

Fall 2014

A New Devil in the White City: The Demolition of Prentice Women's Hospital and the Failures of Chicago's Landmarks Ordinance, 48 J. Marshall L. Rev. 391 (2014)

Laura Luisi

Follow this and additional works at: <https://repository.law.uic.edu/lawreview>



Part of the [Cultural Heritage Law Commons](#), [Property Law and Real Estate Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Laura Luisi, A New Devil in the White City: The Demolition of Prentice Women's Hospital and the Failures of Chicago's Landmarks Ordinance, 48 J. Marshall L. Rev. 391 (2014)

<https://repository.law.uic.edu/lawreview/vol48/iss1/9>

This Comments is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC Law Review by an authorized administrator of UIC Law Open Access Repository. For more information, please contact repository@jmls.edu.

A NEW DEVIL IN THE WHITE CITY: THE DEMOLITION OF PRENTICE WOMEN'S HOSPITAL AND THE FAILURES OF CHICAGO'S LANDMARKS ORDINANCE

LAURA LUISI*

I.	INTRODUCTION.....	391
II.	BACKGROUND.....	392
	A. The Beginning of Preservation	392
	B. The National Historic Preservation Act.....	394
	C. Chicago's Landmark Ordinance.....	395
	D. Prentice Women's Hospital: The Conflict among Preservation, Politics, and Economic Development	397
III.	ANALYSIS.....	405
	A. Designation of Commission Members of Chicago's Landmarks Ordinance	405
	B. Designation of Commission Members in the Denver and Boston Landmarks Ordinances.....	407
	C. Demolition and Economic Hardship Provisions in Chicago's Landmarks Ordinance	408
	D. Demolition and Economic Hardship Provisions of the District of Columbia and Denver Landmarks Ordinances.....	411
IV.	PROPOSAL.....	413
V.	CONCLUSION.....	418

I. INTRODUCTION

It is time to apply the same ingenuity that has fueled the creation of Chicago's internationally renowned architecture towards solving the present-day challenges of preserving the important contemporary structures that define the city's identity. Chicago is perhaps the only city where a building as unique as the Prentice Women's hospital can survive and thrive. We threw out the babies, but hopefully not the bath water.¹

*J.D. Candidate, The John Marshall Law School (2015); M.B.A. Candidate, Dominican University (2015); B.S. in Architecture, University of Illinois—Chicago School of Architecture (2012).

1. Letter from Lois Weisberg, Architect, to Mayor Rahm Emanuel (Oct. 22, 2012), *in* Memorandum from Eleanor Esser Gorski, AIA, Assistant Comm'r to Members of the Comm'n on Chi. Landmarks (Feb. 1, 2013) [hereinafter

Chicago's culture is, in large part, defined by its courageous, innovative, and rich architectural history. With such a strong cultural identity comes the responsibility to preserve the City's character for generations to come. Throughout its history, the City of Chicago allowed architectural masterpieces to succumb to economic and political pressures.²

The recent decision in *Hanna v. City of Chicago* left Chicago's Landmarks Ordinance unscathed,³ but nevertheless, its inadequacies are showcased by the demolition of the Prentice Women's Hospital. An examination of the landmark ordinances of other large American cities further demonstrates the shortcomings of Chicago's own ordinance.⁴ Chicago's Landmarks Ordinance, in its current form, plays a strong role in destroying the cultural and architectural character that so deeply defines the City. Absent revisions to the Landmarks Ordinance, Chicago will become increasingly devoid of cultural progression and lost as to its place in the nation.

II. BACKGROUND

A. *The Beginning of Preservation*

Historic and architectural preservation in the United States was sparked at the end of the nineteenth century when citizens of Virginia sought to preserve Mount Vernon, the historic home of George Washington.⁵ Although Virginians wanted to preserve the

Memo], available at <http://www.cityofchicago.org/content/dam/city/depts/dcd/general/febPacket.pdf>.

2. See generally Theodore W. Hild, *The Demolition of the Garrick Theater and the Birth of the Preservation Movement in Chicago*, 88 ILL. HIST. J. No. 79 (1995) (explaining the destruction of the Garrick Theater and the Chicago Landmarks Ordinance Commission's failure to fight for preservation). The Garrick Theater was designed by famous architect Louis Sullivan, and was demolished in 1961 to make room for a parking garage. *Id.* at 79. Preservationists urged the newly formed commission to take a stand, but the Commission refused to make an effort despite the feasibility of reusing the building. *Id.* at 84.

3. See *Hanna v. City of Chicago*, 2013 IL App (1st) 121701-U, ¶¶ 33–44 (Ill. App. Ct. 2013) (holding that Chicago's Landmarks Ordinance is not unconstitutionally vague).

4. See Hallie Busta, *Chicago's Landmarks Commission Sidelines Architects*, ARCHITECT MAG. (Aug. 8, 2011), available at <http://www.architectmagazine.com/architecture/chicagos-landmarks-commission-sidelinesarchitects.aspx> (explaining that “[m]ost large cities . . . specify the number of design professionals to be appointed to their landmarks or historic preservation commissions”).

5. H.R. REP. NO. 96-1457, at 18 (2d Sess. 1980), as reprinted in 1980 U.S.C.C.A.N. 6378, 6380–82 (explaining the early history of preservation in the U.S. on a federal level). George Washington's house at Mount Vernon was eventually preserved through the Mount Vernon Ladies' Association, a private

historic site, the federal government and the State of Virginia refused to offer assistance.⁶

The first stride in historic preservation did not come until the early twentieth century when Congress enacted the Antiquities Act of 1906.⁷ Although the Antiquities Act protected only historic landmarks on federal land, the Act marked the beginning of a nationwide preservation movement.⁸ In 1935, Congress passed the Historic Sites Act which preserved objects and structures of national significance.⁹ The Historic Sites Act was the predecessor statute to the National Historic Preservation Act of 1966.¹⁰ Then, in 1949, Congress developed the National Trust for Historic Preservation to encourage public participation in historic preservation projects.¹¹

By the 1960s, Congress's historic preservation efforts propagated public awareness of the need to preserve the country's cultural and historic heritage. In 1964, the Task Force of Preservation of Natural Beauty suggested the execution of an inventory of historic sites.¹² Shortly after the Task Force made its recommendation, the United States Conference of Mayors similarly stressed the country's need for federal legislation to preserve historic sites and structures.¹³ Congress then began the process of creating a comprehensive preservation law to cover both historic properties and artifacts with cultural, architectural, or

organization. *Id.* at 6381; *see also* Melissa A. MacGill, Comment, *Old Stuff is Good Stuff: Federal Agency Responsibilities Under Section 106 of the National Historic Preservation Act*, 7 ADMIN. L. J. AM. U. 697, n.36 (1994).

6. H.R. REP. NO. 96-1457, at 18, *as reprinted in* 1980 U.S.C.C.A.N. 6378, 6381.

7. 16 U.S.C. §§ 431-33 (1988); *see also* MacGill, *supra* note 5, at 703 (explaining that the Antiquities Act gave the president the power to designate historic landmarks, structures, and objects that were located on federal land in order to give them special protection). Some of the criteria that is considered by the Federal Government for a nominee to the National Register includes whether the site or structure is significant to American history, architecture, archeology, engineering and culture, and is associated with events that have made contributions to the pattern of American history, or whether it has high artistic values. 36 C.F.R. § 60.4 (1993).

8. *See* James E. Smith, Note, *Are We Protecting the Past? Dispute Settlement and Historical Property Preservation Law*, 71 N.D. L. REV. 1031, 1037 (1995) (explaining that the Antiquities Act paved the way for the National Historic Preservation Act).

9. 16 U.S.C. § 461 (1935). The Historic Sites Act granted the power in the Secretary of the Interior to evaluate and identify sites of national historic significance. *Id.* at § 462. The Secretary of the Interior is also required to survey historic sites, investigate and research sites of national significance, and acquire property for preservation. *Id.*

10. *Id.* at § 470 (1966); *see infra* Part II.B. (discussing the history and effects of the National Historic Preservation Act).

11. 16 U.S.C. § 468 (1949).

