taxes levied on the sale of a property and finally the earmarking of building license fees collected, for creating a special budget for preservation.

Preservation of Historic Buildings in Jerusalem

Amir Shoham - Israel

1. Jerusalem - Background

Jerusalem represents everything known about historic cities but in a more intense and complex manner. This is a city in which everything is extreme and holy.

Jerusalem is a world city - a symbol, a historic city with religious, cultural and physical values, while at the same time a living city that must develop. This is a city of faith for different religions and an emblem for very many people. It is a divided city:

- * Politically: between Israelis and Palestinians
- * Religiously: between Jews, Christians and Palestinians
- * Between religious and irreligious
- * Physically:
 - According to political boundaries due to the topography (hills and valleys)
 - Stemming from the history of construction in the city: countries and churches that built enclosed compounds from the mid 19th century (Russia, France, Germany, USA, Ethiopia)
 - Special neighborhood structure distinguished by the physical character and population

2. The Situation Today

The city is built on principles established by the British Mandate government during the 1920s and 1930s.

- * The Old City is the center
- * The valleys remain open
- * The buildings are clad in stone

These three principles have influenced the city's character till now. Jerusalem is presently peripheral to areas of demand and therefore a great effort is being made to attract public and private developers and investors.

The planned physical and political borders of the city are experiencing change and uncertainty, and there is ongoing discussion of its boundaries and size.

Planning in Jerusalem Today

For many years planning decisions were taken on the basis of obsolete outline schemes. Only during the last year, after considerable activity by several organizations and with the arrival of a new city engineer, did the preparation of a contemporary outline scheme begin.

Planning Activities in Jerusalem Today:

- * The beginning of the process: preparation of a conceptual plan for the city center
- * Preparation of an outline scheme that will update the 40-year-old plan
- * Preparation of a District outline scheme
- * An exploratory committee that prepares recommendations for the city's borders whether to expand towards the open green areas or whether to build and concentrate construction in the existing urban area.

The Sustainable Jerusalem team is preparing an alternative plan that views Jerusalem as part of the metropolis and integrates the municipal outline scheme with the District scheme.

The Council's approach is compatible with that of Sustainable Jerusalem: building into the city rather than towards the outskirts, towards the open areas.

Such an approach forces the Council to examine building and building densities in the historic urban area, on the understanding that in order to avoid building in the open areas it is necessary to allow construction within the existing urban fabric. We are trying to combine the need to build with the need to preserve the city's character. Our recommendations are based on the understanding that preservation and development in historic cities can be compatible and mutually supportive.

We believe it is possible to continue developing Jerusalem while exploring areas facilitating massive building and where controlled development is required, through understanding and preserving the unique human and physical composition of the city.

3. The Involvement of the Council for the Preservation of Buildings and Historic Sites in the Development of Jerusalem

The Council is involved in a debate over individual buildings and their immediate surroundings, and over historic sites in the urban texture.

The definition of preservation has been undergoing change in recent years. The concept has been expanded to include sustainable development

(development today considering the past and the present, while preserving the ability of future generations to survive).

Including aspects of preservation within broader subjects leads to an integrated discussion on preserving natural resources, energy, open spaces, and the resources of the world heritage, both man-made and natural.

Such an approach naturally forces the preservation authorities to relate to Jerusalem's development needs. At the same time the planning organizations that in the past did not afford preservation considerations high priority, have started to include them in the decision making process. Planners are now more prepared to integrate preservation issues and demands with urban planning.

4. The Council's Activities

Long Term Activities

Creating a work tradition

- * Working together with municipal organizations, preservation committees and entrepreneurs
- * Preparing an updated list of buildings and textures to be included in the official municipal preservation list.
- * Integrating preservation in the outline scheme: documentation demands, the inclusion of an architect specializing in preservation, the right to issue occupancy permits only after full preservation of the sections designated for preservation.

Developing a Work Network:

- * Connection between the Council for the Preservation of Buildings and Historic Sites and:
- * Sustainable Jerusalem the organization that unites some 40 groups dealing with the environment and society
- * Academic organizations: Bezalel academe - Faculty of Architecture, Jerusalem Institute for Israel Studies
- * Residents' groups

Medium Range Activities:

Residents' involvement in decision-making:

The physical, human and political structure of Jerusalem demand involvement in decision-making by the residents, community administrations and other groups representing the various population groups.

Thus the Council, together with the Society for the Preservation of Nature, Sustainable Jerusalem and the residents of particular neighborhoods have initiated the submission of outline schemes that are compatible with our approach to planning.

- * Tracking planning activities through the support committee of the team preparing the plan for central Jerusalem
- * Holding discussions at the National Council for Planning and Building on specific subjects of principle connected to planning - Jerusalem
- * Delivering opinions at the committee examining Jerusalem's borders.

Short Term Activities:

- * The approach today is to try to coordinate issues in advance and reach an agreement with the Municipality and the District Committee (the Ministry of the Interior) prior to the deposition of a plan for approval.
- * Accompanying the planning and objection processes to plans within the planning authorities, and their approval.
- * An attempt to coordinate the plan with the Municipality and the District planning authorities prior to the objection stage.
- * Coordination in advance with entrepreneurs.

5. Issues of Principle in which the Council is Involved

The resources:

The built heritage resource is one of the most important in Jerusalem: buildings, roads and textures/neighborhoods that create Jerusalem's unique physical character.

The open space resource is contracting. Under such very circumstances it is forbidden to continue taking local decisions without a general overview, with respect to the places where there will be dense building and places in which open spaces will remain are known in advance.

Building height and density - a primary factor affecting the city's image

The need to preserve open space resources and the built tradition necessitates dense building

- * This situation demands exact long term planning rather than arbitrary, spot decisions that ignore special textures by placing high massive buildings in or near such textures.
- * Increasing building densities without any relationship to the height of the building. One can reach high densities by building 7-8 story buildings that are the same as a building of 24 stories.
- * The decision regarding where to build 7-8 stories at high density and where to build 9-24 stories must be taken in a long term planning framework.
- * The damage is not only to existing building but also to opportunities for future development.

Positioning a single building in a dense urban fabric without examining its impact on the immediate environment creates a situation in which the building rights near that structure cannot be exploited and prevents further investment.

- * The street level the Jerusalem experience till now has been that the street level and quality of the urban space around a high building have not benefited from the structure and have even been harmed by its presence.

In the discussion of high buildings we raise points for exploring the compatibility of this type of building with Jerusalem's character.

Who Will Live in High Buildings?

- * High rise buildings offer a solution for some of the housing and work demands
- * High rise buildings for weaker sections of the population will create the rehabilitation neighborhoods for the year 2020.
- * Maintenance of a high building is expensive (elevator, security). It is therefore intended for affluent sectors of the population not typical of Jerusalem.

Due to the character of Jerusalem's population, a situation is liable to develop in which many of the expensive apartments will be bought as investments by foreign residents and will stand empty for most of the year. They will thus afford a negative contribution to the revival of the inner city.

- * Building expensive apartments in high buildings in the city center will generate higher prices and prevent young couples (and their children) from returning to the city center.

Planning law - Preservation Provision Clear Advantages

Nitza Smock - Israel

1. Preservation is declared as a legitimate public goal to be pursued through planning means.
2. Designation of historic structures and places is possible and encouraged.
3. Permission is given to use betterment taxes for preservation expenditures.

Preservation "tools"

1. **Provision:** The city is allowed to list buildings for historic preservation.
But: It is possible to remove listed building from the preservation ordinance, if the city is not able to raise funds necessary for compensation.
2. **Provision:** The city is allowed to grant tax relief for owners of properties "injured" by preservation if no compensation is required.
But: Every tax relief has to be approved by the minister of the interior.
3. **Provision:** The preservation commission can demand immediate maintenance if it is proven that the property may otherwise suffer irreparable damage.
But: The authority of the preservation commission includes only basic maintenance jobs does not includes in - depth restoration work.
4. **Provision:** The city is allowed to perform absolutely necessary restoration tasks and charge the property owner for reimbursement.
But: The procedure means pressing formal charges against the owner in the courts.
5. **Provision:** If no maintenance work is carried out by the owner (despite notification), the city can condemn the property or parts thereof.
But: The approval of the regional planning commission is required.
 - A variety of appeals are allowed.
 - All the procedures involved, are lengthy to the extent that the preservation goals may be compromised.

Mandatory Requirements

1. **Preservation commission**
 - The city is required to establish a preservation commission.
 - It's structure authority and membership are predetermined.
 - Commissions main tasks are: designation of properties for preservation and decisions regards to maintenance and condemnation.
2. **A list of designated buildings**
 - A list of buildings designated for preservation has to be assembled and documented within two years.
3. **Limitation of building permits**
 - The planning law allows a period of 3 years.
 - The preservation section allows 1 year with a possible extension for another year.

Enabling Provisions

1. Preservation plan is allowed but not required. This means that the preservation list is not binding.
2. All agencies and organization authorized by the Minister of Interior are allowed to offer preservation plans.
3. Enables the adjustment of the list at any point in time by the preservation committee.
4. Does not necessitate in any shape or form the publication of the list during the period it is under preparation.

Does not Apply to the Following Topics

1. To the authority's obligation to preserve according to the international preservation treaties.
2. To the governmental authority's obligation to grant easement in taxes (betterment tax, value added tax, maintenance-fee as tax deductible),
3. Does not define or necessitates preservation of landscape sites.
4. Disregards the necessity to define the professional staff, which accompanies the subject in the local authority and all the appeal committees.
5. Does not offer fines or deterring penalties for construction offenses, demolition or other in preservation sites.
6. Does not refer to the potential realization of owner's compensation via transfer of rights (TDR).

Compensation Issues in the Tel Aviv Historic Preservation Ordinance

Zofia Santo - Israel

Introduction

On a world scale, Tel Aviv is a very young city - less than a hundred years old. Unfortunately, just like its counterparts throughout the western world, it is already suffering from a variety of urban ills. Its "downtown" experienced a major decline, which only recently started showing signs of reversal, its major commercial streets are loosing trade and there is a slow but consistent outmigration. Worst of all, a massive physical deterioration is evident in all the older parts of the city.

In this context, historic preservation became both a means and a symbol of urban rejuvenation.

Historic preservation in Tel Aviv concerns mostly structures erected during the twenties and the thirties of the last century - the incipient years of the International Style. Those structures although remarkable individually, own their very importance to the fact that they are a part of a consistent and wide-spread urban pattern.

Because of these two facts: preservation as a handle on blight and preservation of the urban fabric rather than of singled-out buildings, Tel Aviv has indeed arrived in its preservation effort at very high numbers of designated properties. Throughout the city there are about 1800 structures designated for preservation.

In the following pages I will concentrate at the main problem stemming from such approach; the issue of injury to property values and compensation.

The Historic Preservation Ordinance - Basic Facts

The Historic Preservation Ordinance is designed to be in effect throughout the city; the historic properties are concentrated in the center while the "Receiving Areas" are allowed subject to a variety of conditions, in the entire city. The Ordinance has been approved by both the Tel Aviv and the Regional Planning Commissions and is at present "deposited" for public review in accordance with the Israeli Planning Act procedure.

The Ordinance consists of four main sets of provisions: Designation of Properties, Preservation Regulations, Compensation Provisions and Miscellaneous Provisions regarding historic areas, parking requirements, cancellation of street widening etc. 1100 properties designated for preservation in the first section of the ordinance are governed by special regulations set in the following section. The preservation regulations are quite similar to equivalent provisions in US and European legislation of the kind. The following table summarizes the subjects addressed:

Basic Preservation Requirements

	Demolition	Structural change (addition)	Change in Use	Preservation/ Rehabilitation	Maintenance
Required				Yes	Yes
Prohibited	Yes				
Prohibited in Some Buildings		Yes	Yes		
Subject to Arch. Requirements		Yes	Yes	Yes	Yes
Subject to Special Review Process		Yes	Yes	Yes	Yes

Does Preservation Require Compensation ?

Usually the question of compensation becomes relevant only in extreme cases of preservation depriving the owner of a reasonable use of his property. In the US. for example, several judicial tests have been applied to determine whether a preservation requirement justifies compensation. US law clearly distinguishes between the Police Power (the sovereigns' power to control and to restrict through regulations) and the Power of Eminent Domain which allows for an actual taking of property. Eminent Domain actions of government are always accompanied by compensation. Police Power provisions, on the other hand, do not require compensation unless they are so acute as to be considered a de facto "taking". The judicial tests are applied, therefore, on a case-by-case basis and are tied to the amount and nature of the regulatory intervention. To be considered for compensation one has to sue and to carry the procedural and financial burdens of a court case.

The Israeli law differs dramatically in this matter. Not only there is no need to prove "taking" to gain compensation, but there is an almost automatic determination of compensation based on Section 197 of the Planning Act. As follows:

"...Should the Local Planning Commission or the Board of Appeals find that there is a loss of property value as a result of the adoption of planning/zoning regulations,

the Planning Commission shall compensate the owner(s) of the injured property. The amount of compensation shall equal the appraised loss inflicted upon the affected property..."

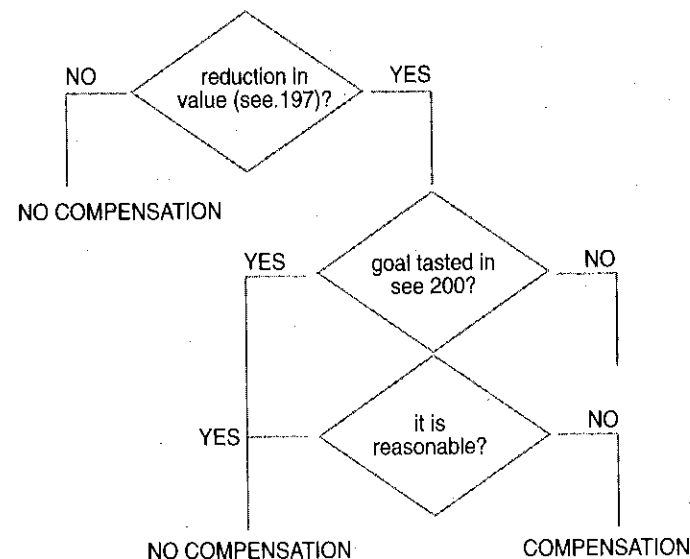
Stated differently, under the Israeli legislation, a determination that the property value is adversely affected may suffice as a cause for compensating the property owner. The final determination that compensation is to be paid and the actual extent of the payment are a result of another provision of the Planning Act. Section 200. This section, loosely translated, sets forth the following:

"Property shall not be deemed injured, if (1) the "injury" results from one of the following provisions, and (2) unless the "injury" exceeds a reasonable limit". Section 200 explicitly enumerates those provision, which are not to be considered injurious:

"...change in land use... setting setbacks, number of buildings on a lot, the size, height and shape of buildings... prohibition of use or construction to prevent physical, environmental and economic dangers... limitation of use of buildings... requirement of parking and bomb shelters..."

It does not, however, define what constitutes "a reasonable limit" under the law.

The following diagram illustrates the process of ruling for compensation under the Planning Act:



In sum, although preservation does not necessarily constitute a "taking" it will most likely require compensation. The Israeli statutory and judicial attitudes adversely affect preservation in three ways.

First, the planning law is ill balanced. In most cases, it is consistent inasmuch as it excludes from compensation those provisions which, elsewhere in the Law itself, are set as goals for local plans. Thus, land use changes, for example, are exempt, under Section 200, from compensation payments. This is not the case with preservation regulation. Although preservation is explicitly mentioned as a legitimate planning goal, the Law does not afford preservation provisions "protection" from Section 197.

In addition, since 1988 (Pree Haaretz vs. Pl. Co. Kefar Saba) the courts have lowered the "reasonable limit" from the then established 26% of property value to 6% at present, and have expanded the circle of potential beneficiaries.

Finally, since at issue is the appraised loss of value, Israeli land appraisers play an outstanding role in the compensation process. Unfortunately, land appraisers in Israel have little preservation related experience and lack relevant data base for comparative analysis.

Preservation Rewards

Having determined that the Historic Preservation Ordinance would require some compensation provisions, the question of preservation rewards was then broken into three disparate issues: extent of compensation, the means of providing it and the method which will allow its incorporation in the ordinance.

Extent

The previously described requirements of the Planning Act, Sections 197 & 200, furnished the basic "fairness considerations" for determining the amount/extent of compensation. The basic compensation was, therefore, set in accordance with the "loss of value" precept. Section 197 creates eligibility for compensation, however, immediately upon zoning approval. It was felt that an incentive has to be created to offset the obvious risk of being sued by hundreds of property owners who might opt for a relatively simple Section 197 process resulting in cash payment, rather than wait for any alternative solution provided by the municipality. Thus, for practical and economic - effectiveness reasons, incentives were added beyond the net "loss of value" to forestall immediate and massive compensation claims.

Means of Providing Preservation Rewards

Several practical options for providing preservation rewards were considered and evaluated: tax reductions, compensation in cash, special exceptions and variances and finally, off site development rights. Each option was tested with respect to two criteria - availability and effectiveness. The results of options evaluation are abbreviated below.

	Tax Reductions	Cash Payments	Special Exceptions / Variances	Off-Site Development Rights
Availability	None at the national level; no authority to grant tax deductions at the local level	Extremely limited, mostly from the local government	Planning devices - within the authority of the Local Planning Commission	Available, albeit, untested planning device
Effectiveness	None	Limited to most critical cases	Limited: (1) applicable only when requested by the owner & not at odds w/ preservation. (2) Very dependent on demand fluctuations. (3) of little effect on appraised land values.	Proved effective in the US; little Israeli experience and/or case law available, most of it in Tel Aviv

Based on the above analysis and other research, allocation of off - site development rights was found to be the preferred alternative for rewarding preservation. In particular, a Transfer-of-Development- Rights (TDR) modeled approach was selected wherein the compensation consists of (1) previously approved development rights which cannot be used at the preservation site (the "sending" site) and (2) new development rights granted as an additional incentive. According to TDR principles, the total amount of development rights thus generated as a reward for preservation, can be then transferred to another pre specified location elsewhere in the city (the "receiving site").

TDR in Local Context

TDR is not at present an acknowledged tool on the Israeli real estate or planning scenes. In fact, there are quite a number of potential shortfalls the TDR technique presents in the Israeli legislative environment. Some of the problems are associated with the Planning Act.

To begin with, there are the issues of the authority to approve plans (zoning schemes) and the time required for approval. The Israeli planning apparatus consists of three hierarchical levels: overall State Planning Committee, six Regional Planning Commissions, each responsible for a region encompassing many municipal authorities, and finally, the Local Planning Commission, in most cases corresponding to the area of a single local authority. In accordance with the premises of the hierarchy, each level of the apparatus has the powers to approve plans concerning lower level development.

Thus, local level plans are almost uniformly "deposited" for public review and approved by the Regional Commission with the Local Commission acting in an advisory capacity. Since the processing of those plans requires actions of at least two planning agencies, the expected duration of the approval period is between 2 to 5 years.

Since a 1996 Planning Act amendment, Local Planning Commissions can independently approve plans regarding ten design - related subjects. Among the rest, they are allowed to approve plans shifting or transferring existing development rights as long as no new rights are generated. Such plans, dealing with a very limited subject matter and involving only the local planning agency, can be approved much more efficaciously within a period of 4 to 6 months.

The question of what subject matter can be legally regulated within the limits of the Planning Act also warrants some elaboration. Israeli planning legislation does not acknowledge comprehensive planning. Both statutory and judicial attitudes limit regulatory powers solely to physical, tangible aspects of the planned environment. For instance, planning agencies can control development rights (sometimes referred to as floor area of FAR), height, street width or lot size; they cannot, however, use non physical and non-site - specific tools or measures. "Development rights bank" is not acceptable as isn't any open ended provision which does not afford a glimpse of the eventual physical outcome.

Having discussed the limitations of the TDR technique in the local legislative ambience, we can now proceed to explain the method used in the Historic Preservation Ordinance in order to assure acceptable and practical handling of preservation rewards.

Preservation Rewards: the Regulatory Method

As economically sustainable scheme within the limitations of the planning system could be established in the Historic Preservation Ordinance based on two elements:

1. A formula for generating development rights in exchange for preservation, in proportion to the "injuries" inflicted by preservation burdens and
2. A mechanism to translate the abstract formula, for each pair of buildings transferring development rights (the designated/sending site and the receiving one), into a set of specific, physical plan variables.

The general development rights formula was incorporated into the regional level master plan since this is the only option available for the generation of "new" rights as an incentive for the owners of designated properties. The specific point - to - point plans based on this general formula, will have to be adopted separately, as a secondary procedure at the local level, once the master plan is approved and sets of TDR sites get matched by the development rights market.

One the basics of the proposed regulatory mechanism are explained, highlighting the main compensation provisions of the Ordinance becomes a straightforward matter:

1. Sending Properties -

all sites with unused "residual" development rights which cannot be used on site due to preservation requirements.

2. Transfer Device -

a detailed zoning plan (local level) for each set of rights trading sites, permanently removing any unused development rights from designated buildings.

3. Receiving Properties -

Location: throughout the city, minimal lot size to qualify, in residential areas - 3000 sq. m. in employment zones and the CBD - 1500 sq. m. transfer allowance - up to 1/4 of the currently approved development rights, the allowed change in approved height - in residential areas - one floor, in employment zones and CBD - up to five floors, conditions for transfer approval - a finding of no injury to the surrounding area.

4. Transferable Rights Formula -

A sum in square meters of the following parameters:

"residual" rights - 100% of those rights can be transferred to a receiving property,
preservation costs offset - 30% of the floor area of the designated structure,
unused basement offset - 40% of the floor area which could have been used in the basement were it not for the fact that the designated structure cannot be raised,
restoration of boarded up balconies - 50% of the balcony's floor area,
compensation for procedural delays (the need for a local level zoning plan, for instance) - 10% of the existing floor area in the designated structure.

The sum of the above mentioned variables is to be multiplied by a factor representing compensation for two additional elements of potential "injury", namely, state tax burdens and differences in property valuation occurring when development rights are being transferred.

Afterward

The Tel Aviv Historic Preservation Ordinance applies a relatively novel and untried approach in an attempt to bypass the absence of preservation funds, tax reductions or any other financial support, and to minimize legislative complications. However, the main problem facing the proponents of the Ordinance, is not the risk of massive compensation payments but rather the militant opposition of property owners. Similar opposition is not uncommon in other western countries, but it is usually curtailed by a variety of grass roots movements voicing their enthusiastic support. This is not the case in Israel. It seems appropriate that State and international organizations concerned about preservation, take a more active role in education and public awareness campaigns so as to turn preservation for a planning issue into a matter of general concern.

Legal Methods of Furthering Urban Preservation Examples from the United States of America with Emphasis on State of Georgia¹

James K. Reap² - U.S.A

In the United States, cultural resources³ are identified and designated as worthy of preservation through a process of identification and listing in one or more of three different types of registers: the National Register of Historic Places, a state register of historic places, or a local designation. The statutory criteria for listing varies from register to register, but generally focuses on the historical, architectural, engineering, archaeological, or cultural significance of the individual property or district in which it is located.⁴

The National Register of Historic Places is the official list of resources in the United States worthy of preservation.⁵ It includes not only properties that have national significance, but also those with significance to a particular state or local jurisdiction.

It is maintained by the Keeper of the National Register, a position within the U.S. Department of the Interior, National Park Service. Nominations to the Register, however, generally begin with a state's historic preservation office. The Keeper determines eligibility and lists those properties that meet nationally established criteria.⁶ The Register is primarily a planning tool for federal agencies and plays an important role in the environmental review process for federally licensed and funded projects. It also provides recognition of significance that can be crucial in local preservation efforts. Additionally, inclusion qualifies property owners for certain federal tax benefits.⁷ Though listing in the Register does not prevent a private owner from doing whatever he wishes with the property unless a federal license or federal funds are involved, an owner who objects may prevent their properties from being listed in the Register.⁸

Many states also main registers. These, which may be more or less inclusive than the National Register, are often important in the state environmental review process or in qualifying the owner for state or local tax benefits.

Perhaps the most important listing mechanism to protect cultural properties from demolition or inappropriate alteration is found at the local level. States may delegate authority to local governments to enact laws or ordinances for the regulation, protection and promotion of the public health, safety, morals, or general welfare.⁹ This authority is referred to as the police power. Many state courts have held that historic preservation activities fall within the police power and the United States Supreme Court has upheld the use of restrictions on private property for preservation purposes.¹⁰

The specific scope and content of local preservation legislation varies considerably due to the differences among the states in the authority delegated to local governments, community need, and the type of resources protected. Generally, though, preservation ordinances regulate changes in buildings and sites that would negatively affect or destroy the character that gave designated landmarks or historic districts their significance. Over 2,000 local governments across the United States have enacted some form of historic preservation ordinance.

