

**Historic Preservation:**  
**Through the Lens of the King Records Case**  
**(Conservation of the City's Historic Assets)**

**Marion E. Haynes, III**  
**Chief Counsel-Land Use & Planning**  
**City of Cincinnati Law Department**

**1. Why Historic Preservation?**

- a. Ties to our past
- b. Irreplaceable or difficult to replace methods and materials
- c. Intrinsic, authentic value that may not always be represented by a market value
- d. Competitive advantage
  - i. Tourism, economic development
- e. Environmental benefits

**2. Historic Preservation is Constitutional Basis for Government Action**

- a. *United States v. Gettysburg E.R. Co.*, 160 U.S. 668, 16 S. Ct. 427, 40 L. Ed. 576 (1896)
- b. *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed.2d 631 (1978)

**3. Historic Designation Process**

- a. Designation of landmarks districts and sites = legislative action
- b. Application of historic guidelines = administrative action

#### **4. Thorniest Issue is Demolition (see however Liberty and Elm)**

- a. The Albee Theater
  - i. Early (failed) historic preservation effort
- b. Gamble House
  - i. Who designates historic buildings?
- c. Dennison and Davis Furniture Buildings
  - i. Is renovation economically viable?
- d. Buildings with Orders
  - i. Who is responsible for condition?
- e. Christy's/Lenhardt's and King Records Buildings
  - i. Who can stop demolition and how?

#### **5. Private Property Rights Versus Community Values**

- a. Like many zoning disputes
- b. Finality and lack of good options makes these battles particularly heated
- c. Difficult to demolish historic structures in Cincinnati
- d. Historic preservation code displays clear policy preference for preserving designated buildings
  - i. Code also tries to solve tricky problem of triggering public debate on designation without leading to demo of building

#### **6. King Records Building**

- a. "1540 Brewster Avenue" in Evanston neighborhood
- b. Once sixth largest music studio in country
- c. Fully integrated all the way to executive level
- d. Rock Hall president: "There was never a more important piece of real estate musically or culturally in the history of popular music"

- e. James Brown, Bootsy Collins, dozens of others in the Rock and Roll Hall of Fame, Country Music Hall of Fame, and Blues Hall of Fame

## **7. Competing Applications**

- a. Designation application filed by Cincinnati Music Heritage Foundation and Bootsy Collins Foundation
- b. Demolition permit application filed by property owner
- c. City refused demolition permit based on CMC 1435-07-2-A which provides that no demolition may take place during pendency of a designation application
- d. Property subsequently landmarked by the Council
  - i. Important contributions to culture and society
  - ii. Association with the lives of persons significant in our past

## **8. Mandamus Lawsuit**

- a. Five claims: mandamus to issue permit, mandamus to commence appropriation proceedings, declaratory relief, injunctive relief, and damages
- b. City moved to dismiss
- c. First District dismisses in total
- d. Ohio Supreme Court affirms
  - 1. *State ex rel. Dynamic Industries, Inc. v. Cincinnati*, 147 Ohio St.3d 422, 2016-Ohio-7663
  - 2. No subject matter jurisdiction over declaratory, injunctive, or damages claims
  - 3. Mandamus claims were not ripe
    - a. Failure to exhaust administrative remedies
  - 4. Did not address vested rights or application timing questions
  - 5. Implicitly validated Cincinnati's designation process

**9. Will the King Records Building be saved?**

- a. COA for demolition filed
  - i. Owner has claimed economic hardship
    - 1. Deprivation of economically viable use
    - 2. Reasonable-investment backed expectations
    - 3. Hardship created or exacerbated by property
- b. Council has resolved to appropriate to public use
  - i. Public memorial
  - ii. Music library
  - iii. Historic preservation
- c. Demolition delay ordered
  - i. Other options for saving building are feasible
  - ii. City has made several offers to purchase
- d. HCB and Planning Commission have determined that acquiring the property and putting it to public use is in the public interest

**10. Next?**