

CHICAGO’S WRIGLEY FIELD AND SOLDIER FIELD: VARIED APPROACHES TO HISTORIC PRESERVATION WHEN FACED WITH PROPOSED STADIUM RENOVATION

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TABLE OF CONTENTS

I	INTRODUCTION.....	2
II	BRIEF HISTORIES OF THE STADIUMS.....	3
	A. Wrigley Field.....	3
	B. Soldier Field.....	5
III	APPLICABLE HISTORIC PRESERVATION STATUTES	7
	A. National Historic Preservation Act of 1966.....	7
	B. Illinois Historic Preservation Act.....	12
	C. Municipal Code of Chicago.....	14
IV	THE AIMS OF HISTORIC PRESERVATION LEGISLATION AND APPLICATION TO WRIGLEY FIELD AND SOLDIER FIELD.....	16
V	CAPTURE OF THE POLITICAL DECISION TO PRESERVE HISTORIC PROPERTIES.....	20
	A. Wrigley Field.....	21
	B. Soldier Field.....	23
VI	CONCLUSION.....	25

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I. INTRODUCTION

This ballpark we love is many things. It is a museum and a hot dog joint. It is a day at the beach and a night in the rain. It is a national monument and a neighborhood hangout. It is a circus and a cathedral.

It is a delightful contradiction. On the one hand, it is a time capsule, infused with history. On the other hand, it maintains an everyday familiarity and a willingness to change at a moment's notice. Wrigley Field is both a celebrity and a good friend. It is priceless jewelry that you can wear.

The ballpark, nearly nine decades old, has refused to age gracefully. It has refused to age, period. It isn't a bronze statue serving as a pigeon perch in the city square. It's a working ballpark that has stayed vital by changing and changing, and changing again, reshaping itself to meet the demands of each new age.

For a park so steeped in tradition, and in elegance, it has been willing to try all sorts of new ideas. In fact, its crazy schemes have been so successful that they are no longer considered crazy schemes—they have become baseball's cherished traditions.

Wrigley Field was the first park to let fans keep foul balls. The first to have an organist. The first to build a permanent concession stand. And when the Bears played at Wrigley, as they did for half a century, the ballpark was the proving ground for George Halas's bold innovations with the T formation and the man in motion. Wrigley Field has always been revolutionary.

But it's always been a curmudgeon, too. Along with the firsts, Wrigley has a notable "last": for 40 years, it was the lone holdout for day-only baseball. The ballpark has plenty of "not yet's," too: no Jumbo Tron scoreboard—yet. No hidden bullpen built into the outfield stands—yet. No costumed animal mascots—yet.

Wrigley Field has always known how to change and how to stay the same. The ballpark has remade itself over and over, responding to what the fans needed and wanted. But Wrigley Field is special for more than its ability to adapt and survive.

Wrigley is beloved because it is a refuge, a place where the workweek disappears, where homework doesn't exist. It is a haven, an escape. If the ballpark were surrounded by acres of farmland or parkland, by rolling fields of green grass, it wouldn't be as special. Instead, it's shoehorned into a city, besieged by concrete, suffocated by smog. It's an oasis.

If the ballpark were in a temperate climate, where year-round sunshine were guaranteed, it wouldn't be as special. Instead, it's in a city showered by sleet, battered by winds. But on certain summer days—not many, not enough to spoil the Midwestern stoics who worship here—the park is a festival of green, bathed in sunlight, massaged by the lake's soothing breeze.

Wrigley Field is our reward for surviving Chicago's winter. Its bright, shiny days are rare, which makes them all the more precious and magical.

The place is a shrine, and it's a museum, but it's like no other. At what other shrine, at what other museum, can you boo, scream, heckle, groan, high-five a complete stranger, eat popcorn, and drink beer?

At no other. Only at Wrigley Field.²

² Mark Jacob, *Wrigley Field a Celebration of the Friendly Confines*, pp. xiii-xvi, (McGraw-Hill, NY, 2002).

This ode to Wrigley Field provides insight as to why Wrigley Field was a suitable candidate for historic preservation. It also exposes a major tension in the historic preservation debate; the conflict between preserving the status quo and the need to evolve. In bare contrast to Wrigley Field, one is hard pressed to find many tributes to Chicago's Soldier Field. Soldier Field, a National Historic Landmark, was renovated with little regard to preserving its historic character, while Wrigley Field, when faced with renovation was clothed with local landmark status, a far more protective shield.

This paper will discuss why Wrigley Field and Soldier Field were treated differently. It will do this by comparing the applicable historic preservation statutes, will discuss the aims of historic preservation legislation, suggest how public pressure and politics influence historic preservation decisions, and will conclude with a discussion of how the inherent flaws of historic preservation legislation feed the potential for capture of political decisions.

II. BRIEF HISTORIES OF WRIGLEY FIELD AND SOLDIER FIELD

The discussion of a property's historic significance and eligibility for historic preservation should commence with a description of the property itself.