12. H.R. REP. NO. 96-1457, at 19, *as reprinted in* 1980 U.S.C.C.A.N. 6378, 6381.

13. *Id.*

historical significance.¹⁴

B. The National Historic Preservation Act

Congress enacted the National Historic Preservation Act of 1966 (“NHPA”) to protect at a national level historic and cultural property.¹⁵ Congress intended the NHPA to maintain our national heritage for future generations by safeguarding significant cultural sites and structures.¹⁶ The NHPA does not dictate which sites or structures are worthy of preservation but, rather, sets

14. H.R. REP. NO. 89-1916 (2d Sess. 1966), *as reprinted in* 1966 U.S.C.C.A.N. 3307, 3309. Prior to the NHPA (“National Historic Preservation Act”), federal preservation laws only protected historic sites of national significance. *Id.* With the creation of the NHPA, congress recognized that local and federal historic sites with cultural and architectural significance were also worthy of preservation and in need of protection by federal law. *Id.*

15. 16 U.S.C § 470 (1966).

16. *Id.* at § 470(b). Congress declared the following seven points as the underlying policy considerations of the NHPA:

the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

historic properties significant to the Nation’s heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of federal and federally assisted projects and will assist economic growth and development; and

although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Id. The Act forced the Federal Government to cooperate with State and local governments, Native Americans, and the public to effectively ensure the protection of sites and structures all over the country. *Id.* at § 470-1.

forth an overall plan to effectively carry out its policy while reserving the power of preservation to the states and certain federal agencies.¹⁷

One major component of the NHPA authorizes the Secretary of the Interior to log and maintain a National Register of Historic Places comprised of districts, sites, buildings, structures, and objects of significance to American history, architecture, archeology, engineering, or culture.¹⁸ Based on published criteria and procedures, the Secretary determines what is included in the Register.¹⁹

Congress also enacted the NHPA to encourage states to create their own local preservation programs with the approval of the Secretary of the Interior.²⁰ Approval requires the satisfaction of certain NHPA criteria, the most important of which is the appointment of a State Historic Preservation Officer (“SHPO”).²¹ The SHPO acts as a liaison between the State and the Secretary by nominating properties to the National Register and communicating information to the public regarding preservation.²² Before being nominated for the National Register, historic properties and sites achieve landmark status through local landmark ordinances.²³

C. Chicago’s Landmark Ordinance

Approved by the Illinois SHPO, Chicago’s Landmarks Ordinance was enacted in 1968 to protect Chicago’s cultural and historic heritage by preserving buildings, sites, areas, and districts considered representative of the City’s unique character.²⁴ The

17. 16 U.S.C § 470a (1966).

18. *Id.* at § 470a(a)(1)(A). The Secretary of the Interior is part of an Advisory Council established by the NHPA, and the Council’s job includes advising the President and Congress on matters concerning historic preservation, conducting training and education programs, and encouraging the public to take an interest and stance in preservation. *Id.* at § 470a(b)(3)(g). Other members of the Advisory Council include four members of the general public, Architect of the Capitol, a Native American or Native Hawaiian, four historic preservation experts, one governor, and one mayor. *Id.* at § 470i.

19. *Id.* at § 470a(a)(2); see also JULIA H. MILLER, A.L.I., A LAYPERSON’S GUIDE TO HISTORIC PRESERVATION LAW: A SURVEY OF FEDERAL, STATE, AND LOCAL LAWS GOVERNING HISTORIC RESOURCES PROTECTION 2 (2007) (explaining the National Register’s significance in the federal regulatory protection scheme, which includes federal loans, grants, and tax incentives).

20. 16 U.S.C. § 470a(b)(1) (1966). Every state has now enacted a preservation program, which includes more than 2,300 preservation ordinances. MILLER, *supra* note 19, at 10.

21. 16 U.S.C. § 470a(b)(1) (1966). The Secretary will approve the state program only if the Governor of the State appoints a State Historic Preservation Officer, the State establishes a State historic preservation review board, and provides for adequate public participation in the State program. *Id.*

22. 16 U.S.C. § 470a(b)(3) (1966).

23. *Id.*

24. CHI., ILL., MUN. CODE ch. 2-120, art. XVII, § 580 (1987).

Landmarks Ordinance creates a nine-member commission composed of eight members chosen by the Mayor and the Commissioner of Housing and Economic Development (“HED”).²⁵ The Mayor must select the eight Commission members from professionals “in disciplines of history, architecture, historic architecture, planning, archaeology, real estate, historic preservation, or related fields, *or* shall be persons who have demonstrated special interest, knowledge or experience in architecture, history, neighborhood preservation, or related disciplines.”²⁶

Once a site or building is proposed for landmark designation, the Commission must vote on whether to make a preliminary recommendation for landmark status and initiate the consideration process for official landmark designation.²⁷ The Commission may recommend landmark designation if the proposed landmark meets two or more of the designated criteria,²⁸ and “has a significant historic, community, architectural or aesthetic interest or value, the integrity of which is preserved in light of its location, design, setting, materials, workmanship, and ability to express such historic, community, architectural, or

25. *Id.* at § 590.

26. *Id.* at § 600 (emphasis added).

27. *Id.* at § 630.

28. *Id.* at § 620. The seven criteria that must be taken into consideration by the Commission are as follows:

Its value as an example of the architectural, cultural, economic, historic, social, or other aspect of the heritage of the City of Chicago, State of Illinois, or the United States.

Its location as a site of a significant historic event which may or may not have taken place within or involved the use of any existing improvements.

Its identification with a person or persons who significantly contributed to the architectural, cultural, economic, historic, social, or other aspect of the development of the City of Chicago, State of Illinois, or the United States.

Its exemplification of an architectural type or style distinguished by innovation, rarity, uniqueness, or overall quality of design, detail, materials, or craftsmanship.

Its identification as a work of an architect, designer, engineer, or builder whose individual work is significant in the history or development of the City of Chicago, the State of Illinois, or the United States.

Its representation of an architectural cultural, economic, historic, social, or other theme expressed through distinctive areas, districts, places, buildings, structures, works of art, or other objects that may or may not be contiguous.

Its unique location or distinctive physical appearance or presence representing an established and familiar visual feature of a neighborhood, or community of the City of Chicago.

Id.

aesthetic interest or value.”²⁹

If the Commission recommends preliminary landmark designation, it must then ask the Commissioner of HED to make a report that evaluates how the proposed landmark designation would affect the surrounding neighborhood and comprehensive plan of the City.³⁰ Once the owner of the property is notified and consent for landmark designation is requested,³¹ the Commission must hold a public hearing to provide all interested persons an opportunity to present testimony regarding the proposed landmark designation.³²

After a thorough and complete review of all relevant materials and testimony, the Commission votes on whether to recommend the proposed landmark designation to the City Council.³³ The ultimate decision on whether to designate landmark status lies in the hands of the City Council, which uses the same criteria as the Commission to decide whether to finalize landmark status.³⁴

D. Prentice Women’s Hospital: The Conflict among Preservation, Politics, and Economic Development

Professionals in the fields of architecture and preservation frequently refer to the Prentice Women’s Hospital (“Prentice”) as “unique in the world,”³⁵ “an architectural treasure,”³⁶ and a building that has “few if any equals in modern engineering.”³⁷ Built in 1975, Prentice, along with the Hilliard Homes and Marina

29. *Id.* at § 630.

30. *Id.* at § 640. This report must be submitted to the Commission within 60 days of the request or 90 days if the request pertains to a district. *Id.* The Commission may make changes based on the report, taking into consideration the opinion and recommendations of the Commissioner of Housing and Economic Development. *Id.*

31. *Id.* at § 650. The owner has 45 days to respond to the request, but may ask for an extension not exceeding 120 days. *Id.*

32. *Id.* at § 680. Prior to the hearing, the Commission must provide notice of the date, time, and place to any owner of the property not less than 15 days preceding the hearing. *Id.* at § 670.

33. *Id.* at § 690.

34. *Id.* at § 700.

35. Letter from Leading Architects, to Mayor Rahm Emanuel (July 25, 2012), *in* Memo, *supra* note 1.

36. Letter from Gary Allen Fine, Professor of Sociology, Northwestern University, to Members of the Chicago Landmarks Commission (Oct. 4, 2012), *in* Memo, *supra* note 1.

37. *See generally* Paul Goldberger, *Paul Goldberger on the fight to save Chicago’s Prentice Hospital*, VANITY FAIR (Aug. 14, 2012), *in* Memo, *supra* note 1 (paying tribute to Bertrand Goldberg’s use of modern engineering, and deeming it a unique form that revolutionized the design of health care facilities).

