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ZONING AND LAND USE PLANNING

Landmarks Preservation Law Given Broad Reading by Court



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The Appellate Division, First Department, has ruled that New York City's Landmarks Preservation and Historic Districts Law (Administrative Code of City of N.Y. §25-301 *et seq.*) (the Landmarks Law) permits the Landmarks Preservation Commission (LPC) to require the private owner of property purchased subject to a prior interior landmark designation to preserve the historic character and operation of the interior landmark and to continue to permit at least minimal public access to it.

The case is the first time an owner of an interior landmarked property has asked to convert an interior landmark into a private residence. Currently, there are a total of 117 designated interior landmarks in New York City, and the First Department's decision, in *Matter of Save America's Clocks v. City of New York*, 2017 N.Y. Slip Op. 08457 (1st

Dept. Nov. 30, 2017), has important implications for them and for future property development in New York.

The case, however, may not be over. Two justices dissented, and

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the dispute ultimately may have to be resolved by the New York Court of Appeals.

Background

The case involved the 19th Century building at 346 Broadway in lower Manhattan and, in particular, the clocktower atop the building's western end, which houses a purely mechanical tower clock with a mechanism similar to London's "Big Ben." A room on the building's

fourteenth floor has an interior spiral staircase that leads up to a landing housing the clock's pendulum, and then to the clocktower's machine room. Four glass and metal clock faces make up the four walls of the machine room, in the center of which the clock mechanism sits inside a glass and wood enclosure. Above the mechanism is the clock's 5,000-pound bell, which strikes the hours.

The city acquired the building in 1968 and used it to house courts and city government offices.

Several decades later, in addition to designating the exterior of the building a landmark, the LPC designated 10 interior spaces of the building spanning around 20,000 square feet as interior landmarks, including the banking hall on the ground floor, the main lobby, the clocktower gallery, the clocktower machinery room, and fixtures and interior components, including the "No. 4 Striking Tower Clock."

In making this designation, the LPC found that the building and the

designated portions of its interior had:

a special character, special historical and aesthetic interest and value as part of the development, heritage and cultural characteristics of New York City, and the interior or parts thereof are thirty years old or more, and that the interior is one which is customarily open and accessible to the public, and to which the public is customarily invited.

In December 2013, the city sold the building to Civic Center Community Group Broadway LLC, which purchased the building by a deed that provided that the purchase was subject to the landmark designation.

Thereafter, the owner submitted an application for a certificate of appropriateness (COA) to the LPC, seeking permission to refurbish the building's exterior and interior and to modify some of the landmarked interior spaces. Among other things, the application requested permission to convert the clocktower into a triplex private apartment, to disconnect the clock from its mechanism, and to electrify the clock.

The LPC held a public hearing on the owner's application. There, the LPC's counsel advised the commissioners that the LPC did not have the power under the Landmarks Law to require "interior-designated spaces to remain public" and "to require that [the clock] mechanism remain operable." The LPC then approved the COA.

Various individuals and organizations challenged the LPC's decision

in an Article 78 proceeding. The trial court partially annulled the COA to the extent that it allowed work inside the clocktower that would completely eliminate public access and allowed work that would convert the clock from a mechanical to an electrical system of operation.

The dispute reached the First Department.

The First Department's Decision

A divided panel of the First Department affirmed the trial court's decision, with the majority concluding that the LPC's determination was

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irrational and affected by an error of law because it was based on the erroneous advice of its counsel that caused a misunderstanding of the LPC's authority under the Landmarks Law. The court concluded that, contrary to the legal advice it had received, the LPC has the authority under the Landmarks Law to regulate the clock mechanism because it effectuates the Landmarks Law's statutory purposes and because the law's language "clearly gives the LPC authority to require the owner to run the clock by its still functioning mechanism and to deny the request to electrify it."