A typical preservation ordinance would generally contain the following key components:¹¹

1. Statement of "purpose" and the legal authority under which the ordinance is enacted.
2. Definitions.
3. Establishment, powers, and duties of the historic preservation commission or other administrative board.
4. Criteria and procedures for designating historic landmarks and/or districts.
5. Statement of actions reviewable by the commission (e.g., demolition or a material change in the exterior appearance of structure) and the legal effect of such review (e.g., approval or denial, non-binding recommendation).
6. Criteria and procedure for reviewing such actions.¹²
7. Standards and procedures for the review of "economic hardship" claims.
8. "Affirmative maintenance" requirements and procedures governing situations of "demolition-by neglect".
9. Procedures for appealing the final preservation commission decision to a higher authority.¹³
10. Fines and penalties for violation of ordinance provisions.

Historic preservation efforts can often be significantly enhanced when the preservation ordinance is closely coordinated with other land use laws and regulations such as those governing comprehensive planning, zoning, and subdivision regulations as well as other government programs such as transportation and housing.

While historic preservation and other land use laws have been upheld by the courts as legitimate government actions, the U.S. Constitution's Bill of Rights includes important limitations on governmental power.¹⁴ The Fifth Amendment to the Constitution¹⁵ prohibits the "taking" of private property for public use without "just compensation." The Supreme Court has interpreted this prohibition to include not only a physical taking of the property but also the imposition of regulations which are so burdensome that its effect is equivalent to a physical taking. Owners often argue that a "taking" has occurred when laws and regulations have diminished their use of a property or its economic value. Courts have generally rejected that argument when the regulation "substantially advance[s] legitimate state interests" and does not "deny an owner economically viable use of this land."¹⁶ In judging economic viability, courts have looked at factors including the economic impact on the owner, whether the owner can

realize a reasonable (not maximum possible) return, and whether the owner can recoup his investment through the lease or sale of the property either before or after restoration.¹⁷

Two other concepts are particularly important in considering the constitutionality of historic preservation ordinances and other land use regulations - due process and equal protection. Restrictions on individual rights must neither be discriminatory nor arbitrary, and individuals must receive notice of proposed governmental action and be afforded an opportunity to be heard on the matter.¹⁸

While the content of an historic preservation ordinance and the legality of the regulatory process are crucial, they are insufficient to protect historic resources absent effective enforcement. Most preservation ordinances provide for the imposition of fines for individuals who violate their provisions.¹⁹ In other cases, a preservation commission may order the demolition of inappropriate work completed without a permit or require reconstruction of features improperly removed. An owner who has violated an ordinance may be denied a building permit or a number of years. In cases where owners are required to maintain their properties in good repair, local authorities may order the owner to make repairs or enter the property and make the repairs themselves, recouping expenses through a lien on the property.²⁰ In rare cases, a recalcitrant property owner might be jailed. However, this penalty is unlikely to be imposed.

It is a popular myth in the United States that land use regulation always reduces the value of individual properties. In fact, the absence of regulation may lower property values. Developers of new housing subdivisions and commercial properties recognize this fact and often impose rules on the use of property that are much stricter than government land-use regulations. Tightly regulated properties are frequently among the highest priced and highest tax-producing areas in America. The reason is that regulation - imposed either by private developers or by government - increases the property owner's certainty that his investment will not be destroyed by inappropriate or obtrusive development next door.²¹ Studies from a number of states have shown that historic listing programs and local protective ordinances tend to enhance property values. Four Georgia cities provide good examples: In Tifton, property values in listed areas grew on average by almost 11 percent between 1983 and 1996 compared to over 9 percent for non-designated neighborhoods. In Rome, designated properties increased in value by 10 percent more than non-designated properties over a sixteen-year period. In Athens, between 1976 and 1996, average values in designated districts increased by 48 percent, while the values in non-designated districts lagged at 34 percent. Finally in Savannah, an historic neighborhood which was not included in the National Register listed Savannah Historic District saw an increase in property values of only 15 percent between 1974 and 1997 compared to increases of 603 percent and 279 percent in two similar neighborhoods which were listed.²² The experience of Fredericksburg, Virginia has been similar. Between 1971 and 1990, residential

properties in historic districts increased by an average of 674 percent, while the increase was only 410 percent for residential properties elsewhere in the city. There was also a difference for commercial properties: 480 percent increase within historic districts, 281 percent outside historic districts.²³

To understand preservation in the United States, one must recognize that Americans tend to view real estate, including historic buildings and sites, as marketable commodities whose purpose is to increase the wealth of the owner.²⁴ Most historic properties are in private hands, and there are not enough public or charitable resources available to save all historic properties that merit preservation.²⁵ Even if public and charitable resources were available, widespread public ownership is not seen as feasible or wise, since that would reduce the tax base, burden the budget with costs for acquisition and maintenance, and crowd out economically productive activities.²⁶

In a market economy, historic properties compete for private investment not only with other real estate, but also with stocks, bonds, art, precious metals, and many other investment opportunities. The preservation or restoration of older buildings must compare favorably with these other choices in order to attract private capital. For many historic properties, the cost of preservation or restoration can exceed the value to the owner or potential investor. It is in this context that incentives can be effective in bridging the gap between cost and value and encouraging the influx of private capital for historic preservation.²⁷

There are a wide variety of possible incentives to encourage the preservation of historic properties. Some of these incentives are explored in more detail below:

Income Tax Incentives

Deductions - A good example of employing an income tax deduction for preservation purposes is the tax recognition of preservation easement donation. A preservation easement is a voluntary legal agreement in which the owner relinquishes part of his or her property rights in perpetuity to a governmental agency or non-profit organization. Preservation easements generally require the current or future owners to obtain permission from the easement holder prior to making changes in the property. The value of the easement is based on the difference between the appraised fair market value of the property prior to conveying an easement and its value with the easement restrictions in place. The more the easement restricts the property's development potential, the more valuable it is. The Internal Revenue Service guidelines suggest that a facade easement can be appraised at 10 - 15 percent of the value of the property.

In most cases, the easement donor can take a one-time deduction of the value of the easement from his adjusted gross income for federal taxes.²⁸ Many states also have provisions that will allow individuals to similarly reduce their state income taxes.²⁹

Income Tax Credits

Income tax credits for preservation activities are available under the federal Tax Reform Act of 1986.³⁰ The act provides for a 20 percent tax credit for the substantial rehabilitation of historic buildings for commercial, industrial and residential rental purposes.³¹ To qualify, both the building and rehabilitation must be certified by the U.S. Secretary of the Interior. First, the building must be a certified historic structure - one that is listed in the National Register of Historic Places, located in a National Register historic district, or contained within a district designated by local government that meets certain federal requirements. Second, the rehabilitation activity itself must also qualify. It must be substantial - costing \$5,000 or the adjusted basis of the building, whichever is greater.³² The work done on the building also must be consistent with the historic character of the property and, where applicable, the district in which it is located. The Secretary of the Interior's Standards for Rehabilitation serve as guidelines for determining whether the work is in character. Property owners must complete and submit applications in accordance with federal regulations in order to receive the credit, and in most cases pay a fee for certification. To avoid repaying all or part of the credit, the owner must retain the property for five years. Since 1976, federal historic preservation tax incentives have resulted in more than 27,000 historic properties saved and rehabilitated, private rehabilitation of over \$18 billion, more than 149,000 housing units rehabilitated, and over 75,000 housing units created. A significant proposal, not yet enacted into law, would extend the federal income tax credits to the rehabilitation of owner-occupied residential dwellings.³³ This change could greatly increase the use of federal tax credits.

A number of states have enacted state income tax incentives to further encourage preservation. The attractiveness of this incentive to property owners is directly related to the tax rate. It is a much more effective incentive in states with high income taxes.

States employing income tax incentives include Colorado, Connecticut, Indiana, Maine, Maryland, Michigan, Missouri, New Mexico, North Carolina, Rhode Island, Utah, Vermont, West Virginia, and Wisconsin. Amounts are generally in the 20-25 percent range, but are as low as 5 percent and as high as 50 percent. Unlike the federal government, state preservation tax credits are often available for owner-occupied residential properties as well as income producing properties. Minimum expenditure requirements and rehabilitation standards are usually key parts of these programs.³⁴

Grants

Direct grants from the government are one way of reducing rehabilitation costs. Grants can be superior to tax incentives in a number of ways. They can be more closely targeted to certain types of historic properties and particular program users. They are not limited to those with high tax liabilities, but can focus on properties of low and

moderate-income owners. Grants also tend to provide better control over the quality of work. While the impact of grants on state and federal budgets is more predictable than incentive programs, grants depend on yearly appropriations and are more subject to reductions or elimination.³⁵

The National Historic Preservation Act of 1966, as amended,³⁶ provides for federal grants to the states, which may be passed through to local governments or individuals. In practice, however, the limited appropriations by Congress have been used primarily to support the administrative infrastructure on the federal and state levels. Since 1980, only a relatively small amount has been awarded in grants, and these primarily to governmental entities.

The federal government also provides grants for other purposes to states and local governments that may be used for historic preservation. The Transportation Equity Act for the 21st Century (TEA-21) and its predecessor, the Intermodal Surface Transportation Act of 1991, authorized substantial grants for an "enhancements" program which has proven to be a major source of funding for preservation projects.³⁷ States are required to set aside 10 percent of their federal surface transportation funds for projects historic preservation, landscaping, beautification and other projects related by function, proximity or impact to a transportation facility or intermodal system.³⁸ A number of significant grants programs for state and local governments are funded under the Department of Housing and Urban Development (HUD) Act.³⁹ Community Development Block Grants (CDBG) have been used extensively to help communities with economic development, job opportunities and housing rehabilitation. Funds under this program have been used not only for infrastructure improvements, but also for direct rehabilitation grants for low-income homeowners.

A number of states make appropriations for direct grants to historic preservation projects. The best example is the State of Florida. Between 1985 and 1996, Florida appropriated \$82.3 million for local preservation projects, and when bond-financed monies are included, the total is more than \$250 million. Individual grants are made only to state agencies, local governments and private nonprofit organizations. However, economic incentives work in the public sector as well as the private sector by reducing the overall cost of the project.

In addition to general appropriations and bond issues, state governments have raised funds for preservation activities through lotteries, taxes on something else - real estate, mortgage fees, gambling, cigarettes, hotels/motels, and limited partnership - license plate revenues, and litigation proceeds⁴⁰. In addition to programs directed specifically toward historic preservation, states offer a wide variety of local development programs whose resources can often be directed toward preservation activities.⁴¹

Waiver of Fees

Governments can also reduce the costs of development by waiving certain fees, which can be significant in some jurisdictions. Development fees are often based on the additional costs local governments will incur to support new development - roads, utilities, school, police and fire services. Where historic structures are reused, there is little additional infrastructure cost for government and those fees may be waived with little impact on the government, but a major benefit to the property owner.

Loans

Since most rehabilitation is financed with borrowed money, opportunities exist to provide financing incentives for preservation projects. One approach is to provide loans at a lower rate of interest than could generally be obtained from conventional financing arrangements. Subsidized loans were authorized by the 1980 amendments to the National Historic Preservation Act,⁴² but Congress has not funded the program. However, under the proposed Homeowner Tax Credit, owners with insufficient tax liability could convert the credit to a mortgage credit certificate to obtain a mortgage interest rate reduction from their lender. In distressed areas, buyers could use the value of the credit toward down payment costs at the time of closing.⁴³

An example of a state preservation loan program can be found in New Mexico. A self-sustaining revolving loan fund⁴⁴ was established "to provide owners of registered cultural properties in New Mexico with low-cost financial assistance in the restoration, rehabilitation and repair of properties listed in the state register of cultural places. . ." The Office of Cultural Affairs makes or subsidizes loans jointly with lending institutions such as commercial banks, savings and loans, and credit unions. Receipts from the repayment of loans are re-deposited in the loan fund for future projects. Similar programs have been established on the local level. King County, Washington has established a revolving loan fund in partnership with the Washington Mutual Bank to help private property owners and non-profit organizations secure low-interest financing for the restorations and preservation of historic landmarks.⁴⁵

Tax Abatement

Property tax is one of the largest single expenses for building owners. Properties are taxed on value of the underlying land as well as the improvements such as buildings. The value of the land is tied to its potential for development, the so-called "highest and best use." This can often lead the owner to tear down an existing historic structure and replace it with a more intensive use. On the other hand, when buildings are rehabilitated or restored, their assessed value increases, thus increasing their taxes. This can discourage owners from maintaining or improving their properties.

Many state legislatures have addressed these problems by creating abatement programs, where the assessed value of a building is frozen at its pre-rehabilitation level for a certain number of years. Tax abatement programs have been discouraged in some states by constitutional provisions that require all real estate to be treated equally, with no disproportionate benefits for individual taxpayers. Constitutional amendments have been passed in several states, such as Florida, Georgia, and Texas, which specifically allow tax abatement for historic properties.

Although the details such as the type of properties that qualify, minimum investment requirements, and the length of the abatement period vary from state to state, the overall approach adopted in Georgia is typical.⁴⁶ To qualify for the abatement, a property must be eligible for listing in the Georgia Register of Historic Places and undergo substantial rehabilitation. Substantial rehabilitation is defined as an increase in the fair market value of the building or structure by 55 percent for owner occupied residential property, 100 percent for income-producing properties, and 75 percent for income-producing property used primarily as residential property. Finally, the work must meet the rehabilitation standards promulgated by the Georgia Department of Natural Resources. Once the administrative process for certification is complete, the owner presents the certificate to county board of tax assessors and the assessed value of the property upon which taxes are based is frozen for eight consecutive years. In the ninth year, the assessment is adjusted to a point halfway between the frozen value and the current fair market value. In the tenth year, the assessment is placed at fair market value. Should the property lose the historic or architectural features that made it eligible during the period of the abatement, the amount of the taxes which have been abated, along with interest, become due as a penalty.⁴⁷

In most areas of the country, property taxes are significantly higher than state income taxes. In such states, a property tax incentive is more useful than the state income tax incentive. A few states, such as Maryland and North Carolina, offer both approaches.⁴⁸

Transfer of Development Rights

In urban centers, the preservation of older, smaller buildings or less-intensively developed sites is made difficult when economic factors make it more profitable for the owner to demolish the building(s) and take advantage of unutilized development potential on the site. Where such buildings are designated as historic under local ordinances, the transfer of development rights (TDR) concept may prove useful in providing the owner an opportunity to realize some return on the unused development potential while preserving the historical, architectural or landscape character of the property or district.⁴⁹

Traditionally, development rights have been considered a permanent part of a parcel of land. TRDs change this concept by permitting these development rights to be severed from their original site ("transferor site"), transferred by the property owner to the owner of another site ("transferee site"), and attached to the transferee site. In some cases, there is an intermediate stage after the rights are severed and before they are transferred and "banked" for future transfer.⁵⁰ The end result is that the owner of the transferee site can add the transferred development rights to those already attached to his site.

A feature shared by nearly all TDR programs is the designation of sending and receiving areas. Sending areas are designated where community plans call for preservation of development limitations and landowners are restricted from making the maximum economic use of their land by preservation and zoning ordinances or other regulations. Owners within these areas are permitted to sever and transfer their development rights.

Receiving areas, on the other hand, are designated where more intensive development is deemed appropriate. Owners within these areas can purchase transferred development rights and develop at a higher or greater density than would otherwise be allowed by underlying regulations.⁵¹ In crafting successful TRD programs it is a challenge to find appropriate receiving areas in the community for higher-density development and ensuring that the development rights have a sufficient value in the receiving areas to create a market.

TDRs are considered among the most difficult preservation techniques to design and implement. Programs are complex and require a significant investment in staff to implement and maintain. They will not work in isolation, but need to be used in conjunction with other land use and preservation techniques. Other significant factors in their successful use include:

- * State enabling legislation which provides clear authority and guidance while allowing localities to tailor the program to their specific circumstances;
- * A participating financial institution can help to promote the program, facilitate transactions and provide information about the value of the TDRs;⁵²
- * A public education component; and
- * Support from the real estate and development community.

Most important of all, these programs require leadership and commitment from local elected officials, appointed boards and professional staff.⁵³

Philadelphia program requires that proceeds of any TDR sale be placed into an escrow or trust account to benefit the rehabilitation or maintenance of the transferring property.⁵⁴

Easements

Not only can easement donation bring economic benefits through a one-time income tax deduction; it can provide continuing property tax relief for the owner of the property subject to the preservation easement or development restriction. Georgia's Uniform Conservation Easement Act is typical. It provides that when an owner records the easement in the county land records, he is entitled to a revaluation of the property so as to reflect the existence of the encumbrance.⁵⁵ A lower evaluation will result in reduced taxes in subsequent years.

Rent Subsidies

The Department of Housing and Urban Development and its state partner agencies, in addition to the direct grant programs mentioned above, also provide subsidized housing certificates or vouchers for low-income households through its Section 8 program. Rent subsidies are used to pay owners the difference between what these tenants can pay and contract rents. Developers who rehabilitate older buildings in historic neighborhoods can obtain a return on their investment with structures that are fully occupied after completion at competitive rates.⁵⁶

Tax Increment Financing

Tax increment financing (TIF) is a mechanism used by local governments in many states to encourage redevelopment by making the targeted area more appealing to private investment through publicly financed improvements. Property values are assessed and the sum of the assessed values in the TIF district becomes the baseline for further calculations. Public improvements are made in the area using funds derived from taxes or from the issuance of bonds. These expenditures are used as incentives to encourage private investment in the area. As public and private investments cause the value of property to rise, the additional taxes resulting from higher assessments are either put back into further improvements on a pay-as-you-go basis or used to pay off the bonds which generated funds for the initial public investment.⁵⁷

Building Codes

To protect the public from unsafe conditions, most jurisdictions have adopted codes and standards that specify how buildings are to be constructed and used. These codes focus on new construction and require up-to-date materials and construction techniques. The cost of fully complying with these codes when renovating historic properties can be significant, to the point of making their rehabilitation economically unfeasible. Similar rehabilitation projects in different jurisdictions can vary in cost by as much as a million dollars because of building code differences. To address this problem, professional associations of building code officials⁵⁸ and state governments have developed new code provisions which provide more flexibility in design, materials

and construction systems that enable historic buildings to meet standards without reducing the overall level of safety.⁵⁹ States with representative legislation in this area include California, Massachusetts, Wisconsin and Georgia.⁶⁰ In New Jersey, rehabilitation of old buildings increased by 60% following the adoption of a new rehabilitation building code.⁶¹

Location of Public Buildings in Historic Districts

By simply locating public agencies in historic buildings and districts, governmental entities can provide economic incentives for preservation. In 1976, Congress passed the Public Buildings Cooperative Use Act to encourage the General Services Administration (GSA) to "acquire and utilize space in suitable buildings of historical, architectural or cultural significance unless such space would not prove feasible and prudent".⁶² The act, which proved to be less than effective, was supplemented by Executive Order 13006, issued by President Clinton in 1996. This order directs federal agencies to give first consideration to locating facilities in historic structures within historic districts, and requires that any rehabilitation or new construction is "architecturally compatible with the character of the surrounding historic district or properties."⁶³ Several governors have issued executive orders directing state agencies to do the same. At least six states - Texas, Florida, New York, Arizona, Minnesota, and Connecticut - have enacted laws requiring state agencies to first consider historic buildings when seeking new office space. While these state laws and executive orders have not proven effective on a large scale, actions of individual federal, state and local agencies have made a significant difference to specific historic buildings and districts around the country.⁶⁴

National Main Street Program

In 1980, the National Trust for Historic Preservation established the National Main Street Center to address the decline many downtown areas experienced in the 1960s and 1970s as regional malls drew away economic activity. It is a comprehensive development program focusing on organization, economic structuring, promotion and design which encourages downtowns to retain their unique characteristics, including their historic buildings. State and local governments have together implemented the program in over 1,400 utilizing the overall framework provided by the National Center. The total public and private reinvestment in Main Street communities is \$10.9 billion, with an average investment per community of over \$5 million. Some 47,000 businesses have been generated, creating 174,000 jobs. Nearly 70,000 buildings have been rehabilitated. On average, \$35.43 has been reinvested for every \$1 spent on the program.⁶⁵

Recent studies from throughout the United States have shown that the economic impact from a wide variety of preservation activities is impressive. In Georgia during

the period 1992-1996, construction activity to rehabilitate historic projects generated \$559 million in total economic activity including the creation of 7,500 jobs in the construction industry and other sectors of the state's economy and \$201 million in earnings, including wages for workers and profits for businesses.⁶⁶ In New Jersey, \$123 million of rehabilitation was done on designated historic buildings. The total economic impact was 4,607 new jobs, \$156 million in personal income, \$207 million in gross domestic product, and \$65 million in federal, state and local taxes. The state garnered about half of these benefits, some \$93 million, while the rest is distributed outside the state. The New Jersey study showed that the ration of job creation for historic rehabilitation was slightly higher than that produced for the same investment in highway infrastructure or new construction.⁶⁷ In Texas, rehabilitation of historic properties created 4,200 jobs in 1997 in diverse areas such as construction, manufacturing, transportation, utilities, retail and services. \$192 million in historic rehabilitation was spent that year, - \$102 million in non-residential work, \$70 million in residential work, and another \$20 million in historic public building rehabilitation projects.⁶⁸

Historic resources are important generators of heritage tourism, an important component of many communities' economies. In Rhode Island, half of the state's \$1.2 billion annual tourist industry is driven focused on cultural and historic attractions.⁶⁹ Texas characterizes only 11 percent of all travelers as heritage travelers. However, they spend about \$1.43 billion annually - approximately \$1.2 billion resulting from overnight stays and about \$230 million from day trips. The numbers of both travelers and trips are continuing to grow.⁷⁰ For every \$1 million expended by heritage travelers in Texas, 22 jobs are created in the state, \$480,000 of income is generated, \$49,000 in state taxes are generated, \$43,000 in local taxes are generated, and the Gross State Product is increased by \$825,000.⁷¹ The impact from even a single significant landmark can be impressive. Visitors to the Frank Lloyd Wright Home and Studio generate \$5.5 million in annual economic activity for the city of Oak Park and a total of \$26 million in the grater Chicago area.⁷²

All of these studies have shown that preservation activity is good for the economy, and the incentives provided by public programs have worked. The Mayor of Philadelphia has described how even the revenue "lost" from expanded rehabilitation tax credits more than pays for itself:

While a \$1 million rehabilitation expenditure would cost the Treasury \$200,000 in lost tax revenues, it would at the same time generate an estimated \$779,478 in wages. Taxed at 28 percent, the investment would produce \$218, 254 in federal tax revenue. Corporate income, capital gains, and real estate taxes would further complement gains in household income tax. Thus. . . these offsetting factors make the historic rehabilitation tax credit a largely self-funding program. Best of all it would provide cities with much-needed private investment capital for redevelopment and housing.⁷³ Philadelphia Mayor Edward Rendell

A similar scenario can be posed for other preservation incentives. Given the recent success of preservation as an economic generator and incentives as important catalysts, the future of incentives appears bright.

Notes:

1. The State of Georgia was established in 1733 as a colony of England. It achieved its independence during the American Revolution and was one of the 13 original states to become part of the United States of America. Its landmass comprises 59,441 square miles, making it the largest state east of the Mississippi River. Its population of 7,642,207 makes it the tenth largest US state, and it ranks third in current population growth. The state is subdivided into 159 counties, each with its own local government.
2. James K. Reap, 2001. Professor Reap is an attorney who teaches historic preservation law at the University of Georgia, Athens Georgia, USA, and Georgia State University, Atlanta, Georgia USA. He chairs the Preservation Law Committee of US/ICOMOS and is the voting representative of US/ICOMOS to the ICOMOS International Scientific Committee on Legal, Administrative and Financial Issues on which he serves as Secretary General of the committee.
3. Cultural resources include for the purpose of this discussion buildings, structures, districts, objects and sites.
4. JULIA H. MILLER, NATIONAL TRUST FOR HISTORIC PRESERVATION, A LAYPERSON'S GUIDE TO HISTORIC PRESERVATION LAW 2 (1997).
5. Established Under the Historic Sites Act of 1935, 16 U.S.C. §§ 461 et. seq. and expanded by the National Historic Preservation Act of 1966, as amended, 16 U.S.C §§ 470a et. seq.
6. 36 C.F.R. Part 60.
7. Miller, supra note 4, at 2.
8. However, this will not prevent the application of federal laws and review processes for properties which are eligible for the listing in the Register such as the provisions under Section 106 of the National Historic Preservation Act.
9. This delegation of authority may be accomplished through specific enabling legislation of by granting local governments broad "home rule" power.
10. Preservation of historic resources was recognized by the court as "an entirely permissible governmental goal" and New York City preservation ordinance as an "appropriate means" for achieving that goal. Penn Central Transportation Company v. City of New York, 438 U.S. 104 (1978).
11. Miller, supra note 4, at 10.
12. Commissions generally adopt rules and procedures for conducting business as well as design standards or guidelines by which to judge the appropriateness of a proposal for demolition, alteration or new construction.
13. Appeals generally go to another administrative board such as a board of zoning appeals, the local governing authority itself (mayor and city council or county commission), or directly to the courts.
14. The constitutions of the states also contain significant limitations on governmental power and the protection of individual rights.