A. A Brief History of Wrigley Field

Wrigley Field, home of the Chicago Cubs, is located at the corners of Clark and Addison in Chicago's Lakeview Neighborhood. The ballpark, originally known as Weeghman Park, was built in 1914 on a site that previously held an Evangelical Lutheran

Seminary.³ Wrigley Field was built during a “stadium renaissance” along with ballparks such as Chicago’s Comiskey Park (1910), Boston’s Fenway Park (1912), Detroit’s Tiger Stadium (1912), and Brooklyn’s Ebbets Field (1913).⁴ These ballparks, unlike their wooden construction predecessors, were made of concrete and steel. Today, of those stadiums, only Wrigley Field and Boston’s Fenway Park exist as Major League ballparks.⁵

Wrigley Field has undergone renovation multiple times since 1914. In 1937, both the outfield bleachers and famous manually operated scoreboard were constructed.⁶ That same year, the ivy covering the brick outfield wall was planted.⁷ These are the features that make Wrigley Field perhaps the most recognizable stadium in all of sports. Between 1937 and 1988, Wrigley Field experienced no significant alterations. In 1988, however, Wrigley Field added lights, becoming the last Major League baseball franchise to play night games.⁸

In the summer of 2001, the Tribune Company, owner of Wrigley Field, asked for the Daley Administration’s permission to increase ballpark seating by 2,350 seats.⁹ The Lakeview community, especially the Wrigleyville Rooftop Owners Association voiced much opposition to the stadium’s renovation.¹⁰ The Rooftop Owners were concerned that expansion of Wrigley’s bleachers would block their view of the inside of the park, and

³ Cubs.com, <<http://chicago.cubs.mlb.com/NASApp/mlb/chc/ballpark/index.jsp>>

⁴ Jacob, *Wrigley Field A Celebration of the Friendly Confines* at 3.

⁵ *Id.*

⁶ Cubs.com, <<http://chicago.cubs.mlb.com/NASApp/mlb/chc/ballpark/index.jsp>>.

⁷ *Id.*

⁸ *Id.*

⁹ Fran Spielman, *Trib fights unfriendly confines on Wrigley Blanket landmark status would hurt business, it says*, Chicago Sun Times, p. 7, (8/23/01).

¹⁰ Fred Mitchell, *Rooftop owners prepare for a fight*, Chicago Tribune, p. 2, (07/12/01).

destroy their businesses.¹¹ The Daley Administration, in turn, pushed for Wrigley Field, in its entirety, to be designated as a “Chicago Landmark.”¹²

After much negotiation between the Tribune Co. and City Hall, in February of 2004, the Chicago City Council granted landmark status to only portions of Wrigley Field.¹³ Those portions landmarked were the ivy covered brick outfield walls, the marquee at the park’s entrance at Clark and Addison, the grandstands, and the manually operated scoreboard in the centerfield bleachers.¹⁴ In the spring of 2005, Mayor Daley endorsed the Cubs’ latest plan for bleacher expansion and construction of a commercial building on land adjacent to Wrigley Field.¹⁵

B. A Brief History of Soldier Field

Soldier Field is located in Grant Park along the lakefront just south of Chicago’s Loop. Soldier Field, originally named Municipal Grant Park Stadium, was designed by Holabird and Roche, and opened in 1924 as a multipurpose stadium.¹⁶ In 1926, it was renamed Soldier Field, and dedicated to the American soldiers killed in World War I.¹⁷

Soldier Field was truly a multipurpose stadium. It was used for football games on the Pro, College, and High School levels¹⁸, World Cup soccer¹⁹, the legendary 1927 Demsey-Tunney boxing match²⁰, religious ceremonies²¹, and speeches by FDR (1944)

¹¹ *Id.*

¹² Spielman, *Trib fights unfriendly confines on Wrigley Blanket landmark status would hurt business, it says*, Chicago Sun Times p. 7.

¹³ Salvatore Deluca, *Chicago Landmarks Wrigley Field, Preservation Online*, <http://www.nationaltrust.org/magazine/archives/arc_news/021204p.htm>, (2/12/03).

¹⁴ *Id.*

¹⁵ Curt Wagner and Chris Courtney, *Field of Green?*, Chicago Tribune- Redeye Edition, p. 5, (3/14/05).

¹⁶ Chicagobears.com- <http://www.chicagobears.com/history/sf_timeline.jsp>

¹⁷ Blair Kamin, *Bowled Under*, Chicago Tribune, p. 1, (10/30/02).

¹⁸ Chicagobears.com- <http://www.chicagobears.com/history/sf_timeline.jsp>

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

and Martin Luther King. (1966).²² Soldier Field is also home to Chicago's National Football League Franchise, the Chicago Bears.

In the early 1980's, Soldier Field's owner, the Chicago Park District, developed plans to renovate Soldier Field by building a dome over the stadium.²³ Similar to Wrigley Field, a proposed renovation sparked community opposition that ultimately led to landmark designation. Chicago architect, Harry Weese, led a crusade to prevent the dome from being built by getting Soldier Field listed on the National Register of Historic Places.²⁴ In May, 1985, Soldier Field was listed in the National Register, over the objections of its owner, the Chicago Park District.²⁵ In 1987, Soldier field was given National Historic Landmark status, America's most elite designation for historic places.²⁶

In 1999, the Chicago Park District again proposed renovation plans.²⁷ This time, instead of constructing a dome, the plans were to level everything except for Soldier Field's façade, and construct a new seating bowl.²⁸ These renovation plans were also met with opposition from Friends of the Park, and Landmarks Preservation Council of Illinois, who argued that the renovation would destroy the stadium's historic character.²⁹

Despite opposition, Soldier Field's \$660 million renovation was completed in September of 2003.³⁰ In July, 2004, the National Park Service ("NPS") recommended that the Secretary of the Interior withdraw landmark status from Soldier Field, and that

²² Kamin, *Bowled Under*, Chicago Tribune, p. 1.

²³ Rudolph Unger, *U.S. Makes Soldier Field A Landmark*, Chicago Tribune, p. 1, (05/16/85)

²⁴ *Id.*

²⁵ *Id.*

²⁶ Kamin, *Bowled Under*, p. 1.