City,³⁸ are referred to as the trifecta of breakthrough architecture in Chicago by world-renowned architect Bertrand Goldberg.³⁹ Although most would not call Prentice a work of beauty, it is a testament to structural progress in the city that fostered architecture in the United States.⁴⁰

Based on the significance of Prentice, landmark designation would seem to have been an easy decision for the Commission, and indeed it was. At its preliminary vote on November 1, 2012 at 4:45 p.m., the Commission members called it a “boldly sculptural building” and subsequently voted for preliminary designation.⁴¹ After a preliminary vote, the Commission must usually request a report from HED, which usually takes weeks, if not months, to comply. In this case, the Commission was in possession of the HED report hours after their preliminary vote.⁴² The Commission voted once again on November 2, at 6:45 p.m. This time the Commission revoked the landmark designation and, in support of its decision, said that the HED report’s economic findings and Northwestern University’s (“NU”) needs outweighed the benefits of preservation.⁴³

The speedy process violated the procedures set out by the Landmarks Ordinance:⁴⁴ once a preliminary recommendation is

38. See National Trust for Historic Preservation, Executive Summary, *Prentice Women’s Hospital Landmark Report*, in Memo, *supra* note 1 (explaining that Prentice stands as a significant contribution to Chicago’s overall character and aesthetic value). The National Trust for Historic Preservation specifically stated that “[t]aken together, this group of Prentice, Marina City, and Hilliard homes . . . provide a legible narrative of the development of Goldberg’s ideas about concrete structural engineering.” *Id.*

39. *Id.* Bertrand Goldberg had revolutionary design concepts by “separating the caregiving and administrative functions of the hospital and creating ‘quiet villages’ that improved proximity and sightlines between nurses and patients.” *Id.* Engineers and architects alike praised him for his innovative use of poured concrete as a structural base, and deemed him a “crucial part of the story of the Bauhaus and [modernism] in America.” *Id.*

40. Goldberger, *supra* note 37.

41. See Emmet Sullivan, *Behind the Decision to Deny Prentice Landmark Status*, CHI. MAG. (Nov. 2, 2012), available at <http://www.chicagomag.com/Chicago-Magazine/C-Notes/November-2012/Commission-Votes-to-Grant-Landmark-Status-to-Prentice-then-Reverses-Decision/> (explaining that the preliminary landmark designation was only “symbolic,” and was merely carried out to give the impression that the vote change was due to the HED report).

42. *Id.*

43. *Id.*

44. See generally Deanna Isaacs, *The Landmarks Commission Stages A Prentice Do-Over, with the Same Result*, THE CHI. READER (Feb. 8, 2013, 6:07 PM), <http://www.chicagoreader.com/bleader/archives/2013/02/08/the-landmarks-commission-stages-a-prentice-do-over-with-the-same-result> (proposing that the Commission never really had a choice in their vote because of the political forces weighing against them); see also Deanna Isaacs, *Groundhog Day: Landmarks Commission Will Vote on Prentice*, THE CHI. READER (Jan. 28, 2013, 3:21 PM), available at <http://www.chicagoreader.com/bleader/archives/2013/01/28/ground>

made, the Commission must request an HED report, have a public hearing, give interested parties the opportunity to be heard, and may make a final recommendation to the City Council.⁴⁵ Realizing the violation, the Commission yet again put Prentice on its February 7, 2013 meeting agenda and planned for a proper hearing and another vote.⁴⁶ The HED report included a recommendation for landmark designation and reuse design proposals, an impartial economic study, various articles written by preservationists and enthusiasts dedicated to saving Prentice, letters from prominent architects to Mayor Rahm Emanuel, and a statement made by NU encouraging and justifying the demolition of Prentice.⁴⁷

In its statement, NU argued that it *had no choice* but to demolish Prentice because it had nowhere else to build their new research facility.⁴⁸ The crux of NU's argument was that the research facility would provide \$150 million in government research funding, in addition to the \$300 million it already received.⁴⁹ NU claimed that other proposed sites were not suitable place for the new facility.⁵⁰ NU argued that because the "University and its affiliates are major employers and a driving economic force for Chicago," the new research facility would bring jobs, growth, and prestige to the city.⁵¹ Before making these

hog-day-landmarks-commission-will-vote-on-prentice [hereinafter Issacs, *Groundhog Day*] (explaining that the Commission voted on Prentice a second time possibly because they did not follow the proper procedures at their November 2, 2012 meeting where the initial voting took place).

45. CHI., ILL., MUN. CODE ch. 2-120, art. XVII, § 690 (1987).

46. Isaacs, *Groundhog Day*, *supra* note 44.

47. *See generally* Memo, *supra* note 1 (providing a comprehensive report of information that was taken into consideration by HED and the Commission).

48. *See* Press Release, Northwestern University, Finding Tomorrow's Cures: Northwestern University Plans for a Medical Research Facility on the Site of the Former Prentice Hospital, *in* Memo, *supra* note 1 (explaining their reasoning for moving forward with their plans to demolish Prentice and build a new research facility on that particular site).

49. *Id.*

50. *Id.* NU used floor connections between the buildings in order to create an overall connectedness between all of its buildings. *Id.* NU claimed that Prentice site is the optimal location because it would allow them to use the connected system and better integrate the new building into its current buildings. *Id.*

51. *Id.* NU claimed that demolition of Prentice and the construction of an entirely new building would create more than 2,500 construction jobs, provide more than 2,000 full time jobs, attract top scientists to Chicago, and generate new startup companies with new discoveries. *Id.* In addition to the economic impact, NU also claimed that these figures do not include the "incalculable impact from the saved lives, improved quality of life, the commercial application of the research and other downstream economic impacts," all of which it did not provide statistical data for. *Id.*

The notion that NU had not even attempted to find a suitable solution for both sides of this chaotic battle further enraged preservationists. *Editorial: Prentice Should Remain Part of Chicago Skyline*, CRAIN'S CHI. BUS. (Aug. 27,

statements, NU had not retained an architect, nor did it have any specific proposals for the new research facility. Preservationists described NU's argument in five words: "save Prentice or save lives."⁵²

However, the economic study in the HED report stated that:

[t]he combination of preserving Prentice and adding new research space at an adjacent location is likely to generate more positive property value impact nearby than simply demolishing Prentice and building new research space there, with attendant increases in property tax revenues to the City of Chicago and Chicago Public Schools on the order of hundreds of thousands of dollars per year.⁵³

In addition to the evidence of economic prosperity, Prentice met four of the criteria required for landmark designation under the Landmarks Ordinance.⁵⁴ Prentice represented a critical part of

2012) in Memo, *supra* note 1. NU hasn't even retained an architect, which creates the prospect that the city could trade this gem for yet another utilitarian edifice on the medical campus. Unless Northwestern can bolster its case, the city should deny it a demolition permit. *Id.* Others have pointed to the fact that NU owns various other sites in the Streeterville neighborhood, yet still insisted on using the Prentice site, and only the Prentice site. *Editorial: Save Chicago's Iconic Prentice Hospital*, CHI. SUN-TIMES, June 26, 2012, in Memo, *supra* note 1. Jonathan Fine, executive director of Preservation Chicago, stated that "[f]or the last 100 years, [NU has] been trading and swapping land whenever it suits their convenience." *Id.*

52. *Id.* NU stated that the new building would "enable Northwestern University to bring in billions of dollars to the Chicago area, provide thousands of jobs, make the city a hub for biomedical research and innovations—and save lives . . . [o]r it can landmark a building about which there are mixed opinions." *Id.*

53. Lee Huang, *The Economic Impact of Rehabilitating the Prentice Women's Hospital Building* (Dec. 21, 2012), in Memo, *supra* note 1. Economist Lee Huang provided HED with a cost-benefit economic analysis comparing the demolition of Prentice and erection of a new building against the rehabilitation of Prentice into office and retail space coupled with the erection of a new building on a different site. *Id.* He concluded:

The combination of preserving Prentice and adding new research space at an adjacent location is likely to generate more positive property value impact nearby than simply demolishing Prentice and building new research space there, with attendant increases in property tax revenues to the City of Chicago and Chicago Public Schools on the order of hundreds of thousands of dollars per year.