15. This constitutional protection is made applicable to the states through the Fourteenth Amendment.
16. *Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980); *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2866 (1992).
17. *Miller*, supra note 4, at 20.
18. The Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
19. The range of fines varies considerably among different communities, from \$100 to \$5,000 per day as long as the violation continues.
20. *Miller*, supra note 4, at 12.
21. The government similarly adds value to property through provision of roads, water and power systems, subways, schools and other services.
22. JONI L. LEITH AND PATRICIA TIGUE. PROFITING FROM THE PAST: THE ECONOMIC IMPACT OF HISTORIC PRESERVATION IN GEORGIA 8-9 (1999).
23. DONOVAN D. RYPKEMA, THE ECONOMICS OF HISTORIC PRESERVATION: A COMMUNITY LEADER'S GUIDE 43 (National Trust for Historic Preservation, 1994).
24. Robert E. Stipe, Historic Preservation: The Process and the Actors, in THE AMERICAN MOSAIC at 5-6 (Robert Stipe and Antoinette J. Lee, eds., 1987).
25. Donovan D. Rypkema, Financial Incentives in Urban Conservation, PROCEEDINGS OF THE 4TH INTERNATIONAL SYMPOSIUM OF THE WORLD HERITAGE CITIES, at 112 (1997).
26. *Penn Central Transportation Co. v. City of New York*, 238 U.S. 104, at 110, Note 6 (1978).
27. Rypkema, supra note 3, at 113.
28. Federal estate taxes may also be reduced when a property subject to an easement passes by inheritance because the fair market value of the property has been reduced by the easement restrictions.
29. National Park Service, Historic Preservation Easements: A Historic Preservation Tool with Federal Tax Benefits (accessed June 8, 2001) <<http://www2.cr.nps.gov/TPS/tax/easement.htm>>, see also Mark Primoli, Internal Revenue Service, Facade Easement Contributions (accessed June 8, 2001, last modified December 14, 2000) <<http://www2.cr.nps.gov/tps/tax/IRSFacade.htm>>.
30. PL 99-514; Internal Revenue Code Section 47 [formerly Section 48(g)], see also National Park Service, Federal Historic Preservation Tax Benefits (accessed June 8, 2001, last modified March 6, 1999) <http://www2.cr.nps.gov/TPS/tax/tax_t.htm>.
31. Prior federal tax laws: The tax reform Act of 1976 provided: 5-year amortization of qualified expenditures incurred in the rehabilitation of certified historic structures, or alternatively, accelerated depreciation of substantially rehabilitated historic structures; denial of deduction for costs of demolishing certified historic structure; restriction to straight-line depreciation of buildings constructed on the site of a demolished or substantially altered certified historic structure. The Revenue Act of 1978 provided: a 10% tax credit for qualified expenditures incurred in the rehabilitation of a building that had been in use for a period of at least 20 years before the commencement of the rehabilitation.

The Economic Recovery Tax Act of 1981 provided: a 25% tax credit for certified rehabilitation of certified historic structures, a 15% credit for rehabilitation of structures over 40 years old, and a 10% tax credit for rehabilitation of structures 30-39 years old combined with 15-year straight line depreciation. The Tax Equity and Fiscal Responsibility Act of 1982 required: reduction in the depreciable basis of buildings rehabilitated utilizing the 25% tax credit by one-half the amount of the credit. The Tax Reform Act of 1984 provided: lengthened depreciation periods of 18 years, subsequently 19 years; denial of tax credits to rehabilitation of tax-exempt use property, permanent requirements that cost of demolition of all buildings be added to basis of land where building was located before demolition.

32. Adjusted basis is in the simplest terms the cost of the property minus the value of the land, plus the costs of any improvements, minus any depreciation already taken.
33. Different versions have been introduced into both houses of Congress: H.R. 1172 and S. 664. Both bills would extend the 20% tax credit to owner-occupied dwellings. Homeowners with insufficient tax liability could convert the credit to a mortgage credit certificate to obtain a mortgage interest rate reduction from their lender. The lender then takes the credit against its taxes. In distressed areas, buyers could use the value of the credit toward down payment costs at the time of closing. The Senate version would limit the credit to \$20,000 and restrict it to historic districts where median income is less than two times state median income.
34. BEAUMONT, CONSTANCE. SMART STATES, BETTER COMMUNITIES 92 (1996).
35. James A. Sewell. State Income Tax Incentives Versus Grants: Which Are Better? in BEAUMONT, id., at 109.
36. 16 u.s.c § 470 et. seq.
37. *Miller*, supra note 4, at 32, see also the Internet site maintained by the non-profit Surface Transportation Policy Project (accessed June 8, 2001) <<http://www.transact.org/>>.
38. "Intermodal" refers to the connections between various transportation modes such as rail and bus.
39. 24 U.S.C § 3532 .et.seq. For more information on the programs of the Department of Housing and Urban Development, see their question and answers web page at (accessed June 8, 2001) <<http://www.hud.gov/qaintro.html>>.
40. BEAUMONT, supra note 34, at 71-76.
41. One example is Georgia's Local Development Fund, administered by the Georgia Department of Community Affairs, which provides matching grants to communities for downtown development projects, historic preservation projects such as improvements to historic courthouses and city halls, tourism activities, and community facilities such as museums and community centers. See the Department's web page (accessed June 8, 2001) <<http://www.dca.state.ga.us/grants/developfund.html>>.
42. 16 u.s.c § 470 et seq.
43. See supra note 33.
44. Historic Preservation Loan Act, NMSA §§ 18-6-18 to 18-6-23 (1978), also Historic Preservation Loan Fund rule, 4 NMAC 10.2.
45. See the King County web site (accessed July 9, 2001) <<http://www.metrokc.gov/exec/culture/aboutheritage/lhpapers/T35revloan.doc>>.
46. Rehabilitated Historic Property Act of 1989, O.C.G.A. Section 48-5-7.2.

47. Robert L. Zoeckler, "The Tax Abatement Program for Historic Properties in Georgia," 28 GEORGIA STATE BAR JOURNAL 129 (1992).
48. BEAUMONT, *supra* note 34, at 93.
49. Useful references on TDRs include: RICK PRUETZ, SAVED BY DEVELOPMENT: PRESERVING ENVIRONMENTAL AREAS, FARMLAND AND HISTORIC LANDMARKS WITH TRANSFER OF DEVELOPMENT RIGHTS; "Transferable Development Rights and Alternatives after Suitum", 30 URBAN LAWYER No. 2 (Spring 1998); "A Review of Transferable Development Rights Programs in the United States," 16 PRESERVATION LAW REPORTER 1066-1074 (Apr.-Jun. 1977).
50. J.J. Costonis, "The Redefinition of Property Rights as a Tool for Historic Preservation", in MARK J. SCHUSTER PRESERVING THE BUILD HERITAGE: TOOLS FOR IMPLEMENTATION 81, at 85 (University Press of New England, 1997).
51. "Transfer of Development rights: What Is TDR?" <http://www.co.dane.wi.us/plandev/planning/tdr/section2.htm> (Accessed 2/4/01).
52. Robert Lane, "Transfer of Development Rights for Balanced Development", LAND LINES (Lincoln Institute of Land Policy March, 1998).
53. "Managing Growth and Addressing Urban Sprawl: The Transfer of Development Rights", Research Report Number 563, 3, 9 (Michigan Agricultural Experiment Station, Michigan State University, August, 1999).
54. Donna Ann Harris "Philadelphia's Preservation Incentive: The Value of the TDR", 6 Forum Journal No. 5 (September/October 1992).
55. O.C.G.A. § 44-10-1 et seq.
56. HUD web site (accessed June 8, 2001) <http://www.hud.gov/section8.cfm>.
57. BEAUMONT, *supra* note 34, at 80. For a Internet site which describes tax increment financing in the City of Chicago, see <http://www.ci.chi.il.us/Planning/Programs/TaxIncrementFinancing.html> (accessed February 26, 2000) and CITY OF CHICAGO DEPARTMENT OF PLANNING & DEVELOPMENT, REVIEW OF TAX INCREMENT FINANCING IN THE CITY OF CHICAGO (July, 1998). See also, William G. Seline, "Tax Increment Financing: A Key Preservation Tool", ECONOMIC BENEFITS OF PRESERVING OLD BUILDINGS 49 (Preservation Press, 1976).
58. The Uniform Building code, published by the International Conference of Building Officials (ICBO); the Standard Building Code, published by the southern Building Code Congress (SBCG); the National Building code, published by the Building Officials and Code Administrators; and the Life Safety Code, published by the National Fire Protection Association.
59. BEAUMONT, *supra* note 34, at 141-143. This approach has been called a "performance code", in contrast to a "prescriptive code" which requires the use of specific materials and methods, leaving little room for professional judgment.
60. The Georgia legislation is found at O.C.G.A. § 8-2-200, et seq.; see also MARILYN E. KAPLAN, BUILDING CODES AND HISTORIC BUILDINGS (National Trust for Historic Preservation, 1996).
61. National Trust for Historic Preservation, New Jersey's Building Code Spurs Preservation, 17 PRESERVATION ADVOCATE NEWS December 15, 1999.
62. 40 U.S.C. § 601-616 (1976). Regulations implementing the Public Buildings Cooperative Use Act

are set forth at 41 C.F.R. §§ 19.000 et. seq. and §§ 105-51.001 et. seq. In 1978, Executive Order 12072 directed federal agencies to give first consideration to centralized community business areas. See 61 Fed. Reg. 9110 (Mar. 7, 1996) for the General Services Administration's interim regulations reaffirming the order's policies and goals.

63. 61 Fed. Reg. 26,071 (1996).
64. BEAUMONT, *supra* note 34, at 155-159.
65. See BEAUMONT, *supra* note 34, at 191-200, and the web site for the National Main Street Center (accessed June 87, 2001) <http://www.mainst.org/>.
66. LEITHE AND TIGUE, *supra* note 22, at 7.
67. Harriette C. Hawkins, Preservation Pays: Measuring the Economic Benefits of Historic Preservation in New Jersey, ECONOMY OF CONSERVATION 53 (Proceedings of the XII Assembly ICOMOS, Mexico, 1999).
68. THE TEXAS HISTORICAL COMMISSION, ET AL, "HISTORIC PRESERVATION AT WORK FOR THE TEXAS ECONOMY 8 (1999).
69. RYPKEMA, *supra* note 23, at 79.
70. *Id.* at 3.
71. *Id.* at 12.
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Financing the Protection and Preservation of Cultural Goods in Republic of Croatia

Jadran Antolovic - Croatia

There is almost no activity that can be systematically implemented without a clearly established system to ensure the necessary resources. The protection and preservation of cultural goods can therefore be no exception, and this is confirmed by statements of experts in this field who claim that the level of protection can be judged by the quality of the cultural good protection and preservation financing system.

The coming into effect of the Law on the Protection and Preservation of Cultural Goods ("Narodne novine" No. 69/99) will result in significant changes in the system of financing protection and preservation of cultural goods in the Republic of Croatia. To introduce the new system of financing, it is first necessary to define the basic concepts of cultural good protection and preservation to be dealt with.

The term, protection of a cultural good, implicitly includes measures for protection of a legal and expert nature, prescribed on the basis of provisions of the Law on the Protection and Preservation of Cultural Goods, which are also in accordance with conservationist regulations.

Conversely, the term, preservation of a cultural good, implicitly includes the implementation of measures for protection and preservation with the goal of prolonging the longevity of the cultural good's monument characteristics.

Why is the difference in the definition of these terms important for the explanation of the cultural good financing system?

The answer to this question is simple: for the implementation of cultural good protection, it is necessary to secure resources from the national budget; while for the implementation of preservation measures, resources are first secured by the owner of the cultural good, who under certain circumstances may realise assistance from national budget resources, donations or other sources.

Financing the Protection of Cultural Goods

Article 52 of the Constitution of the Republic of Croatia, which reinforces the idea that objects and real estate of special cultural and historical importance are of interest to the Republic of Croatia and therefore enjoy its special protection, stipulates the requirement that the national budget cover all expenses for the protection of cultural goods, thus confirmed on the basis of a special law.

For a cultural good protection system to exist, regulations must establish how the protection must be carried out and also certify a supervisory body responsible for insuring the implementation of the regulated protection system. According to existing regulations, the Ministry of Culture of the Republic of Croatia is the body within the national administration whose field of activity includes the protection of cultural goods, with the exception of the City of Zagreb, where such duties (at the first level) are carried out by the City Institute for the Protection of Cultural Monuments and Nature. Resources necessary for the work of the Ministry of Culture are obtained from the national budget, and for the City Institute from the budget of the City of Zagreb. It is in this way that resources are secured for the performing of expert and administrative duties connected with the protection of cultural goods as well as for the salaries of officials and employees who perform these duties.

Financing the Preservation of Cultural Goods

The following participate in securing resources for the preservation of cultural goods:

- * The owner of the cultural good, or the holder, who uses the good instead of the owner.
- * Legal entities and individuals who use the cultural good for the performing of commercial activities.

Resources from the following can be used to secure resources for preservation:

- * The national budget,
- * The budgets of the counties, or City of Zagreb,
- * The budgets of cities or municipalities,
- * Donations, legacies, concession reimbursements and foundations,
- * Other sources confirmed in legislation.

Financing the Preservation of Cultural Goods the Responsibilities of the Owner

The purpose of protecting cultural goods is to maintain their preservation in an original and undamaged state and to transfer them to future generations. Therefore, the system for their protection must secure the creation of the best possible conditions for their survival, and their owners must undertake measures related to regular maintenance and the prevention of every action that could directly, or indirectly, threaten the monument characteristics of the cultural good and its integrity in general. Resources for the preservation of a cultural good must first be provided by their owners, which is clearly established in Article 108 of the Law on the Protection and Preservation of Cultural Goods. If the owner is not using the cultural good, then this responsibility is transferred to the holder who is using the cultural good. This provision is based on Article 31 of the Law on Ownership and other Object Rights ("Narodne novine" No.

91/96) which prescribes that "ownership is a responsibility and the owner must contribute to the common good, so that in general, during the realisation of their rights, they must act in accordance with common and others interests that are not against their own rights". By examining this provision and the provisions of Article 32 Paragraph 2 of the same Law which states that "the owner of objects that, on the basis of the Constitution and through a special law, are proclaimed objects of interest to the Republic, and for whom are prescribed special methods of use and exploitation by the owner and those certified with other rights towards it, must exercise their right to ownership in accordance with them..." it is obvious that, without a doubt, the owner is the one who must accept the greatest burden in insuring the preservation of the cultural good in their ownership. The responsibilities of the owner of the cultural good are well prescribed in the provisions of the Law on Ownership and Other Object Rights as well as in the provisions of the Law on the Protection and Preservation of Cultural Goods, and these laws confirm the responsibility of the owner to secure necessary resources related to regular maintenance and preservation of a cultural good. For the owner, these responsibilities are not insignificant and force them to re-evaluate the economic potential before realising their right to ownership over the cultural good. By taking over ownership they also take over a good deal of the responsibility for the goods' preservation. An owner who is not able to secure the necessary maintenance for a cultural good will be forced to find a method to secure the necessary resources, sell the cultural good or relinquish it to someone else.

In cases when the prescribed measures for the protection of a cultural good limit the rights of ownership, and as a result the owner is exposed to exceptional expenses that exceed the regular expenses of maintenance and the income and other benefits gained from the cultural good, the owner may, under conditions prescribed in the Law on the Protection and Preservation of Cultural Goods, gain the right to assistance for the difference between the extraordinary expenses and the regular maintenance expenses for the cultural good. It should be mentioned that this right is gained only if the owner fully implements all protective measures for their cultural good, which are prescribed by the relevant Conservationist Department of the Ministry of Culture, or the Institute of the City of Zagreb for cultural goods in the region of Zagreb. Under these same conditions, the owner may realise customs exemptions on the import of material necessary for repair, restoration or maintenance of their cultural good. This right may be realised in the method prescribed in customs legislation that came into effect on January 1, 2000. These exemptions and special rights that the owner realises, in accordance with special laws, are considered the Republic of Croatia's contribution towards the expenses of preserving cultural goods.

Financing the Preservation of Cultural Goods from Monument Annuity Resources

The provisions of the Law on the Protection and Preservation of Cultural Goods introduces, for the first time, the collection of budget revenue on the basis of the use

of a cultural good for commercial purposes. There are four cases when an individual who uses a cultural good has the responsibility to pay a certain amount for monument annuity, and they are:

1. When a recognised cultural good, or a well-known portion of it, is used on photographs, stickers, pins and souvenirs, publications and other printed material, apparel and other items, the individual responsible must pay 10% of the retail price of the product into the national budget (Article 112 of the Law);
2. When a legal entity or individual uses a recognised cultural good, or a well-known portion of it, in their own promotions on film, video, billboards, photographs and other items, they must pay 1,000 HRK into the national budget before the first appearance of every type of promotional material (Article 113 of the Law);
3. When a legal entity or individual, or their business unit, performs commercial activities in an immovable cultural good or in the area of a cultural-historical site, they must pay a monument annuity in the amount of 2% of their realised income, in other words profit, as a result of the exceptional privilege of exploiting the cultural good (Article 114 of the Law);
4. When a legal entity or individual, performs activities in catering, hotel accommodation and passenger transport, as well as activities related to nautical tourism, they pay a monument annuity in the amount of 2% of realised income, in other words profit, as a result of the exceptional privilege of exploiting the cultural good (Article 114 of the Law).

Revenue obtained on the basis on Article 114 of the Law is forwarded in the following way: 60% to the municipality or city on whose territory the annuity is collected, and 40% into the national budget.

It is important to stress that all budget revenues based on the use of cultural goods are strictly special purpose funds and can only be used exclusively for the protection and preservation of cultural goods.

Financing the Preservation of Cultural Good from National Budget Resources

Resources from the National budget intended for the protection and preservation of cultural goods are, as a rule, placed in the portion of the budget intended for the Ministry of Culture, since the duties connected with protection and preservation are within the field of activity of that Ministry. These resources, on the basis on the national program for the protection and preservation of cultural goods, as part of the Programs of public needs in culture of the Republic of Croatia, are allocated in accordance with Article 110 of the Law on the Protection and Preservation of Cultural Goods for the

financing of:

- * The protection and preservation of cultural goods in the ownership of the Republic of Croatia, with the exception of resources for their constant maintenance since these resources are secured by the relevant body of the Government of the Republic of Croatia.
- * The implementation of the National Program for the Protection and Preservation of Cultural Goods.
- * Reimbursements to owners for the difference between extraordinary and ordinary maintenance expenses for a cultural good, when conditions prescribed in the Law are met.
- * Emergency measure for the protection and preservation of cultural goods in accordance with Article 73 and 74 of the Law on the Protection and Preservation of Cultural Goods.
- * Reimbursements to owners for the limiting of ownership rights, when conditions prescribed in the Law are met.

Financing the Preservation of Cultural Goods from the Budget Resources of Counties, Cities and Municipalities

In accordance with Article 111 of the Law on the Protection and Preservation of Cultural Goods, the budgets of counties, the City of Zagreb, cities and municipalities must secure resources for the financing of:

- * The protection and preservation of cultural goods that are in their ownership.
- * The protection of cultural goods in extraordinary circumstances.
- * Participation in the financing of the national program for the protection and preservation of cultural goods that are found in their area.

A portion of the resources necessary for the financing of the preservation of cultural goods will enter into the budgets of cities and municipalities on the basis of the monument annuity collected (60% of the annuity) in their area. This, in addition to budget resources set aside for this purpose, should lead to much greater resources being secured at this level than previously.

Financing the Preservation of Cultural Goods from Donations, Foundations and Other Sources

The provisions of Article 109 of the Law on the Protection and Preservation of Cultural Goods introduces the possibility of collecting resources necessary for protection and preservation measures from donations, concession reimbursements, foundations, legacies and other sources established in legislation.

These sources of financing are normal and common in Western countries where, through the actions of associations, foundations, endowments and other commercial entities, significant resources are secured and directed towards the preservation of cultural goods. There has been the appearance of similar forms of financing for the preservation of cultural goods in Croatia as well, and it is justified to expect that the further development of the economy will make its use more common.

VIII. Financing of Protection and Preservation of Cultural Goods

1. Securing Resources for the Protection and Preservation of Cultural Goods

Article 108

Resources for the maintenance and preservation of cultural goods are secured by the owner of the cultural good, or the holder, of the good if the good is not used by the owner. Exemptions and privileges that the owner, or holder of a cultural good exercises on the basis of law are considered the participation of the Republic of Croatia in the preservation of cultural goods.

Article 109

Resources for the protection and preservation of cultural goods are secured from:

- *The national budget,*
Budgets of the county, the City of Zagreb, cities or municipalities, for a preventatively protected good and cultural good that is found on the territory of the county, or City of Zagreb, city or municipalities, and completely for cultural goods put under protection on the basis of Article 17 of this Law,
- *Donations, concession fees, legacies, endowments,*
- *Other sources established with this Law or other provisions.*

Article 110

Resources from the national budget, on the basis of national programs for the protection and preservation of cultural goods, as portions of the Programs of public need in culture of the Republic of Croatia, are distributed by the Ministry of Culture for the financing of:

- *Protection and preservation of cultural goods owned by the Republic of Croatia except for resources for current maintenance secured by the competent body of the Government of the Republic of Croatia.*

- Implementation of national programs for the protection and preservation of cultural goods,
- Extraordinary expenses for maintenance of cultural goods in accordance with Article 22 of this Law.
- Emergency measures for the protection and preservation of cultural goods in accordance with Articles 73 and 74 of this Law.
- Compensations to owners for the restriction to the rights of ownership in accordance with Article 25 of this Law.

Article 111

The budgets of the county, City of Zagreb, cities or municipalities secure the resources for the financing of:

- The protection and preservation of cultural goods in the ownership of the county, City of Zagreb, city or municipalities,
- The protection of cultural goods in extraordinary circumstances in accordance with Article 76 Paragraph 2 of this Law,
- Participation in the financing of national programs for protection and preservation of cultural goods that are found on their territory,
- Protection and preservation of goods from Article 17 of this Law.

2. Budget Revenue on the Basis of Use of a Cultural Good

Article 112

Anyone using a recognizable cultural good, or its recognizable portion, in photographs, stickers, badges, souvenirs, publications and other written material, apparel items, or other items is required to pay 10% of the retail price of the product into the national budget.

The amount from Paragraph 1 of this Article must be calculated and paid within 8 days from the day the product is put into trade by the individual who put that product into trade.

Article 113

Legal entities and individuals that use a recognizable cultural good, or a recognizable portion of it, in their own promotions on film, commercials, billboards, photographs or other items are required to pay into the national budget the amount of 1,000.00 Croatian Kuna before the first proclamation of every type of promotional material. The first proclamation of the material is considered every new proclamation of the altered promotional material in which the cultural good is used in the sense of Paragraph 1 of this Article.

Article 114

Legal entities and individuals, or their business units, who perform economic activities in an immovable cultural goods or in the region of a cultural-historical site, must calculate and pay a monument annuity at the level of 2% of the realized income, in other words profit, as a result of exceptional privileges directly resulting from the use of the cultural good. Legal entities and individuals who perform the activities in catering, hotel accommodation, passenger transport, as well nautical tourism harbor activities must calculate and pay a monument annuity at the level of 2% of the realized income, in other words profit, as a result of the exceptional privileges directly resulting from the use of the cultural good. Individuals from Paragraph 2 of this Article, or their business units, that perform activities in an immovable cultural good or in the region of a cultural-historical site, must calculate and pay the monument annuity regulated in Paragraphs 1 and 2 of this Article.

Legal entities whose activities are primarily financed from the budget (National, county, City of Zagreb, city or municipal) are exempted from the application of Paragraph 1 of this Article.

Of the amount calculated for monument annuity from Paragraphs 1 and 2 of this Article, the person obliged to pay the annuity pays 60% into the budget of the City of Zagreb, the city or municipality on whose territory the annuity is collected, and 40% is paid into the national budget.

During the payment, and supervision over the payment, of the monument annuities, provisions are implemented concerning taxes on profits, in other words income. The budget revenue realized through the collection of monument annuities will be used exclusively for the protection and preservation of cultural goods.

Legal Forms of Financing Urban Preservation

Adam Arnoth - Hungary

According to the law of preservation (LIV/1997) the official proposal for listing any valuable building is made by the National Board for the Preservation of Historic Monuments. The decision and declaration is made by the Ministry of Culture, called nowadays the Ministry of Cultural Heritage.

