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Living History: How Homeowners in a New Local Historic District Negotiate Their Legal Obligations

ABSTRACT. American historic preservationists are increasingly emphasizing the need to preserve not only prominent landmarks, but also the vernacular architectural culture of “ordinary neighborhoods.” Preserving such neighborhoods often requires convincing homeowners to agree to legal restrictions on how they maintain their homes, yet to date, there has been no empirical research on how homeowners have responded to the policy tradeoffs inherent in making such a decision. This Note fills that gap, using extensive original empirical research to examine how homeowners in New Haven’s recently approved City Point Local Historic District viewed and managed their legal obligations. This Note then draws upon these data to develop policy recommendations for improving local preservation efforts nationwide.

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NOTE CONTENTS

INTRODUCTION	771
I. HISTORIC PRESERVATION, LOCAL HISTORIC DISTRICTS, AND CITY POINT	774
A. The Historic Preservation Movement and the Rise of the Local Historic District	774
B. Historic Preservation in New Haven	777
C. The City Point Neighborhood as a Case Study	778
D. The Impetus for the City Point Local Historic District	782
II. THE EMPIRICAL EVIDENCE: OWNER PERCEPTIONS OF THE LHD	785
A. Overall Owner Perceptions	786
B. The Influence of Information	789
C. How Groups Differ in Their Views – “Middle-Class” Versus “Working-Class” Streets	793
III. THE EMPIRICAL EVIDENCE: MANAGING AND ENFORCING LHD OBLIGATIONS	798
A. Managing One’s Own LHD Obligations: First-Party Enforcement	798
B. Community Standards and LHD Regulations: Second-Party Enforcement	802
1. Neighborhood Relations in City Point	802
2. The Informal Violation Enforcement Formula	803
C. The Role of the Historic District Commission: Third-Party Enforcement	806
1. Participant Costs in Time and Resources	806
2. The Absence of Clearly Delineated Safe Harbors	808
3. The Failure To Demonstrate Responsiveness to Local Needs	809

IV. DISCUSSION AND POLICY RECOMMENDATIONS	811
A. Has the City Point LHD Been a Success?	811
B. Solving the Dilemma of the “Working-Class” Streets	813
C. Do Policy Instruments Matter?	813
D. Improving the HDC Process and Structure	815
E. Recognizing “First-Generation” Issues	818
CONCLUSION	819
APPENDIX	820

INTRODUCTION

Historic preservation laws matter. When Tom Ahern sought to reduce his heating bills by replacing the wooden windows on his turn-of-the-century Colonial Revival with vinyl windows in March 2004, he was merely following in the footsteps of countless other frugal New England homeowners. Yet while Ahern may have been a typical homeowner, his home—a triple-decker in New Haven’s historically working-class City Point neighborhood—was not a typical home. Nearly four years earlier, in October 2000, City Point homeowners voted overwhelmingly to approve an amendment to the New Haven zoning bylaws designating City Point as a local historic district (LHD). Designed to “preserve and protect the community’s historic architecture and the quality of life of the neighborhood,”¹ the LHD ordinance required that almost any proposed external alteration of a structure in the LHD receive prior approval from the New Haven Historic District Commission (HDC). Ahern decided not to seek this approval, and when the Historic District Commission challenged his vinyl windows, he decided to fight back. In the end, Ahern negotiated a compromise: he could keep the side and rear vinyl windows, as long as he reinstalled the wooden front windows and replaced the asphalt shingling on the front of his house with wooden clapboard. Both sides claimed victory.

At first glance this incident may appear to be no more than a garden-variety zoning dispute. Yet upon closer inspection, it illustrates two new challenges facing historic preservation at the start of the twenty-first century. The first challenge is how best to address the shift from historic preservation as an individual activity to historic preservation as a more communal activity. Throughout the nineteenth and early twentieth centuries, historic preservation in the United States was a largely individualized affair, unencumbered by the need for either consensus or negotiation. Individual owners maintained individual properties, while the government used taxpayer money to maintain obvious national landmarks.² This began to change in the 1950s and 1960s, as communities began to realize that they were losing their architectural heritage because of individual or governmental decisions that frequently subordinated historic preservation to desires for immediate profit or immediate regeneration.³ As the historic preservation movement has slowly expanded its

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1. CITY POINT HISTORIC DIST. STUDY COMM., CITY OF NEW HAVEN, [REPORT] 1 (1999) (on file with the New Haven City Plan Department) [hereinafter CITY POINT STUDY REPORT].
 2. See NORMAN TYLER, HISTORIC PRESERVATION: AN INTRODUCTION TO ITS HISTORY, PRINCIPLES, AND PRACTICE 33-36 (2000).
 3. Although the National Trust for Historic Preservation was chartered by Congress in 1949, it was not until the 1950s and 1960s that historic preservation began to find a broader base of

emphasis from preserving grand homes and famous public buildings to preserving the vernacular history of everyday American life, historic preservation—once an individual activity—has become an increasingly communal one.⁴

The second challenge is how best to address the shift in the focus of historic preservation from landmark buildings to vernacular neighborhoods. The increased emphasis over the past four decades on the creation of historic districts has meant that ordinary homeowners have become more involved in a debate about the value of historic preservation that previously concerned only a small band of preservation-minded civic activists. While some of the first historic preservation efforts in the United States came in the context of historic districts,⁵ not until the United States Conference of Mayors argued for the broader use of LHDs in 1966 did many local preservationists consider expanding their primary emphasis beyond protecting landmark buildings.⁶ The increased use of LHDs—which differ from National Register Historic Districts (NRHDs) in that they carry legal obligations as well as symbolic value—has meant that law and preservation have become more intertwined at the local level than ever before. This growth has been steady and significant: in 1957 there were only 11 communities with local preservation ordinances, whereas by 1975 there were 421 such communities, and by 1983 there were

adherents. *See, e.g.*, Special Comm. on Historic Pres., U.S. Conference of Mayors, *Findings and Recommendations*, in WITH HERITAGE SO RICH 189 (Nat'l Trust for Historic Pres. ed., 1983) (1966).