Id. In addition, he stated that the rehabilitated Prentice building alone would generate approximately 1,000 jobs and provide Cook County with an additional \$90 million in continuous revenue each year. *Id.*

54. See Cheryl Kent, *Prentice Hospital Debate Goes Deeper Than Surface Appearance*, CHI. TRIB., Aug. 25, 2012, in Memo, *supra* note 1 (explaining that Prentice Women's Hospital meets four of the seven criteria designated in

the City's history, exemplified an important piece of architecture, embodied a unique physical appearance, and demonstrated the work of an important architect, Bertrand Goldberg.⁵⁵ Aware of the unique attributes and significance of Prentice, prominent architects and preservationists, including Jeanne Gang and Frank Gehry, begged the Commission to save Prentice.⁵⁶

Despite the overwhelming evidence and public outcry, HED's report concluded that Prentice was not worthy of preservation and stated that NU's proposal for demolition and the erection of a new research facility would "further distinguish the Streeterville neighborhood as one of the nation's preeminent medical campuses while reinforcing institutional investments that will extend city wide and beyond."⁵⁷ The report also indicated that HED would not consider the economic study and design proposals because they were "founded on a set of assumptions" and because "[t]here will be many patients whose lives are saved or enhanced as a result of [NU's] research program."⁵⁸

Chicago's Landmark Ordinance). Those four criteria are:

[i]t is a rare and innovative example of hospital design and of a thread of modernism architecture characterized by expressive forms; [i]t is the work of a well-known architect and engineer whose work is strongly identified with Chicago and who was influential internationally; [i]t represents an architectural and social theme of humanism that was particular to its era; [i]ts distinctive appearance is a neighborhood landmark in Streeterville).

Id.

55. National Trust for Historic Preservation, *supra* note 38.

56. *See generally* Memo, *supra* note 1 (providing various letters from architects and a signed petition from architects around the world, including Frank Gehry, Dirk Lohan, Bob Somol, Dan Wheeler, and John Ronan). Among the architects who sent letters to Mayor Rahm Emanuel, Jeanne Gang, designer of Chicago's new Aqua Tower, pled with the Commissioners by stating that preservation of Prentice will establish precedent for "preserving and reusing an unusual building type, and will only strengthen Chicago's reputation as a home to and incubator for world-class architecture and sustainability." Letter from Jeanne Gang, Architect, to Alderman Brendan Reilly (Nov. 15, 2010), *in* Memo, *supra* note 1. *See* Letter from William F. Baker, Engineer, to Chairman Rafael Leon (June 17, 2011), *in* Memo, *supra* note 1 (explaining that Prentice is significant and unique because its "structural solution (an exterior shell cantilevered 45 above its base) is the only example of its type anywhere in the world"); *see also* Letter from Kevin Roche, Architect, to the Commission on Chicago Landmarks (Oct. 1, 2012), *in* Memo, *supra* note 1 (urging the Commission to "once again safeguard the City of Chicago's historic and cultural heritage by recommending the Prentice Women's Hospital for a preliminary landmark designation").

57. DEP'T OF HOUS. AND ECON. DEV., REVISED REPORT TO THE COMM'N ON CHI. LANDMARKS ON PRENTICE HOSPITAL 4 (2012), *in* Memo, *supra* note 1.

58. *Id.* Despite the various reuse proposals and analysis deeming the preservation of Prentice economically beneficial, HED decided that Prentice would not be able to meet the needs of the research facility, nor would it be able to be used for any other purpose. *Id.* at 4–5.

Proponents of Prentice's preservation wrote scathing responses to HED's report and claimed that the situation was the direct result of "Chicago's elastic interpretation of a plainly written ordinance when a powerful institution is leaning on the city."⁵⁹ Many pointed to the plain fact that, based on the language of the Landmarks Ordinance, neither HED nor the Commission should take economic factors into consideration; instead, the City Council should consider economic factors *only after* the Commission formulated its recommendation.⁶⁰

Although most of the blame fell on the poorly drafted Landmarks Ordinance and NU's economic manipulation, Mayor Rahm Emanuel did not escape the battle unscathed. On October 30, 2012, the Mayor published an article in the Chicago Tribune announcing his support for the demolition of Prentice, and explained that he was prepared to weigh the "promise of a new medical center that would bring 2,000 jobs and hundreds of millions of dollars in investment to our city . . . against the importance of honoring Chicago's past and one of our great architects, Bertrand Goldberg."⁶¹ This article came out before the Commission voted, which left the Commission members without a meaningful choice and essentially rendered the eventual vote pointless.⁶²

The Mayor made these statements soon after he appointed four new members to the Commission, none of whom had any

59. Kent, *supra* note 54.

60. See Isaacs, *Groundhog Day*, *supra* note 44 (shedding light on the view of preservationists in regard to the economic factors that were taken into consideration in the HED report and preliminary recommendation).

61. Mayor Rahm Emanuel, *Emanuel on Prentice: 'I support the decision to rebuild on the site'*, CHI. TRIB., Oct. 30, 2012, http://articles.chicagotribune.com/2012-10-30/news/chi-prentice-hospital-rahm-emanuel-20121030_1_research-facility-historic-buildings-research-center. In his article, the Mayor does not consider the possibility of reusing the building for another purpose and building the research facility on another site that NU owns. *Id.* Rather, he uses purely economic factors to justify the demolition of Prentice, including the creation of new jobs and keeping "Chicago as a major center of scientific innovation that will be home to countless discoveries in the future." *Id.*

62. See *Emanuel Destroys Prentice*, ARCHITECTURE CHI. PLUS (Oct. 30, 2012), <http://arcchicago.blogspot.com/2012/10/emanuel-destroys-prentice.html> (arguing that the Commission did not have a choice concerning the preservation of Prentice because Mayor Rahm Emanuel had already made it clear that he wanted it demolished to make room for NU's new research facility). The Commission was faced with a double-edged sword in the Prentice situation, even if they did want to vote in favor of preservation. *Id.* On the one hand, the Commission could have backed the Mayor's position denying landmark preservation, and taken the heat for blatantly ignoring the legal process for determining landmark designation under the Landmarks Ordinance. *Id.* Or, they could have voted to give landmark designation, with full knowledge that "it's doomed in the City Council [that] Emanuel controls." *Id.* Either way, Mayor Rahm Emanuel would have determined the fate of Prentice. *Id.*

formal architectural or historic preservation training.⁶³ The four new members included a former Cook County property tax assessor, an obstetrician who delivered President Barack Obama's children, a former alderman and retired member of the Chicago City Council, and a restaurateur.⁶⁴ These appointees replaced a National Park Service official with a master's degree in historic preservation, a preservation-minded financial services consultant, and two architects; after these departures, the board no longer had a single architect or architectural historian.⁶⁵

63. See Micah Maidenberg, *Architects MIA: Credentials of new Chicago landmarks commissioners questioned*, THE ARCHITECTS NEWSPAPER (Aug. 19, 2011), available at <http://archpaper.com/news/articles.asp?id=5575#.VJHF076hGE4> (shedding light on the Mayor's new appointees who seem to be unqualified to hold positions on the Commission). In response to opposition to the new appointments, Mayor Emanuel's spokesperson, Tom Alexander, wrote:

The appointments by Mayor Emanuel ensure that each member of the Landmarks Commission offers the commission a different point of view, with no two members representing the same discipline and all of the members speaking to part of the broad spectrum of challenges facing the Commission. The new members offer diverse, valuable, and essential perspectives to the Commission, and the Commission is ready to weigh the important questions and decisions it will face going forward.

Id.

Ben Weese, who was a member of the commission for 13 years prior to being replaced by Mayor Emanuel's new members, stated that the Commission of Landmarks is not one welcome to "trainee[s]." *Id.*

64. *Id.*; see also Blair Kamin, *Changes Will Erode Foundation of Landmarks Commission*, CHI. TRIB. (July 8, 2011), available at http://articles.Chicagotribune.com/2011-07-08/news/ct-met-kamin-landmarks-0708-20110708_1_historic-preservation-chicago-stock-exchange-building-mayor-rahm-emanuel (criticizing Mayor Emanuel for replacing extremely experienced Commission members with illogical appointees, even if they may be minimally qualified). The first appointee by Mayor Emanuel was Jim Houlihan, who is a former Cook County Assessor and reportedly helped develop property tax breaks for historic preservation within the City of Chicago. *Id.* The second appointee was Dr. Anita Blanchard, who delivered the Obama children and is currently an associate professor at the University of Chicago. *Id.* The third appointee was chef and restaurant owner Tony Hu, a member who did not have any experience in historic preservation or any of the related fields. *Id.* The fourth and final appointee by the Mayor was Mary Ann Smith, former alderman of the 48th ward and past member of the City Council's committee on landmarks. *Id.* Although Mary Ann Smith does have some preservation experience, it is minimal compared to the prior members of the Commission who were dedicated to the field of preservation and its counterparts. *Id.* The members that remained on the board were Rafael Leon, director of the Chicago Metropolitan Housing Development Corps, Ernest Wong, landscape architect, and Andrew Mooney, commissioner of the housing and Economic Development department in Chicago. *Id.*