²⁷ James Janega and Blair Kamin, *Ryan's Willing to Kick in for Soldier Field Rehab*, Chicago Tribune, p.1, (7/15/99).

²⁸ *Id.*

²⁹ Blair Kamin, *U.S. Says Rehab Could Cost Soldier Field Landmark Title*, Chicago Tribune, p.1, (3/15/01).

³⁰ Hal Dardick, *Soldier Field Status Slipping*, Chicago Tribune, p.1, (9/24/04).

Soldier Field be removed from the National Register of Historic Places.³¹ The National Park Service's report based its recommendation on the idea that Soldier Field lost its "historic integrity" because "the futuristic new stadium bowl is visually incompatible with the classical colonnades, and the perimeter wall of the historic stadium."³² The NPS recently reaffirmed its recommendation that Soldier Field be stripped of its landmark status following a request by the National Park System Advisory Board that the NPS clarify its stance.³³ The Advisory Board is to vote on the NPS recommendation in July or August, 2005, at which time, the Secretary of the Interior will decide whether Soldier Field's landmark status will be withdrawn.³⁴

III. APPLICABLE HISTORIC PRESERVATION STATUTES

There are various federal, state, and local statutes that protect historic properties through regulating the actions of both public and private actors. However, this paper will only discuss the historic preservation statutes relevant to Wrigley Field and Soldier Field. Since both properties are located in Chicago, this paper will discuss the National Historic Preservation Act of 1966³⁵ (NHPA), the Illinois Historic Preservation Act³⁶ (IHPA), and the Municipal Code of Chicago.³⁷

³¹ Hal Dardick and David Mendell, *Soldier Field's Place In History*, Chicago Tribune, p.1, (7/21/04).

³² *Id.*

³³ *Panel Renews Call to Drop Stadium from Historic List*, Chicago Tribune, <www.chicagotribune.com> (4/22/05).

³⁴ *Id.*

³⁵ *National Historic Preservation Act*, 16 U.S.C. §§ 470 et seq. (2005).

³⁶ *Illinois Historic Preservation Act*, 20 ILCS §§ 3410/1 et seq. (2004).

³⁷ *Chicago Landmarks Ordinance*, Chicago, Il., Municipal Code ch. 2-120, art. XVII, §§ 580-920 (1987)

A. National Historic Preservation Act of 1966

When congress enacted the National Historic Preservation Act of 1966, it recognized the importance of America’s historical properties,³⁸ and recognized that far too many historic properties had been destroyed or adversely altered.³⁹ Congress found preservation of this “irreplaceable heritage”⁴⁰ 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.”⁴¹

The NHPA carries out its regulatory purposes primarily through notice and comment procedural protection.⁴² Specifically, the NHPA authorized the expansion and maintenance of the National Register of Historic Places⁴³, established the Advisory Council on Historic Preservation⁴⁴, and delegated its authority to state historic preservation programs.⁴⁵

National Register of Historic Places

The NHPA authorizes the Secretary of the Interior to expand and maintain a National Register of Historic Places (“National Register”) composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture.⁴⁶

³⁸ 16 USC §§ 470a (b)(1), (b)(2)

³⁹ *Id.* § (b)(3)

⁴⁰ *Id.* § (b)(4)

⁴¹ *Id.*

⁴² 16 U.S.C. § 470f.

⁴³ 16 U.S.C. § 470a (a)(1)(A)

⁴⁴ 16 U.S.C. § 470i

⁴⁵ 16 U.S.C. § 470a (c)

⁴⁶ 16 U.S.C. § 470a (a)(1)(A)

For a property to be listed in the National Register, it must meet certain criteria. Eligible properties are those where the “quality of significance in American history, architecture, archeology, engineering, and culture is present”⁴⁷, and

- (a) that are associated with events that have made a significant contribution to the broad patterns of our history;⁴⁸ or
- (b) that are associated with the lives of persons significant in our past;⁴⁹ or
- (c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction;⁵⁰ or
- (d) that have yielded, or may be likely to yield, information important in prehistory or history.⁵¹

There is a special subset of properties in the National Register called National Historic Landmarks.⁵² These properties are designated as Historic Landmarks because they are especially unique for their national significance.⁵³ There are less than 2,500 National Historic Landmarks while there are close to 80,000 properties listed in the National Register.⁵⁴

Establishment of Advisory Council on Historic Preservation

The NHPA provides for the establishment of the Advisory Council on Historic Preservation, a 20 member independent agency comprised of a wide array of individuals, all of whom are appointed by the President of the United States.⁵⁵

⁴⁷ 36 C.F.R. § 60.4

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² 36 C.F.R. § 65.1

⁵³ *Id.*

⁵⁴ Margaret Foster, *Panel Votes to Strip Soldier Field of Landmark Status*, Preservation Online, <http://www.nationaltrust.org/Magazine/archives/arc_news/100604.htm> (10/6/04).