4. For example, the National Trust for Historic Preservation estimates that its Main Street Program, focused on revitalizing American downtowns, has attracted public and private investment of \$23.3 billion and has created over 308,000 new jobs since 1980. *See* NAT'L TRUST FOR HISTORIC PRES., ANNUAL REPORT 2004, at 5 (2005), available at http://www.nationaltrust.org/about/reports/2004_annual_report_nthp.pdf; *see also* GOV'T FIN. RESEARCH CTR., GOV'T. FIN. OFFICERS ASS'N, THE ECONOMIC BENEFITS OF PRESERVING COMMUNITY CHARACTER: A CASE STUDY FROM FREDERICKSBURG, VIRGINIA (Nat'l Trust for Historic Pres., Dollars & Sense of Historic Pres. 005, 1996) (1991) (finding that home prices in the Fredericksburg LHD—roughly equal to those outside the LHD when it was created in the 1970s—were over 60% higher than those outside the LHD by 1990); S.C. DEP'T OF ARCHIVES & HISTORY, HISTORIC DISTRICTS ARE GOOD FOR YOUR POCKETBOOK: THE IMPACT OF LOCAL HISTORIC DISTRICTS ON HOUSE PRICES IN SOUTH CAROLINA (2000), <http://www.state.sc.us/scdah/propval.pdf> (concluding that property values in historic districts are higher, and increase at a higher rate, than those outside historic districts). For an excellent comprehensive annotated bibliography of historic preservation literature, see RANDALL MASON, ECONOMICS AND HISTORIC PRESERVATION: A GUIDE AND REVIEW OF THE LITERATURE 22-51 (2005), available at http://www.brookings.edu/metro/pubs/20050926_preservation.pdf.
5. *See* TYLER, *supra* note 2, at 57-60.
6. Special Comm. on Historic Pres., *supra* note 3, at 193.

between 800 and 1000.⁷ By 2002, there were over 2300 communities with local preservation ordinances,⁸ and interest in creating new local preservation ordinances continues to grow. While the first legal battles about preservation were fought in the courts, resulting in landmark legal opinions such as *Berman v. Parker*⁹ and *Penn Central Transportation Co. v. City of New York*,¹⁰ today the legal issues facing preservation are less high-profile, yet no less important. Moreover, the historic preservation movement has begun to push beyond its traditional focus on high architecture and Anglo-American history,¹¹ and it is increasingly at the local level—in places like the “Little Manila” of Stockton, California;¹² the experimental Depression-era community of Arthurdale, West Virginia;¹³ and the “iconic cultural landscape” of Hartington, Nebraska (population 1600)¹⁴—where the future of the historic preservation movement is developing.

Despite this increased emphasis on using LHDs to preserve otherwise ordinary neighborhoods,¹⁵ almost all of the existing literature concerning

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7. RICHARD J. RODDEWIG, PREPARING A HISTORIC PRESERVATION ORDINANCE 1 (Am. Planning Ass’n, PAS Report No. 374, 1983), *reprinted in* AM. LAW INST.-AM. BAR ASS’N COMM. ON CONTINUING PROF’L EDUC., ALI-ABA COURSE OF STUDY MATERIALS: HISTORIC PRESERVATION LAW 399, 399 (2004).
 8. NAT’L TRUST FOR HISTORIC PRES., A CITIZEN’S GUIDE TO PROTECTING HISTORIC PLACES: LOCAL PRESERVATION ORDINANCES 1 (2002), http://www.nationaltrust.org/smartgrowth/toolkit_citizens.pdf.
 9. 348 U.S. 26 (1954). *Berman* upheld the right of governments to justify regulation and the taking of private property for public purposes on the basis of aesthetics, noting in particular that “[t]he concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy” *Id.* at 33 (citation omitted).
 10. 438 U.S. 104 (1978) (affirming that laws designating property as a historic landmark are a valid exercise of the police power and do not constitute a per se regulatory taking of the designated property).
 11. See, e.g., Richard Cloues, *Preserving the Legacy: Georgia’s Historic African American Resources*, CRM, vol. 17, no. 2, 1994, at 17, available at <http://crm.cr.nps.gov/archive/17-2/17-2-10.pdf> (discussing the rapidly growing field of “minority preservation”).
 12. See Stephen Howie, *It Has Come to This*, PRESERVATION, Nov.-Dec. 2003, at 34.
 13. See Michael Byers, *Brave New Town*, PRESERVATION, Mar.-Apr. 2006, at 32.
 14. Gillian Klucas, *Up on the Farm*, PRESERVATION, Nov.-Dec. 2005, at 28, 29.
 15. The term “ordinary neighborhood,” as used in this Note, is in no way meant to carry any pejorative connotation. Rather, the term is used simply as shorthand for a neighborhood that, while architecturally or culturally rich in its own way, is not home to any of the architectural or historical anomalies that have traditionally attracted the focus of historic preservationists (such as landmark buildings, presidential birthplaces, or sites of nationally significant social, political, or military events).

LHDs addresses the “how to” rather than the “why do.” Although there is substantial information available on how to repair an old home,¹⁶ there is a dearth of widely disseminated empirical insight into why homeowners create LHDs, whether homeowners’ views about LHDs change over time, and whether local historic preservation laws are effective in practice.¹⁷ This Note addresses that gap in the legal and policy literature, exploring these emerging local issues in the context of how owner-occupiers in New Haven’s City Point Local Historic District view, negotiate, and manage their obligations under a recently approved LHD ordinance.