65. See Maidenberg, *supra* note 63 (explaining that the previous members of the board were immensely more qualified than the new appointees); see also Kamin, *supra* note 64 (arguing that Mayor Emanuel's appointments to the

The Mayor made his decision in accordance with the Landmarks Ordinance guidelines which, as described above, allow members to be either professionals in the named disciplines *or* persons who simply demonstrated special interest, knowledge or experience in one of those disciplines *or* related disciplines.⁶⁶ This language essentially bestows on the Mayor the discretion to appoint whomever he wants at any particular point in time. The lack of specificity regarding appointment of Commission members is yet another failure of Chicago's Landmarks Ordinance, leaving it as one of the few in the nation that does not specify the number of design professionals required to be on the board at any one time.⁶⁷

In its current state, Chicago's Landmarks Ordinance is inadequate to protect the cultural and historic integrity of the first

Landmarks Commission were purely political and the former members were better equipped to serve as Commission members). Among the members that were replaced are Ben Weese and Edward Torrez, both architects, Phyllis Ellin, who has a master's degree in historic preservation, and Yvette Le Grand. *Id.* With the new appointments, the Commission no longer had any members that were architects or architectural historians. *Id.* Commission member John Baird expressed that he was "particularly concerned that [they] don't have an architect to run the permit review committee." *Id.* Replaced member Edward Torrez also commented on the subject and agreed that when the Commission is "reviewing permit drawings, it's probably a good idea to have somebody, like an architect, who can read the drawings [and] understand the drawing plans and elevations, because those are the materials used to communicate the intent of these projects." Busta, *supra* note 4. The Mayor stood by his decision, and argued that the diverse Commission members will also "look at issues including neighborhood preservation, urban planning, and real estate" to make their preservation decisions. *Id.*

66. CHL., ILL., MUN. CODE ch. 2-120, art. XVII, § 600 (1987).

67. See Busta, *supra* note 4 (laying forth that other large cities, such as Boston, New York, and Denver, specify how many design professionals are required to be on the Commission at any one time, unlike Chicago's broad provisions). For example, the Denver Ordinance specifically states how many professionals are required from each particular profession, and how to decide who should be nominated:

Two (2) members shall be appointed from nominees submitted by the president of the Denver Chapter of the American Institute of Architects;

Two (2) members shall be appointed from nominees submitted by the president of the state historical society;

Two (2) members shall be appointed from nominees submitted by the chairperson of the planning board;

Two (2) members shall be appointed directly by the mayor; and

One (1) member shall be appointed from nominees submitted by the Colorado Chapter of the American Society of Landscape Architects.

DENVER, CO., MUN. CODE ch. 30, art. II, § 23 (1950). This ordinance significantly limits how much power the Mayor has in appointing Commission members, thus ensuring a strict adherence to the guidelines and a higher protection against political influences.

city of architecture.⁶⁸ Based on a detailed study of the landmarks ordinances of other large cities, it unmistakably appears that Chicago's Ordinance is in need of revisions if it is to preserve the treasures that define the City.

III. ANALYSIS

A. Designation of Commission Members of Chicago's Landmarks Ordinance

In the wake of the demolition of Prentice, preservationists, architects, and citizens expressed opposition to the selection process set forth in Chicago's Landmarks Ordinance for appointing Commission members. The language of the selection process provision leaves Chicago with an ordinance that is specific enough to survive constitutional vagueness challenges but loose enough to allow the Mayor to appoint whomever he wants and, thus, circumvent the "inconvenient" goal of the Ordinance.

Specifically, in the recent Illinois Appellate Court case *Hanna v. City of Chicago*, the plaintiffs attacked the words "special interest" and "related disciplines."⁶⁹ The plaintiffs argued that these words were unconstitutionally vague because they essentially allowed the Mayor to appoint anyone with the slightest interest in a "related discipline."⁷⁰ The Court disagreed. It stated that, taken as a whole, the terms are not vague.⁷¹ Specifically, the Court found that the term "special" clearly includes anyone who has intently studied any of the named subjects and can contribute to discourse on landmarks and redistricting.⁷²

Next, the Court found the term "related" to signify "a potential commission member must be someone who is familiar with the subjects listed, i.e., 'architecture, history, neighborhood preservation,' or with one that is connected to these."⁷³ In

68. See *A Modest Proposal: Abolish the Commission on Chicago Landmarks*, ARCHITECTURE CHI. PLUS (Feb. 8, 2013), <http://arcchicago.blogspot.com/2013/02/a-modest-proposal-abolish-commission-on.html/> [hereinafter *A Modest Proposal*] (claiming that the Commission serves no purpose, as it is controlled by the political entities within the City of Chicago). As Chicago is considered to be the mecca of architecture, it requires constant care and attention to keep its cultural history alive. Emily Hotaling Eig & Laura L. Harris, *City as Museum: Building as Artifact: Chicago as case study*, 10 THE J. OF MUSEUM EDUC. 21. "While most American Cities maintain substantive collections of historic architecture, few publicly recognize the value of their holdings or encourage public appreciation. Chicago is one city that does think of itself as a museum, and one that does its collection proud." *Id.*

69. *Hanna*, 2013 IL App (1st) 121701-U, ¶ 33.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* The Court further stated that we "need not even use our

summary, the Court reasoned that the qualifications for Commission appointments, when taken together, indicate that a member must have some “above-average quality” with respect to the areas listed or one that is associated with them.⁷⁴

Even though the Ordinance passed the test for constitutional vagueness, the current standards open the flood gates for the Mayor to appoint *anyone* with a mere showing of a minimal interest in one of the specified or related fields.⁷⁵ In its current state, the Commission of Chicago’s Landmarks is the Mayor’s pawn, and rather than save buildings from destruction, the Commission is required to “take the bullet” and find a “way to put a good public face on the Commission” when it is forced to destroy a Chicago Landmark.⁷⁶ In fact, the Commission has never saved a landmarked building that a Mayor, the Department of Development, or an influential developer wanted destroyed.⁷⁷

Before the Prentice affair, the Farwell Building was nominated for landmark designation, and the Commission initially voted against demolition of that landmark too.⁷⁸ Because various political figures and connected developers were in favor of demolition, the Commission was again forced to call another meeting and it ultimately reversed the vote.⁷⁹ Following the second Farwell Building vote, Edward Torrez, a Commissioner who refused to change his earlier vote and a major force in the fight to save Prentice, was removed from the Commission.⁸⁰ As exemplified in the Farwell Building and Prentice demolition decisions, Chicago’s Landmarks Ordinance has developed a pattern for manipulation and deceit influenced by political and economic incentives.

imaginations to decipher what a ‘related discipline’ might be, since several examples are provided in the very phrase that begins this section: ‘historic architecture, planning, archaeology, real estate [and] historic preservation.’”
Id.

74. *Id.* at ¶ 34; see also Greg Hinz, *City’s Landmarks Law Upheld by Appellate Court Panel*, CRAIN’S BUS. (Sep. 26, 2013), available at <http://www.chicagobusiness.com/article/20130926/BLOGS02/130929827/citys-landmarks-law-upheld-by-appellate-court-panel> (asserting that the plaintiffs stated that an appeal to the Illinois Supreme Court is highly likely in the near future, and that it is unlikely that the ruling will be overturned because the language of the Ordinance is constitutionally sound).

75. See *A Modest Proposal*, *supra* note 68 (explaining that the Mayors nominations are merely “window dressings: [t]hey are there, ultimately, to lend their public reputation to provide cover to any controversial decisions the Mayor may make”).

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

B. Designation of Commission Members in the Denver and Boston Landmarks Ordinances

Contrary to Chicago's Landmarks Ordinance, most large cities, including Denver and Boston, specify not only the number of commission members but also the number and type of design professionals required to be on the Commission.⁸¹ Although Denver's Landmark Preservation Ordinance allows the Mayor to nominate two commissioners, the remaining commissioners must be nominated by groups within Denver that are directly related to the field of preservation.⁸² Denver's ordinance requires that the mayor appoint two members each from nominees separately submitted by the president of the Denver Chapter of the American Institute of Architects, the president of the state historical society, the chairperson of the planning board, and the Colorado Chapter of the American Society of Landscape Architects.⁸³

The ordinance in Boston, Massachusetts, is almost identical to Denver's ordinance. Boston's ordinance sets the following requirements for the appointment of Commission members by the Mayor: two commissioners must be registered architects; one commissioner must be an architectural historian; one commissioner must be a city planner; one commissioner must be a landscape architect; one commissioner must be nominated by the Greater Boston Real Estate Board; one commissioner must be nominated by the Boston Chamber of Commerce; and the final two commissioners must be chosen by the Mayor.⁸⁴ So Boston's

81. Busta, *supra* note 4.

82. DENVER, CO., MUN. CODE ch. 30, art. II, § 23 (1950).

83. *Id.* The Denver Landmarks Ordinance also states:

In making appointments to the preservation commission, the mayor shall give due consideration to maintaining a balance of interests and skills in the composition of the commission and to the individual qualifications of the candidates, including their trainings, experience, knowledge or interest in any one or more of the following fields: architecture; landscape; history of the community; real estate; law; city planning; fine arts; general contracting; education; commerce and industry.