⁵⁵ See 16 USCA § 470i (a)(1)- (a)(11) – (Members include the Secretary of the Interior, a state Governor, a mayor, the Chairman of the National Trust for Historic Preservation, four experts in the field of historic

As the Council’s title would suggest, its duties are to advise the President and Congress on matters relating to historic preservation.⁵⁶ In addition to its advisory capacity, the Council also encourages public participation in historic preservation efforts, advises state and local governments on drafting historic preservation legislation, and recommends ways for federal agencies align their policies with historic preservation policies.⁵⁷ Finally, the Advisory Council submits an annual report to the President and Congress that describes its recent activities, assesses current historic preservation concerns, and recommends legislation in furtherance of historic preservation goals.⁵⁸

The Advisory Council’s most important role, however, is its involvement in the Section 106 process. Before undertaking any project that may affect a historic building that is included or eligible for inclusion in the National Register, the head of the federal agency must give the Advisory Council “a reasonable opportunity to comment with regard to such undertaking.”⁵⁹

Delegation of Authority to State Historic Preservation Programs

The NHPA delegates its authority to state historic preservation programs, so that they may carry out the purposes of the NHPA primarily by identifying and nominating historic properties.⁶⁰

Before federal preservation authority can be delegated to a State Historic Preservation Program, the state program must first be approved at the federal level.

preservation, three members of the general public, and a member of a Native American tribe or Native Hawaiian organization.).

⁵⁶ 16 USCA § 470j (a)(1)

⁵⁷ 16 U.S.C. §§ 470j (a)(2) – (a)(7)

⁵⁸ 16 U.S.C. § 470j (b)

⁵⁹ 16 U.S.C. § 470f

⁶⁰ 36 C.F.R. § 60.6 (a)

NHPA approval of state historic preservation programs requires that the state's governor appoint a "State Historic Preservation Officer" ("SHPO") who is responsible for administering the state historic preservation program.⁶¹ In administering the state historic preservation program, the SHPO designates a state historic preservation review board⁶² ("State Review Board"), and takes measures to provide for public participation in the recommendation of properties for nomination to the National Register.⁶³

If the NHPA approves a state program, the SHPO may then certify local governments to carry out the purposes of the NHPA, as long as the certified local government ("CLG") meets certain requirements, which more or less mirror the responsibilities of the state historic preservation programs.⁶⁴

Protection Value of NHPA (Section 106 Process)

Once a property is listed, or eligible for listing, in the National Register, it is afforded protection under Section 106 of the NHPA.⁶⁵ However, the level of protection depends on whether the actor is a private party or a federal agency.

If private parties want to alter their historic property, and there is no federal funding involved, the NHPA provides little protection.⁶⁶ Although the statute may not prevent property owners from altering their property, it does provide the owners with incentives to maintain the properties' historic qualities. First, listing in the National Register makes property owners eligible to receive Federal grants for the preservation of

⁶¹ 16 U.S.C. § 470a (b)(1)(A)

⁶² *Id.* § (b)(1)(B)

⁶³ 16 U.S.C. § 470a (b)(1)(C)

⁶⁴ *Id.* § (c)(1)

⁶⁵ 16 U.S.C. § 470f

⁶⁶ 36 C.F.R. § 60.2- ("Listing of private property on the National Register does not prohibit under Federal law or regulation any actions which may otherwise be taken by the property owner with respect to the property.")

their property.⁶⁷ Second, owners of listed properties may receive tax incentives to rehabilitate their historic property.⁶⁸

The NHPA's protection arises when federal agencies undertake projects which may affect those properties listed, or eligible for listing in the National Register. "Federal agencies undertaking a project having an effect on a listed or eligible property must provide the Advisory Council on Historic Preservation a reasonable opportunity to comment pursuant to Section 106 of the National Historic Preservation Act of 1966."⁶⁹ The protection afforded by Section 106 is strictly procedural. "While the Advisory Council comments must be taken into account and integrated into the decision making process, program decisions rest with the agency implementing the undertaking."⁷⁰ If the agency feels it is necessary to demolish a property listed on the Federal Register, it can do so against the advice of the Advisory Council.

Soldier Field, which was protected under the NHPA as a National Historic Landmark, was not subject to Section 106 review because no federal funds were used in the renovation project.⁷¹ This shows how landmark status under the NHPA is largely honorary, and the protection afforded is without teeth.

B. Illinois Historic Preservation Act

The Illinois Historic Preservation Act⁷² (IHPA) is important to discuss due to its function within the federal historic protection framework. The IHPA is set up much like

⁶⁷ 36 C.F.R. § 60.2 (b)

⁶⁸ *Id.* § (c)

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Blair Kamin, *U.S. Says Rehab Could Cost Soldier Field Landmark Title*, Chicago Tribune-Chicago Sports Final Edition, p. 1, (3/15/05)

⁷² 20 ILCS §§ 3410/1 et seq.

the NHPA. The IHPA, similar to the NHPA, establishes an advisory council, the Illinois Historic Sites Advisory Council (“Advisory Council”).⁷³ The IHPA also establishes and maintains an Illinois Register of Historic Places.⁷⁴

Illinois Historic Sites Advisory Council

The Illinois Historic Sites Advisory Council plays a critical role. It has the power to recommend nominations of historic properties to the SHPO, who then nominates properties to the National Register.⁷⁵ The federal historic preservation regime relies primarily on the SHPO to nominate properties to the National Register.⁷⁶ The Illinois Council also establishes the guidelines in determining eligibility for listing on the Illinois Register of Historic Places⁷⁷, and nominates properties to that list.⁷⁸

Illinois Register of Historic Places

The Illinois Register of Historic Places is established and maintained by the Illinois Historic Preservation Agency.⁷⁹ For a property to be included in the Illinois Register, the property “must have special historical, architectural, archeological, cultural, or artistic interest or value.”⁸⁰ The criteria for inclusion in the Illinois Register are virtually identical to the criteria for listing in the National Register.⁸¹

⁷³ *Id.* § 3410/3

⁷⁴ *Id.* § 3410/6

⁷⁵ 20 ILCS 3410/4 (a)

⁷⁶ Julia H. Miller, *A Layperson’s Guide to Historic Preservation Law: A Survey of Federal, State, and Local Laws Governing Historic Resource Protection*, SJ053 ALI-ABA 1, (2004).

