

Committee on Resources

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Testimony of Robert Bisno before National Park Service Subcommittee

June 3, 2003

Good Morning Mr. Chairman and members.

My name is Bob Bisno, and I'm a principal in the Lincoln Place Apartment Redevelopment Project located in Venice, California.

I'm here today because it's important, that we protect the importance and integrity of the National Register process from those who are seeking to exploit it to promote their own self-serving agenda.

In my case, that agenda belonged to the tenants of my property who were seeking to block the redevelopment of my property so that they would not be obliged to relocate. Their true agenda has nothing to do with historic preservation. Indeed, several years ago I actually proposed a plan to renovate all of the existing buildings that would have preserved them, but the tenants fought and blocked that effort because they were opposed to the increased rents that would have been necessary to make such a program feasible.

Abuse of the National Register process and other "preservation" mechanisms will become the number one tool to stop economic development in the coming decade unless you take immediate steps to stop it.

We purchased Lincoln Place Apartments in 1986, and for the past nine years, we've been through the arduous permitting process to allow us to carry out our redevelopment plan. Our plan includes the construction of 144 low-income apartments without any governmental subsidy, even though the City of Los Angeles does not require affordable housing in new projects.

Our redevelopment process started in 1994 with an Environmental Impact Report that considered the historic preservation arguments made later by the applicants for the National Register.

The Lincoln Place Apartments were built in 1950, basically using off-the-shelf plans made available by the FHA, which had been issuing mortgage insurance for thousands of project nation-wide since 1937.

After a full public hearing, the Planning Department of the City of Los Angeles voted to certify the EIR that found that Lincoln Place was NOT a significant local resource. See Exhibit A (excerpts from City EIR).

The following year, the full City Planning Commission, after a full public hearing and consideration of the same EIR, found that Lincoln Place was NOT a significant local resource.

Dissatisfied with the decision of the City's Planning Department, the applicants then filed an application to the City's Cultural Heritage Commission; a board concerned only with historic preservation, to have Lincoln Place declared a City monument.

The Cultural Heritage Commission independently reviewed the evidence cited by the proponents of the National Register application. They also reviewed the analysis of Robert Chattel, a nationally recognized expert qualified under the Secretary of the Interior's Professional qualifications.

After an extensive review of the facts, the commission determined that Lincoln Place should NOT be designated a Cultural Historic Landmark as it did not represent significant architecture and was a later example of the many projects involving FHA mortgage insurance found in the region.

And just last year, after considering the National Register application filed by the applicants, the Los Angeles City Council reviewed that application and UNANIMOUSLY voted that Lincoln Place was NOT a locally significant resource. See Exhibit B (Findings of City of Los Angeles).

Having lost locally, the applicants then identified the National Register process as a tool they might exploit, and filed an application to have these commonplace structure listed on the National Register of Historic Places. Under current law, anyone can file a National Register application, even if the owner objects.

The preliminary steps in the National Register process are administered by State officials with final decision-making reserved to the Keeper of the Register.

On February 7th of this year, by a vote of 7 to 1, the California State Historical Resources Commission voted to recommend to the Keeper of the National Register that Lincoln Place be considered a "locally significant" resource notwithstanding the City's repeated findings that Lincoln Place was NOT a significant local resource. Ironically, according to supporters of the application in a published article, attempting to have Lincoln Place designated as a historic site was a last-ditch desperate effort since the applicants had lost everywhere else they had tried. See, e.g., "Sad Story Unfolding in Venice" Santa Monica Mirror, July 11-17, 2001. Mr. Chairman, I ask unanimous consent to submit a copy of this article for the record.

Although those administering the National Register process told us that the application would not have an impact on our property rights, even before the State Commission cast its vote, the City's permits were challenged in court, and after the Commission's vote, the City refused to issue any more permits. Our ability to move forward was instantly stopped.

Moreover, the State Historic Preservation Officer, who had essentially "rubber-stamped" the application without any independent review went out of his way to assist those trying to block our activities by writing letters to suggest that the property had been, or would be shortly, listed on the National Register.

The Keeper herself had to intervene to clear up the confusion. On March 28, 2003, the Keeper wrote that neither the February 7, 2003 action of the State Historic Preservation Commission nor the March 3, 2003 transmittal of State Historic Preservation Officer regarding the Petitioners' application constituted a formal "determination of eligibility" for the Lincoln Place Apartments, and that only she could make such an official determination.

However, despite her letter and her intention to clarify the problem created by the State SHPO, the City Attorney still refused to release our permits.

Later, on April 24, 2003, the Keeper of the National Register returned the application to the State Historic Preservation Officer with her findings that the application was significantly inadequate. Basically, the actions of the State Historic Preservation Commission and Officer's recommendations were overturned. See Exhibit C (April 24, 2003 Keeper action).

On May 12, 2003, the State Historic Preservation Officer returned the application in a letter stating that if the applicants wished to persist in their efforts, a wholly new application would be required.

However, even though the National Register application has been effectively terminated, our problems resulting from the National Register application have continued unabated.

As of today, the applicants have filed not one, but two, lawsuits before different courts to block our redevelopment based only on their National Register application.

In terms of personal costs, I have spent over \$ 500,000.00 in the past seven months alone just to respond to this application, to respond to the related lawsuits, and to allow my objections to be heard.

Since this soap opera started, I keep hearing some people say that an application for the National Register does not affect a property owner's rights. Moreover, some tell me that I should feel it is an honor to have my property considered for the National Register.

Those are naïve and misguided views. The truth is that those who oppose property rights have carefully designed the National Register system so that it can be used to effectively strangle an owner's activities without any express prohibition on the owner's activities being invoked.

I'm living proof that the rights of property owners are trampled in the National Register process, as it currently exists.

That is what has happened, and is continuing to happen to me.

The National Register process needs to be reformed to prevent this type of abuse. The regulations are vague and not understood even by cities like Los Angeles, the second largest city in this country. The evaluation criteria are so subjective as to be non-existent. There is a lack of rigor on the part of professional staff in screening applications. In our case, the SHPO conducted no independent review of the application, and didn't even request that the applicants submit their bibliography so that the SHPO could check that any of the claims made were accurate.

But most of all, properties should not be declared eligible for the National Register if the owner does not request it. If I want my property honored by the National Register, I will myself make the application. On the other hand, if I believe being listed on the National Register is not in my interest as a property owner, I should be left alone.

There are other laws on the books that give the Federal Government the right to preserve property that is a significant historic resource where necessary.

If the Federal Government believes that a property must be preserved, it can buy the property or condemn it. If the Federal Government is unwilling to acquire the property for preservation purposes, it should leave matters to local government and property owners.

Mr. Chairman and members, the solution to this problem is rather an easy one. Federal law having to do with preservation must be changed to require approval of property owners before any application is accepted by any state SHPO. Only then can the federal government take pride in knowing that it's protecting private property rights rather than have those right trampled as mine have been.

I thank you Mr. Chairman and this committee for giving me a chance to bring this travesty to your attention and the attention of this Congress.

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