We have the so-called "temporary listing" as well. This decision is made by the Authority for Historic Monuments (That is more or less the part of the above mentioned National Board). "Temporary" means 1 year, after this time the building must be declared a monument or cancelled. The owner has the right to appeal against temporary listing, but not against final one.

Till the acceptance of the law of preservation in 1997 all preservation issues were controlled by the 1/1967 government order. Already this order dealt with large-scale, settlement preservation. It established the notion of protected area. Valuable areas of historic towns and villages became protected by the state. Listing protected zones has similar procedure as individual items, but of course it is usually discussed with the municipalities in order to achieve harmony between the protected zone and the masterplan. The masterplan is approved by the council of the settlement.

Individual buildings are always protected together with their whole plot. Since 1997 this protection has been extended to the neighbouring areas as well (so-called setting of a monument). The National Board for Preservation, as an authority for building construction in the case of historic monuments, controls all outer and inner restoration or renovation to be done on individually protected buildings. The permission of the office is needed for any work done. In a protected area the office also serves as a professional board giving consent, but the permission is given by the authority for building construction.

Since the right of the owners of the protected building is restricted, a law requires the state to take part in the maintenance. Although money is never enough for this purpose, there are several ways to support governmentally protected buildings. State owned properties obviously have to be entirely restored, maintained and managed by central budget. Beside this the budget gives financial support for the renovation of privately owned protected buildings. Unfortunately the help is mainly grant instead of tax reduction or exemption. (There was a short period around 1990 with tax exemption for restoration works on listed buildings. This was almost the only period when we received several applies for listing).

According to the law of preservation the state has the right to expropriate a listed property because of the reason of preservation, but it is used very rarely. In other cases the municipality can expropriate a property offering another one.

Before 1992 the restorations of the most interesting protected building were planned, and carried out by the National Board. Today our job is mostly organization, management, the distribution of state funds. Funds are distributed among the most valuable historic buildings. Traditionally these are church buildings, castles, mansions, public buildings, but there are urban houses, dwelling houses as well.

Some other forms of financial support are possible. The most complex, is the National Heritage Program that is announced annually by the Ministry of Culture. Protected buildings that have already organized the restoration work and have received all permissions can apply for this fund. The Hungarian Millennium, the 1000th anniversary of the foundation of the state of Hungary celebrated in 2000-2001, gives special actuality to these grants. The minister is in charge of taking decision about the distribution of the money. However, our office is member of the advising jury. In 1999 about 500 buildings were supported by this fund.

Large funds are at disposal for the support of church buildings. With this the government is trying to compensate the long-lasting suppression of the church during the communist years. In case of churches the architectural value is not a criteria for receiving financial help, unfortunately, of course in many cases even town churches receive this kind of support.

Our office has been providing grants for work done on listed buildings for decades. This fund can be given to all protected monuments. Money available for this purpose is unfortunately very little. However, greater financial basis can be activated and our office can supervise the distribution and use of this.

All what you have heard about before was about supporting individually protected buildings. The maintenance of not listed, but still very valuable architectural heritage is the task of the local governments. These buildings are listed, and supported by the local governments in harmony with laws of monument protection and that on local governments.

According to estimates, the number of currently listed 10.5 thousand monuments could grow by 50%. However, the number of buildings that would be worth preserving is about 100,000. Up till today more than 500 local governments have brought orders about preserving locally important buildings. In Budapest, for instance, the local government has been engaged in local preservation and today there are 3,300 protected buildings under its control. The support of these buildings has been ensured by government order since 1994. Part of the local budget is separated for this purpose. The support is in part non-refundable grant, in part interest free loan. Since 1994 about 500 have been restorations were done by support from local funds in Budapest.

Urban Preservation - a lesson from Japan

Toshiyuki Kono - Japan

Introduction:

The legal basis of urban development & town planning: an experience of Kyoto

The law for the protection of Cultural properties was the most important instrument for the purpose of the preservation of historic buildings in Japan. Under this law, buildings can be designated as "Important Cultural Properties" and "Cites". Once this designation is made, real property tax is exempted and the government gives subsidies its repair work up to 80%. However this system was designed to preserve individual buildings or temple complexes, but not to protect areas or zones. The Town Planning Law therefore plays an important role for the purpose of restriction of urban development, since if a particular area in a town is designated as either "aesthetic zone" or "urban scenic beauty zone" under this law, the development in this area is restricted. However the development boom in 50's and 60's was so strong that this system was not sufficient. Mountains in Kyoto were for example facing danger to be developed.

In 1966, to save historic towns, the Law for the Preservation of Old Capitals was promulgated to preserve certain areas in Kyoto, Nara, Kamakura and other several municipalities as "Historic Landscape". It was also introduced as a new "Historic Landscape Zone" into the Town Planning Law. In Kyoto, for example, ca. 8500 ha. was designated as preserved historic landscape zones by the Prime Minister and 24 areas, ca. 2800 ha. out of this 8500 ha. is controlled by the Town Planning Law, i.e. change of status quo is in principle prohibited. To adjust this disadvantage, the following measures can be taken; loss caused by the designation as "historic landscape zone" can be compensated; owners can ask the City Government to purchase his property, real property tax is exempt; income from the sale of the property to the City up to 20 million yen is not taxable.

This regulation was not yet sufficient to stop the pressure of development. Especially to preserve traditional town houses. Even if each house could be of less importance as a cultural property, group of traditional houses may have importance. In 1972, the Kyoto Municipal Ordinance on Cityscape was institutionalized for the first time in Japan aiming at the preservation of urban landscapes. Among many systems established by the ordinances is Special Preservation Area of Traditional Buildings system. For districts where traditional townscape especially typical of Kyoto exist, this system requires preservation of the exterior of traditional town houses, and restoration of the exterior of buildings which no longer retain their original traditional styles. It also provides grant subsidies to partially cover the expenses needed for such repair works. This system has proved to be a trailblazer for subsequent townscape preservation systems. Later on, upon revision of the Law for the Protection of Cultural Properties in

1975, a system called Preservation Districts for Groups of Historic Buildings was established, similar to the above-mentioned Special Preservation Area of Traditional Buildings system. Kyoto has now 4 Preservation Districts for Groups of Historic Buildings. This "Preservation District for Groups of Historic Buildings" was introduced also into the Town Planning Law as a new zone and the houses in an area which is designated as a Preservation District for Groups of Historic Buildings fall under the control, i.e. construction, repair or change of colors of the houses need permission of the mayor. On the other hand, repair work is subsidized; real property tax is reduced. This means the scheme for urban preservation developed on the municipality level was adopted also on the national level. It has been useful to preserve small towns, however did not help preservation in big cities, since the pressure of development was so big. Japan therefore lost many buildings, especially those constructed after the Meiji Restoration at the end of the 19th century. Theoretically, it was possible to designate modern buildings as "important cultural properties". However, the interest of the Agency for Cultural Affairs lay in preserving much older buildings; for example, all remaining buildings constructed before 15th century are designated as "important cultural properties". Until the mid 1990s, no building constructed in the Meiji period (1868-1913) was even nominated.

What was the Background to this Loss?

Tokyo, in particular, lost a lot of modern buildings. There were two main reasons for this: the earthquake in 1923 and WW2. Remaining buildings were lost mainly due to urban development. Why?

First of all, these Meiji period buildings were not old enough for Japanese, and people did not generally consider them as "heritage" to be protected. This tendency was reinforced by the fact that these modern buildings were often private properties, different from temples and shrines a "designated important cultural properties". Preservation of modern buildings costs too much for owners. It may easily cost anything from 50 up to 500 million dollars. Under the current policy for the protection of cultural properties, owners must pay for the maintenance of buildings.

After the Kobe earthquake in 1995, a new law was promulgated, which expects owners to investigate whether buildings owned by them can withstand an earthquake. These modern buildings are usually not strong enough. In such a case, owners take over the costs not only for maintenance, but also for repair and renovation in order for them to be able to withstand earthquakes.

One may wonder if there was no incentive offered by law or the state. In fact, there are a few incentives; when a building is once designated as an "important cultural property", property tax is fully waived.

If the building is designated as an "important cultural property" the state partly subsidizes preservation. However, the owners sometimes do not welcome the designation, since, after the designation, the use INSIDE the building would be strictly controlled. Some buildings were even quickly demolished to avoid being designated as "cultural property"

thus avoiding such restrictions. Once the building is designated as an "important cultural property", theoretically the state subsidizes up to 80% of renovation costs. However the state has not yet subsidized renovation work of concrete buildings so far due to the lack of budget.

Finally in 1996, the Agency of Cultural Affairs changed its basic stance, i.e. before priority was given to "preservation" only. Now "use and preservation" is considered important. Therefore a new system of "registered cultural property" was introduced. Under this system, the owner of a building is obliged to maintain at least 2/3 of the surface of the building, while there is no restriction to alter the inside of the building. In addition, 50% of costs for designing are subsidized by the state and 50% of property tax is waived. This new system has been quite widely used.

However, despite these systems, a Foundation that owned a building in Tokyo constructed in 1912, which was famous as a "club", recently decided to demolish the building because renovation would cost as much as reconstruction.

The following is the list of modern buildings in Tokyo, which were recently lost (-) or decided to preserve (+):

- * Tokyo station, 1908 (start of construction) - 1914 (completion of construction), (+)
- * Mitsukoshi Dep. Store 1911 - 1914, (+)
- * Old Tokyo Marine insurance Build, 1914 - 1918, (-)
- * Japan Industry Club, 1918 - 1920, (-)
- * Old Daiichi Insurance Build, 1915 - 1921, (-)
- * Old Tokyo Kaikan Build, 1919 - 1922, (-)
- * Marunouchi Build, 1920 - 1922, (-)
- * Old Nihon Oil Yurakupkan Build, 1920 - 1922, (-)
- * Old Nihon Yusen Build, 1920 - 1923, (-)
- * Old Nihon Kogyo Bank Build, 1921 - 1923, (-)
- * Old Yokohama Shokin Bank Build, 1920 - 1927, (-)
- * Mitsui Honkan Build, 1926 - 1929, (+)
- * Old Daiichi Bank Build, 1928 - 1930, (-)
- * Meiji Insurance Build, 1930 - 1934, (+)
- * Daiichi Seimei Sogo Build, 1935 - 1938, partly preserved
- * Old Tokyo Broadcasting Build, 1935 - 1938, (-)

Recent Innovations in Preservation

Legal schemes developed by the state for the purpose of the preservation of cultural heritages have not worked well from the viewpoint of urban preservation. On the other hand, there were some innovative measures introduced especially at the municipality level that I shall briefly introduce here.

1. The Specific Block Development system in Tokyo: The Town Planning Law regulates the floor area ratio of buildings to be constructed, depending upon zone. In the Nihonbashi area, which is one of the most expensive areas in Tokyo, the maximum floor area ratio should be 718%. But it can be enlarged up to 1218%, when a block includes a building designated as an "important cultural property" and the block is developed as a whole. This system gives interesting opportunities to owners for redevelopment, since they can construct bigger building, which are more suitable for encouraging investment. In fact, Mitsui Properties, the owner of Mitsui Honkan Build, which is designated an "important cultural property" decided to use the system and will construct a 41- storey building.

Meiji Insurance will use the same system and can have 1500% as the maximum floor area ratio. There is, however, a significant limitation in this system. Not all floors can be used as office space. The building with an enlarged floor area ratio must include a conference hall, hotel, theater, museum, restaurants or shops. If the owner could sell all floors as office space, it would clearly be more profitable and the incentive for owners to preserve old buildings would be stronger.

2. There is another way to use the floor area ratio. In 2000, a "floor area ratio transfer" system was introduced into the Town Planning Law. This system itself does not aim at preservation of heritage or protection of cultural properties. It is however expected that it will help. Suppose, for instance, that there is a 6-storey modern building constructed in 1920. The floor area ratio for this zone is 800%. Since this modern building is not so big, that the ratio of this building is only 300%. The owner of this building has land in the next block. Then he can "transfer" 500% to the next block and construct a building up to 1300% (800+500). Since modern buildings are usually not big, this system may lead owners of modern buildings to maintain them and use the rest of the floor area ratio. In fact, Osaka City is considering preserving the Old Osaka Stock Exchange Building in cooperation with its owner using this kind of "transfer" system.

This system can be used only in "commercial areas", and not, for example, in industrial zones. In addition, to use this system, the area must be designated as such by municipalities. In order to be designated as areas where this "transfer" system applies, social stock such as streets must be well established in the area.

3. Yokohama city has an ordinance to preserve "cultural property", which protects both the inside and outside of buildings. Besides this, Yokohama City introduced a new ordinance in 1989, under which only the outside would be preserved. Under this scheme, when a building is appointed by the City, its owner will be subsidized as follows: 1) for the preservation of wooden buildings worth up to 10 million yen and non-wooden buildings up to 60 million yen. 2) to strengthen the structure in the case of earthquakes, wooden buildings up to 3 million yen, non-wooden buildings up to 20 million yen, 3) for design up to 2 million yen, and 4) investigation, 2 million yen. Just through being appointed, owners can get 300,000 yen per year.

Additionally, buildings designated as an "important cultural property" of the state or a "registered cultural property" can at the same time be appointed by Yokohama City, although in this case the owner can obtain only one subsidy. So far 47 buildings have been designated. However, according to the person in charge of this system in Yokohama, not all the owners of old buildings are willing to be appointed; to be appointed, they must sign an agreement, which identifies the parts of the building as those to be preserved. Although it is doubtful whether such an agreement is legally binding, some people do not want to be so bound.

The limitation is that this system is not linked with any tax incentives. This is particularly serious when one considers the very high level of inheritance tax. Property tax in Yokohama can be waived only for 3 years and the procedure is very complicated and time-consuming.

As was mentioned above, people sometimes do not like their buildings to be designated or appointed as cultural properties. In order to lead them to accept that their buildings can be under protection and also control, Hagi City in West Japan uses tax incentives. The City is famous for houses built in the 18th and 19th centuries and many people still live in these houses. Hagi City has historic buildings either as "cites" designated by the state under the Law for Protection of Cultural Properties or those in the zone of "Group of Traditional buildings". In the first category, the property tax (local tax) of houses, which should be individually appointed by its house number, is fully waived. The tax of farming land in the same zone is waived 50%. Also the tax for the part of land, 10m from street, is waived fully. Using this incentive scheme, Hagi City tries to persuade owners of old houses that their buildings should be designated as cultural properties.

The Future?

The control of Town Planning Law and the Law for Construction Standards is not very strict in Japan. As background, one may say that ownership is simply too strong. Many people believe that their ownership can be limited only in exceptional cases. Besides this, land was so valuable that from an economic point of view it made little sense to maintain old small buildings, compared with demolishing them, constructing a new tall building and making lots of money. This combination of strong ownership and economic boom meant that many buildings were lost.

Many municipalities now have ordinances to maintain scenic views of their towns. But they are not binding. They are more akin to a "guideline" or a "gentlemen's agreement". To restrict ownership without the force of "law" seems very difficult. This is particularly true of ordinances, which are an inferior legal instrument in the Japanese legal system. Therefore to use floor area ratios seems to be a rather good idea. The next step would be to apply it more flexible, i.e. to offer all floors as office space.

Legal Forms of Financing Urban Preservation in Mexico

Roberto Nunez Arratia - Mexico

The search and implementation of legal forms of financing for the Heritage Conservation are nowadays priority works for the local authorities, the communities and interested people on the preservation and integral development of the Historic Centers, Districts, and Monumental Sites in Mexico.

We are going to analyze in this study the legal forms in each type or way of financing, which are not in force excluded, but they complement.

DIRECT PUBLIC INVESTMENT AND PARTICIPATION LAW INCENTIVES AND BENEFITS PRIVATE INVESTMENT

DIRECT PUBLIC INVESTMENT AND PARTICIPATION

- * Budgetary items
- * Subventions

Where do they come from and what do they apply to?

They come from the Federal Government, the State Governments and the Local Governments, their sum and destiny are determined in the annual budgets contained in their respective Laws or Decrees of Outgoing Budgets.

It is hard to be precise about the sum and destiny of the Public Investment in the Historic Center of Mexico City during the last decades, because they came from a variety of sectorial areas of the Federal and Local Governments, without being in an integral program for the Historic Center. The city authorities invested in the maintenance of basic services, without an existing urban program and a structured government action in a middle and long term.

The Three Main Exceptions Were:

- * The process of building the METRO (18 subway stations located in the Historic Center, with an average user flow of 600 thousand people per day), that brought as one of its negative consequences, the damage of great monuments such as the Cathedral and the National Palace and also contributed to the dryness of the underground;
- * The stretching of important roads, that has as an unproductive effect, the destruction of part of the ancient urban trace in the ancient Mexico City, undoing the unity of the social tissue in some of its districts;

- * The housing reconstruction after the 1985 earthquakes. (796 buildings; however this action had a meaningless effect related to the integral regeneration of the Historic Center).

In this three cases, the financial resources were provided to a great extent by the World Bank.

In the eighties and nineties there was poor public investment in the Historic Center of Mexico City, most of all in the matter of infrastructure and housing due to a succession of economical and financial crisis, high levels of inflation (51.97% in 1995) and the successive monetary devaluations. The exceptions have been the rescuing constructions of important Archaeological, Historical and Artistic Monuments an advance in this matter being noticed from 1991 to date, promoted by co-financing, private investment participation and from institutions such as the Bank of Mexico and the National Autonomous University of Mexico.

In Mexico City there is a new government, elected democratically (1998-2000 and 2000-2006) but this government is within another, the Federal Government, which produces a phenomenon of "living together", that imposes a series of financial, territorial and urban conditions. In the financial aspect, the City Government is not sovereign because it cannot attend directly the national and international market capitals.

The public treasury in Mexico City is poor, the income is insufficient and in the outgoing respect, between 70 or 80% of the available resources are appointed to the running expenses. This percentage tends to grow to attend headings of considerable inescapable expenses such as security, and the impart of justice that actually ascends to 25% of the total, which is why only between 1 and 1.5% of the gross internal product that ascends to approximately a hundred million dollars, is destined to the investment. With these resources which are minimal, it is necessary to continue with the Metro construction and finance hydraulic or traffic programs, which is the reason why there is no money left for the Conservation of Urban Heritage resulting in direct public investment, and why we have to resort a mixture of resources, co-financing with Companies and Private Institutions and tax, financial and administrative incentives.

The Federal Government has to assume its own responsibility in front of the national and international community, by having promoted the Historic Center of Mexico City a declared Zone of Historic Monuments and World Heritage Site. Even though this responsibility must be expressed in direct federal investments, the Federation should also support the recovering process through this two ways:

- * The granting of tax incentives through the subsidy in income taxes.
- * The support and endorsement of the request made by the Federal District Government in front of the bilateral and multilateral organisms of cooperation (World Bank, Inter-American Development Bank, UNESCO etc.)

Let's see where the direct public investment comes from and how it is applied in other Historic Centers in Cities within the Mexican Republic, which have also been declared by the UNESCO "World Heritage Sites".

ORIGIN		APPLICATION	
CAMPECHE			
	Federal Government Local Government	- Infrastructure	Electric Power System
Resource mixture	decentralized organisms	- urban image	lightening streets and sidewalks
	business leaders and civil associations	- integral restoration of monuments and sites	restoration of facades (1200 houses)

ORIGIN		APPLICATION
MORELIA		
	Federal Government Investment	- Partial Program of urban Development of the Historic center - remodel of sidewalks
Resource Mixture	Federal Government State Government Local Government Federal commission of Electricity Federal Government State Government Local Government Foundations and associations	- Underground cabling of the historic center - Price: 4.5 million dollars - Restoration of monuments - price: 8.5 million dollars
Resource origin	Public sector Private sector Bank financing Appointed budget to the historic center in relation to the annual global of the local Government	- 74% - 15% - 8% - 12%

ORIGIN

APPLICATION

OAXACA		
Public Investments	Local Government	- improvement of the urban image
	Federal Government	- Deteriorated Monument Rescue - District rescue

PUEBLA		
	Federal Government	- Restoration of Federal Monuments - Temples
Resource Mixture	State Government	- Improvement and Maintenance of Infrastructure
	Local Government Government Bank Inter - American Development Bank	- Plan for Recovery of the Zone of Monuments

QUERETARO		
	Federal Government -100 City program	- Restoration of Monuments and archaeological and historical zones
	State local and beneficiary resources	
Resource Mixture	Direct Investment Program	- Improvement of Urban Image
	State Resources with Beneficiary Contributions	

ORIGIN

APPLICATION

ZACATECAS		
	Assigned Budgets Federal Government	- Public Spaces - Federal and Local Government Real Estate
	State Government Local Government	- Facade Conservation

Law Incentives and Benefits

These are encouragement measures that consist of deductions, exemptions and reductions of the different taxes and rights, both federal and local, mainly of Income Tax, Value Added Tax, Sales Tax and Real Estate Tax.

Tax Deductions:

Consist on the diminution of the tax basis, the income amount tightened to the tax and we find them in the matter concerned applied mainly to Income Tax for the sum of the expenses for works of conservation or restoration of declared historic or artistic monuments or that are part of a monument group or zone and for donation concept for the same purpose.

DEDUCTIONS		
TAX	PERCENTAGE	SPECIAL CONDITIONS
Income Tax Companies	10% Restoration Works Depreciation Via	- Company Fixed Assets - Buildings declared or catalogued as Monuments - Restoration Certificate
Art. 44-1-A Income Tax Law		
Income Tax Art. 24, 70-XI 70 - A and 70-B Income Tax Law	100% Donations to Civil Associations or Societies with Cultural Ends to the Federation Federal Entities or Municipalities	- Which are verified with the documents gathered by the tax established requirements - That the Institutions who receive the donations assign their assets exclusively to the proper ends of their social objective.

Tax Exemption and Reduction:

Consist of the exemption of the charge to the tax payer or the diminution of the caused tax. These incentives are applied either in Sales Tax or Value Added, Income, over Societies and Real Estate Tax.

TAX EXEMPTIONS AND REDUCTIONS		
	TAX	SPECIAL CONDITIONS
MEXICO	Real Estate Exemption	Owners of declared historic or artistic monuments that conserve and restore them can apply for the exemption (Art. 11 - Federal Monuments Law)
MEXICO CITY	Real Estate Sales Tax Building Permit Rights Hydraulic Installation Rights	- Subsidy during Restoration - Cannot exceed the third part of the effected investment that must be superior than \$33,000.00 dollars
	100% Reduction	
	Real Estate 50% Reduction	- Owners or acquires of declared or catalogued monuments that inhabit them.
	Real Estate and Rights Related to new Constructions and Restorations	- People who invest in new Real Estate Projects in the Historic Center
	80% Reduction	

In other for the tax stimulus to be really effective, they may operate jointly with financial incentives, supports and administrative facilities, combined with mechanisms and attractive systems such as the air rights transfer system or the easement rights and that they form part of a campaign and an integral program in the middle and long term. It is considered necessary to establish a special tax rule for the owners and acquirers of real estate located in the Historic Center of Mexico City.

We can think of some proposals:

Federal Taxes Regarding Income Tax

- * Tax exemption by the income alienation of real estate located in the Historic Center, even if they are catalogued, declared or not.
- * Deduction of the incomes for housing rent of the 100% during a 10 year term, instead of the 50% still in force. (blind deduction for local tax expenses without the need of proof).
- * Deduction over other incomes of the caused expenses of restoration and conservation by the owners that occupy their houses in the Historic Center.

Local Taxes

In the matter of the Real Estate Tax and the Sales Tax

- * Exemption of the real estate tax for a 5 to 10 year term depending on the investment sum.
- * 100% reduction to the owners or acquires of non catalogued or declared real estate that are located in the Historic Center, just for being part of a Monument Zone.
- * Reduction equivalent to the 100% to owners, acquirers or developers who carry out housing recycling projects together with facilities to the conversion of the condominium owner rule.
- * In respect of the public real estate of the Federation which are exempt of the Real Estate Tax, this exemption can make up with a specific subsidy for the infrastructure, equipment and urban image conservation of the Historic Center.

Private Investment

- * Resource Mixture
- * Cooperation and Association between the Public and Private Sectors.

The direct public investment is not enough to preserve the urban cultural heritage, even if we join together the resources of their two or three Government levels, but also it is necessary the private investment participation or co-participation.

Private participation has been going on in Mexico by Foundations, Associations and Societies such as the Cultural Banamex Foundation (1971) and the Cultural Bancomer Foundation, both coming from the banking sector, that have been financing the rescue and restoration of important historic monuments; others such as the Cultural Televisa Foundation (1988), the Cultural Domeq Institute (1976) that also contribute with resources for the heritage protection; The Pro-defense Society and Conservation of the Cultural Heritage of Oaxaca and the Rodolfo Morales' Foundation, established by famous painters of the Oaxaca State, who have an integrated group of intellectuals and artists participating in the co-financing for the restoration of the Historic Center and of important monuments such as the Exconvent of Santo Domingo, and the restoration works of greater magnitude done in Mexico over the last years with the Federal Government participation of the 56.70%, the State Government of 20% and the Private Sector of 23.30%.