⁷⁷ 20 ILCS 3410/4 (e)

⁷⁸ 20 ILCS 3410/4 (b)

⁷⁹ 20 ILCS 3410/6

⁸⁰ *Id.*

⁸¹ See 20 ILCS 3410/6

Protection Afforded to Illinois Historic Places

Historic properties included in the Illinois Register carry a similar level of protection as those properties listed in the National Register. This is hardly surprising since state preservation programs are created in the image of the NHPA. The IHPA, like the NHPA affords protection from state agency action by withholding public funds used for projects that will adversely affect a Registered Illinois Historic Place.⁸² However, despite adverse effects on the property, the publicly funded project can continue if the Director finds that “the project is necessary to provide an important public service or benefit, the project cannot be carried out practically so as to avoid the adverse effect, and the adverse effect is minimized to the maximum extent feasible.”⁸³

C. Municipal Code of Chicago: Commission on Chicago Landmarks

The Municipal Code of Chicago⁸⁴ is structured similar to both the NHPA and the IHPA. It establishes and maintains a list of historically significant properties called “Chicago Landmarks.”⁸⁵ The municipal code also establishes a landmarks commission, called the “Commission on Chicago Landmarks.”⁸⁶ The Chicago historic preservation regime is differentiated from the federal and state regimes because it provides increased protection for designated landmarks by authorizing the Landmarks Commission to review permits for alteration and demolition.⁸⁷

⁸² 20 ILCS § 3410/9.

⁸³ *Id.*

⁸⁴ Chicago, Ill., Municipal Code ch. 2-120, art. XVII, §§ 580-920.

⁸⁵ *Id.* §§ 610 (1), (2).

⁸⁶ *Id.* § 580.

⁸⁷ *Id.* § 900.

Chicago Landmarks

In general, the criteria for Chicago Landmark designation are similar to the criteria for the National Register and the Illinois Register. Criteria for inclusion relate to historic events and people, as well as significant architecture.⁸⁸ Chicago Landmarks criteria are more inclusive in two ways. First, unlike the National Register and Illinois Register, they include a category of properties with “Unique Visual Features.” The Municipal Code describes this category of properties as those with unique location or distinctive physical appearance or presence representing an established and familiar visual feature of a neighborhood, community, or the City of Chicago.⁸⁹ Second, unlike the National Register criteria, Chicago Landmarks standards include no presumption that properties less than 50 years old are ineligible for historic designation.⁹⁰

Chicago Landmark Commission

The Chicago Landmark Commission is responsible for surveying, identifying, and recommending to the City Council the designation of properties of historical or architectural significance in Chicago as “Chicago Landmarks.”⁹¹ The Chicago Landmark Commission may also prepare nomination of landmarks to the IHPA and NHPA.⁹²

Protection Afforded to Chicago Landmarks

The Chicago Landmark Commission’s real powers involve reviewing applications for alteration or demolition of properties that have been designated as “Chicago

⁸⁸ *Id.* §§ 620 (1)-(7).

⁸⁹ *Id.* § 620 (7).

⁹⁰ See 36 C.F.R. § 60.4.

⁹¹ Chicago, Ill., Municipal Code ch. 2-120, art. XVII, §§ 2-120-610 (1), (2).

⁹² *Id.* § 610 (10).

Landmarks.”⁹³ If the Commission finds that the proposed alteration or demolition will adversely affect the landmark, it may deny the permit application.⁹⁴ The Commission, however, also has the power to grant a permit to alter or demolish a Chicago Landmark property if the denial of the permit would cause sufficient economic hardship to the property owner.⁹⁵

Wrigley Field was given Chicago Landmark protection, and therefore the proposed bleacher expansion and renovation project came under review of the Chicago Landmark Commission.

IV. THE PURPOSE OF HISTORIC PRESERVATION LAWS

After analyzing the historic preservation mechanisms available to Wrigley Field and Soldier Field, now consider the general purpose of historic preservation law, and whether the preservation of Wrigley Field and Soldier Field fits that purpose.

Historic Preservation Laws, as the name suggests, are intended to preserve historically significant properties. Carole Rose’s 1981 article, *Preservation and Community: New Directions in the Law of Historic Preservation*, argues that “views of ‘historic significance’ alter considerably with shifting social interests.”⁹⁶ The decision as to whether a property is “historically significant” and therefore deserving of preservation is ultimately a political choice.⁹⁷ To legitimize those political choices, the public

⁹³ *Id.* § 610 (5).

⁹⁴ *Id.* § 780.

⁹⁵ *Id.* § 610 (14).

⁹⁶ Carol Rose, *Preservation and Community: New Directions in the Law of Historic Preservation*, 33 *Stan. L. Rev.* at 476 (1980).

⁹⁷ *Id.* at 479.

purpose of historic preservation must be determined.⁹⁸ Basically, Rose is saying that historic preservation is based on a political unit's assessment of a property to determine if it is historically significant. And for that property to be found historically significant, the rationale for that decision must be based on a public purpose.

Rose speaks of a progression of rationales for historic preservation. In 19th Century America, the public purpose of historic preservation was to “inspire the observer with a sense of patriotism.”⁹⁹ In this period, properties associated with historic people and events were preserved.¹⁰⁰ The next phase of historic preservation, which emerged at the turn of the century, focused on preserving properties of architectural significance.¹⁰¹ The more recent rationale for historic preservation is what Rose calls a “community-building” rationale.¹⁰² This rationale “stresses the ‘sense of place’ that older structures lend to a community, giving individuals interest, orientation, and a sense of familiarity in their surroundings.”¹⁰³ Evidence of these rationales can be seen in Federal, State, and Local Historic Preservation legislation.