Id. Although the above guidelines are similar to those in the Chicago Ordinance, the Mayor of Denver is only allowed to appoint two commission members based on the above criteria. *Id.* The remaining members *must* be chosen from the list provided in the Denver Landmarks ordinance. *Id.*

84. BOSTON, MA., MUNI. CODE ch. 772, § 3 (1975). The Boston Ordinance also requires a nomination by various different organizations:

Two commissioners from four candidates, and two alternates from four other candidates, who shall be registered architects in the commonwealth, nominated by the Boston Society of Architects;
one commissioner from two candidates, and one alternative from two other candidates, who shall be architectural historians, nominated by the

ordinance, like Denver's, allows the Mayor to nominate only two members of his choosing.

In contrast to Boston and Denver, Chicago's ordinance allows the Mayor to choose eight of the nine Commission members without any input from qualified Chicago organizations. And while Boston's and Denver's commission are always comprised of professionals who have extensive knowledge and training in relevant fields, Chicago's ordinance fails to layout any background, education or experience requirements. Thus, it *is* possible for Chicago's Commission to be left without a single architect, historian, preservationist, or planner, as was the case at the time of the Prentice vote.⁸⁵ This dearth of expertise greatly increases the potential for the commission to be influenced by improper factors unrelated to preservation or the goals of the ordinance.

C. Demolition and Economic Hardship Provisions in Chicago's Landmarks Ordinance

According to Chicago's Landmarks Ordinance, when the Commission begins the process of landmark designation, it "shall

Society for the Preservation of New England Antiquities;

one commissioner from two candidates and one alternate from two other candidates, who shall be experienced as city planners, nominated by the regional chapter of the American Institute of Planners;

one commissioner from two candidates, and one alternate from two other candidates, who shall be landscape architects registered in the commonwealth, nominated by the Boston Society of Landscape Architects;

one commissioner from two candidates, and one alternate from two other candidates, nominated by the Greater Boston Real Estate Board;

one commissioner from two candidates and one alternate from two other candidates, nominated by the Greater Boston Chamber of Commerce;

and two commissioners and two alternates, selected at large by the mayor and who by reasons of experience or education have demonstrated knowledge and concern for conservation and enhancement of those physical features of the city which are important to its distinctive character.

Id.

85. See Busta, *supra* note 4 (explaining that the lack of architects, preservationists, and historians on the Commission is due to the vague wording of the Ordinance, which does not state how many design professionals are required to be on the board at any given time). Although some of the current Commissioners have "special interest" in the "related disciplines," opponents argue, "there can be no substitute for experience and expertise." Kamin, *supra* note 64. The most important function of the Commission is that it "serves as the last line of defense between civilization and the sort of civic barbarity that, in the early 1970s, reduced Louis Sullivan and Dankmar Adler's great Chicago Stock Exchange Building to rubble." *Id.* Without the Commission, economic and political influences would take over the process of landmark designation and therefore render the Ordinance useless. *Id.*

limit its consideration solely to” the seven criteria listed in the Ordinance.⁸⁶ Of the seven criteria, the Commission found that Prentice met four, two more than are required for landmark designation.⁸⁷ Despite this fact, the Commission took economic factors presented to them into consideration in their decision to deny landmark status.⁸⁸

Chicago’s Landmarks Ordinance provides that a building owner must apply for a demolition permit.⁸⁹ If the permit is denied, the owner may apply for an economic hardship exception “on the basis that the denial of the permit will result in the loss of all reasonable and beneficial use of the property.”⁹⁰ Strict adherence to these rules was recognized in *Penn Central Transportation Co. v. City of New York* when the United States Supreme Court stated:

The first recognition is that . . . large numbers of historic structures, landmarks and areas have been destroyed without adequate consideration of either the values represented therein or the possibility of preserving the destroyed properties for use in economically productive ways. The second is a widely shared belief that structures with special historic, cultural or architectural significance enhance the quality of life for all.⁹¹

If the Commission properly limited its considerations to the criteria in the Ordinance, Prentice would be a designated landmark.⁹² The proper procedure in this case was for the Commission to designate Prentice a landmark, and then deny NU’s permit application to demolish Prentice based on economic hardship.⁹³ During this process, the Commission would have to

86. CHI., ILL., MUN. CODE ch. 2-120, art. XVII, § 620 (1987).

87. See Kent, *supra* note 54.

88. See DEP’T OF HOUS. AND ECON. DEV., *supra* note 57 (giving its recommendation to the Commission and using economic factors as its basis for stating that redevelopment of Prentice is not worth the fiscal burden that would be placed on NU).

89. CHI., ILL., MUN. CODE ch. 2-120, art. XVII, §§ 740–825 (1987).

90. CHI., ILL., MUN. CODE ch. 2-120, art. XVII, § 830 (1987). Section 830 also states that the Commission “shall develop regulations that describe factors, evidence, and testimony that will be considered by the Commission in making its determination.” *Id.*

91. *Penn Cent. Transp. Co. v. City of N.Y.*, 438 U.S. 104, 108 (1978).

92. See generally CHI., ILL., MUN. CODE ch. 2-120, art. XVII, §§ 580–920 (1987) (laying out the criteria for landmark designation).

93. See *MB Assoc. v. D.C. Dept. of Licenses, Investigation, & Inspection*, 456 A.2d 344, 346 (D.C. 1982) (explaining that if a reasonable alternative economic use exists, “there is no [unconstitutional] taking, and hence no unreasonable economic hardship to the owners, no matter how diminished the property may be in value and no matter if ‘higher’ or ‘more beneficial’ uses of the property have been proscribed”); see also *Manhattan Club v. Landmarks*

ensure the denial of a demolition permit would not economically burden NU; however, the Commission is not required to grant the permit merely because the owner's expectations of profits are not met.⁹⁴ To grant a demolition permit based on economic hardship, the Commission may require the owner to show not only that he cannot economically utilize the property but also that it is impractical to lease or sell it at a reasonable price.⁹⁵

To prevail on the exception of economic hardship, NU had to prove that the economics of restoration precluded it from any reasonable use of the property.⁹⁶ Based on HED's comprehensive report, there were various proposals that provided a plan for restoring Prentice and constructing NU's research facility.⁹⁷ The proposals for restoration matched *all* of the economic benefits in NU's proposal and even provided *additional* benefits with "attendant increases in property tax revenues to the City of Chicago and Chicago Public Schools on the order of hundreds of thousands of dollars per year."⁹⁸

Preservation Comm'n, 51 Misc. 2d 556, 559 (1966) (clarifying that only when the "building is incapable of earning a reasonable return and the Commission is unable to devise a satisfactory scheme for its preservation, provisions are made for . . . permission to demolish").

94. See *900 G Street Associates v. Department of Housing & Community Development*, 430 A.2d 1387, 1391 (D.C. 1981) (explaining that denying a demolition permit does not constitute a taking if there is some sort of feasible economic use for the property, even if that use does not provide the benefits that the owner expected or wanted).

95. See *Scott*, 553 S.W.2d at 863 (explaining that if an owner is unable to afford the cost of restoring the structure, the Commission cannot force him to, as that would be considered a confiscation of his land, and an unconstitutional taking).

96. See *Lafayette Park Baptist Church v. Scott*, 553 S.W.2d 856, 862 (1977) (explaining that the decision cannot be based on whether it is merely feasible to restore the building, but rather if the owner can benefit from a restoration and create a cohesive plan with the Commission to save the structure).