Part I provides a brief background of the historic preservation movement in the United States, explains the reasons for the focus on New Haven’s City Point LHD, and offers a short historical sketch of City Point itself. Parts II and III draw upon original empirical research to determine the extent to which legal policy instruments matter in the historic preservation context—examining the owners’ perceptions of their obligations under LHD ordinances, the effectiveness of LHD enforcement mechanisms, and the extent to which owners manage their LHD obligations without resorting to the mechanisms provided by law. Part IV summarizes the main research findings and offers several policy recommendations, describing how this research might assist New Haven as well as other American cities.

I. HISTORIC PRESERVATION, LOCAL HISTORIC DISTRICTS, AND CITY POINT

A. *The Historic Preservation Movement and the Rise of the Local Historic District*

The historic preservation movement in the United States was born in ad hoc campaigns during the late nineteenth and early twentieth centuries to

16. See, e.g., N.Y. LANDMARKS CONSERVANCY, HISTORIC BUILDING FACADES: THE MANUAL FOR MAINTENANCE AND REHABILITATION (William G. Foulks ed., 1997); TECHNICAL PRES. SERVS., NAT’L PARK SERV., RESPECTFUL REHABILITATION: ANSWERS TO YOUR QUESTIONS ABOUT OLD BUILDINGS (1982).

17. The existing empirical research on the effects of LHDs largely focuses on interpreting impersonal data such as appraised values and census tract demographics. See, e.g., N. Edward Coulson & Robin M. Leichenko, *Historic Preservation and Neighbourhood Change*, 41 URB. STUD. 1587 (2004) (using census data to determine that preservation efforts did not appreciably change neighborhood demographics). Although such work is extremely valuable, it is not—nor does it claim to be—designed for probing the motivations and rationales of the individual owners who, together, compose the LHD and determine its tenor, parameters, and relative success.

preserve specific prominent sites or buildings that were under immediate threat of demolition or development. (Famous examples included George Washington's Mount Vernon¹⁸ and the Gettysburg battlefield.¹⁹) This approach began to change during the late 1950s and early 1960s, however, as federal urban renewal programs encouraged the mass clearance of "blighted" areas such as southwest Washington, D.C.,²⁰ Boston's West End,²¹ and New Haven's Oak Street.²² Historic preservationists responded to these wholesale demolition programs by pushing for passage of legislation like the National Historic Preservation Act of 1966²³ and by creating standing organizations dedicated to preserving the historic built environment. Yet in their early years, these organizations, like the preceding campaigns, focused largely on the preservation of significant public and quasi-public buildings located in or near renewal zones, and the tools at their disposal were largely extralegal—consisting predominantly of persuasion, publicity campaigns, small "encouragement" grants, and the "plaquing" of historic buildings.²⁴

With the passage of the National Historic Preservation Act and the subsequent Supreme Court decision in *Penn Central*,²⁵ historic preservationists gradually acquired legal tools for their arsenal. These tools now range from demolition delay ordinances, LHDs, and the granting of preservation easements, to preservation tax credits, façade improvement programs, and adaptive reuse policies.²⁶ Despite the availability of these tools, the historic preservation movement has traditionally relied upon voluntary compliance and

18. See ELSWYTH THANE, *MOUNT VERNON: THE LEGACY* 1 (1967).

19. See *United States v. Gettysburg Elec. Ry.*, 160 U.S. 668, 670 (1896).

20. See *Berman v. Parker*, 348 U.S. 26 (1954).

21. See THOMAS H. O'CONNOR, *BUILDING A NEW BOSTON: POLITICS AND URBAN RENEWAL 1950-1970*, at 125-39 (1993).

22. See Ira M. Leonard, *The Rise of Metropolitan New Haven, 1860 to 1980*, in *NEW HAVEN: AN ILLUSTRATED HISTORY* 45, 60-61 (Floyd Shumway & Richard Hegel eds., 1981).

23. Pub. L. No. 89-665, 80 Stat. 915 (codified as amended at 16 U.S.C. §§ 470 to 470x-6 (2000)).

24. Michael A. Candeto, *Historic Preservation in the Elm City: The Role of the New Haven Preservation Trust* 25-31 (May 29, 1979) (unpublished manuscript, on file with the Yale Law School Library).

25. 438 U.S. 104 (1978).

26. See *infra* note 31; see also, e.g., CONN. GEN. STAT. § 7-147j (2005) (authorizing demolition delay ordinances); STEVEN TIESDELL ET AL., *REVITALIZING HISTORIC URBAN QUARTERS* (1996) (discussing adaptive reuse); Nat'l Trust for Historic Pres., *Preservation Easements: An Important Legal Tool for the Preservation of Historic Places*, <http://www.nationaltrust.org/legal/easements/index.html> (last visited Nov. 29, 2006) (discussing preservation easements).

affirmative incentives instead of legally binding mandates. For example, in the early years of the historic preservation movement, legal solutions like “historic districting” tended to be employed only in small areas of undeniable historical or architectural importance (such as downtown Charleston, South Carolina, or New Orleans’s Vieux Carré), where the overriding value of external legal controls was understandable, if not always enthusiastically received by local owners.²⁷

As the nation has aged, however, more neighborhoods have become candidates for LHD status and the legal obligations that such status imposes.²⁸ The number of LHDs has increased steadily over the past forty years and continues to grow at a record pace.²⁹ Yet for these newer LHDs, the justifications for such a designation can be less clear-cut than were the justifications for more obvious candidates like New York City’s Greenwich Village, where there was significant public support for preserving the architecturally popular brownstone aesthetic. As the historic preservation community has begun to focus less on monumental public architecture and spectacular private mansions, and more on the importance of preserving both the “folk” architectural vernacular and “collections” of buildings (such as streetscapes or neighborhoods), many local communities that may not have considered themselves historic now find themselves prime candidates for historic district designation.