The “community building” rationale is clearly displayed in the “Unique Visual Feature” criteria for designation as a Chicago Landmark. The criteria reference a property with “unique location or distinctive physical appearance or presence representing an established and familiar visual feature of a neighborhood, community, or the City of Chicago.”¹⁰⁴

⁹⁸ *See Id.*

⁹⁹ *Id.* at 479

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 480.

¹⁰² *Id.* at 479.

¹⁰³ *Id.* at 480.

¹⁰⁴ Chicago, Il., Municipal Code ch. 2-120, art. XVII, §§ 2-120-620 (7).

Rose's "community building" Rationale is an extremely broad justification for historic preservation. Almost any property, it can be argued, gives the community a "sense of place" or "orientation, or, using the Chicago ordinance's language, "unique location or distinctive physical appearance." Isn't all real property a "unique location"? This overly broad justification may provide political decision makers extreme leeway when legitimatizing historic preservation decisions. The overly broad and subjective standard inherent in the "community building" rationale could potentially lead to arbitrary results and unpredictability as well as political gamesmanship.

The other two rationales, historic significance and architectural significance are present in all historic preservation legislation discussed in this paper.¹⁰⁵ These rationales are also subjective, but arguably less subjective than the "community building" rationale. Historical significance is perhaps the least subjective because it is tied to a concrete event in the nation's history. Architectural significance is more subjective than historical significance because architecture and aesthetic views change over time. The bottom line is that all three of Rose's rationales for historic preservation are quite subjective, and therefore may create inconsistent results and the potential for much wiggle room for political decision makers.

Now consider how the landmark designations of Wrigley Field and Soldier Field fit into Rose's historic preservation rationale framework? Is it a public purpose, and therefore legitimate, to protect these properties? Looking at these properties through the lens of Rose's rationale, the argument could surely be made that both of these properties merit historic preservation.

¹⁰⁵ See: NHPA, 16 U.S.C. §§ 470 et seq. (2005); IHPA, 20 ILCS §§ 3410/1 et seq. (2004); Chicago, Il., Municipal Code ch. 2-120, art. XVII, §§ 580-920 (1987).

Wrigley Field would seem to best fit within Rose's "community building" rationale for historic preservation. Wrigley Field is known more for its cultural significance than anything else. Despite being the home of a traditionally mediocre,¹⁰⁶ and sometimes downright awful baseball team,¹⁰⁷ Wrigley Field is consistently among the most consistently sold out baseball stadiums.¹⁰⁸ The reason why the Cubs can sell so many tickets despite their consistent underperformance is that Wrigley Field is "the baseball fan's Mecca."¹⁰⁹ In fact, some argue that because Wrigley Field is consistently sold out, the Tribune Company has little incentive to invest in building competitive rosters.¹¹⁰ It is Wrigley Field's status as a "Baseball Mecca" that highlights its cultural value, and "community building" significance.

Soldier Field, on the other hand, fits into Rose's other two rationales. In contrast with Wrigley Field, Soldier Field's historic preservation designation was primarily based on the stadium's architectural significance, and the historic events that took place there.¹¹¹ As previously mentioned in this paper, Soldier Field is a war memorial dedicated to the American soldiers who died in World War I, it was the venue for speeches by Martin Luther King Jr. and FDR, and was built by Holabird and Roche as a neo classical stadium based on the Parthenon.¹¹²

Considering the public purpose rationales for the historic preservation of Wrigley Field and Soldier Field, convincing arguments could be made for the preservation of both

¹⁰⁶ Espn.com, <<http://sports.espn.go.com/mlb/alltime/franchise?team=chc>>- The Cubs have not played in the World Series since 1945, and have not won the World Series since 1908.

¹⁰⁷ *Id.* Since their last World Series appearance, the Cubs have won their Division only 3 times.

¹⁰⁸ Espn.com, <<http://sports.espn.go.com/mlb/teams/stadium?team=chc>>- The last three seasons, Wrigley Field has ranked 2nd, 3rd, and 4th in terms of percentage capacity for home games. In 2004, the per game average attendance was 39,138. Wrigley Field's seating capacity is 39,558.

¹⁰⁹ Encyclopedia of Chicago, <<http://www.encyclopedia.chicagohistory.org/pages/1389.html>>

¹¹⁰ *See Id.*

¹¹¹ *Panel Reviews Call to Drop Stadium from Historic List*, Chicago Tribune, <www.chicagotribune.com>, (5/22/05).

¹¹² Chicagobears.com- <http://www.chicagobears.com/history/sf_timeline.jsp>

stadiums. However, a stronger case may be made for the preservation of Soldier Field. The rationales for its preservation are less subjective than the rationale supporting Wrigley Field's preservation. Soldier Field is linked to concrete events and people significant in American History. If Soldier Field was such a significant property with strong rationales for preservation, how could the City of Chicago disregard its preservation status and significantly alter the property? Was the political decision to allow renovation motivated by something other than the public interest? Similarly, was the decision to grant Chicago Landmark protection to Wrigley Field motivated by the public's interest in historic preservation, or did the Daley Administration's motivations lie elsewhere?