In its decision, the court observed that Section 25-301(b) of the Landmarks Law declares that "the protection, enhancement, perpetuation and use of improvements...of

special character or special historical or aesthetic interest or value is a public necessity and is required in the interest of the health, prosperity, safety and welfare of the people." The court noted that the purposes of the Landmarks Law include the "protection, enhancement and perpetuation of such improvements...which represent or reflect elements of the city's cultural, social, economic, political and architectural history;...[the] foster[ing of] civic pride in the beauty and noble accomplishments of the past;...protect[ing] and enhance[ing] the city's attractions to tourists and visitors and the support and stimulus to business and industry thereby provided;...[and] promot[ing] the use of...interior landmarks...for the education, pleasure and welfare of the people of the city."

The court then reasoned that the LPC had designated the building's fourteenth floor interior, including the clocktower machinery room and the clock machinery, as an interior landmark because the clock's mechanism "represents an element of the city's cultural and economic history and contributes to the building's historical value," and because maintaining it "would promote pride in the 'accomplishments of the past' and advance the statutory purposes."

In addition, the court found, the interior landmark designation was consistent with the Landmarks Law's provisions.

The court explained that Section 25-302(1) of the Landmarks Law defines “interior architectural feature” to include the “components of an interior, including, but not limited to...the type and style of all...fixtures appurtenant to such interior.” Section 25-304(b), the court continued, permits the LPC to “apply or impose, with respect to the construction, reconstruction, alteration, demolition or use of [a designated landmark] or the performance of minor work thereon, regulations, limitations, determinations or conditions which are more restrictive than those prescribed or made by or pursuant to other provisions of law applicable to such activities, work or use.” According to the court, this language “clearly gives the LPC authority to require the owner to run the clock by its still functioning mechanism and to deny the request to electrify it.”

Indeed, the court added, there would be “little point” in designating the machinery as a landmark without an expectation that it would continue to operate for as long as it can.

Moreover, the court said, the LPC’s approval of the clock mechanism proposal was not rational. In the court’s view, the building’s “majestic clock, and its historically significant functioning mechanism, is a perfect example of the very reason the Landmarks Law exists,” because, as provided in Section 25-301(b), the “protection, ...perpetuation, and use of [objects] of special character or

special historical or aesthetic interest or value is a public necessity.” The LPC’s actions were “contrary to that purpose,” according to the court.

The court next examined whether the LPC has the authority to retain public access to the clocktower, and ruled that, under the Landmarks Law, the LPC may reject a COA that would cause a designated interior to be inaccessible to the public, and may require the owner to continue to provide at least some degree of public access.

According to the court, preserving the public’s access to landmarked spaces furthers the statutory purpose. It said that it was “difficult to see” how an interior landmark located in a private home could “foster civic pride in the city’s past, educate our citizens, enhance tourism and provide the stimulus to business and industry that tourism provides.” Thus, the court found, the statutory purposes of the Landmarks Law would be thwarted if the public was denied access to the clocktower and the opportunity to view its historic mechanism. Put differently, the court said, the building owner’s proposal to transform the clocktower into a private residence “violates the interior landmark designation to which its ownership is subject under the deed.”

The court added that, under Section 25-304(b) of the Landmarks Law, the LPC has “broad authority to regulate, limit or condition

proposed alterations to landmarked interiors”—including the clocktower. In addition, the court said, given that Section 25-302(m) of the Landmarks Law provides that a previously designated interior landmark “is” customarily open to the public, or the public “is” customarily invited to such spaces, the Landmarks Law “contemplates that interior landmarks shall remain accessible to the public in the future.”

The majority opinion concluded that the actions of the LPC were contrary to the purpose of the Landmarks Law. It also noted the importance of clarifying the LPC’s authority to take the action that the majority of the commissioners believed they did not have.

Conclusion

At this writing, it is not certain whether the court’s decision will be the final word in this case. For now, however, the decision means that the Landmarks Law permits the LPC to require the private owner of property purchased subject to a prior interior landmark designation to preserve the historic character and operation of the interior landmark and to continue to permit at least minimal public access to it—and that it is irrational for the LPC to decide otherwise. In many respects, the court’s decision itself is a landmark ruling.