Any process of deciding whether to implement new property regulations inevitably creates friction, as local property owners face a fundamental legal question: whether they are willing to relinquish partial control over their own property in exchange for a modicum of control over the property of their neighbors. The decision about whether to pursue LHD status raises the same questions but also makes a unique additional demand of the homeowners involved: to navigate a course between protecting American heritage and pursuing the American dream.

27. See TYLER, *supra* note 2, at 59-60. Moreover, until *Berman*, the validity of aesthetic regulation was highly unsettled, and attempts to implement aesthetic regulations were frequently struck down by state courts. *Id.*

28. Usually a historic site, landmark, or district must be at least fifty years old before it can be considered for listing on the National Register of Historic Places. See Nat’l Register of Historic Places, Nat’l Park Serv., Listing a Property: Some Frequently Asked Questions, <http://www.cr.nps.gov/nr/listing.htm> (last visited Nov. 29, 2006). Additionally, “[i]n many communities, the creation of a National Register district is the trigger for [creating] a parallel local [historic] district.” Donovan D. Rypkema, *The Economic Effect of National Register Listing*, CRM, vol. 17, no. 2, 1994, at 28, 29, available at <http://crm.cr.nps.gov/archive/17-2/17-2-16.pdf>.

29. See *supra* text accompanying notes 6-8.

B. Historic Preservation in New Haven

New Haven is an ideal subject for historic preservation studies for three main reasons. First, New Haven's institutional preservation ethic arose at a comparatively early point, with the 1962 founding of the New Haven Preservation Trust (NHPT)³⁰ predating both the passage of the National Historic Preservation Act (1966) and the *Penn Central* decision (1978). The preservation community in New Haven has therefore had more time to develop its public policy preservation tools than have its counterparts in many other cities.³¹ Second, the presence of Yale University, with its broad architectural portfolio, has spurred New Haven to engage in a comprehensive evaluation of potential historic preservation strategies.³² Third, New Haven's characteristics as a mid-sized postindustrial city mirror those of many other cities that are attempting to balance their historic built environment with the needs of their contemporary citizenry.³³ Understanding the effects of LHDs in New Haven therefore provides insight into issues facing similar districts elsewhere in New England and across the country.

New Haven has seventeen National Register Historic Districts, as well as thirty-two properties or sites that are listed individually on the National Register.³⁴ New Haven also has three LHDs: Wooster Square (1970), Quinnipiac River (1978), and City Point (2001). Under the New Haven historic preservation ordinance,³⁵ homeowners residing in these districts must preserve their property as it was at the time the LHD was created, and they must receive approval from the New Haven Historic District Commission

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30. See PEGGY FLINT, *THE NEW HAVEN PRESERVATION TRUST, A TEN YEARS' WAR, 1962-1972* (1972).
31. These tools include local and national historic districts, see CITY OF NEW HAVEN, *NEW HAVEN DATA BOOK 63* (2002) [hereinafter *DATA BOOK*], available at http://www.cityofnewhaven.com/CityPlan/pdfs/PlanningPrograms/ComprehensivePlan/Data_Book.htm, home painting incentives, see David McClendon, *City Grants To Create Jobs, Beautify Homes*, *NEW HAVEN REG.*, May 16, 1997, at A5, façade improvement programs, see Tara York, *Grand Ave. Bakery Celebrates Face-Lift*, *NEW HAVEN REG.*, Oct. 21, 2003, at A3, and state tax credits, see *CONN. GEN. STAT.* § 10-416.
32. See, e.g., VINCENT SCULLY ET AL., *YALE IN NEW HAVEN: ARCHITECTURE & URBANISM* (2004).
33. Such cities include New London, Connecticut; Worcester, Massachusetts; Manchester, New Hampshire; and Providence, Rhode Island.
34. *DATA BOOK*, *supra* note 31, at 63.
35. *NEW HAVEN, CONN., ZONING ORDINANCE* art. VI, § 54 (2006), available at <http://www.municode.com/resources/gateway.asp?pid=19969&sid=7>.

before making any changes to their homes that are not like-for-like.³⁶ The HDC consists of five members and up to five alternates,³⁷ holds monthly public meetings, and has two main duties. The first is to assist in identifying historic resources in New Haven that are worthy of or in need of preservation.³⁸ The second is to review owner applications for “certificates of appropriateness,” which are required whenever an owner in an LHD seeks to erect, alter, restore, move, or demolish any building or structure or any exterior architectural feature that is visible from a public way.³⁹ In making this determination, the HDC uses statutory guidelines for determining appropriateness (including factors such as the historical and architectural significance of the building, the materials and design of the proposed alteration, and the relationship of the change to “other structures in the immediate neighborhood”), and it may deny a certificate of appropriateness if the changes, “in the opinion of the Commission, would be detrimental to the interest of the historic district.”⁴⁰ Finally, the HDC has at least nominal enforcement authority⁴¹ and is empowered both to issue stop-work orders (thereby ensuring that historic features are not destroyed before a public hearing can be held)⁴² and to fine owners who violate LHD regulations.⁴³

C. *The City Point Neighborhood as a Case Study*

The purpose of an academic case study is to examine a single incident with the intention of generalizing the findings in order to construct a general theory

36. *Id.* § 54(g)-(i). Under a like-for-like policy, replacing one vinyl window with another vinyl window would not require HDC approval. However, replacing a wooden window with a vinyl window *would* require HDC approval.

37. *Id.* § 54(e)(2)(a). All HDC members are appointed by the Mayor. The HDC must include at least one architect or architectural historian, one member selected from a list of candidates provided by the New Haven Preservation Trust, and at least one resident or owner from each LHD.

38. DATA BOOK, *supra* note 31, at 63.

39. ZONING ORDINANCE art. VI, § 54(f)(1)-(2). The New Haven ordinance does *not* apply to alterations made solely to interiors. *Id.* § 54(i).

40. *Id.* § 54(g).

41. *Id.* § 54(l). For a discussion of how effective this enforcement authority is in practice, see *infra* Section III.C.