. V. CAPTURE OF THE POLITICAL DECISION TO PRESERVE

Before considering whether there was a capture of the political decision to preserve or alter Wrigley Field or Soldier Field, first consider the competing interests at play, and the parties advancing those interests. The interests on both sides are similar in each situation, but the participants differ. Chicago Cub's President, Andy MacPhail, articulated the competing interests of the owner's of historic stadiums and preservation advocates when asked about the impending landmark status for Wrigley Field. MacPhail said, "Somewhere, someone's going to have to make a decision on whether this place is going to be a museum or a viable ballpark," "[People] want us to win, yet they [also]

want us to continue to have the third-smallest capacity, keep our ticket prices low and have no advertising in the ballpark.”¹¹³

We see this balancing of these interests in the context of preservation and renovation of Wrigley Field and Soldier Field. In the case of Wrigley Field, the Tribune Company, a private property owner wants to renovate its stadium for economic reasons. In the case of Soldier Field, the Chicago Park District, a public entity, is owner of the stadium, and wants to renovate for economic reasons as well. Especially troubling, though, is that in Soldier Field’s case, it is a public entity that owns the stadium. Given the political landscape of Chicago, the fox may be guarding the hen house. For Wrigley Field, the scale tipped in favor of historic preservation concerns, as local landmark status was applied. For Soldier Field, economic concerns trumped preservation concerns, as the stadium was renovated, despite the possibility of losing National Historic Landmark status. Obviously these decisions were not merely based on the public interest of historic preservation. Influences on this balancing process may have included public pressure, political gamesmanship, and capture by certain interests.

A. WRIGLEY FIELD

Was the public interest of preservation the motivating factor at Wrigley, or was the motivation provided by the lobbying efforts of a vocal, well organized group seeking to protect their business interests?

Carol Rose’s article stressed the importance of civic group participation in the historic preservation process. These organized citizens groups help to identify historic

¹¹³ Teddy Greenstein, ‘*Viable*’ park vital to team; Cubs president upset by delay of renovation, Chicago Tribune, p. 1 (9/11/01).

properties and push for their nomination as landmarks when the political system breaks down due to political pressures.¹¹⁴ The views of neighborhood groups undoubtedly were present in the landmark designation process at Wrigley. The Lakeview Citizens Council, for example, was vocal in its opposition to the renovation of Wrigley Field.¹¹⁵ The Council was especially concerned about the proposed bleacher expansion, which would require support pillars over the sidewalks along Sheffield and Waveland avenues.¹¹⁶ It feared that the overhanging bleachers would be a haven for “pigeons, trash, and the homeless.”¹¹⁷

Although the neighborhood associations and historic preservation organizations probably had some influence in the debate over Wrigley Field’s landmark status, arguably the strongest influence came from the rooftop owners. This is not surprising, though, considering the rooftop owners had the most to lose if bleacher expansion occurred as proposed. According to the Rooftop Owners Association, the proposed bleacher expansion would have potentially blocked the rooftop businesses’ views of the game, effectively destroying their longstanding and very profitable businesses,¹¹⁸ with an estimated of gross between \$8 million to \$10 million annually.¹¹⁹ To advance their position, the rooftop owners even enlisted a political heavyweight as their consultant, former chairman of the Democratic National Committee, David Wilhelm.¹²⁰

¹¹⁴ See Rose, 33 Stan. L. Rev. at 530-531.

¹¹⁵ Gary Washburn, *Cubs Start to Play Hardball; Wrigley Draws the Curtain on Nearby Rooftops*, Chicago Tribune- North Sports Final Edition, p. 3, (12/6/01).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Fred Mitchell, “Rooftop Owners Prepare for a Fight,” Chicago Tribune- North Sports Final Edition, p. 2, (7/12/01).

¹¹⁹ *The Gloves are Off; Rooftop Owners Say They’re Disappointed After Cubs Filed Copyright Suit*, Chicago Tribune-Redeye Edition, (12/17/02). Note, however, that this estimate was made by Cub’s President, Andy MacPhail.

¹²⁰ Mitchell, *Rooftop Owners Prepare for a Fight*, Chicago Tribune-North Sports Final Edition, p. 2.

The fight between the Rooftop Owners Association and the Cubs escalated as the Cubs installed a “windscreen” along Wrigley Field’s back fences in 2001 to block the views of neighboring rooftops.¹²¹ The fight further escalated in 2002 as the Cubs filed suit in U.S. District Court against the rooftop owners for copyright infringement and unjust enrichment.¹²² Finally, in January 2004, the Cubs and the rooftop owners settled the lawsuit.¹²³

B. Soldier Field

The Chicago Park District’s push to renovate Soldier Field was clearly not motivated strictly by the general public’s interest. Instead, it was motivated by the fact that the Park District felt renovation was necessary to keep the Chicago Bears from moving out of Soldier Field. In fact, Julian Green, spokesman for the Chicago Park District was quoted as saying, “Had we not renovated the stadium, the Bears would have left.”¹²⁴ Not only was there capture of the decision to disregard the potential loss of landmark status for Soldier Field, there also may have been political maneuvering present that helped the renovation avoid review.

Carol Rose points out two situations where inter-political play influences historic preservation decisions. Both of these situations may have been present in the renovation of Soldier Field. The first situation occurs when political pressure is applied to

¹²¹ Washburn, *Start to Play Hardball; Wrigley Draws the Curtain on Nearby Rooftops*, Chicago Tribune-North Sports Final Edition, p. 3.

¹²² *The Gloves Are Off; Rooftop Owners Say They’re Disappointed After Cubs File Copyright Suit*, Chicago Tribune-Redeye Edition, (12/17/02).