97. See REUSE ALTERNATIVES FOR PRENTICE, SAVEPRENTICE.ORG, in *Memo*, *supra* note 1 (providing the Commission and HED with three reuse proposals and an economic fact sheet detailing the cost and benefits of restoring Prentice). One of the design proposals was submitted by BauerLatizo Studio, and included a twenty-five story, one million square foot research facility, using Prentice as a visual focus and critical support structure for the research facility. *Id.* Another of the four proposals, by Curil Marsollier and Wallo Villacorta, proposed a medical research facility with Prentice as the medical library for the entire NU campus. *Id.* The last proposal was designed by Kujawa Architecture, and incorporated 700,000 square feet of new construction attached to an adjacent site, in addition to the space provided by Prentice. *Id.*

98. *Id.* NU's proposal to demolish Prentice argued that it would create 2,500 construction jobs, 2,000 full time jobs, and contribute \$390 million annually in economic impact for the city. *Id.* The counter proposals had consistent upfront operation costs with NU's proposal, but added significant economic benefits in addition to those claimed by NU's proposal to demolish Prentice and build a research facility on the same site. *Id.* NU also stated that there is wide spread support for demolition in Chicago, including support from

Chicago's Commission was faced with a similar issue in 1960 when it reviewed a demolition permit for the Garrick Theater, which was already a designated landmark.⁹⁹ The Commission considered the economic feasibility of saving the theater and the hardship it would cause to the owner.¹⁰⁰ The Commission approved the demolition permit only after an in-depth examination of the costs and future revenues. It found that restoration would have cost \$3.5 million and, even with renovations, the theater would have operated under a deficit.¹⁰¹

D. Demolition and Economic Hardship Provisions of the District of Columbia and Denver Landmarks Ordinances

Similar to Chicago's Landmarks Ordinance, the District of Columbia requires a showing of economic hardship before a demolition permit is granted to the owner of a landmarked building.¹⁰² The building owner in *MB Associates v. D.C. Department of Licenses, Investigation & Inspection* claimed that it would cause him economic hardship to repair his building for use, mainly because of the cost to repair the floors.¹⁰³ The Court found that the demolition permit itself had been properly denied because a structural engineer provided evidence that repair of the floors was feasible and the building could be used as office space.¹⁰⁴ Also, the property owner did not attempt to sell the building and thus failed to meet his burden of proving unreasonable economic hardship.¹⁰⁵

Denver's Ordinance requires specific documentation

various organizations, architects, labor unions, medical and scientific communities, patient advocacy groups, and institutions that are named in their report. *Id.* Additionally, NU claimed that it conducted a poll of 507 Chicago residents on August 25–27, 2012, which showed that 72% of Chicago residents were in support of NU building a new research center. *Id.*

99. See *People ex rel. Marbro Corp. v. Ramsey*, 28 Ill. App. 2d 252, 254 (1960) (explaining the process that the owner of the Garrick Theater had to undergo in order to get a demolition permit granted by the Commission).

100. *Id.*

101. *Id.* Because the owner of the Theater could not afford the \$3.5 million dollar restoration cost, the Commission, along with various other organizations and individual citizens, attempted to raise the money in an effort to save the building from destruction. *Id.* After many discussions between architects, city planners, architectural historians and members of the Commission, they could not come up with a solution to acquire the necessary funds to save the Garrick Theater. *Id.*

102. See *MB Associates*, 456 A.2d at 345 (asserting that the property owner has the burden of proof to establish that no other reasonable economic use exists).

103. *Id.*

104. *Id.*

105. *Id.*

demonstrating hardship, including a report from a licensed engineer detailing the property's suitability for rehabilitation, market value, and recent appraisals.¹⁰⁶ Although Chicago's Landmarks Ordinance states that its purpose is to protect the city's cultural heritage, the Commission's failure to adhere to the

106. See DENVER, CO., MUN. CODE ch. 30, art. II, § 6 (1950) (explaining that the economic hardship exception is only applicable if the property owner satisfies all the requirements in the Ordinance). The Denver Ordinance states that the property owner must submit the following information before the Commission will consider its demolition permit application:

Estimate of the cost of the proposed construction, alteration, demolition, or removal and an estimate of any additional cost that would be incurred to comply with the conditions of approval set out in Section 30-6.

A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation.

In the case of a proposed alteration, the cost of the project proposed by the applicant compared with the changes required by the preservation commission. In the case of a proposed demolition, the estimated market value of the property in its current condition, after rehabilitation, and after demolition shall be compared, in addition to actual project costs.

Amount paid for the property, the date of purchase or acquisition, and the party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant and the person from whom the property was purchased.

All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property.

Any listing of the property for sale or rent, price asked and any written offers received within the previous two years.

The actual or market value of the land and improvements thereon according to the most recent assessment.

Real estate taxes for the previous two years.

In the case of a proposed demolition, a proposal for a replacement structure for the property and financial proof of the ability to complete the replacement project.

For income producing property, the annual gross income from the property for the previous two years; itemized operating and maintenance expenses for the previous two years.

Id.

In addition to the requirements above, Section 6 of Denver's Landmarks Ordinance also states:

The Commission shall make a determination of economic hardship within ten days of the public hearing. The determination to approve or deny shall be based upon the submissions of the applicant and testimony of experts and the public. If approved, the action of the applicant may proceed without further delay imposed by reasons of this chapter. In either case, the Commission shall provide a written records of its decision.

Id.

rules and process has delegitimized and frustrated the main goals of the Ordinance.

IV. PROPOSAL

Chicago's Landmarks Ordinance should be revised to provide stricter guidelines and ensure uncompromising adherence to those guidelines. First, the appointment of commissioners should be more controlled. The Ordinance should direct the Mayor as to how many commission members may be nominated and from what professions.¹⁰⁷ Second, the Ordinance's provision for economic hardship should be revised to be more specific. A showing of economic hardship should require a documented showing, including professional opinions by an architect or engineer, that there is no alternate reuse possibility for the structure or building.¹⁰⁸ Third, and finally, the time allowed to the City Council for landmark consideration should be decreased to minimize the change of outside economic and political pressures by those who are driven by only fiscal gain.¹⁰⁹

The current Ordinance bestows on the Mayor the power to choose eight of the nine Commission members using broad, open-ended language, which allows him to appoint anyone:

Commission members shall be selected from professionals in the disciplines of history, architecture, historic architecture, planning, archaeology, real estate, historic preservation, or related fields, or shall be persons who have demonstrated special interest, knowledge, or experience in architecture, history, neighborhood preservation, or related disciplines.¹¹⁰

107. See DENVER, CO., MUN. CODE ch. 30, art. II, § 23 (1950) (laying out specific numbers and types of members that shall comprise the Denver Commission of Landmarks Designation); see also BOSTON, MA., MUNI. CODE ch. 772, § 3 (1975) (laying out specific types of Commission members, but also requiring that certain members must first be nominated to the Mayor by various professional organizations within the City of Boston, and be related to the relevant fields).

108. Compare DENVER, CO., MUN. CODE ch. 30, art. II, § 6(8) (1950) (requiring the applicant for economic hardship to *show* his hardship with documented evidence); with CHI., ILL., MUN. CODE ch. 2-120, art. XVII, §§ 580-920 (1987) (lacking any requirements to prove economic hardship before obtaining a demolition permit for a landmarked building).

109. See DENVER, CO., MUN. CODE ch. 30, art. II, § 4(10) (1950) (stating that if the City Council does not file a final decision with 90 days after the recommendation by the Commission, the designation procedure is terminated). Although Denver's Ordinance calls for the termination of the designation procedure after 90 days, incorporating this into Chicago's Landmarks Ordinance would inhibit, rather than encourage, preservation.

110. CHI., ILL., MUN. CODE ch. 2-120, art. XVII, §§ 580-920 (1987).

Rather than the current guidelines, the following provisions, which combine those of Boston and Denver, should dictate the appointment of Commission members:

Commission members shall be selected by the Mayor as follows:

Two (2) members shall be architects appointed from nominees submitted by the president of the Chicago Chapter of the American Institute of Architects;

Two (2) members shall be architectural historians appointed from nominees submitted by the Historical Landmark Preservation Committee of the Chicago City Council;

One (1) member shall be a city planner appointed from nominees submitted by the Regional Chapter of the American Institute of Planners;

One (1) member shall be appointed from nominees submitted by the Real Estate Association of Chicago;

One (1) member shall be a landscape architect appointed from nominees submitted by the Chicago Chapter of the American Society of Landscape Architects;

One (1) member shall be appointed directly by the mayor; and

One (1) member shall be the Commissioner of Housing and Economic Development or his designee.¹¹¹

111. The proposed provisions are a combination of the Denver and Boston Landmarks Ordinances. In addition to Boston and Denver, various cities around the country employ similar provisions for the establishment of their respective Commissions. The New Orleans Vieux Carre District uses the following guidelines for appointment of its Commission members:

The Vieux Carre Commission shall consist of nine members, all of whom shall be citizens of the city. They shall be appointed by the mayor with the advice and consent of the council. The members of the Commission shall be appointed by the mayor as follows: one from a list of two persons recommended by the Louisiana Historical Society; one from a list of two persons recommended by the Louisiana State Museum Board; one from a list of two persons recommended by the chamber of commerce of the city; three qualified architects from a list of six qualified architects recommended by the New Orleans Chapter of the American Institute of Architects and three at large.