42. ZONING ORDINANCE art. VI, § 54(l)(1).

43. *Id.* § 54(l)(3).

for why the world works in a certain way.⁴⁴ Two features of the City Point LHD make it an ideal candidate for a case study.

Figure 1.
MAP OF CITY POINT NEIGHBORHOOD⁴⁵



First, the City Point LHD was created recently, in 2001. Conducting this research while the City Point LHD is relatively new offers a baseline for future researchers, who will have the opportunity to reassess the LHD and to provide

44. See ROBERT K. YIN, *CASE STUDY RESEARCH: DESIGN AND METHODS* (3d ed. 2002).

45. This map of the City Point LHD can be found online. *DATA BOOK*, *supra* note 31, at 66.

a valuable longitudinal complement to the empirical data presented herein. Many owners who voted for the LHD still reside there, providing an opportunity to explore how closely their expectations when forming the LHD align with the reality of their experience four years later. Moreover, New Haven has a long history of historic preservation and has created institutions (notably the Historic District Commission) that have established procedures for how LHDs “should” operate. This provides an opportunity to compare the initial experiences of the City Point LHD to the settled policy norm.

Second, the particular features of the City Point neighborhood itself make it a useful ground for wider comparison. Because this LHD was formed around an ordinary neighborhood, it provides an opportunity to examine the unique policy issues that may be present in LHDs that do not have any immediately obvious historic focal point. The LHD is compact enough to permit a thorough survey of its owners, while still providing enough variety in housing stock, housing quality, social class, and other variables to make the research conclusions broadly applicable. Furthermore, in both New Haven and many cities nationwide, HDCs are responsible for multiple LHDs—each of which has its own socioeconomic, aesthetic, and geographic profile. The experience of the New Haven HDC in balancing its obligations to City Point and other LHDs provides insight into how other cities might structure their own historic preservation efforts.

In order to evaluate the dynamics of the current City Point LHD, it is important to understand City Point’s historical evolution. Positioned just southwest of New Haven’s historic city center, on a long spit of land stretching into the harbor, the City Point neighborhood was first developed in the mid-nineteenth century, coinciding with the emergence of a thriving commercial oystering industry.⁴⁶ Many of the houses on South Water Street date from around 1850, with stilted upper levels and double-width doors on the ground levels designed for the easy unloading of the oysters that were harvested just offshore.⁴⁷ Although the oystering industry had reached its peak by the end of the nineteenth century,⁴⁸ rapid industrialization led City Point to become one of New Haven’s first “streetcar suburbs.” The presence of a streetcar line on Howard Avenue by 1893 fostered a development boom of larger homes on the

46. See VIRGINIA M. GALPIN, *NEW HAVEN’S OYSTER INDUSTRY 1638-1987*, at 23 (1989).

47. See, e.g., New Haven Pres. Trust & Conn. Historical Comm’n, *New Haven Historic Resources Inventory Phase One: Central New Haven 9-10* (Jan. 1982) (unpublished manuscript, on file with the New Haven Museum and Historical Society).

48. Trevor O’Neill, *Oystering and Oyster Law in Connecticut 6* (Dec. 30, 1981) (unpublished manuscript, on file with the New Haven Museum and Historical Society).

main thoroughfare and more modest homes along cross and side streets.⁴⁹ The last buildings in City Point were built around 1925, as available land quickly became scarce. The result of this nearly ninety-year development is a fine collection of architectural styles, ranging from vernacular oystermen's houses, Greek Revivals, and Eastern Stick Styles to Queen Annes, Italianates, and Bungalows, all of which have been remarkably well preserved in a compact neighborhood of six streets and approximately one hundred houses.

Between the end of World War II and the late 1980s, however, City Point experienced a period of stagnation, as the oystering business declined,⁵⁰ the automobile allowed more affluent families to abandon the "streetcar suburbs," and New Haven slowly lost its status as a major manufacturing center. As the oystering families moved out of City Point, they were replaced by immigrant and ethnic minority families seeking inexpensive housing in the Howard Avenue homes that were being converted into duplexes and apartments.⁵¹ Then, in the late 1950s, the construction of Interstate 95 physically divided the City Point neighborhood from the Hill neighborhood to its north, a demoralizing blow that further isolated the peninsula of City Point from the rest of the city.⁵²

The number of absentee landlords in City Point also increased during this period, and the "appearance of the neighborhood began to deteriorate."⁵³ Although middle-class "urban homesteaders" stemmed this trend temporarily

49. The NHPT Historic Resources Inventory notes that "[h]ouses constructed during [this] period along the cross streets and Greenwich Avenue in City Point are . . . more modest versions of styles and types of contemporary residences along Howard Avenue." New Haven Pres. Trust, *supra* note 47, at 11.

50. See GALPIN, *supra* note 46, at 34; Stephen W. Hitchcock, *The Last of the New Haven Oystermen . . .*, *YANKEE MAG.*, Oct. 1972, at 66.

51. See New Haven Pres. Trust, *supra* note 47, at 12.

52. Ironically, the construction of Interstate 95 may have been what ultimately preserved "the flavor and character of this small, unique New Haven neighborhood." HENRY S. HARRISON, *HARRISON'S ILLUSTRATED GUIDE: GREATER NEW HAVEN 190* (1995). As the New Haven Preservation Trust noted,

[T]he highway construction, which isolated the district from the rest of the city . . . , helped to produce an undisturbed cohesive residential enclave, which has a readily identifiable historic character. The streetscape appears today much as it did at the turn of the century, when most of the buildings in the district were completed.

New Haven Pres. Trust, *The Oyster Point Historic District*, http://web.archive.org/web/20041226050833/www.icomm.ca/nhpt/Historic_District_Pages/oysterpoint.html (cached Feb. 15, 2005).