¹²³ H. Gregory Meyer, *Cubs, Rooftop Owners Cut Deal*, Chicago Tribune, p. 1, (1/12/04).- The rooftop owners were required to pay the Cubs more than \$2 million per year, and the Cubs are required to pay any rooftop owner whose view is obstructed due to bleacher expansion.

¹²⁴ Hal Dardick, *Stadium’s revenue is open to argument*, Chicago Tribune, p. 1, (12/13/04).

preservation officials by other political actors.¹²⁵ She highlights the situation where officials are pressured into not nominating eligible properties to historic registers because that nomination could cause the delay of a much coveted civic project, such as a new sports stadium.¹²⁶ If Soldier Field was significant enough to merit National Historic Landmark status, why was it never made a Chicago Landmark? Although this question can not be answered, its effects are apparent in the renovation of Soldier Field. If Soldier Field had been a City of Chicago Landmark, then any alterations to the stadium would have triggered review by the Commission on Chicago Landmarks. Since Soldier Field only enjoyed federal landmark protection, it could avoid review merely by avoiding the use of any federal or state funds in the actual renovation of the stadium. This highlights the second situation discussed by Carol Rose.

The second situation involves “fund shifting gimmickry.”¹²⁷ This phenomenon occurs when cities characterize federal or state provided funds as supporting something tangential to a project which may affect a historic property.¹²⁸ This fund shifting allows the city to avoid the mandatory review procedures arising from the use of federal or state funds in a project that may affect a historic site.¹²⁹ The financial dealings associated with Soldier Field’s renovation are arguably in a similar vein as the fund shifting situations described by Carol Rose. Soldier Field’s renovation was funded solely by a city tax and private funds. The National Football League provided a \$100 million loan, The Chicago Bears added another \$200 million and the City of Chicago tapped into its

¹²⁵ Rose, 33 Stan. L. Rev. at 530

¹²⁶ *See Id.*

¹²⁷ Rose at 528.

¹²⁸ *Id.*

¹²⁹ Rose at 528.

hotel-motel tax to fill the rest of the budget.¹³⁰ In 1999, Governor George Ryan, offered State aid for improving the roads and infrastructure near Soldier Field, noting that financial help for the renovation of Soldier Field itself would complicate things by triggering review by the Illinois Historic Preservation Agency.¹³¹

Perhaps the most glaring evidence of the inter political play involved with Soldier Field's renovation is that with the "strong backing of Mayor Richard Daley"¹³² it only took two weeks for the state legislature to pass and the governor to sign legislation approving the plan.¹³³

VI. Conclusion

Rose argues that the questions of what property should be preserved, and how that property should be preserved are ultimately "choices among political constituencies and preferences."¹³⁴ However, Rose warns that "without a coherent rationale to explain and direct public involvement in preservation activities, the legal techniques for preservation become little more than new weapons for the politically adroit."¹³⁵

Rose also states that it is "crucial that landmark designations avoid the appearance of unpredictability and caprice, and that the standards and procedures for landmark designation and control be clear from the outset."¹³⁶ She maintains that the "articulation

¹³⁰ Blair Kamin, *U.S. Says Rehab Could Cost Soldier Field Landmark Title*, Chicago Tribune, p. 1 (3/15/01).

¹³¹ James Janega and Blair Kamin, *Ryan's Willing to Kick in for Soldier Field Rehab*, Chicago Tribune, p. 1, (06/15/99).

¹³² Hal Dardick, *Stadium's Revenue is Open to Argument*, Chicago Tribune, pg 1, (12/13/04).

¹³³ *Id.*

¹³⁴ Rose at 478-79.

¹³⁵ *Id.*

¹³⁶ *Id.* at 503.

of public purposes [for historic preservation] will give rise to standards, and standards give notice to property owners.”¹³⁷

If the articulated rationales for historic preservation are by their nature subjective, doesn't that still create the problem of “weapons for the politically adroit”? The differing outcomes at Wrigley Field and Soldier Field are evidence that despite the articulated rationale in the historic preservation legislation, there is still the appearance of unpredictability, which may result from basing preservation decisions on motivations other than the articulated rationale. Perhaps it is impossible to have meaningful historic preservation laws considering decisions are not made in a vacuum, but subject to political whims and acapture.

Whether or not historic preservation laws have become meaningless due to their subjectivity and malleability, they are entrenched, and here to stay. What is necessary, though, are more effective federal and state historic preservation laws that afford the same protection as local landmark laws. Perhaps, legislation could be created that would require State and Local historic landmark protection of property that has Federal landmark protection.

There is one positive thing to take away from the City of Chicago's handling of historic landmark designation. Surprisingly, the City of Chicago was able to take a common sense approach to Wrigley Field historic preservation. The Landmark Commission, instead of designating the entire ball park, used a targeted approach.¹³⁸ The Landmarks Commission designated only Wrigley Field's “exterior and unique features-

¹³⁷ *Id.*

¹³⁸ Salvatore Deluca, *Chicago Landmarks Wrigley Field*, Preservation Online, <http://www.nationaltrust.org/magazine/archives/arc_news/021204p.htm> (02/12/2004)

its ivy-covered brick walls, marquee, grandstands, and manually operated scoreboard.”¹³⁹

This approach, according to Chicago Planning and Development Commissioner, Alicia Berg, “accommodates the [Cubs] desire to modernize non-historic elements of the ballpark.”¹⁴⁰

The ultimate question to consider is, “Would Wrigley Field have Chicago Landmark protection today if it was owned by the City instead of the Tribune Company?”

¹³⁹ *Id.*

¹⁴⁰ Sabrina L. Miller, *Landmark urged for parts of Wrigley*, Chicago Tribune, p. 16, (03/01/2003).