It is worth highlighting the work done by the program "Adopt a Work of Art", that started with the restoration of XVI, XVII and XVIII century paintings and has enlarged its objective for the rescue and conservation of altarpieces, wall painting, historical and artistic monuments with contributions of the Federation, 50%, the State Governments, 22% and Private Investment, 28%.

On the other hand is the work of the Historic Center Trust Fund (Dec. 18, 1990), established by the Historic Center Foundation, Civil Association and whose beneficiaries are the owners, promoters, occupants, service lenders and users of real estate located within the perimeter of the monument zone and has as its objective the promotion, gesture and coordination among the private individuals and the authorities, the execution of actions that will support the recuperation and protection of the Historic Center, looking up to the obtaining procedure simplification.

This Trust Fund is a private Institution managed by a mixed Technical Committee composed of functionaries of the City Government and members of the private initiative; during the 10 years of its operation an important number of real estate have been restored using both, the direct financing of the Federal and Local Governments, as well as the building owner resources, with incentives of tax reductions, specially the Real Estate Tax (reduction during the restoration works).

The Historic Center Trust Fund supported the program "Lend me a Hand" (1991-1995) as a response to the convocation of the City Government directed to the owners and private investors as a financing strategy for the historic center rescue focused on a specific place known as the "Financing Corridor", (between the Alameda and the Main Plaza). This program was structured over the basis of co-investment between the City Government and the private individuals.

The Government contributed the labor for the street repavement and also made sidewalk, public lightening, arborization and urban furniture rehabilitation works. As for the owners, they invested in the rehabilitation of their building facades with a 20%

subsidy and the benefit of tax incentives.

Among the obstacles we need to surpass to get a greater resource contribution from the private sector for the urban heritage preservation, we find:

- * Under valuation that owners (private individuals and Public Institutions) and real estate developers make of the Urban Cultural Heritage. It is necessary to make them conscious of the value of the heritage areas and their needed participation in the rescue and conservation.
- * Reticence to invest in the housing field, both owners (the 80% of the catalogued real estate are private property) and investors, arguing that the rehabilitation price in most cases and because of the deteriorated state the buildings are in, exceeded that of new constructions and that the future output of the investment will be lower from another type of investments.
- * Lack of financing and accessibility to housing credits, there is not a specific housing program for the Historic Center.

It has been proven that resource mobilization by the owners and the private investors is conditioned to a group of actions from the Federal Government, as well as from the City Government, that can be summarized as follows:

- * Important public investment in matters of infrastructure, traffic, transport, urban image and public spaces.
- * Certain, structured and predictable governability.
- * A general program with goals and objectives clearly enunciated, including the indication of the priority operation areas.
- * The existence of a feasible project plan that the City Government can propose to the financing of the private individuals.

To increase and improve the cooperation between the public and the private sectors for the protection of the urban cultural heritage it is necessary to create new acting tools and new institutions that are founded over association and cooperation:

1. Between owners and investors.
2. Between these and the Public Administration of the City.

To support the previous legally, some reforms had been approved and published to the Urban Development Law of the Federal District, which establish that in the execution of the programs, the Public Administration of the City can choose between some of the following ways of participation:

- * The subscription of a Coordinate Agreement in which the rights and obligations of the private individuals and the execution of the works in charge of the public administration are defined.
- * The joined goods and resource contribution by the private individuals and the City Government through a Trust Fund, Civil or Mercantile Association.
- * The public resource contribution to the Trust Fund or Association established by the private individuals, with a strict control of them, in benefit of the Historic Center development.

This system of association and cooperation is being implemented through the Historic Center Trust Fund and the Alameda Trust Fund.

In the Third Meeting of Mayors and Authorities of Cities in Latin America and the Caribbean with Historic Centers in a recovery process, that took place in Mexico City, on April 5 and 6 of 2000, the subject was "Gesture and Financing Forms", those attending agreed and committed, among others to the following points:

- * To give an important role to Public Investment, so it must play an increasing role of other investments, by substantial improvement actions of public spaces, of equipment, of urban infrastructure and of housing.
- * Involve and give incentives to the private sector and the community, by encouraging and making accessible the new investment evolution.
- * Apply tools and mechanisms of subvention and tax exemptions, as well as support and stimulus to the private sector and community projects. Emphasizing among them the air rights transfer system.
- * Dispose a project plan stemmed of the Master Plan, that can be financed by own resources or resulting from the Federal Government, Private Sector or from International Organisms of Cooperation.
- * Promote programs and projects that allow their self-financing, through the stimulation of profitable activities.

To conclude, I consider that in addition to the appointed recommendations it is necessary a conjunction of the direct public investment sufficient and adequate, of tax, financial and administrative incentives, of collaboration and coordination, of different Government levels, joined to the sensibility and political will of the authorities and the private individuals participation interceding coordinate agreements, private trust funds, foundations or associations to preserve the urban heritage.

Basic Statistic of the Historic Center of Mexico City (2000)

Concept	Description
Surface	9.7 sq. Km (1.5% of the Federal District)
Total Population	177,118
Population Density	12,074
Population Loss in 20 years	33% (100,000 inhabitants approximately)
Infant Population (0 to 14 years)	48,455 (27%)
Population older than 60 years	15,965 (9%)
Illiterate population older than 15 years	5,415 (4%)
Floating estimated population	1,500,000
Total of inhabited housing (1995)	45,262
Inhabited housing loss (90-95)	2,738 (6%)
Properties	9,000 (668 blocks)
Commercial Use	58% of the properties (larger part in ground floor)
Warehouses	24% of the property
Occupied Personnel (commerce, industry and services)	183,228 people
Catalogued Monuments by the National Anthropology and History Institute	1,508

Heritage Conservation - Legal Framework

- * Political Constitution of the Mexican United States. February 5.1917. Art.73. Congress faculty to legislate over monuments, which conservation is of National interest.
- * Federal Law of Archaeological, Artistic and Historical Monuments and Zones. April 28. 1972. Published May 6.1972. Art. 2, 3, 10, 11.
- * General Law of National Goods. December 22.1981. Published January 8.1982. Art 2, 29, 35, 43, 46 and 47.
- * Decree that declares monuments zone the named Historic Center of Mexico City. April 9.1980. Published April 11.1980.
- * Agreement why it is created the National Commission for the Cultural Heritage preservation. June 27.1989.
- * General Law of Human Establishment. July 9.1993. Art. 3, 5 and 49.
- * Urban Development Law of the Federal District. Published February 7.1996. Art. 2-X, 31-C and D. Actuation areas : with recycling and heritage conservation potential.IV Title. Chap. V. of the transference of development urban potentiality. V Title. Chap. II. from the social, private and cooperation acting. VI Title. from the Cultural Urban Heritage. VII Title. Chapter I from tax and finance incentives.
- * Safeguard Law of the Urban Architectural Heritage of the Federal District. March 12.2000 Published April 13.2000.

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Legal, Administrative and Financial Issues

Anne Mie Draye - Belgium

General Remarks

This report describes the legal rules concerning urban preservation into force in the Flemish Region. The last decades Belgium was reformed into a federal state; the competencies in the field of urbanism, heritage protection and urban preservation belong to the Regions. Due to a lack of time, it was impossible to describe the legal systems into force in the other two regions. However some similar rules were adopted there.

Comments on the Proposed Subjects

1. Legal Forms and Specific Laws Dealing with Urban Preservation

Basically two different systems exist in order to protect larger urban areas. In the first place the decree of March 3, 1976, on the protection of monuments, urban and rural sites as amended later on, not only contains the possibility of protecting monuments but also larger built ensembles, the so called urban and rural sites. Urban and rural sites are defined in this decree as larger groups of buildings whether or not including individually protected monuments - and their surroundings which are of general interest because of their artistic, scientific, historical, folklore, technical or other social/cultural value.

Urban and rural sites that respond to this definition can be protected by a ministerial decree, after a procedure during which i.a:

- * local and provincial authorities are being asked for an advice.
- * A public enquiry is organized by the local authorities in order to inform the local population.
- * Private or public owners are invited to formulate remarks and objections.

Any one can ask the competent minister to start the protection procedure: owner, local authorities, heritage associations.

In this first legal system, the heritage value of an urban area is stressed and will also be the aim of the protection.

Besides that, a specific legislation on urban renovation was adopted by a governmental decree of April 1, 1993, as amended later on.

In the framework of this legislation, specific areas in which urban renewal is needed are demarcated. The most important criterion for this purpose is that the concerned

area present areas in comparison to the local community as a whole (lower socio-economic development, unoccupied houses, an elder population). The demarcation of this areas is done by ministerial decree, after an explicit demand of the local authorities, which play necessarily important role in this system of urban renewal. In practice local authorities are often stimulated by inhabitants organizations. Inhabitants are very much involved in the demarcation procedure and in the later renovation, they are asked to give their opinion on every important decision that must be taken by local authorities and Flemish government.

This second legal system stresses the social context of urban preservation and renewal, but can of course deal in practice with areas having an important heritage value. This also means that urban renewal areas can be protected in the same time as urban sites.

2. Financial and Fiscal Consequences

For protected urban sites, no subsidies are foreseen. Private owners of buildings located in such a site can however make use of a tax incentive, that was introduced by a federal law in 1984. Under specific circumstances (the building is not rented and it is opened for the public a few times a year) they can deduct from their annual income tax 50% of the cost with an absolute maximum of 1 million BEF they made for maintenance or restoration works.

This tax advantage can be considered to be a sort of compensation for the maintenance obligation and the easements of non alliterating without permit the buildings located in the urban site, even if the rules are not so severe for those goods as they are for individually protected monuments. In urban sites, especially the maintenance of the scale is important.

For urban renewal areas an important system of subsidies was elaborated. As stipulated above, local authorities eventually helped by social housing companies, play an important role in the renewal operation. In this regard, they can obtain regional subsidies for the acquisition of houses in the area and for improvement works carried out later on.

For local authorities, 80% of the cost for acquisition and works can be subsidized; social housing companies can obtain 60 to 70% of subsidies.

Besides this first possibility of a public initiative, private owners can also ask for a premium fixed on 265.000 BEF when they buy or build a new house in an urban renewal area. When they carry out renovation works to an existing building a premium of maximum 265.000 BEF is foreseen, on condition that this sum represents 25% of the cost of the works.

A similar renovation premium can also be granted to a tenant, after agreement on the works by the owner.

Since a few years, the budgets available for subsidies and premiums for urban renewal cause problems. Since they aren't far from sufficient, no longer new areas are being recognized. Nevertheless in the mean time about 150 renewal areas were delimited.

3. Transforming Building Rights to a Different Property

No such a system is known in the two described legal systems.

4. Financial Tools for Private Owners

The incentives for private owners concerning the deduction of maintenance and restoration costs from income tax are described sub 2. They are valid for definitively protected urban sites.

In urban renewal areas, private owners, even tenants, are encouraged by the above mentioned system of premiums (2).

For both systems, the more general tax rule instoring a lower VAT for works carried out on houses elder than 15 year (6% instead of 21% can be very useful.

5. Enforcement of Preservation

Within the system of protected urban sites, the maintenance obligation and the prohibition of alliterating a protected good without a previous permit are enforced by (relatively low) fines and by the obligation for the court to impose at the moment of the condemnation the restoration of the good into its former condition. This last sanction causes many problems in practice: what to do when f.i. a building was demolished? Within urban renewal areas, there is a control on the use of subsidies, in case of abuse they must be paid back.

Of course in urban sites and in urban renewal areas, urbanistic legislation must be respected as well, and can be enforced by fines, adaptation works, restoration into the former condition.

6. The Position of Local Authorities

No specific legislation on urban preservation exists at the local level. Specific regulations on limited parts of the territory of a municipality can be worked out within the framework of urbanistic legislation. Such "local" regulations are made for some historic centers. Basically, they imply a more sever system for the granting of permits. Nevertheless, local authorities play an important role in the urban renewal system and can stimulate as well the protection of urban sites located on their territory. As described above they are strongly involved in demarcation procedure and renovation works and in the protection procedure, for which they can take the initiative.

7. The European Union and Urban Regeneration

Within the framework of the European Regional Development Fund, some initiatives are taken in order to promote the design and implementation of innovative development models for the economic and social regeneration of urban areas in crisis. A supplementary aim is to strengthen exchanges of information and experience on sustainable urban development in the European Union.

Towns with minimum 10.000 inhabitants are eligible for the urban initiative, when at least they fulfill certain conditions, f.i. high long-term unemployment, high level of poverty and exclusion, high proportion of immigrants, low level of education, poor environmental mental conditions. Concrete actions can be proposed in various fields, amongst them projects on renovation of buildings in the context of creating employment, integrating the local population, respecting the environment and generally improving urban life.

The urban budget for 2000-2006 is 700 million Euro. The financial support for a concrete project varies between 50 and 70% of the total cost.

Urban Preservation Ordinance of 4 March 1993 on the Conservation of Architectural Heritage (Region of Bruxelles)

Arlette Verkruyssen - Brussels Capital Region

Since the Devolution reforms over the period 1970, 1980-1983; 1988-1989 and 1993, Belgium has become a Federal State, with different levels of Government such as the Federal State, the Communities and the Regions.

The consequence of Devolution reforms is that political competencies, not only in the field of architectural heritage preservation, but also in respect of fiscal aspects relating to architectural heritage have been devolved to lower level of Federal Government.

Indeed, the Brussels Capital Region has now got the competence in a completely independent way heritage protection.

An ordinance dealing with the protection of monuments, built ensembles and landscapes was adopted on March 4th 1993.

Thanks to this legislation a new legal instrument and a new policy of protection of the cultural heritage was initiated in the Brussels Capital Region through procedures of preserving lists and protection.

The integration of the architectural heritage in our modern way of living is as important as the protection by itself. In the "Brussels Regional Development Plan" the patrimony is one of the biggest trumps of attraction for Brussels and contributes to its development.

We took over the idea of a "Royal Commission of Monuments and Landscapes", which is only competent in the Brussels Capital Region.

It gives advises to the Government about any question related to estates belonging to the heritage. On the contrary with the systems into force in both other Regions, its so called advice is binding. In many cases its advice has to be followed. The Commission can also do proposals about estates it wants to protect.

In Brussels all the real estates built before 1931 are considered as valuable properties. Which means that for all those building a special agreement has to be delivered by a deliberation Commission.

What Kind of Protection of the Real Estate is Known in the Brussels-Capital Region?

When one takes the Ordinance of March 4th 1993, one can say that basically three kinds of protection occur, i.e.

- * Inventory
- * Inscription on the preservation list
- * Protection

Registration in the Preservation List

This list is made up by the Government and mentions the property which makes part of the real estate.

The Government is able to start the procedure of protection on its own initiative or on proposal of the Royal Commission for Monuments and Landscapes. The Government may, indeed, also start the procedure after advice of the RCML, when one of the following authorities do demand:

- The City Council of the municipality where the good is located;
- A non-profit association which has 150 signatures of persons of at least 18 years old and who live in the Region;
- The owner

The Government notifies its decision to start the procedure of protection to the authorized representative (regional administration). The Government also notifies its decision to:

- The RCML
- The municipality where the property is located
- The owner
- The non-profit association
- All other persons of whom the Government considers it useful to inform them.

The decision of the Government is also notified in the Moniteur belge (official notification and thereby opposable to thirds).

The owner may, within 30 days following the notification of the decision, communicate his remarks. If he doesn't the procedure is continued.

The Government takes the decision of final protection within three years following the official notification of the decision to start the procedure. Once this period is expired the procedure is cancelled.

The decision of inscription on the preservation list has to be motivated and has to contain following elements:

- A short description of the good;
- The value of the good (monument, the entire good, landscape...)

Moreover, the decision may contain specific conditions which can limit the title of ownership as for example the integral or partial building ban or demolition ban.

The final protection has also to be notified officially.

The owner has to preserve the registered good in good condition.

The owner needs a written agreement of the Government to carry out construction works.

This agreement is cancelled if the petitioner didn't start the building works after 2 years following the demand.

On demand of the beneficiary the Government is enabled to extend the agreement for a period of one year.

For the grant of this agreement also, the certified advice of the RCML is necessary.

The same procedure is applied to the protection files, (second kind of protection provided by the ordinance of March 4th 1993).

The biggest difference between the two kinds of protection is that a good inscribed on the preservation list hasn't the advantage to provide the owner a financial incentive. On the contrary, the protection procedure gives the owner, the possibility to ask a financial help for executing preservation works on his property (financial help from 20% till 40%).

In case the owner is a local authority 80% of the costs of restoration are paid by the Region of Brussels (20% for municipality).

Please do notice that subsidies are reserved for owners of protected monuments. Just like in the Flemish Region, they can't be obtained by owners of goods located in a larger protected ensemble.

Existing Fiscal Incentives.

As said the fiscal matters remained a Federal competence. Nevertheless, the tax on real estate income has become a regional tax. Amendment of the legislation concerning to this tax is only possible with the consent of Regional Governments. Regions are also competent to reform exemption of taxation rules as well as determine the rate of tax imposed (art. 39 ordinance of March 4th 1993).

1.1 Direct Taxation

Deduction from total net income of maintenance and restoration costs regarding built on and protected real estate which is not let and which is open to the public within the framework of individual income tax (article 104 8° of the 1992 Income Tax Code - article 55 royal decree of 27 August 1993).

Terms to be met by the **taxpayer**:

- * **Natural person** subject to individual income tax;
- * To be bound to **submission of income** from relevant real estate (owner, usufructuary, leaseholder or freeholder, possessor, not the tenant). If the real estate is alienated during the taxable period, the new proprietor can enjoy the reduction, if the latter also obtains a recognition relating to accessibility of the real estate under review.

Terms which apply to the real estate or parts of it:

- * Being **protected** as a monument or landscape as provided for in architectural heritage preservation legislation. If a built-on property is not protected in its own, but has to be considered as an element of a protected landscape, servitude's provided for in the decree on protection will apply. That is the reason why it is taken into consideration for tax deduction.
- * Being a **built immovable property**;
- * Which **has not been let**, not even in part, during the taxable period for which deduction is applied for. This also holds if only the facade and the roof of the building are under preservation. If certain floors or parts of a protected building belong to different owners, a separate assessment will be made for each owner, taking into account the land register plots he owns on a distinct basis.
- * Which is **open to the public**: either at the moment of application for deduction, or at the time when works allowing accessibility are undertaken during the year of application for deduction. Because of the specificity of each real estate in particular, no general rules on accessibility can be provided for. This does not mean at all that the real estate has to be open every day as a whole. We can rather speak of a relative accessibility during a specific period of the year, which will be subject to arrangements between the owner of the real estate and public authorities. Accessibility has to be given a very large interpretation: facades visible from a public road can be considered as fulfilling the conditions governing this matter. It should be said that accessibility has to be approved by the Minister of Finance. Arrangements are made between the competent Government and the owner. As a rule, these arrangements are made for a period of 10 years for the parts of the real estate which are visible from a public road and for a period of 5 year for the inner parts.

- * Terms which apply to the **works** undertaken: these are maintenance and restoration works which are necessary for the conservation of property or parts of it, its reconditioning or its upgrading from an artistic, scientific or esthetical point of view. These works include those undertaken in order to make accessibility to the public possible and which have been approved by the Ministry of Finance or its representative. On the territory of the Brussels Capital Region a compulsory prior favorable governmental opinion will have to be obtained on the nature of the works undertaken. After execution of the works, the Brussels Capital Region Government will issue a certificate stating that the works have been executed according to good manufacturing practices as required in the prior governmental opinion.

- * **The deductible amount**: This amount concerns 50 percent of not subsidized works, representing 1,000,000 BEF (to be indexed) maximum. The amounts are taken into account for the taxable period in which they have been paid. In the case of joint possession of property, deduction will be proportionately granted to the different owners according to their respective share in the joint property.

Formalities to be Completed

- * A certified copy of the preservation decree relating to the real estate concerned.
- * The decision approving the accessibility of the real estate.
- * The invoices and modes of payment of works and materials used.
- * The certificate of the competent government or its representative stating that the works have been executed as ordered in the prior governmental opinion.
- * A statement on word of honors declaring whether subsidies have been promised, allotted or paid and, if so, its amount as well as the own financing.

Exemption from withholding tax on the cadastral income of non leased or non exploited protected goods situated within the Brussels-Capital Region (art. 39 of the ordinance of 4 March 1993 on the conservation of architectural heritage).

The taxpayer must be a natural person, a legal entity (no trade company) or a non-resident.

The real estate has to be protected and may not be leased or exploited in the sense of the Income Tax Code. Moreover it should be situated in the Brussels-Capital Region.

1.2 Indirect taxation

Exemption from inheritance tax and duties on transfer by death can be granted for legacies of protected real estate made to the Brussels-Capital Region or institutions of public interest (art. 40 of the ordinance of 4 March 1993 on the conservation of architectural heritage).

- * The testator has to be a physical person, since only physical persons are entitled to bequeath their goods. Besides the testator should have his address or have the seat of his property in the Brussels-Capital Region and has to be part of the protected architectural heritage.

- * The legal act should be a legacy, which means it has to arise from testamentary dispositions. Donations, even those made under the suspending or dissolving the condition of decease of the donator, are subject to donation tax (registration duties on gratuitous transfers).

- * The legatee should be the Brussels-Capital Region or a Foundation recognized as an institution of public interest (in the sense of the law of 27 July 1921).

For the Brussels-Capital Region or the Foundation, the goods received by means of legacy are inalienable and not-transferable. In case the institution of public interest is dissolved, the inheritance goods, which have been donated to it, become property of the Brussels-Capital Region, notwithstanding any statutory clauses stipulating to the contrary.

Sanctions

When the owner doesn't take care of his protected real estate, the Brussels Government may oblige him to pay the restoration works realized by the Region itself or the municipality. The Brussels Government has also has the competence to expropriate the owner in case of extreme danger of deterioration of a protected estate.

Conclusions

One can say that for the Brussels Capital Region, in the past urban preservation wasn't a priority.

When the Brussels Capital Region inherited the full competence concerning this matter, certain improvement can be observed.

Nevertheless we are aware that a lot of things have to be done, but according to and taking into account the actual urban development, I can confirm that a positive evolution can be observed in Brussels.

The Legal System for Urban Preservation in Sweden and its Financial Implications

Thomas Adlercreutz - Sweden

1. *The legal forms and the specific laws dealing with urban preservation - what are the laws governing the declaration of a building as being worth of preservation, which authority makes with the decision, what is the position of governmental and municipal authorities and what standing do the private owners of the property have in such procedures.*

The legal prerequisites for urban preservation in Sweden are to be found mainly in the Planning and Building Act (SFS 1987:10), but to some extent also in the Environmental Code (SFS 1998:808). The Planning and Building Act went into force in 1987 and the Environmental Code rather recently, on 1 January 1999. Rules aimed specifically at the protection of the cultural heritage are laid down in the Cultural Monuments (etc.) Act (SFS 1988:950).

Let me first go a little further into planning law. All procedural rules are to be found in the Planning and Building Act. The Environmental Code, however, is superior in the sense that it contains material rules for determining the use of land and water areas, so as to maintain the environmental standards laid down in the code. This code encompasses provisions for all kinds of activities that may affect the environment. It lays down general rules of consideration, which have to be respected by individuals as well as by the public administration. With regard to cultural values the code is instrumental in two various aspects.

First, the code catalogues fundamental requirements for the use of land and water areas. Areas, which are of importance owing to natural or cultural values or to outdoor recreation, shall, as far as possible, be protected against measures which may be substantially damaging to these values. If an area harbors values of national importance, the requirement is stricter then the area shall be protected. In addition, the code contains certain geographical delimitation of large tracts, especially along the coastline and around lakes and rivers, where the natural and cultural values are defined to be of national importance.

The effect of these provisions is that not just individuals, but also the public authorities, e.g. a local government in applying its planning powers, must refrain from taking damaging measures in an area of national importance. Decisions contrary to this can be cancelled.

Second, the code provides for protection of historic landscapes in culture reserves. These provisions are scarcely relevant to the preservation of the urban

heritage, and will therefore not be dealt with further here.

The Planning and Building Act also contains material rules for the use of land and water areas, rules which have to be implemented in the broader framework provided for by the Environmental Code. The Planning and Building Act gives local governments a wide degree of autonomy in regulating planning and development within their respective 289 districts. One of the aspects of which the Act is subordinate to the Environmental Code is that the state represented by the 22 County Administrations - may intervene in planning procedures, e.g. if an issue of national importance according to the Environmental Code has not been duly considered. Areas delimited to be of such importance due to cultural value should therefore be safeguarded from damaging development.