53. New Haven Pres. Trust, *supra* note 47, at 12.

during the 1970s,⁵⁴ concerns about crime⁵⁵ and neighborhood stability continued to strain City Point's relationship with the Hill neighborhood to its north from the late 1970s⁵⁶ into the 1990s.⁵⁷ Despite these tensions, however, there were also glimmers of hope for City Point. By the early 1980s, the neighborhood was beginning to welcome a number of younger families who were "attracted to the area for its beautiful old homes, waterside location, continuity as a neighborhood, and . . . increasing ethnic diversity."⁵⁸ Almost twenty years later, these positive factors helped spur the creation of the City Point LHD.

D. *The Impetus for the City Point Local Historic District*

Before turning to the empirical study, it is important to understand why City Point's homeowners sought LHD status in the first place. The first step in City Point's journey toward LHD status was its designation as a National Register Historic District in 1989. As part of the New Haven Preservation Trust's effort to inventory every historic structure in the city, the Trust noted that the "earliest oystermen's houses, along South Water Street[,] . . . bear an historical link with later, larger, and generally more intact houses of the local industry's leaders along Howard Avenue." The Trust successfully petitioned for NRHD status on the basis that these structures composed "part of a local thematic district based on the history of the industry in the area."⁵⁹ This designation was largely symbolic, however, because NRHD status is enforceable only against the federal government (for example, if federal money is used for highway construction or if a private construction project necessitates

54. See *id.* at 13.

55. Historical New Haven Digital Collection, "I Feel Safe in My Neighborhood" (c. 1994), <http://insight.library.yale.edu/Yaleimages/Size3/YVRC/D4164/257903.jpg>.

56. SHOSHANA HOOSE, CITY POINT 13 (1980).

57. The tensions noted by Shoshana Hoose, *id.*, were exacerbated in the 1980s and early 1990s by stark demographic contrasts between the two geographically proximate neighborhoods; compared to the Hill, City Point had fewer minorities, see Historical New Haven Digital Collection, Black-White Racial Composition of Each City Block in New Haven (1990), <http://insight.library.yale.edu/Yaleimages/Size3/YVRC/D4165/257823.jpg>, fewer vacant structures, see CITY OF NEW HAVEN, COMPREHENSIVE PLAN OF DEVELOPMENT: NEW HAVEN, CONNECTICUT, at IV.6 (2003), available at <http://www.cityofnewhaven.com/cityplan/planningprograms.asp>, and fewer Section 8 housing voucher recipients, cf. DATA BOOK, *supra* note 31, at 33 (providing data for 2000).

58. HOOSE, *supra* note 56, at 13.

59. New Haven Pres. Trust, *supra* note 47, at 14.

an Army Corps permit); homeowners in an NRHD are not restricted in any way in the use of their property.⁶⁰

In June 1996, however, City Point residents met to discuss forming a *local* historic district with legally binding effect under the New Haven zoning ordinance⁶¹—a process that was eventually completed in February 2001.⁶² Three main catalysts appear to have sustained the momentum of the LHD proposal: the proposed widening of Interstate 95, the demolition of St. Peter’s Church in the adjoining Hill neighborhood, and the potential encroachment of an upscale condominium development on the South Water Street waterfront.

The first catalyst came in the early 1990s, when it became apparent that Interstate 95 was no longer capable of carrying an ever-increasing volume of traffic. Proposals for easing this congestion included widening the highway—which would entail taking several City Point houses—and creating new roundabouts within City Point itself. Having already suffered amputation from the rest of the Hill neighborhood with the construction of Interstate 95, City Point residents were fearful of further highway incursions. As such, they sought every available tool in their fight against the widening, including LHD status.⁶³ Notably, the existence of the LHD would not likely provide direct substantive protection against such a widening; because City Point had previously been designated an NRHD, any federally funded project—such as the expansion of an interstate highway—would *already* be required to meet the

60. See National Historic Preservation Act of 1966 § 106, 16 U.S.C. § 470f (2000). For an excellent overview of the implications of NRHD designation, the types of federal action that “trigger” the Act, and the section 106 review process, see JULIA H. MILLER, *A LAYPERSON’S GUIDE TO HISTORIC PRESERVATION LAW: A SURVEY OF FEDERAL, STATE, AND LOCAL LAWS GOVERNING HISTORIC RESOURCE PROTECTION* 1-8 (2000).

61. NEW HAVEN, CONN., ZONING ORDINANCE art. VI, § 54 (2006), available at <http://www.municode.com/resources/gateway.asp?pid=19969&sid=7>.

62. LHD ordinances provide significantly stronger protection than does NRHD status because homeowners are legally bound under the former in a way that they are not under the latter. The LHD process is fully explained in CONN. GEN. STAT. § 7-147b(a-j) (2005). See also *supra* Section I.B. The process of creating an LHD consists of four distinct stages. First, the HDC issues a study report outlining the rationale for forming a new district, holds a public hearing, and recommends whether or not the proposed district warrants a vote. Second, two-thirds of property owners in the proposed district must vote (by secret ballot) to accept the LHD restrictions. Third, a majority of the Board of Aldermen must vote to approve the LHD. Finally, the Mayor must sign the LHD into law. For City Point, the study of the proposed district began in June 1996, the owner vote took place in October 2000, the Aldermen approved the district on January 16, 2001, and Mayor John DeStefano signed the district into law on February 20, 2001. See CITY POINT STUDY REPORT, *supra* note 1.

63. For an explanation of how such tools might be deployed, see Andrea C. Ferster & Elizabeth S. Merritt, *Legal Tools for Fighting Freeways and Saving Historic Roads*, F.J., Summer 2000, at 32, available at http://www.nationaltrust.org/issues/transportation/legal_tools.pdf.

stringent historic preservation standards of section 4(f) of the Department of Transportation Act.⁶⁴ However, the existence of an LHD could potentially provide residents with additional legal tools if either the state or the city became involved in the process—for example, if additional state-level environmental permits were required, or if the viability of the federal component relied upon secondary components (such as new access roads or alignments) that were state- or city-owned.

