Historic preservation with the church can be a two-edged sword

Three steps your church can take when faced with a historic preservation designation.

In reaction to the loss of historically significant buildings within larger metropolitan areas in the 1950s, communities throughout the nation adopted historic preservation zoning codes to provide for the legal authority to designate and prevent the demolition or destruction of buildings considered valuable to the community as a whole.

Today, more than half of all larger metropolitan communities throughout the United States have historic preservation ordinances. Recently, the issue of how historic designations impact churches in light of the Religious Land Use and Institutionalized Persons Act have been litigated throughout the United States.

As a result of the historic designation, no demolition or changes can be made to the exterior without appealing to the historic commission for a variance. Church leaders vowed a fight because the designation prevents them from removing religious items such as stained glass windows, crosses and Latin phrases on the exterior.

They further noted that the designation makes it more difficult to sell or redevelop the church into something else. The building closed and remains empty today.

In the city of Peoria, IL, Trinity Evangelical Lutheran Church, located in the downtown district, purchased an abandoned apartment next to its church with the intention of tearing it down and building a family life center. The church met with representatives of the city, who were not pleased with the idea of having the church remove the property from the tax roles.

Therefore, over the objection of the church, it designated the abandoned apartment building a "city landmark" under the historic preservation ordinance with the end result that the church could not remove the building, but rather, could only renovate it to use an apartment building.

Removing a designation

In Washington D.C., the Third Church of Christ Scientist sought to remove the designation of Historic Preservation to its building located in downtown Washington D.C. The church, built in 1971 and designed by Araldo Cossutta of I.M. Pei and Partners, was built in the "Brutalist" architectural style. As one commentator described it, Brutalism is "the celebration of concrete."

The building is a concrete octagonal tower. Its fortress like façade features three massive, windowless, 60-feet high concrete walls. The door to the church is hidden from the street. Upon learning that the church was not satisfied with the building in 1988, the city placed a historic preservation designation on the building requiring the church to continue its use as a worship facility, even though it did not want to.

Both the Trinity Church and Christian Scientist cases ended up in federal court litigation in 2008 resulting in mixed decisions. In the Third Church case, the city filed a Motion to Dismiss the complaint suggesting that the historic preservation status trumped First Amendment and RLUIPA concerns.

After oral argument, the court denied the motion with the judge sending his thoughts through oral argument that the historic preservation board should have considered the First Amendment and RLUIPA concerns at a hearing where the request to remove the permit was considered and denied. On May 12, 2009, the District of Columbia approved a demolition permit for the building, citing hardships on the building's owner and the possibility of the church's demise if demolition was not approved.

However, in the Trinity Church case, the court dismissed the RLUIPA claim concluding that the "court cannot find that the landmark status of the apartment building and >>
the concomitant limitations on the renovation or teardown of the apartment building constitutes a substantial burden on the religious exercise of the church."

So what is a church to do when faced with a historic preservation designation situation?

Step one is to consult with an attorney and planner familiar with the area of the law to design a game plan to combat the designation.

Step two is to become involved in the community to find out who is driving the plan to make the property designated as historically significant, and more importantly, find out why.

Step three is to be proactive. If your church is planning on renovating or demolishing a structure that you are hearing the city wants to stop, take out permits and begin work immediately to create a "vested right" in the process.

I am a proponent of historic preservation when it is used in the context of truly preserving our heritage. However, when historic preservation is used as a "tag" to stop a church from using land for religious purposes because it is taken off the tax roles, or used to stop a church from worshiping because the building is no longer functional, then it needs to be challenged. CE

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