The implementation of the above provisions would ensure that the Commission is always comprised of qualified members.

In addition to the above revisions, the current provision requiring a showing of economic hardship should be revised to include a documented showing that there is no possibility of reuse. The current economic hardship provision does not require the applicant to *show* economic hardship but, rather, merely requires them to claim it.¹¹² The broad language in this provision allows the Commission to deny or grant the economic hardship exception for any reason.¹¹³ Because of the high stakes involved in a landmark decision, this section of the ordinance should use the strictest and most specific language. Thus, the economic hardship provision should be modified to include the following:

Within 60 days following conclusion of the hearing under Section 2-120-840, the Commission shall determine whether denial of the permit denies the

NEW ORLEANS, LA., CODE OF ORD. ch. 166, § 31 (1956). The Louisville, Kentucky Ordinance provision is similar, and although not as strict as the previous examples, still provides more guidelines than the current Chicago Ordinance:

Of the members to be appointed by the Mayor, at least one shall be an architect, at least one shall be an architect or landscape architect, at least one shall be an historian or architectural historian qualified in the field of historic preservation, at least one shall be a registered professional archaeologist, at least one shall be a real estate broker or a MAI designated real estate appraiser, at least one shall be an attorney, at least one shall be a person who is a member of the Metro Area Chamber of Commerce who has recognized expertise in business and all such members shall have a known interest in local landmarks and districts preservation.

LOUISVILLE, KY., LOU. CODE § 32.504 (2003).

112. CHI., ILL., MUN. CODE ch. 2-120, art. XVII, §§ 580–920 (1987). The current provision states:

Within 60 days following conclusion of the hearing under Section 2-120-840, the Commission shall determine whether denial of the permit denies the applicant of all reasonable and beneficial use of or return from the property. The determination shall be accompanied by a report stating the reasons for the decision. In the case of a finding of economic hardship, the decision shall also be accompanied by a recommended plan to relieve any economic hardship. This plan may include, but is not limited to, property tax relief, loans or grants from the City of Chicago or other public or private sources, acquisition by purchase or eminent domain, building code modifications, changes in applicable zoning regulations including a transfer of development rights, or relaxation of the provisions of this ordinance sufficient to allow reasonable beneficial use of or return from the property.

Id.

113. *Id.*

applicant of *all* reasonable and beneficial use of or return from the property. The applicant shall supply the Commission with the following information:

The amount paid for the property, the date of purchase and the party from whom purchased;

The assessed value of the land and improvements thereon according to the two most recent assessments;

Real estate taxes for the previous two years;

Annual debt service, if any, for the previous two years;

All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing or ownership of the property;

Any listing of the property for sale or rent, price asked and offers received, if any;

Any consideration by the owner as to profitable adaptive uses for the property;

If the property is income producing, an owner must also provide annual gross income from the property for the previous two years, itemized operating and maintenance expenses for the previous two years, and cash flow, if any, during the same period;

Estimate of the cost of the proposed construction, alteration, demolition or removal and an estimate of any additional costs that would be incurred to comply with landmark designation; and

In the case of a demolition, a report comparing the cost of reuse/rehabilitation of the structure with the cost of complete demolition. This report should include profits, cost to rehabilitate or of demolition, and future costs to maintain the structure.

If the Commission finds that there is *substantial* economic hardship, and there is *not one* possible solution for reuse, the exception for economic hardship shall be granted.¹¹⁴

114. As stated prior, the modified provision is derived from a combination of the Boston and Denver Landmarks Ordinances. Boston's Landmarks Ordinance adamantly requires that an applicant who is seeking an exemption based on hardship must produce evidence showing that there indeed is an economic hardship. BOSTON, MA., MUNI. CODE ch. 772, § 8 (1975). The applicant is required to supply various information, including: when the property was purchased; the amount paid; whom it was purchased by; the assessed value of the land; real estate taxes for the previous two years; annual debt service for the previous two years; appraisals obtained within the previous two years; any time the property was listed for sale or rent, and the price asked and received; any consideration by the owner as to profitable adaptive uses for the property; and if the property is income-producing, the gross income, operating and maintenance costs, and cash flow during the

If the current economic hardship provisions were replaced with the above modification, it would help to clarify that economic hardship and its documentation could only be considered *after* the site or building is designated a landmark.

The last modification to Chicago's Landmarks Ordinance should be in section 2-120-705, which allows landmark designation based on the recommendation of the Commission, if the City Council does not make a decision within 365 days.¹¹⁵ The 365-day provision allows the City Council an unnecessary amount of time to consider landmark designation and, in certain instances, increases the possibility that political and economic pressures will influence their decision.¹¹⁶ Thus, rather than 365 days, the requirement should be ninety days:

If the City Council does not take final action upon any landmark recommendation submitted by the

previous two years. *Id.*

The Denver Ordinance, on the other hand, focuses on the possibility of reuse and the future alterations, should the hardship be granted. DENVER, CO., MUN. CODE ch. 30, art. II, § 6(8) (1950). The Denver Ordinance states that the Commission may require the applicant to submit *all* of the following documents: cost of proposed construction, alteration, or demolition; report from an architect or engineer as to the soundness of any structures on the property and suitability for rehabilitation; in the case of an alteration, the cost of the proposed project compared with the cost to reuse; in the case of a demolition, market value of the property in its current condition, after rehabilitation, and after demolition; amount paid for the property; date of purchase; appraisal over the previous two years; any listing for sale or rent over the previous two years; actual market value of the property; real estate taxes for the previous two years; in the case of demolition, a proposal for the new structure and financial proof of the applicants ability to complete the proposed project; and for income properties, the annual gross income for the previous two years, and operating and maintenance costs. *Id.*

115. CHI., ILL., MUN. CODE ch. 2-120, art. XVII, §§ 580–920 (1987). The relevant section of the Landmarks Ordinance states:

If the City Council does not take final action upon any landmark recommendation submitted by the Commission on Chicago Landmarks to the City Council within 365 days of the date upon which the recommendation is filed with the City Council, landmark designation based upon the recommendation of the Commission shall be granted. The Historical Landmark Preservation Committee of the City Council shall hold timely hearings and report its recommendation to the City Council.

Id.

See also DENVER, CO., MUN. CODE ch. 30, art. II, § 1(10) (1950) (terminating the proposed landmark designation procedure if the City Council fails to act within 90 days).

116. See generally Kent, *supra* note 54 (explaining that what really happened “has more to do with Chicago’s elastic interpretation of a plainly written ordinance when a powerful institution is leaning on the City than it does with Prentice”).

Commission on Chicago Landmarks to the City Council within ninety days of the date upon which the recommendation is filed with the City Council, landmark designation based upon the recommendation of the Commission shall be granted.

The ninety-day period allows the City Council ample time to consider the Commission's recommendation and make a final decision. Moreover, the short time period greatly reduces the risk that the Mayor, developers, or anyone else with a fiscal or political interest will influence the City Council.¹¹⁷

V. CONCLUSION

The long fight to save Prentice ended in June of 2013 when NU began demolition of the Bertrand Goldberg masterpiece.¹¹⁸ The language of Chicago's Landmarks Ordinance is to blame for the loss of Prentice, and without revisions, the Ordinance will continue to act as a gateway for successful circumvention of the landmark process and fiscal gain.

117. See generally Isaacs, *Groundhog Day*, *supra* note 44 (emphasizing the fact that pro-preservationists called out NU's strategy as forcing the city "to make a choice between the destruction of Prentice on the one hand and a new medical research facility on the other, as if there weren't any other possible solutions").

118. See Blair Kamin, *As Prentice Comes Down, Stakes Rise On Its Replacement*, CHI. TRIB. (Oct. 12, 2012), available at http://articles.chicagotribune.com/2013-10-12/news/ct-met-kamin-prentice-1013-20131012_1_prentice-women-bertrand-goldberg-prentice-tower (explaining that Prentice is finally demolished, but more important, NU has the important task of replacing it with something *great*, and not just good).