The second catalyst was the 2000 demolition of St. Peter's Roman Catholic Church on Kimberley Avenue. Deconsecrated in 1996, St. Peter's was a 1903 Richardsonian Romanesque landmark in the Hill neighborhood, built by Irish immigrants several blocks north of City Point itself.⁶⁵ When the city embarked upon an ambitious school construction and renewal initiative in the mid-1990s, however, it designated St. Peter's as the site for a new elementary school. Despite being listed on the state and national registers of historic places,⁶⁶ and despite well-organized protests against its demolition (including a petition signed by 800 residents and a court battle between the local residents' association and the city),⁶⁷ the city ultimately tore down St. Peter's only hours after the superior court ruling.⁶⁸ This experience appears to have galvanized the resolve of those who were already pushing for a City Point LHD; they argued that if state and national register listings were unable to save St. Peter's, such listings might not protect the City Point community either.⁶⁹

64. 49 U.S.C. § 303 (2000).

65. HOOSE, *supra* note 56, at 2.

66. All states have registers of historic places, which often afford listed sites certain protections from state action (analogous to the protections that the National Historic Preservation Act affords to listed sites that are potentially affected by federal action). Listing on a state register also often makes a site eligible for certain state-based financial rehabilitation incentives. For an overview of the role of state registers, see MILLER, *supra* note 60, at 9. For an overview of state preservation law, see Sandra G. McLamb, *Preservation Law Survey 2001: State Preservation Law*, 8 WIDENER L. SYMP. J. 463 (2002).

67. For a report on the petition, see Robert J. Leeney, *Old Friends Trying To Preserve St. Peter's in Hill*, NEW HAVEN REG., Apr. 29, 2000, at A8. For information about the lawsuit, see Hill/City Point Neighborhood Action Group v. City of New Haven, No. CV000437784, 2000 WL 1172327 (Conn. Super. Ct. July 21, 2000). The plaintiff group alleged that the city had not pursued feasible and rational alternatives to demolition as required under the National Historic Preservation Act. *Id.* at *1.

68. Natalie Missakian, *City Wins Court Battle, St. Peter's Demolished*, NEW HAVEN REG., May 24, 2000, at A1.

69. See *id.* ("Doris Groves, a 70-year resident of [City Point], said even though [the] neighbors lost in court, they won by coming together and rallying around a cause. 'I think it shows that the neighborhood has to get involved and they have to be informed,' Groves said.").

The final catalyst was the potential incursion of more high-end condominiums in the City Point neighborhood. In 1981, taking advantage of City Point's waterfront location and proximity to Interstate 95, a developer constructed a gated planned development of approximately 300 condos at the west end of South Water Street, demolishing several homes in the process.⁷⁰ While City Point residents grudgingly accommodated this development, the perpetual threat of further condo development on adjacent vacant marshland generated sustained concern among local homeowners. In particular, many homeowners feared that additional condo development would be out of scale with the existing neighborhood, would increase traffic, and would decrease surrounding property values.⁷¹ While the LHD boundaries did not encompass the proposed condo expansion site, the LHD still provided an additional legal tool that could assist City Point residents in their fight against future development threats. Perhaps more importantly, the LHD had value as a symbolic statement to potential developers that City Point residents were prepared to mount a unified opposition campaign should any incompatible development be proposed.

II. THE EMPIRICAL EVIDENCE: OWNER PERCEPTIONS OF THE LHD

This Part presents empirical data about owner-occupier views of the LHD. The data were collected in two ways: through a quantitative written survey of all City Point owner-occupiers and through qualitative interviews with a smaller number of City Point owner-occupiers.⁷² The quantitative survey was designed and conducted according to methods proven to obtain significantly

70. HARRISON, *supra* note 52, at 190.

71. Indeed, in 2004, another developer did propose constructing eighty-two additional condos, to be located immediately behind the existing older homes on the west side of lower Howard Avenue. See Randall Beach, *Condo Expansion Draws Ire from Neighbors*, NEW HAVEN REG., July 6, 2004, at A1.

72. See *infra* note 94 for additional details about the survey sample population. This study was intentionally limited to owner-occupiers (approximately 70% of the residential owners in the City Point LHD) and did not include absentee owners, because the main research issues of interest concerned how neighbors dealt with one another in managing their obligations under the LHD. Absentee owners were presumed to be much more likely to comply with the statutory HDC regulations not only to avoid institutional conflicts with the city, but also because they would not have accumulated the social capital among owner-occupiers that might help them avoid being reported to the HDC for violations. See *infra* Section III.B. Indeed, many of the absentee-owned buildings in the neighborhood sported the \$75 "City Point Historic District" plaque, suggesting that absentee owners were generally inclined to support the district and to comply voluntarily with the letter of the law.

higher-than-average response rates.⁷³ Indeed, the survey response rate was approximately 73%, which provides a high level of confidence in the representativeness of the results. The survey results were then coded and entered into an SPSS file⁷⁴ and were supplemented with data from the New Haven Assessor's database.⁷⁵ Finally, in-person qualitative interviews were conducted with approximately 20% of the survey respondents.⁷⁶ This qualitative component enabled the collection of information that would have been impossible to acquire via a written survey, and it provided a parallel source of data against which to compare the quantitative survey results.