The Planning and Building Act provides for protection of cultural values in several modes. It contains general requirements for buildings and other structures and for sites and public spaces. These state that alteration to existing buildings and structures shall be carried out with care so that characteristics are preserved and constructional, historical, environmental and architectural values are taken into consideration. Buildings which are particularly valuable from a historical, environmental or artistic viewpoint, or which are a part of an area of this kind, may not be disfigured. All buildings should be maintained to keep their characteristics as far as possible. Buildings, which are particularly valuable, shall be maintained in such a way that their characteristics are being preserved. These general requirements should be met in all decision-making under the Act.

There is no explicit rule in the Act that forces the local governments to identify which buildings fall into the category of being "particularly valuable". It is, however, inherent in the whole planning system that the local governments should try to sort this question out, so that various planning devices become effective and the owners alerted to the fact.

To further this and other ends the act holds that every local government must adopt a comprehensive plan, covering its entire districts. A comprehensive plan shall note the main aspects of the proposed use of land and water areas, the local government's view on how the built environment should be developed and preserved. It should further describe how the local government intends to take into consideration national interests and qualitative norms under the Environmental Code. A comprehensive plan, however, is not binding on either public authorities or individuals.

Binding regulations of land use and of development are effected through detailed development plans. Alternatively, area regulations may be adopted, if needed to achieve the purpose of the comprehensive plan or to safeguard national interests.

With these two planning instruments a local government can regulate how new development may come in place, how tall buildings may be, what materials, designs and colours will be permitted etc. The local government may also adopt provisions, which in several respects affect the preservation of cultural values. It may e.g. regulate the extent to which building permission and demolition permission is needed for individual projects. It may further prohibit demolition of buildings and structures altogether, and lay down provisions for how buildings of particular cultural value should be preserved.

Regardless of whether a demolition prohibition has been decided upon in advance in a plan or an area regulation, the local government may refuse applications to demolish buildings, which are particularly valuable. It could, indeed, be claimed that a local government must not grant permission for the demolition of buildings with these qualities.

Decisions under the Planning and Building act can be appealed against to the County Administrative and further either to the government or to an administrative court of law.

The Cultural Monuments Act's introductory provision holds that protecting and caring for Sweden's cultural environment is a responsibility to be shared by everyone. Primarily it is the County Administrations, which have to fulfil this task within their respective regions. Surveillance at the national level is entrusted to the National Heritage Board, a central government agency. The act covers archaeological monuments and sites, listed historical buildings, ecclesiastical heritage, and cultural objects (export/restitution). I shall here limit myself to architectural monuments.

Under the act, historic buildings can be protected by listing, which is effected by the County Administrations. Parks and gardens and other amenities of historic interest can also be protected. Examples of such amenities are mines, jetties, walls, ramparts, moats, lime or iron ore kilns, mills, wells and bridges. In recent years a railroad and a canal have been added to the list of historic "buildings".

Only the "elite" of culturally important buildings etc. should be protected under the Cultural Monuments Act. Other buildings of cultural eminence can be protected under the Planning and Building Act.

The Cultural Monuments Act is not applicable to buildings owned by the State, but with that exception, the question of who owns a historic building is not relevant to whether it may be listed. Thus buildings held by local governments may also be listed. State owned buildings and other structures could be protected on order of the Government under a special regulation (SFS 1988:1229), issued by the Government. The National Heritage Board is responsible for the administration of this regulation.

Protective orders will specify what provisions apply to a listed building with regard to demolition, alteration and upkeep.

If necessary, the protective order may cover an area adjoining the building to ensure that this area be kept in such a condition that the appearance and the character of the building will not be jeopardized.

The County Administration may try an issue whether a building ought to be listed as a historic building either on application, or ex officio. The right to apply for a listing is open to everyone.

Pending listing, the County Administration may prohibit temporarily any measures that might lessen the cultural value of a building, most notably is stopping an imminent demolition. Even before listing procedure has started the County Administration may also order an owner of a culturally valuable building to notify the Administration of any plans that he may have of demolishing the building or change it in a way that wirelessly might jeopardize the cultural values. After having been notified by the owner of such plans, the County Administration has a month to decide whether to act or not on the issue of listing. During this time, the owner may not go through with his plans.

Owners of buildings to be listed will have to be consulted and the protective order should as far as possible take into consideration to the use of the building and owner's reasonable designs for the building. The protective order must not overly burden the owner with obligations that are not intrinsically necessary to safeguard the cultural value of the building. This is applicable to holders of other real property rights as well. However, a listing can be done regardless of property holder's consent.

Once a building has been listed, the protective order is meant to govern its continuing upkeep and care. However, it is possible for the owner to apply for permission by the County Administration to make changes to the building contrary to the protective order, if he can claim special reasons. Permission may be granted on condition that the change is made in accordance with specific directions and that the owner records the state of the building before and during the work that will change it. If listing causes an obstacle, inconvenience or costs out of proportion to the importance of the building the County Administration may change the protective order or revoke protection altogether.

It should be noted that great architectural value per se of a building does not make it eligible for protection according to the Cultural Monuments Act. In the preparatory works it has been pointed out that architectural value may influence on the applicability of the act if fitted into a context of cultural history. Some time ought to elapse before this context becomes apparent. Thus it is virtually out of the question to list a very recent building, regardless of its outstanding architectural qualities judged

contemporaneously.

The local governments have a greater range of action, through the planning legislation. They may protect recent buildings with great architectural value. On the other hand, the importance of age should not be overestimated. Bauhaus-architecture as well as the more prominent building features of the 1940's and 50's are now beginning to be considered eligible for listing.

2. What are the financial or fiscal consequences of such a declaration? Are the owners entitled to any compensation because of limits on the building opportunities or on the usage of the property?

A listing does not automatically eject any financial or fiscal consequences. The ensuing obligations on the owner, however, could cause him to invoke property rights guarantees. Neither the listing of a historic building, nor demolition prohibitions under the Planning and Building Act, have expropriate effects. The ownership, right of use or possession remains in the same hands as before, but naturally property rights will be to some extent impaired. The most obvious restriction is that owners will be prevented from renewing buildings where the economic life span has elapsed. In addition the upkeep may be more expensive than the property is able to yield. Under the Swedish Constitution (Chapter 2 Article 18 of the Instrument of Government) not just expropriation, but also restrictions to use of property may entitle the damaged party to economic compensation.

To the extent binding planning measures or refusals to grant demolition permission cause economic damage to holders of property rights, these may claim compensation under either the Planning and Building Act or the Cultural Monuments Act, respectively. The provisions in the two acts are similar. If the restriction consists of a prohibition on demolition of the building, then the State or the local government has to compensate the owner, if the economic damage is considerable in relation to the part of the property affected by this restriction. Considerable damage is thought to arise when the damage exceeds 15-20 percent of the value of that affected part. If there are other economic damages, e.g. if the protective order compels the owner to maintain the building by more expensive methods than normal, then the owner is eligible for compensation if his continued use of the affected part is substantially impaired. That threshold is thought to be at 5-10% of the value. In the latter, but not the former case, compensation will be given for the entire damage. In the former case damages will be subtracted by the amount below the threshold. It should perhaps be underlined that the extent of damage is assessed at the time of the listing, not - as is the case in some other jurisdictions - when the owner is refused permission to alter a building and then finds that his economic interests are suffering. If an owner finds his rights seriously impeded, he can require the state or the local government, as the case may be, to redeem the property at a fair market value. As is the case with other issues of compensation and

redemption, a real property court can resolve conflicts. If a damaged party brings action in court, he will as a ground rule have his costs of litigation covered by the local government, provided that the case was not brought recklessly.

The rules on compensation for listing of historic buildings have never been applied fully in a court of law (a few settlements have been reached in court). There have, however, been several cases where compensation has been negotiated. Very rarely have these agreements concerned private property. The typical situation seems to be that the State through its County Administration takes a rather more activist stand on preservation than local governments. Battles between the County and the local authorities have concerned rather big structures, such as theatre buildings, hospitals, prisons and warehouses. The local governments, using their planning prerogatives, have found these space - and money - consuming structures to stand in way of modernization. A few of these situations have been resolved when the State has offered financial compensation to the concerned local government.

3. Are there any legal forms of transforming building rights or other rights to a different property in exchange or in compensation to the owner as a result of the preservation?

There is one legal vehicle by which building rights can be transferred from one property to another. If the properties do not belong to the same owner, the economic consequences may be equalized by monetary compensation. The act in question, dated in 1987, involves such complexities that it has very seldom been used. It happens, however, that agreements are being entered between local governments and developers, whose property is suffering from orders of preservation. One part of such an agreement may be that the developer will be reimbursed by acquiring building rights at another site. The procedure to implement agreements of that nature must follow the Planning and Building Act, in particular its procedural rules for development plans, involving public participation and exhibition of planning proposals.

Similar tools are not at all available under the Cultural Monuments Act.

4. Are there any financial tools for encouraging private owners to preserve buildings such as income tax exemptions, municipal tax exemptions or any other exemptions? Is there any recognition of expenses related to the preservation? Can those expenses be tax deductible in any way?

There is a general grant system, provided for in the Government Regulation for Grants to Maintenance of the Cultural Environment (SFS 1993:179), and open primarily to owners, but also to voluntary organizations, particularly such organizations which are themselves also owners and managers of monuments. The total sum available under

the grant program amounts to approximately \$25 million annually.

Sweden is noted for a high proportion of the GNP going into public expenditure (a fraction of which goes to grants for cultural monuments). Consequently, tax rates are comparatively stern. Very little incentive is provided by tax rules with regard to owners in general, even though they may have extra expenses for the upkeep of monuments. Non-profit organizations, however, have a more favored position.

Costs for repair and maintenance of private houses - be they of cultural value or not, is in general not deductible from taxable income. There is an exception, however, for large rural houses (area in excess of 400 sq. m.), built before 1930. Owners may opt for taxation under rules applicable to commercial properties, which allow deduction of all commercially related expenses, including repair and maintenance. A taxable value for the right of use of the dwelling will then be appraised and added to taxable income.

Wealth consisting of culturally significant property or objects is not excluded per se. Personal movables, such as furniture, gold and silverware, paintings and pictures and jewellery, however, do not constitute taxable wealth (but attempts to that effect have been made and have grounded mainly because compliance would not be possible to monitor).

Most legal persons do not pay wealth tax.

Real property tax is levied on owners and holders of long-term rights to real property at different rates subject to type of property. The present rate for dwellings is at 1.2-1.5 percent of the value determined in land taxation appraisals. Certain kinds of buildings are tax-exempt, e.g. buildings for cultural or educational purposes, such as museums, theatres, school buildings and buildings for public administration. Many of these may have a cultural value, but there is no general exemption for buildings possessing such value. If extra costs for the maintenance of such buildings may be considered to affect the market value of the property, this may decrease the appraised value, which in turn lowers the amount of property tax (and wealth, inheritance and gift tax).

Transfer of property rights through inheritance or gift induces taxation regardless of whether the recipient is a natural or a legal person. The rules are complicated and taxes are levied at various levels and with different basic allowances, depending on the degree of relationship between the deceased or donor on the one hand and on the other the heir or beneficiary. Certain recipients, however, are exempt. With regard to inheritance this is the case e.g. for the State and associations and foundations with certain charitable purposes (one of which is scientific education and research). Maintenance of cultural monuments is not among the favored purposes. With regard

to gift tax, however, the exemption is much broader. In addition to recipients who are already exempt from inheritance tax, municipalities and associations and foundations with a main purpose of furthering religious, charitable, social, political, artistic, athletic or comparable cultural or pro bono ends have also been exempted. A foundation or an association managing a cultural monument may thus receive donations free of gift tax. It should be noted that this exemption applies only to recipients who are legal persons.

It is possible for the Government to remit inheritance or gift tax in certain instances e.g. if according to conditions in a will or a deed a collection of historic, scientific or artistic value must be kept together. The same applies also to real property that is to be passed on in its entirety to future successors, if tax is deemed to jeopardize interests of a cultural historical nature. This possibility has been used very sparingly. There are, however, still in Sweden a few entailed estates, possessing in their buildings and movables very important cultural values, to which these provisions may be applied.

It could be noted also that the State Inheritance Fund, which is the automatic beneficiary in cases where a deceased leaves neither heirs nor a will, might pass on property of essential significance from a cultural or nature conservation viewpoint. The recipient must be a legal person, which is particularly qualified to care for and maintain that property. The acquisition in these cases is not tax-exempt, but the recipient may, of course, be exempt, or tax remitted by the Government.

Value added tax (VAT) is levied in Sweden under EC rules, thus not very different from other member states of the European Union. There are three rates: 25, 12 and 6 percent. The lowest rate is used to further certain culturally related purposes, but there is no comparison in Sweden to a low or zero rates for services to monuments, used in some other countries.

Sponsorship gives rise to tax considerations for both parties involved. There are, however, no provisions in the tax statute that apply specifically to sponsorship (initiatives to that effect have been rebuffed). The basic issue for the sponsor is to be able to claim deductibility for his costs. He must show a commercial viability in expenses incurred, i.e. that costs are beneficial to his business, even though they may not be as directly gauged as costs for advertising normally are. Advertising is often for a special product or brand, whereas in sponsorship the intention typically is to enhance the image and the goodwill of the sponsor's business or the name of the sponsoring company. Another requirement for deductibility would be that costs appear reasonable in relation to benefits, real or expected, to the sponsor. If a sponsored party is less successful in producing the results sought by the sponsor, this should not automatically disqualify from deduction of costs. The sponsor's intention of furthering commercial interests should be reasonable seen in a business perspective.

However, if tax authorities refuse deduction, the motives could be that costs appear to be either an outright gift, or an excessive form of business entertainment. Whether it is a gift or not should be determined with regard to the agreement between the parties. If the sponsored party has agreed to obligations of his own, then it seems hard to judge the sponsor's obligations as a gift or a donation. A sponsorship agreement is a mutual concept, whereas donation is a unilateral act. The sponsored party in return often offers services such as rights for the sponsor's staff or clients to visit or use presses free of charge, to have special favors or discounts, to take part in festive arrangements etc. The more of this, and less of other services, the more likely that tax authorities will clamp down on deductibility. However, as long as services of this kind can be seen as in line with the sponsor's general marketing, they should be in order from a tax perspective.

5. How is the preservation enforced upon the owners of private property?

Disobedience of provisions under the Planning and Building Act may, and should, cause the local government to intervene. It could then decide on fines or contingent fines or it could order that measures be taken at the owner's expense. A breach of the protective rules for historic buildings may lead to consequences of different kinds. The County Administration may issue injunctions for restoring damaged buildings, enforced by contingent fines. There could also be penalties. These, however, could not exceed a fine.

In addition to penalties, offenders may have to pay damages for repair, reconstruction or archaeological investigations necessitated by the offence.

6. What legislation exists in the local or municipal level regarding urban preservation of buildings? What are the local government authorities dealing with the subject? Do they have any legislative powers and what is the relationship between such organizations and the governmental authorities?

The answer to this question can be found already in answer 1. To summarize, it could be reiterated that the local governments control the tools of planning law, with veto powers for the national government in issues where national interests are at stake. The State, through its County Administrations, has the instruments for taking care of the "solitaires" of the urban cultural heritage.

Broadly speaking, the local governments take decisions on comprehensive plan, detailed development plans and area regulations under the Planning and Building Act in their directly elected councils. Matters of planning permission and demolition permission are determined in building committees, elected by the councils.

Legal and Political Instruments to Support the Protection and Maintenance of Cultural Monuments in Urban Areas

Werner von Trutzschler - Germany

Introduction

Emanating from the country's system of federative states, in the Federal Republic of Germany the responsibility for the legislation is entrusted in principle to the Lander, which constitute autonomous states (Art. 20, 70 GG = Federal Constitution). The federal government has allocated special legislative responsibilities for matters which consequences are extending beyond the individual states in the form of exclusive rights (Art. 73, GG), concurrent law (Art. 72, 74a GG) and framework law (Art. 72, 75 GG). Under this arrangement the Lander are able to draw up regulations for the protection and maintenance of cultural monuments; within the state boundaries these regulations must in turn be observed by the counties, cities and townships which have their own legal powers as territorial authorities.

By now all the sixteen Lander have made use of their right to regulate what is to be protected and to establish procedures and responsibilities in the preservation field by passing a law on the protection of monuments and historic buildings. Using the Land of Thuringia as an example, the following discussion illustrates the points of contact and interaction between preservation objectives and urban planning and design. Thuringian has about 30,000 listed monuments including three world heritage sites, the Wartburg, Classical Weimar and the Bauhaus Weimar / Dessau. There are by the way no special protection clauses in German law for world monuments. Before German law all monuments are equal although of course in reality some are more equal than others.

Constitution Authority for Historic Preservation in Thuringia

1. In Art. 30 paragraph 2 of the constitution of the Free State of Thuringia the state lawmakers placed cultural, artistic, historical and natural monuments under the protection of the Land and its territorial authorities. Maintenance of monuments is incumbent primarily upon their owners. Monuments are to be made accessible to the public within the framework of the law and subjects to the rights of others. According to Art. 43 of the state constitution, the Land Thuringia is obligated to pursue realization of the state's preservation objectives, according to its powers and within the framework of its responsibilities, and to ensure that its own actions are compatible with these objectives. Accordingly, in §1 of the Thuringian Monument Protection Law the task of protecting and preserving cultural monuments as sources and witnesses of human

history and geological development is established as a joint responsibility for the Land, and its municipalities and municipal associations as well as for owners and holders of cultural monuments. Denkmalschutz or monument protection, deals with jurisdictional tasks and responsibilities, whereas professional advice and assistance for the preservation authority devolves upon the Denkmalpflege, the care or management of monuments and historic buildings. This means that the governmental agencies entrusted with monument protection should use their regulative authority to direct measures for the protection and preservation of cultural monuments to the owners, who are obligated to preserve and maintain them. Monument care, on the other hand, is understood to encompass all the advisory work, surveys, research and restoration activity that necessarily form the basis for any preservation-oriented measure.

Administration has a three tiers structure. The local monument authorities, located at the county and (self-governing cities) municipal level, are primarily concerned with permit procedures for the preservation measures involving a historic building and with establishing legally necessary directives for monuments protection in special cases. Because many such measures simultaneously involve architectural changes, the local monument authority (as a permit-granting agency) is to be included in building permit procedures. The intermediate monument authority is part of the Landesverwaltungsamt, or State Administrative Office, which is the appellate agency for cases involving permission or denial according to monument protection law or building law. As the highest monument authority, the Ministry for Science, Research and Art is entrusted with general preservation politics, in particular budget and policy tasks. The Thuringian State Office for Preservation and care of monuments and historic buildings is as the governmental expert authority involved in all procedures. In addition to these legal instruments for the particular case, the provisions of the buildings and planning laws have a significant effect on monuments, especially historic buildings.

Planning Law

German planning law, which emanates from the federal government on the basis of its legislative jurisdiction in the fields of property law and regional planning (Art. 74 no. 18, 77 no. 4 GG), refers responsibility for regional administration, design and development to the municipalities, providing them with special planning instruments for this purpose;

1. Instruments for Urban Design Regulation and Planning

The land use plan or master plan (§ 5 Baugesetzbuch-BauGB = book of building law, federal building code) as the preliminary development plan and the development plan itself as the binding plan (§ 9 BauGB) are intended to prepare and guide architectural or other uses of property within the municipality (§1 paragraph 1 and 2 BauGB). In establishing a plan concerns of the general welfare such as nature and environment

or social and cultural needs are to be justly weighed against private interests (§ 1 paragraph 5 and 6 BauGB). Concerns of monument protection and maintenance are to be given consideration, as are the interests of preservation-worthy districts; streets and squares of historic, artistic or urban design significance (§ 1 paragraph 5 sentence 2 no. 5 BauGB). Protected groups of buildings (so-called ensembles, § 2 paragraph 2 Thuringer Denkmalschutzgesetz-ThDSchG = Thuringian Monument Protection Law) are to be recorded in the land use plan (§ 5 paragraph 4 BauGB), individual monuments must be indicated in the development plan (§ 9 paragraph 6 BauGB). Provisions in the development plan regulate the admissibility of projects in a legal planning sense and do not include concrete design or preservation stipulations or an individual building, for instance regarding its facade or roof. However, the townscape design is indirectly influenced by the plan's incorporation and consideration of existing protected districts, streets or squares since allowance must be given to these sites, for instance in the establishment of traffic zones (§ 9 paragraph 1 no. 11 BauGB), public or private green spaces (§ 9 paragraph 1 no. 15 BauGB) or open spaces (§ 9 paragraph 1 no. 10 BauGB). On a planning level influence can thus be exercised over the design of protected streets and square and over the surroundings of individual monuments. Direct design effects result from regulations concerning the intensity of use, whether or not land can be built upon, the position of building sites and the minimum size of building lots (compare § 9 paragraph 1 no. 1-3 BauGB in connection with § 16-23 BauNVO). Through the establishment of the number of stories or the height of buildings and the regulation of construction boundaries and building depths direct influence is already being taken here on the actual building design.

2. Additional Instruments of Urban Planning Law

Additional urban planning legislative instruments include preservation statutes (developed according to §§ 172 ff. BauGB) which are used by municipalities to define urban planning preservation goals for certain districts within a town. The municipality can designate areas with a particular urban design character and appearance in which demolition, alteration use changes, or new construction require special permission (§ 172 paragraph 1, sentence 1 no. 1. Sentence 2, § 172 paragraph 3 BauGB). Such statutes can be of assistance for monument protection but they must be based on urban planning factors named in § 172 BauGB, not on monument protection. Whereas the Thuringian Monument Protection Law seeks to protect historic town centers and other designated building groups from adverse influences on their building stock (§§ 2, 13 ThDSchG), the provisions in the permit procedures covered by preservation statutes are directed at preserving an ensemble's incorporation into the existing urban structure and at maintaining a monument's defining effect on the overall urban context.

3. Formal Designation of a Rehabilitation Area According to §§ 136, 142 BauGB

The preservation and use of historic building fabric can also be encouraged through formal designation of a rehabilitation area in the form of a statute. This planning instrument for municipalities serves to remedy urban development problems that arise

if the buildings or other characteristics of an area do not meet general requirements for healthy living and working conditions or for the security of its residents. In general these problems stem from defects in the building fabric because of poor construction, inadequate development or lack of access to public transportation (§ 136 paragraph 3 no. 1b, c, g BauGB). An area might also exhibit a so-called functional weakness (§ 136 paragraph 2 sentence 2 no. 2 BauGB). Undesirable developments here include primarily a poor supply system, including for instance a lack of shopping services, recreational facilities, or infrastructure connection (§ 136 paragraph 3 no. 2b, c BauGB).

In such cases urban rehabilitation measures serve to redress these grievances through the redesign and renewal of the area as well as through targeted preservation of certain urban areas which have a positive influence on the overall townscape. The concerns of monument protection are of particular significance here, and must be included in planning considerations as a rehabilitation goal (§ 136 paragraph 4, sentence 2, no. 4 BauGB).

Building Code Law

Whereas the planning law regulates project planning, the building code law as state law determines the more specific requirements concerning the construction and design of individual buildings. Here too the municipalities have the possibility of influencing the appearance of certain urban areas through passage of local building regulations in the form of a statute (§ 83 Thuringer Bauordnung = Thuringian buildings law).

The provisions of local building regulations can apply to small spatial units (for instance particular streets or groups of buildings) or even to large urban areas; they can specify elements that define the local townscape (for example building lines, building heights, the distance between buildings and property boundaries). Overlaps with the planning law are possible if the design characteristics are relevant to urban planning insofar as they define the townscape for a larger area rather than applying only to individual sites. The typical slope of the roofs in an old city center can serve as an example. Local building regulations and urban planning provisions should therefore be coordinated with one another.

Typical for such statutes are requirements concerning the exterior appearance of individual buildings, particularly relating to the facade, roof, windows, doorways, the attachment of advertising and exterior antennae, and similar things that can include the interests of monument protection. Moreover such statutes make it possible to protect buildings that are important in terms of local history or urban design but whose significance is not sufficient to rank them as monuments.

To summarize it can be said that preservation goals in accordance with the Thuringian Monument Protection Law and urban planning goals can influence and supplement one another in a positive manner.

Fiscal Instruments to Support Monument Protection

1. Preliminary Remarks

With the federal Urban Renewal and Development Law from 1971 (now incorporated in the BauGB) an important legal instrument was created for preservation of the architectural heritage and for sustained development of the cities. At the same time the law laid the foundation for joint financing of urban planning measures by the federal government, the Lander and the municipalities, initially in the form of a federal government and Lander program for urban rehabilitation and development measures. Since 1971 about 30 billion German marks were spent in this program. In the course of the reunification of Germany a new program of "urban preservation planning" was established in 1991 for the new Lander in order to promote the preservation and continued development of historic city centers in eastern Germany, where 30 cities have historic city centers from European-wide significance and 200 cities have districts with national preservation value.

Thuringia joined the development program in 1991 with 14 cities; by 1997, 20 cities were participating (p. 73 of the Analysis of the Results of the Urban Preservation Planning program. Urban Development in the New Lander. Research Report of the Federal Ministry for Transportation, Building Regulations and Housing, 1999; cited hereafter as Wirkungsanalyse). Through joint financing by the federal government, the Lander and the municipalities a total of more than 3.6 billion DM from various programs were made available from 1994 to 1998 for urban development (information provided by the Federal Ministry for Regional Planning, Architecture and Urban Development at the Leipzig Exhibition in 1998). Thuringia received about 546.08 million DM (federal government report cited in the Berling Morgenpost on 27 October 1999).

The "urban preservation planning" program received 200 million DM annually (Wirkungsanalyse, p. 63). From 1991 to 1998 4740 buildings in 129 east German cities could be protected, 6940 houses, commercial buildings, public buildings, castles, palaces and churches rehabilitated and 835 streets and squares repaired. Through this activity the "urban preservation planning" program occupied an important position among joint federal-Lander programs and among state programs to promote urban preservation and monument maintenance. The investment measures caused a revival and strengthening of the job market, in particular for the commercial middle class, craftsman businesses, and architecture.

In addition a village renewal program with similar objectives for rural areas has been in force for the same time.

2. Urban Planning Support and the Building Code

In accordance with its political significance, support for urban planning and development was legally anchored in the new version of the BauGB in 1998. According to the guidelines for urban planning and development (Thüringer Staatsanzeiger no. 15/1996 pp. 777 ff), the priorities for use of financing are:

- * The strengthening of urban development functions of inner cities and neighborhood centers with special consideration being given to residential construction and to concerns of preservation protection and maintenance.
- * The reuse of wastelands, particularly in industrial and railroad areas, for construction of housing and work places and establishment of services for common needs with consideration being given to environmental concerns and the preservation of resources.
- * Urban development measures to remedy social grievances.

The goal of urban renewal support is a positive development of cities and villages with regard to housing, working and recreational needs of resident and visitors. An important contribution to achievement of this goal is provided by the preservation of historic urban centers, old towns and historic districts in the inner city. From the very beginning support of an area was tied to the legally binding designation of municipal preservation statutes in order to achieve comprehensive effectiveness (Wirkungsanalyse, p. 28).

3. Organization and Execution of the Federal - Lander Programs for Urban Preservation Planning

Selected cities submit annual program applications for the following year to the superordinate building administration, the Thuringian State Administrative Office. Individual applications for assistance can also be submitted by the owner directly to the municipality. Private rehabilitation measures thus become part of the overall urban development measures. Support comes in the form of a grant when the individual's contribution by the owner is at least 15% of the costs of rehabilitation. As a prerequisite for assistance the municipal area must have been included in the support program with an appropriate preservation statute and the municipality and the owner must have entered into an agreement about modernization. Payments come in installments in accordance with construction progress.

4. Further subsidies and tax relief

In addition to the programs mentioned, both the Federal and the State governments hand out subsidies for the restoration of protected monuments and historic buildings. For the same purpose there are income tax reductions which allow investments to be deducted from income over a period of ten years instead of 40 or 50 years.

5. Summary

In Thuringia, as in other places, funds to support urban development have had positive synergetic effects in the field of preservation protection and maintenance on several levels. On the one hand they have an important cushioning function for the extra costs of repair and modernization that arise for a monument owner who is obligated to preserve his building, insofar as these costs are not covered by his own resources, by funds from the capital market, and by other public assistance monies. Moreover through stimulation of investor activity they provide an obvious contribution to stabilization of the regional job market.

It can be assumed that the annual effect reported in 1998 by the Federal Ministry for Regional Planning, Architecture and Urban Development, whereby every ten thousand DM of urban development support triggers eighth thousand DM in investor monies, is still being realized in Thuringia.

Finally it can be observed that in special cases urban renewal and development assistance can serve to avert owner demands for compensation or for public takeover of a cultural monument. Such claims are permitted in the Thuringian Monument Protection Law for owners of cultural monuments in case the requirements of the monument protection authority create an unreasonable burden. This so-called hardship case develops in particular if the costs of the repair and preservation of a building in accordance with its historic, artistic or urban design significance are disproportionate to the remaining use value, thus overstepping the boundaries of an allowable limitation for the owner, who is protected in Art. 14 of the Federal Constitution. Funds for urban renewal and development cover costs that cannot be defrayed by sustainably achievable returns from a building. According to the urban development guidelines (Thüringer Staatsanzeiger no. 15/1996. 7.1 and 15.1 of the support guidelines) extra burdens such as costs for special preservation reports as part of preliminary investigative work or subsequent extra costs resulting from monument protection regulations and requirements can be subsidized.

Methods of Financing Urban Preservation in Finland

Satu-Kaarina Virtala - Finland

Legislation

Urban preservation in Finland is accomplished through general conservation and special conservation legislation, which complement each other, and a system of cooperation between the environmental and cultural administration. Also, on the practical level, the local municipalities and property owners have a responsibility for the management of the cultural environment and the architectural heritage. Moreover, since 1995 the Finnish constitution has stipulated that everyone (i.e. both authorities and citizens) is responsible for the nation's cultural heritage.

The Finnish cultural-environmental legislation can be divided into three parts:

- 1) Land Use and Building Act.
- 2) Special acts that complement the above act, but which are also applied independently.
- 3) Other legislation which contains regulations concerning the cultural environment or the cultural heritage.

Primarily, the Land Use and Building Act is used to preserve the cultural heritage, especially in urban areas. However, the Act on the Protection of Buildings is applied if the building is of national importance or there are other special reasons for doing so. For instance, if preservation cannot be carried out under regulations given in the Land Use and Building Act (e.g. preserving spatial layout or fixed interior fittings would be examples of this). There is no specific law for monuments, however.

Secondly, there are several special acts applied as necessary. The Decree on the Protection of State-owned Buildings complements the Act on the Protection of Buildings, as it was considered necessary to give the state different status from other owners. The Church Act protects all the Lutheran churches built before 1917, while all ancient monuments and sites are automatically protected under the Antiquities Act. The Antiquities Act also complements other legislation, so that ruins or unused sites dating before the 20th century fall under its jurisdiction.

Finally, other important legislation are the acts concerning infrastructure (e.g. Water Act. Road Act) and environmental and nature conservation and protection (e.g. Nature Conservation Act. Forest Act. Land Extraction Act). All these acts contain specific regulations aimed protecting environmental and cultural values. The decisive issue for the working of the legislation is how the administrative sectors and courts of law apply the regulations in their decisions on granting building permits.

Authorities

At the national level two ministries, the Ministry of the Environment and the Ministry of Education, have responsibility for various aspects of urban preservation. The Ministry of the Environment has overall responsibility for policies on the environment, housing, building and the protection of conservation areas. It is also responsible for ensuring that environmental interests, as well as those relating to the cultural environment and architectural heritage, are given proper consideration at all levels of administration, society and international cooperation.

Under the Ministry of the Environment there are thirteen regional environment centers. These regional centers are responsible for environmental protection, the protection of the built environment and archeological sites, land-use planning, building preservation and nature conservation, and the exploitation and management of water resources. Within the sphere of the cultural heritage, their responsibilities are: advising on and controlling spatial planning and construction, issuing special permits, supporting building preservation, and coordinating environmental impact assessments. The centers compile information on the status and use of the environment at a regional level for both their own purposes and to meet the needs of nationwide monitoring, research and planning. They also seek to promote environmental awareness in their own regions.

Overall responsibility for cultural heritage policies, the protection of the archaeological heritage and the administration of museums and antiquities lies with the Ministry of Education.

The National Board of Antiquities, a central expert body under the Ministry of Education is entrusted with the task of protecting the nation's cultural heritage and cultural environment. It directs and supervises the administration of antiquities and museums, researches and records the nation's material cultural artifacts, buildings and sites of historical and cultural importance, maintains museums, organizes exhibitions, and contributes to educational work in the cultural heritage field. The supervision of preservation and conservation of churches built before 1917 falls also within the responsibilities of the National Board of Antiquities. The Church Council and parishes answer for funding of the preservation.

At the regional and local level, twenty provincial museums provide specialized services relating to antiquities and the cultural heritage. These museums are supported financially by the state, but are administered at the municipal level under the supervision of and in cooperation with the National Board of Antiquities.

Planning is the main and most widely implemented tool of urban preservation in Finland. Under the planning legislation, municipal councils have the authority to approve

detailed plans. An important part of planning is to do inventories of sites and buildings worthy of preservation. These inventories are a necessary basis for any future planning and are an important factor in the design work. Thus, preservation of the beauty of the built environment, the cultural values and good building practises is promoted through design work based on the necessary evaluation of the surrounding area. The planning legislation emphasizes infill building and the maintenance of existing buildings, and this has to be kept in mind when any design work is undertaken.

The Finnish planning legislation also emphasizes interactive planning and the participation of people affected by a plan (i.e. both owners and users). Additionally, owners or other people living in a municipality have the right to appeal against an approved plan to the administrative court, and if necessary, to the Supreme Administrative Court.

Preservation

As mentioned earlier, the main tool for the preservation of buildings in urban areas is planning. Plans may include regulations and restrictions to protect building structures and ancient monuments, as well as the cultural environment in general. An estimated 25,000 building sites are presently protected by means of various types of official plans. If preservation cannot be adequately secured through planning, the Act on the Protection of Buildings is applied.

If a municipality is unwilling to include preservation and environmental criteria in its planning, the Ministry of the Environment may issue a zoning order. Zoning orders can also be used if it is likely that implementing a plan will lead to the destruction of a building's cultural, functional, or aesthetic value. During the time when the plan is being revised, a ban on construction or demolition is upheld on the entire building. Under a zoning order, a municipality must alter and approve its plan within a specified period. If the municipality fails to comply, it may be penalized through fines. However, zoning orders are rarely issued.

An owner of a building, an association, a municipality, a regional association or a state authority can propose that a building or a cultural environment be preserved under the Act on the Protection of Buildings. The decision is made by the regional environment center, which also gives the necessary preservation orders usually suggested by the National Board of Antiquities. The decision is ratified by the Ministry of the Environment, which also handles appeals. The Ministry's decision can be appealed to the Supreme Administrative Court only on a legal basis. About 200 building sites are presently preserved under this special act.

The Ministry of the Environment makes decisions on preserving state-owned buildings. About 800 state-owned building sites are preserved.

Financial and Fiscal Consequences of Preservation

In accordance with the Land Use and Building Act, a local detailed plan may contain the necessary regulations (protection regulations) for protecting the built environment, or for protecting an area or a building because of its landscape or natural values, or its cultural and historical values, or other special environmental values. The protection regulations must treat landowners reasonably. A plan can have regulations that limit the owner's right to use a building as he chooses. Full compensation is available to owners who are subject to unreasonable plan regulation. Compensation is awarded only for damages considered to be not minor in importance, and is paid by the municipality. Municipalities receive financial assistance from state funds set up for this purpose. However, municipalities have been cautious in implementing protective measures for building preservation, so the state has not had to provide financial assistance for this purpose.

What has happened in practice is that no money is paid, but preservation is agreed on taking into account the interests of the owner. Problems have usually been solved, for instance, by increasing or regrouping the building rights of the plot.

If a preservation order following a preservation decision restricts an owner from using a building in a normal way or in a manner from which he would gain reasonable benefit, he is entitled to receive full compensation from the state for any inconvenience or loss which is not of minor significance. Special actions for the maintenance of cultural values undertaken by the owner may also be compensated by the state. However, normal maintenance costs are not compensated, nor does the state have to compensate municipalities.

It is the state's and most often the municipality's, duty to ascertain that buildings are sufficiently preserved by plan or by special law. When this is done, and the owner has received compensation for his possible loss, it is the owner's duty to preserve his building in good order. If he is unwilling to do this, the municipal building committee can require him to observe the rules and regulations, or to restore the former state of affairs and fulfill his obligation under threat of a fine or under threat of having what has been left undone carried out at his expense. The committee may refrain from such an action, if the fault is a minor one. The owner is always responsible for maintaining buildings and their surroundings in a condition that meets the standards of health, safety and fitness for use at all times, so as not to cause environmental harm or damage the beauty of the environment.

Financial Tools

Direct economic support for building preservation in Finland is very rare. There are no tax exemptions, but both ministries involved give tax-exempt grants for the repair of culturally and historically valuable buildings. Indirect economic support is given for maintenance of the architectural heritage and it is not usually linked to any particular conditions or to any monitoring of the repair work by the antiquities authorities.

Methods of Financing Urban Preservation - a Case Study of Bulgaria

Hristina Staneva - Bulgaria

Preserving the cultural heritage is crucial to the identity of every country. The richer the cultural heritage of a country is, the deeper and better-defined its identity is, and the more difficult is the task of preserving it. In this paper I will focus on the part of this difficult task, related to the financing of urban preservation of Monuments of Culture.

Our country, Bulgaria, is in a period of transition from state-owned to market economy and our generation has the intricate task to preserve and pass on to the generations to come our rich cultural heritage.

On a territory with population of approximately 7 million people there are 40,000 monuments, originating from a wide historical range - from pre - historical to modern times. Seven of our monuments are included in the WORLD HERITAGE LIST and 1,200 are of national importance.

The previous practice of absolute domination of the state in the field of conservation is now giving way to the market forces and the private initiative. Due to limited resources the involvement of the State is drastically reduced, more than a 100-fold compared to 1985, which poses a considerable challenge to finding financial support for protecting out cultural heritage. The burden of compensating for the active support of the state now falls to big extent on the legislative body, which should enact new laws, consistent with the present-day doctrine of conservation, and synchronized with world's leading standards, to stimulate new ways to provide for the preservation of our culture. Such laws would also act as a warrant towards the inclusion of Bulgaria in the European Union in the future.

In attempt to find a dynamic and open strategy in the field of urban preservation the Parliament recently passed a the Law for Territorial Arrangement, effective since March 31, 2001, aiming to define the territories of the country (some of them including monuments of culture) and to determine the ways to finance this activity. Concerning the structural organization of the territory of the country, a new term was introduced - "protected territory" - a territory that includes a monument of culture along with the surrounding area - Article 8, Section 4. The area linked to the monument could vary from the nature surrounding the monument, to entire settlements, or even entire villages. Article 13, Section 1, concerning the territories with historical, archeological, ethnographic, or architectural significance, gives the right to exceptions to the other established rules if that would benefit the preservation of our cultural heritage. The new bill also represents the move towards democracy of our society by enacting stimulating, rather than restrictive laws, and expands the circle of parties involved in

the process. For example, for the first time in our country the UAB (Union of the Architects of Bulgaria), a non-governmental organization is a member of the National Union of Experts - the decisions taking body, dealing with master plans and the territorial arrangement.

Explaining the legislative and financial aspects of urban preservation activity in our country I will follow the questions, our host are interested in:

1. The criteria for appraising the activity in the field of protection of the monuments of culture are established primarily in:

- * Law for Protection and Development of Culture / Official Journal No 50/1999
- * Law for Monuments of Culture and Museums / Official Journal No 29/1969, with last alteration in Official Journal No 50/1999
- * Article No 5 of the Announcement of the Immovable Monuments of Culture

According to the Law for Monuments of Culture, Chapter 1, Article 2, all monuments of culture are accessible for the Public and are placed under the protection of the State. They could be owned by the State, the Municipality, or by physical or legal entities. The Ministry of Culture exercises ultimate control and coordinates all projects in relation to the monuments of culture and architectural reservations.

The suggestions about the listing of the monuments of culture are prepared by the National Institute for Monuments of Culture. In all cases it takes into consideration the opinion of the Mayor of the municipality or the parish where the monuments to be listed are. The procedure is executed in the following consequences:

- * Identification
- * Declaration
- * Final complex appraisal
- * Approval, promulgation and registration

The Type of the Monument is Determined According to:

- * Location (inside or outside of the settlement)
- * Affiliation to a certain historic period (Pre-historic, Antique, Medieval, Renaissance or from the Modern time).
- * Spatial structure and territorial range (single or group monument complex, ensemble historical settlement, historical zone).
- * The scientific and cultural sphere they belong to (archaeological, historical, architectural and constructional, artistic, landscape, ethnographic, industrial and technological).

The category of the monuments is determined by their cultural and historical values. They are:

- * of world importance, included in the UNESCO list of monuments of culture and sites
- * of national importance - samples with extraordinary value for the Bulgarian culture
- * of regional importance
- * of ensemble importance
- * for the purpose of information

The different monuments of culture are ratified by different institutions: those of world importance - by UNESCO through our National Committee. The historical settlements - by the Council of Ministers, all the remaining - by the Minister of Culture.

The municipality and district authorities are obliged to mark them into the registers and the cadastral plans of the settlement. They inform all the people concerned who have the right to do objections. The final complex appraisal is made by the National Institute for Monuments of Culture according to its own standards and is approved by the Ministry of Culture. The approved lists are published into the State newspaper, but the National Institute for Monuments of Culture is obliged to inform the authorities in the districts and the municipalities of the country.

2. The national legislation makes provision for financial and tax concessions for the protection of the cultural heritage, including the restoration and conservation. This financial and tax concessions are regulated by:

- * The Law for the Local Taxation (Official Journal, No 117/97, alterations in No 71,83, 153/98)

No tax is imposed on real estate, which belongs to the Public, to the State, or to a Municipality. Here we would like to clarify that usually the immovable Monuments of Culture, as well as the archeological and natural landmarks, are Public and State property. When the Monuments are not owned by the State, but rather by physical or legal entities, the tax due for the property of the Monuments is yielded to the owners of the property under the condition that the means will be used to maintain the Monuments.

No tax is imposed also on the real estate, owned by museums, galleries and libraries.

A tax-break is provided in relation to a second type of tax, namely the inheritance tax. The inheritance tax is forgiven in relation to libraries, musical instruments, objects of art, in case the author is the legator himself, some of his heirs or his/her relatives. If it is a lineal inheritance there are no limitations, but for the lateral branch - only to fourth stock.

A tax-break is provided in relation to a third type of tax, namely any tax related to the acquisition of property by cultural or scientific organizations supported by the State Budget, or non-profit legal entity when receiving donations in relation to the purpose of their organization, or donations to community centers, or contributions to the capital of a non-profit organizations.

* Law for Corporate Profits. The law for the Corporate Profits (Official Journal, No115/97, alterations in No 21/98 , 153/98, 12/99, 50/99, 51/99, 64/99, 81/99.

This law deals with the matter of taxing the profits of local and foreign legal entities, including organizations supported by the State Budget. This Law provides for a reduction of the financial burden before donations were issued which donations were for the benefit of scientific research organizations or cultural organizations, as well as donations for restoration and protection of historical and cultural objects. These donations have to be within 5% (five percent) of the before-tax profit.

* The Law for the Profits of Physical Entity. (Official Journal, No 118/97,72/98, 153/98.

The law deals with the matter of the profits of physical entities, sole proprietors, and some business establishments, which are specifically listed in the Law. According to this Law the profits incurred during the fiscal year are subject to tax, when the amount of the donations within 5% of the profit is deducted.

3. In our Law there are no provisions for the exchange of ownership of a Monument of Culture for another type of ownership. The exchange of ownership is done through a regular market transaction, while there certain financial benefits that apply - for example, according to the Law for Accounting from January 15, 1991, depreciation is not calculated when the asset is a Monument of Culture or a Work of Art.

4. The mechanism of financial benefits used to simulate the owners of Monuments of Culture to preserve these assets was described in detail in section 2 above. Here I would add that the actual funds used to maintain or rebuild Monuments of Culture are not considered as expense leading to tax concessions. However, as described above, other tax concessions provide funding for these activities.

5. The preservation of the Monuments of Culture by their owners is established through administrative, legal and punitive decrees. In the Law for Monuments of Culture, Chapter 5, is directed that all owners of Monuments of Culture are obligated to maintain them in good condition. Reconstruction and alterations could be made only after the approval of the National Institute for Monuments of Culture.

If an owner were not able to provide resources needed in emergency to maintain or restore the condition of the Monument the resources would be provided by the State,

and in return the property would be hypothecated.

In Chapter 5, Article 34 of the Law for the Monuments of Culture is stated: *"An owner who does not maintain its property in good condition, as well as who performs reconstruction without permission, will be fined."* According to the Statute of Republic of Bulgaria /Official Journal No. 26, 1968 a person using technological means to dig a site for the purpose of finding antiquities, treasures, or other valuable objects, if this act is not considered a greater violation of the law, will be punished with imprisonment up to six years and a fine.

6. The Law for Local Management and Administration addresses the questions related to the Law making on a local level. The territory of Bulgaria is separated into Regions and Municipalities. A Municipality is an administrative and territorial unit with its local management. A Region is administrative unit in which there are no elected officials who exercise local control, but rather there are positions and appointed officials serving the State.

Article 9 of Law for Local Management and Administration establishes the legal ground for the Municipalities to unite on their free will for the purpose of finding solutions to shared problems, i.e. when there is a problem concerning more than one Municipality they can join efforts and with the help of the State or the Parliament to reach a favorable solution.

The National Union of the Municipalities has the right to:

- * Represent its members before the State
- * Develop proposals to modify and improve the legal structure of the local control
- * Prepare statements and proposals concerning the projected budget of the State in relation to the Municipalities.

The responsibilities of the Municipal Government consist of the right and obligation of the residents, or the elected by them officials, to decide, within their expertise, on matters of local importance related to:

- * Municipal property, finances, and taxes
- * Structure and development of the territory
- * Education
- * Health control
- * Culture - theaters, orchestras, museums, and cultural events
- * Protection of the environment
- * Preservation of the cultural, historical, and architectural monuments with municipal importance

The Municipalities are considered legal entities and have right of ownership and their own municipal budget. The members of the municipal council are elected by the residents of the Municipality, to form a legislative body, often compared to a "local Parliament". This legislative body determines the strategy for development of the Municipality in relation to the activities listed above.

The municipal council decides on the development, the alteration, and the approval of the urban plans concerning the territory of the municipality, including the territories on which are the Monuments of Culture. The municipal and state laws interfere in a way ensuring legislative unity. This bi-law approach to preserving the Monuments of Culture ensures the involvement of both professionals and representatives of the public, thus resulting in the best obtainable solutions.

The laws that the local Parliament is entitled to enact are: statutes, instructions, rules and regulations, etc., dealing with issues of local importance. The sessions of the local government are open to the public. The decisions of the municipal council are posted in a place, designated by the Mayor, and are brought to the attention of the public through the mass medias.

Currently the country is in a process of returning the property to the owners from who it was suspended during the totalitarian regime. For the purpose of preserving the cultural heritage, the Government has imposed moratorium / since June 8, 1994 / to the recovery of the property, which is considered Monument of Culture until all the laws concerning the recovery of property and Monuments of culture are finalised. At that time we hope that we will be able to better answer to all the questions regarding inheritance of Monuments.

Every day it becomes clearer that the risks involved during the transition of our country require a flexible, multi-disciplined, dynamic, and open strategy, armed with adequate laws. During these times, when our society is going through radical change, the choice of appropriate strategy to preserve our cultural heritage is crucial because it concerns the roots of our identity.

A few Concluding Remarks

Gideon Koren - Israel

The purpose of this meeting was two-fold. We hoped to present the difficulties we are coping with daily and the organizations involved in preserving Israel's built heritage of the 19th and 20th centuries, particularly at the local and urban level, while trying to learn from the experience, and the tools adopted by other countries dealing with all these problems.

As we have seen, Israel is forced to handle complex problems in the realm of urban preservation due to the combination of two main factors. On the one hand, there is no obligation to preserve the built heritage. Except for antiquities sites: legislation allows for, but does not compel, the local authorities, or the planning and building authorities, to preserve buildings and historic sites in the urban context. On the other hand, the obligation to compensate property owners, if preservation leads to a drop in the value of their properties or to the inability to develop and exploit them as is customary in the private market, deters local authorities from furthering preservation in the urban context.

As a result of the above considerations we hoped, at this meeting, to learn from the experience of other countries as to which methods can be adopted in Israel to promote and finance urban preservation.

We asked the participants from abroad to relate to the following subjects:

1. The legal forms and the specific laws dealing with urban preservation — what laws govern the declaration of a building as being worthy of preservation, which authority makes the decision, what is the position of governmental and municipal authorities and what standing do private property owners have in such procedures?
2. What are the financial or fiscal consequences of such a declaration? Are the owners entitled to any compensation as a result of the limitations on the building opportunities or on the usage of the property?
3. Are there any legal forms or methods transferring building, or other rights to a different property in exchange, or as compensation to the owner, due to the preservation?
4. Are there any financial tools for encouraging private owners to preserve buildings such as income tax exemptions, municipal tax exemptions or any other exemptions? Is there any recognition of expenses related to the preservation? Can those expenses be tax deductible in any way?

5. How is the preservation enforced upon owners of private property?
6. What legislation exists at the local or municipal level regarding urban preservation of buildings? How do local government authorities deal with the subject? Do they have any legislative powers and what is the relationship between such authorities and the government authorities?

The participants presented the situations existing in their countries with respect to most of the issues that were raised. It is difficult to reach conclusions common to all the presentations, since it transpires that the situation and the frameworks for handling and furthering the issue vary from country to country. It proved difficult to find a clear common denominator to the tools adopted by each country.

Nevertheless, I will try to relate briefly to a few outstanding characteristics of the methods adopted by various countries.

The first clear difference may be observed in the attitude to the question of which legal framework deals with preservation issues. In several countries a constitution has been adopted that provides a legal framework at the supreme level and influences all legislation at levels lower than, and subordinate to, it. This is likely to have several implications, especially when the preservation of a property is liable to be accompanied by damage to the property rights of its owner, a right recognized as fundamental by many of the constitutions introduced in various countries.

Even in the absence of a constitution, the situation is not uniform and is differentiated mainly by the question of whether the legal framework that defines preservation law is determined at the national level or, as noted by several countries with a federal structure, by separate legislation in every territory.

The variety of legislative techniques are not the only difference we have heard in recent days. We have also learned that some countries have a public authority that deals with preservation. The general impression is of a direct relationship between the existence of a public authority and the scope of legislation regarding preservation issues. It would seem to be more difficult to reach satisfactory legislation (and financing) the vaguer the administrative authority responsible for preserving sites.

Even when such authorities have been created the framework of their activities has been entirely different. They function under the auspices of diverse government Ministries (Culture, Education, Interior and Environment) and their authority is not

identical. The central issue, for example, of recognizing and listing sites worthy of preservation listing is under the authority of various authorities and totally different legal methods. This is also true with respect to financing preservation. Public budgets for furthering preservation, tax incentives and easements vary from one legal framework to another.

These variations present a difficulty but also a basis for encouragement. The existing range of solutions in different countries is so broad and varied that it indicates the clear need for developing additional tools to encourage preservation in Israel.

I would like to thank the participants who presented these solutions in a masterful and detailed manner. I am sure that the professional elements in Israel will view this conference as a basis for detailed discussion regarding the possibility of applying some of the solutions learned here in Israel.

I will conclude with the hope that in the future we will see the application some of the tools and solutions of which we have heard, here in Israel.



Jerusalem - Nachalat Shiva

The Council for the Preservation of Buildings and Historic Sites

Background

The Council for the Preservation of Buildings and Historic Sites is a public organization established on the initiative of the Society for the Preservation of Nature (and under whose patronage it functions), following discussions on the destruction of historical buildings in Israel and the decision taken by the Knesset in 1984.

Its objective is to preserve sites in Israel which are connected to the Zionist revolution and the history of Israel's revival, settlement and security. The Council's work is coordinated with different organizations ranging from the local authority, through the Jewish Agency, the Jewish National Fund and government institutions, to relatives of people whose personal history is connected with the various sites.

35 public, national and academic organizations, now members of the Public Council for the Preservation of Buildings and Historic Sites, joined public figures to lay the foundations for the Council. Conservation loyalists throughout Israel, from all walks of life, provide a supportive hinterland for the Council's activities, working on a voluntary basis to achieve its goals. The Board of Directors guides preservation policy throughout the country.

Since it is the only authority dealing with this subject, the Council is the address for information on, and action against, the destruction of historic buildings and sites throughout Israel, waging a struggle for the cancellation of demolition orders or against master plans that harm the preservation of historical sites. A small staff, backed by volunteers, operates within local and regional committees and in fact serves as the watchdog for preserving the history of settlement in Israel and the struggle for its establishment.

Preservation of historical sites in Israel has become part of the national culture as well as offering attractions to tourists from around the world.

Education

The Council encourages the development of educational programs at the historic sites and museums as a national duty, promoting awareness of the importance and value of preservation, and encouraging excursions and visits to the different sites as the spearhead of its activities. Educational programs, in cooperation with the Ministries of Education have been developed for the formal and informal education systems, entitled "To touch the past and preserve it for the future". Considerable effort is invested in the education system and attempts to introduce Israel's heritage to the suitable chapters of the curriculum, in the belief that if children are exposed to the

subject from an early age they will grow up with an attachment to, and awareness of, heritage sites. The sites offer young visitors a unique learning experience, which combines activities and discussions.

Sites and Museums

From Eilat and Revivim in the south to Metulla in the North dozens of buildings and sites have been restored and are open to the public, offering a showcase for the Council's activities. They are the cornerstones in the history of the renewal of our people, with exhibitions documenting the life style and events pertinent to the areas in which they are located.

These sites are visited by about 2 million visitors annually, of which the refugee camp at Atlit is one example. This site alone is visited by over 100,000 visitors a year, many of them school children who are exposed to the events of the illegal immigration through exhibits and activities demonstrating the history of the camp, the struggle for independence and of the settlements.

Roots in the Homeland

A special program for foreign visitors to these sites has been started, enabling them to meet veteran settlers and youngsters who discuss their absorption in Israel via a rich artistic experience of Israeli culture and folklore adapted to each and every site. This program is not a mere visit, but affords studying Israel's rebirth in depth through a rich, emotional experience.

Financing and Public Activities

The Council receives funding for the projects according to a detailed application for each. The projects are financed by diverse organizations, whether local authorities, foundations, industrial enterprises or the Government of Israel, who appreciate the value of supporting education for cultural and historic values.

A Society of Friends for the Restoration of Historical Sites in Israel exists alongside the Council, which helps mobilize financial support. It also assists in the restoration, preservation and development of historical sites and buildings and informal educational activities for various sectors of the population, ranging from excursions for new immigrants to seminars and meetings on the subject of preservation.

Public pressure exerted by the Council for Preservation saw the enactment of the Law for the Preservation of Historical Sites. This law does not yet assure the preservation of these sites in the most desirable manner, for which reason the council must continue to work towards its improvement and draft public and economic support for the preservation and restoration of historic sites in Israel.

Israel's National Committee of ICOMOS

ICOMOS is an international, non-governmental organization dedicated to the conservation of the world's historic monuments and sites. The organization was founded in 1965, as a result of the international adoption of the Charter for the Conservation and Restoration of Monuments and Sites in Venice the year before. Today the organization has National Committees in over 107 countries.

ICOMOS aims to:

1. Bring together conservation specialists from all over the world and serve as a forum for professional dialogue and exchange;
2. Collect, evaluate and disseminate information on conservation principles, techniques and policies;
3. Co-operate with national and international authorities on the establishment of documentation centres specialising in conservation;
4. Work for the adoption and implementation of international conventions on the conservation and enhancement of architectural heritage;
5. Participate in the organisation of training programmes for conservation specialists on a world-wide scale;
6. Put expertise of highly qualified professionals and specialists at the service of the international community.

ICOMOS is UNESCO's principal advisor in matters concerning the conservation and protection of monuments and sites. With IUCN - The World Conservation Union, ICOMOS has an international role under the World Heritage Convention to advise the World Heritage Committee and UNESCO on the nomination of new sites to the World Heritage List.

Through its 21 International Scientific Committees of experts from around the world, and through its triennial General Assembly, ICOMOS seeks to establish international standards for the preservation, restoration, and management of the cultural environment. Many of these standards have been promulgated as Charters by the organization as a result of adoption by the ICOMOS General Assembly.

ICOMOS-Israel - Israel's National Committee of ICOMOS is a not - for - profit organization. Members of ICOMOS-Israel come from such disciplines as archaeology, architecture, engineering, history and law, and are well versed in the field of historic preservation.

The Institutional members of ICOMOS-Israel include the Council for the Preservation of Buildings and Historical Sites, the Nature and Parks Authority and the Government Company for Tourism.

With the ratification of the Convention for the Protection of World Cultural and Natural Sites, 1972, by the State of Israel (in January 2000), ICOMOS - Israel hopes to play a major professional role in the activities of the Israeli World Heritage Committee. Regular meetings and site-visits will allow members to determine and discuss issues relevant to the national agenda of conservation and conservation planning.

Israel National Commission for UNESCO

The Israel National Commission for UNESCO has been in existence since 1949. The Commission was established by the Ministries of Education and Foreign Affairs. Israel joined UNESCO in 1949.

The President of the Israel National Commission for UNESCO is the Minister of Education and the Chairman is the Director General of the Ministry of Education. The members of the Commission represent government ministries (Education, Culture, Science and Foreign Affairs) and statistical bodies related to the UNESCO Convention (Oceanography, Hydrology, Geology, Higher Education, Man and his Environment). There are also representatives of public organizations and experts in UNESCO's fields of specialization. The Steering Committee of the Commission and the Secretary General coordinate the activities of the Secretariat, and its members include representatives of the Ministries of Education, Culture, Science, Foreign Affairs and Higher Education.

Israel Natcom operates from the Ministry of Education, but it serves both government ministries (Education, Culture, Science and Sport, Tourism, Environmental Protection, Infrastructure, Interior and Health), public organizations (Antiquities Authority, Nature and National Parks Authority, Chairs of UNESCO, Council of Higher Education, National Academy of Sciences, Research Institutes, Teacher-Training Institutions, Israel Lands Authority) and Non-Governmental Organizations (non-profit organizations dealing with human rights, women's organizations, youth) which reflect and express the needs of the civil society.

The Israel National Commission for UNESCO coordinates UNESCO activities in Israel, and allows the flow and implementation of ideas and programs, which relate to the goals of the organization in the areas of Education, Culture, Science and Informatic, and Social and Human Sciences among both government ministries and non-government organizations.

Israel Antiquities Authority (I.A.A.)

The Israel Antiquities Authority (I.A.A.) is responsible for applying the 1978 Antiquities Law. The Minister of Education is responsible for the Authority and it is supervised by board of directors headed by a member of the Israel Academy of Sciences. The director general is assisted by a advisory council comprising senior archeologists from universities in Israel

The Authority's Functions:

- * Declaration of antiquities sites
- * Preservation and Supervision of Antiquities
- * Licensing Excavations and Surveys
- * Archeological Excavations
- * Handling and Conservation of Finds
- * Management of State Treasures
- * Sites Conservation
- * Publications
- * Archive and Library
- * Educational Information Services

Antiquities - Looking Ahead to the Future

Since the establishment of the I.A.A. much has been achieved to preserve and protect Israel's antiquities. The Authority has stepped enforcement of the Antiquities Law and the prevention of the destruction of archeological sites. These acts rescued thousands of sites through the country. For the first time, national conservation policy guidelines have been defined and the law requiring the publication of scientific material. The Authority has generated increased activity in the development of antiquities sites for tourism, such as Jerusalem Akko, Beit She'an, Beit Govrin and others. Much progress has been made in the development of research means, in the establishment of advanced laboratories, and in the introduction of new techniques for the processing

and conservation of finds. In recent years, Israel is undergoing accelerated development which has had a significant impact on the country's historical landscape. This has increased the number of excavations undertaken each year. As the national agency responsible for Israel's antiquities, the Israel Antiquities Authority ensures that these antiquities are handled from a broad scientific perspective, and that value-oriented and professional criteria are taken into consideration.

These efforts ensure correct and balanced utilization of Israel's national archeological resources.

Israel Antiquities Authority Conservation Department

The Conservation Department was established in 1988 to provide professional services for preservation of structural remains representing our rich cultural heritage.

Specialized Fields - The activities of the Conservation Department are based on the Israeli Antiquities Law and on international and national charters and conventions. The Department consists of five units, each specializing in a professional field, meeting the demands of modern conservation requirements. The teams include conservators, architects, engineers and conservation surveyors.

Survey and Documentation - Documentation of archaeological sites / Inventory lists / Documentation for planning and conservation purposes / Urban survey / Documentation of historical buildings / Conservation specifications, manuals and guidelines.

Planning - Urban, architectural and engineering planning for archaeological sites / Guidance and planning services for ongoing conservation work / Participation in national planning policy.

Conservation - Conservation during excavations / Constructional supports / Conservation of stone, wood and adobe constructions / Maintenance of sites - drainage, backfill and cover / Development and preparation of sites for tourism / Professional training.

Art Conservation - On - site and workshop conservation of mosaics and frescos / Preparation for exhibitions / Stone and wood conservation / Laboratories for material analyses,

Inspection - Supervision of conservation works at archaeological sites and buildings / Monitoring systems.

Planning and Building Law (Amendment No. 31) (Site Preservation Scheme), 1991

Addition to section E1

1. Following section 76 of the Planning and Building Law, 1965 hereafter - the main law) will be stated:

Section E1: Site Preservation Scheme

Site preservation Scheme

76a The provisions of the fourth addition will be applicable to a scheme for site preservation.

Correction to the third schedule

2. The end of section 13 of the third schedule shall state, "including expenses for preservation of the site or its expropriation, according to the fourth schedule".

Correction to the third schedule

3. Following the schedule of the law shall be stated:

Fourth Schedule (Section 76a)

Definitions

1. In this schedule, 'site' - a building or group of buildings or part thereof, including their near surroundings, which, in the opinion of the planning institution, are of historical, national architectural or archaeological importance.

Preservation scheme

- 2.a. A site preservation scheme shall be treated like a local outline scheme (hereafter-a preservation scheme).
- b. A preservation scheme may be prepared by a Local Commission or by interested parties, subject to section 3.

Preservation scheme proposed by interested parties

- 3.a. A Local Commission may adopt, with or without alterations, a preservation scheme proposed to it by an owner of real estate or by a local authority within whose boundaries the site is located, or by any organization approved generally or specifically by the Minister of the Interior for this purpose (in this section- a preservation scheme by interested parties).

- b. The Local Commission shall decide on the adoption of a preservation scheme prepared by interested parties within six months after the day on which it was proposed; should the Commission not decide within that period, the applicant may submit the scheme to the District Commission.

- c. If a person deems himself injured by the rejection of the preservation scheme by interested parties or by changes made to it, he is entitled to appeal to the District Commission within thirty days after the day on which he was informed of the rejection.

Provisions for 4 the interim period

When a preservation scheme has been submitted to a Local Commission, or when the Commission has decided on the preparation of such a scheme, then the Commission may issue instructions on the prohibition and restriction of activities at the site included or to be included in the scheme, which are liable to damage the objectives of the preservation, for as long as the scheme is under the planning authorities' consideration (hereafter - a site intended for preservation); the provisions of sections 77, 78, and 79 regarding publication of the decision to prepare a preservation scheme, on prohibitions and restrictions during the period of its preparation and waiving obligatory payments, shall apply, mutatis mutandis, to a decision according to this section; however, the prohibitions and restrictions shall not be imposed for a period beyond one year from publication of the notice; the Local Commission, may, with the permission of the District Commission, extend the said period for an additional period which shall not exceed one year; for this purpose, the 'preparation period', from the day on which notice of the decision to prepare a preservation scheme was published until its deposition, or until the prohibitions and restrictions according to this section have lapsed.

Notification

5. Should the District Commission decide to deposit a preservation scheme, it shall notify the owners and possessors of real estate within the bounds of the scheme; such notification shall be delivered or sent by registered mail to the known addresses of the owners and the possessors.
6. A preservation scheme may included provisions on permitted uses of the site, including additional construction, and determine rules pertaining to the relationship between these provisions and those of schemes pertaining to the site.

Lack of source for paying compensation

7. a. The owner, or the possessor of a site to be preserved, who wishes to alter or use the site, may do so only in accordance with the provisions of the preservation scheme.
- b. In this section, 'change' is any act needing a permit according to section 145 of the Law, including 'internal change', if stated specifically in the preservation scheme.

Tax exemption

8. a. If a Local Commission is sued for payment of compensation under sections 197 and 198 for real estate included in the preservation scheme, and if the Local Commission realizes it has no source to finance such a claim, then the Local Commission may, on its own initiative or at the request of the local authority in whose domain the real estate is located, initiate an alteration to, or cancel, the preservation scheme, at any stage during hearings on the claim, and even after judgement thereon.
- b. If compensation has not been paid, according to sub-section (a) and the real estate was restored to the use prescribed for it prior to the preservation scheme, the person who had rights in the real estate when the preservation scheme was approved, or when it was cancelled or changed, shall not be obliged to pay any appreciation levy because of the cancellation or because of the alteration to the preservation scheme.
9. a. If real estate within the bounds of the preservation scheme be affected, as mentioned in section 197, and if under section 200 compensation was not paid to the injured party, then the provisions of section 5 of the Municipal and Government Taxes (Exemptions) Ordinance 1938 (hereafter the Ordinance) shall apply to that real estate, subject to the provisions of sub-sections (b) and (c); the person injured as mentioned, as long as he is so injured, is entitled to exemption according to the Ordinance.
- b. If the real estate was a source of income due to its commercial use, then a person authorized by the Minister of the Interior may determine the rate of exemption and its duration, considering the injury to the real estate as a source of income.
- c. A person so authorized by the Minister of the Interior may, at the request of the relevant local authority, reduce the rate of the exemption, considering the extent of the prejudicial effect to the real estate and the duration of the exemption.

Preservation committee

10. Every local authority shall establish a Preservation Commission, which shall include:

1. In a local authority, which is also the Local Commission, according to section 18 of the law - the head of the authority or the chairman of the planning and building sub-committee, and in a local authority located in a local planning area according to section 19 of the law - the head of the local authority or one of his deputies, who shall be the chairman;
2. Three members of the authority council, selected by the authority;
3. An employee of the authority familiar with planning and building issues, appointed by the head of the authority;
4. A person qualified for the preservation of settlement sites and buildings, selected by the authority council, and he shall be of an advisory capacity.

Invitations

11. The engineer of the local authority and the District Planner of the District in which the Site Preservation Commission functions - or their representatives - shall be invited to every session of the Commission.

List of sites for preservation

12. a. A Site Preservation Commission shall prepare, within two years of its establishment, a list of sites in its boundaries, which, in its opinion, should be preserved (hereafter the list of sites).
- b. The list of sites shall specify the reasons for preserving a site, the extent to which it can be developed, details of site ownership and holders of other rights, and other details as the Site Preservation Commission deems appropriate.
- c. The list of sites shall serve the Site Preservation Commission and the planning authorities.
- d. The Site Preservation Commission may alter the list of sites whenever it deems fit.
- e. The provisions of Chapter 2, article 6 of the law shall apply, mutatis mutandis, to the Site Preservation Commission, as if it were a planning authority.

**The functions 13.
of the Site
Preservation
Commission**

In addition to its functions and powers according to sections 12, 14, and 15, a Site Preservation Commission shall advise the local authority and the Local Commission, whose planning areas include the local authority's area of jurisdiction, on any issue pertaining to the preservation of sites, and it may also advise the District Commission if so requested by it.

Maintenance 14.

- a. Should the Site Preservation Commission be convinced that the site to be preserved faces a real danger of damage or that the site's preservation will be prejudicially affected to an extent liable to negate the purposes of its preservation, as based on the expert opinion of the local authority's engineer, the Site Preservation Commission may, through the local authority engineer, demand of the owners to perform maintenance work on the site within a period of time to be determined by it; should there be a real danger of damage to the site, and if the owners did not execute the work, the local authority may perform the work essential to prevent damage to the site, and the owners shall be liable to repay the said expenses, if the local authority did not decide to bear part or all of these expenses.
- b. Should the site, as mentioned in sub-section (a) be real estate held by a protected tenant, under the Tenant Protection Law, 1972 (hereafter, protected tenant), then the Preservation Commission may, through the local authority engineer, demand of the tenant to perform maintenance work on the site within a period to be determined by it, and the provisions of section 70 of the above mentioned law shall apply, mutatis mutandis, to the said work.
- c. The said demands shall specify the division of expenses between the owner of the real estate and the protected tenant, as prescribed by the head of the local authority, after examining a written expert opinion by the local authority's engineer and by its legal advisor, concerning the real estate to be repaired and other circumstances.
- d. Should the work not be executed and there is real danger of damage to the intended site, then the local authority shall be entitled to execute whatever work is necessary to prevent damage to the site, and the cost of the work shall be defrayed according to the division set under sub-sections (a), (b), and (c).

**Expropriation 15
and
compensation**

- e. A person appointed by the Site Preservation Commission may enter the site and perform the necessary examinations in order to inspect it and assess the need for maintenance work, and shall, for this purpose, hold the authority as prescribed in section 257 of the law.
- a. If the maintenance work on the site is not executed by those responsible within the time allotted by the Site Preservation Commission, as mentioned in section 14, and if, based on the opinion of the local authority engineer, the Commission is convinced that the site will be damaged in a manner liable to negate the objective of its preservation, then the local authority within whose jurisdiction the site is located may expropriate the site or part of it.
- b. A site shall not be expropriated, as mentioned in sub-section (a) unless the District Commission has given consent after providing the property owner with the opportunity to present his case before the Site Preservation Commission and before the District Commission.
- c. The site's development potential, had it not been slated for preservation, shall not be considered for the purposes of compensation for the expropriation, as mentioned in sub-section (a).
- d.1. If a site was expropriated under this section, then the local authority may sell or lease it, subject to the provisions of paragraph (2) on the condition that the sale or lease assures the site's preservation
2. If, within five years of its expropriation, the site is put up for sale or for lease, as stated in paragraph (1), for a period in excess of five years, then the person from whom it was expropriated may purchase or to lease it, as the case may be, within 60 days of the date on which the local authority informed him of its intentions to sell or to lease the said site, provided that the sale or lease price be no less than the price set by the Chief Government Land Assessor or his representative;
3. A sale or lease under this section is subject to the approval of the Minister of the Interior or his representative.

- e. If no specific instructions were stated in this schedule, the expropriation shall be executed under to the Land Order (Expropriation for Public Purposes) Ordinance 1943 as if the local authority, within whose jurisdiction the site is located has been authorized to exercise the authority and to perform the functions of the Government or the Attorney General, according to the said Ordinance in regard of the real estate to be expropriated, dependent on notification in Reshumot.

Value

16. a. If a person deems himself injured by the decisions taken under sections 9, 14 or 15(a) he may contest them before an appeals committee comprising three members to be appointed by the Minister of Justice for this purpose; the committee chairman shall be an attorney with at least three years of professional experience.
- b.1. An appeals committee which considers a contestation under section 9, may cancel the exemption that has been granted or to alter the rate of exemption and its duration
2. An appeals committee that discusses a contestation under section 14, may cancel or alter the demand of the Site Preservation Commission, order who shall execute the work stated in that section, and determine a different division of expenses between the real estate owner, the protected tenant and the local authority, dependent on the issue.
3. An appeals committee that discusses a contestation under section 15 (a), may cancel a decision to expropriating a site or part of it.
- c. If a person deems himself injured by a decision of the appeals committee, he may appeal to the District Court, where a single judge will hear the appeal.
- d. The District Court judgement under sub - section (c) can be appealed before the Supreme Court after receipt of permission from the President of the Supreme Court.

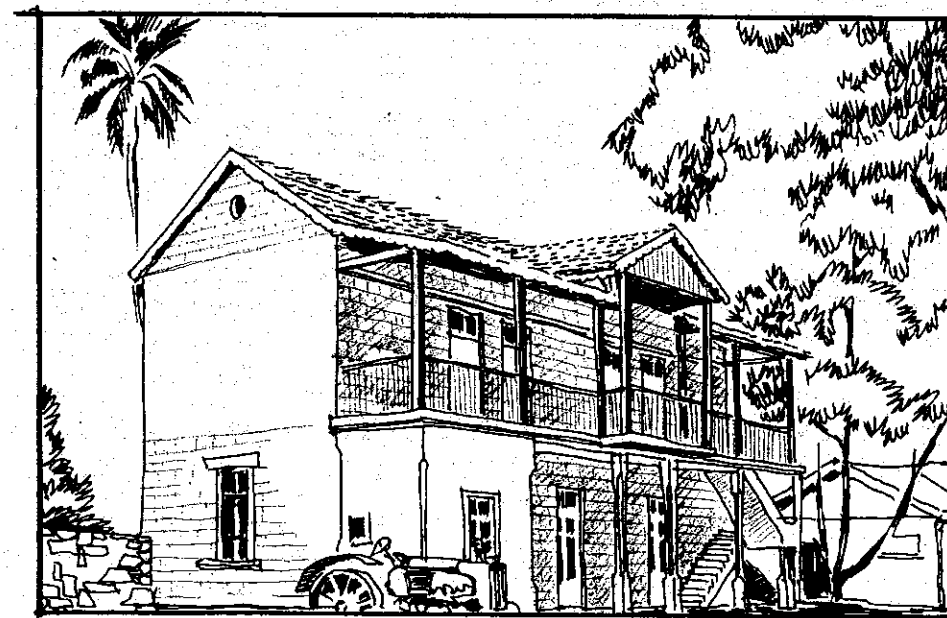
- Preservation of laws** 17. The provisions of this Schedule are in addition to the provisions of any other law and do not detract from them.

Yitzhak Shamir
Prime Minister

Arieh Deri
Minister of the Interior

Chaim Herzog
President of the State of Israel

Dov Shilanski
Speaker of the Knesset



Ein - Shemer - the Old courtyard



PLATIN