A. Overall Owner Perceptions

Owners were generally favorable in their perceptions of the LHD; most had supported its creation in 2001, and a significant number felt that its advantages continued to outweigh its disadvantages. Turning first to overall perceptions

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73. The quantitative survey and its delivery method were constructed using the techniques set forth in DON A. DILLMAN, *MAIL AND INTERNET SURVEYS: THE TAILORED DESIGN METHOD* (2d ed. 2000). Each owner-occupier was solicited in person and provided with a thirty-five question, two-page questionnaire. The questionnaire, available at <http://www.yalelawjournal.org/abstract.asp?id=630>, included fifteen yes/no questions and twenty interval questions (using a scale of one through five). Respondents were provided with prestamped return envelopes; those who did not return a survey were contacted again by phone, and then by personalized letter.
74. This data file is available in both SPSS and Excel formats at <http://www.yalelawjournal.org/abstract.asp?id=630>. After executing Mann-Whitney *U* tests on the five-interval data sets to determine statistical significance, the five-interval data sets were collapsed into three intervals. (To illustrate, if "one" indicated "strongly oppose" and "five" indicated "strongly support," the data were collapsed so that a response of "one" or "two" indicated "oppose," a response of "three" indicated "neutral," and a response of "four" or "five" indicated "support.") This method made general trends easier to identify, while still preserving the original full gradation differences for future analyses.
75. Vision Appraisal Tech., *Assessors Online Database for New Haven, CT*, <http://data.visionappraisal.com/newhavenct> (last visited Nov. 29, 2006). The additional factual data for each property included house location, appraised value, square footage, purchase year (and price, if available), and acreage.
76. All quotations from City Point residents cited in this Note are drawn from fifteen informal in-person interviews conducted in City Point between September 12, 2004, and November 21, 2004. Two particular steps were taken to encourage candor. First, residents were promised that any printed citation of their comments would be suitably anonymized; this Note honors this promise by referring to each respondent only by his or her street of residence. Second, interviews were not tape-recorded to avoid causing interviewees to be more guarded in their responses. Instead, during each interview, the author took handwritten notes, which were transcribed immediately thereafter. The transcriptions are on file with the author.

and the creation of the City Point LHD, 60% of survey respondents stated that they had been supportive or strongly supportive of the creation of the LHD at the time of the vote (in 2000), 33% stated that they had not been passionate either way, and only 8% of respondents said that they had opposed the creation of the LHD ($N=40$)⁷⁷ – a somewhat unsurprising finding, considering that the recorded vote was fifty-eight in favor and six opposed.⁷⁸ When asked about their current views of the LHD, owners were still quite supportive, with a significant majority believing that the advantages of the LHD outweighed its disadvantages (80% to 20%, $N=49$).⁷⁹ Furthermore, of those respondents who were also landlords (either of a unit in their own home or of another residential structure in the LHD), 44% stated that they had found being in an LHD to be an advantage in attracting tenants, while 50% were not sure, and only 6% felt it was a disadvantage ($N=18$). Interestingly, however, only a plurality of respondents (41%) said that they were currently more in favor of the LHD than they had been at the time of the vote (or, in the case of new residents, compared to when they first moved into City Point), while 35% were neutral and 24% were less in favor ($N=51$).

Together, these findings suggest that although there were a number of growing pains between the time the LHD was founded in 2001 and the time this study was conducted in 2004, most owners had some reason to believe that, on balance, the LHD has provided actual benefits to the neighborhood. These benefits are not necessarily tangible or financial, although 73% of respondents felt that the LHD had increased their home value ($N=51$), and 82% reported that they were happy with the effect that the LHD had had on their home values ($N=44$). Almost every proponent of the LHD who was interviewed mentioned “stability” as the primary benefit of the LHD. This was certainly evident from the survey, as 55% of respondents believed that without the LHD, quality of life in City Point would be worse ten years hence, whereas

77. Percentages based on survey results may not total 100% due to rounding. The specific 2004 data analyzed in this study are contained in the Excel data file available at <http://www.yalelawjournal.org/abstract.asp?id=630>.

78. William Kaempffer, *Voters OK City Point Historic Area*, NEW HAVEN REG., Oct. 16, 2000, at A3. However, it is not clear from the official vote how many of the owners who voted in favor were absentee landlords—and as noted *supra* note 72, there is anecdotal evidence suggesting that absentee landlords may have been disproportionately active supporters in the vote.

79. The one statistically significant departure from the overall result on this point was between respondents living on the “middle-class” streets (Howard, Sea, and South Water) and those living on the “working-class” streets (Greenwich, Hallock, and Sixth). Of the former, 88% thought the advantages of the district outweighed the disadvantages, while only 60% of the latter felt the same way ($N_{MCS}=34$, $N_{WCS}=15$, chi-square = 5.1, $p < .05$). The tension between respondents on different streets is discussed more thoroughly *infra* Section II.C.

only 18% believed quality of life would be better in the absence of an LHD ($N=49$). One Sea Street owner echoed a sentiment common among respondents: “I’ve lived here since 1990, and then the neighborhood was going downhill. There was crime; people didn’t seem to care about the place. But the [local] historic district has helped, because now people take care of their houses in a way that they didn’t before.”

The most interesting paradox arising from such qualitative responses is that very few owners regarded “historic preservation” as the primary advantage—or even the primary rationale—for the creation of the historic district. While almost all LHD supporters noted that the LHD had increased neighborhood stability (by encouraging owners to invest in their properties), the fact that the LHD preserved the City Point neighborhood as a “historic” architectural composite was almost never mentioned.⁸⁰ Indeed, despite the fact that the median construction date for a home in City Point was 1890, only 38% of respondents who bought their homes prior to creation of the LHD ($N=37$) and 22% of those who bought their homes after creation of the LHD ($N=9$) said that the “historic” nature of their home was a factor in their decision to purchase.⁸¹ Moreover, several owners mentioned orally while completing the survey that “my home wasn’t historic when I bought it”—clearly drawing a direct (if overly simplistic) connection between the passage of the LHD ordinance and the instantaneous conversion of their homes from “nonhistoric” to “historic” status.

Finally, this study found that a substantial minority of respondents (35%, $N=49$) felt that the LHD was valuable in making neighbors take better care of their homes yet was relatively ineffective in changing the ways that these

80. One possibility is that the community members were seeking “neighborhood preservation” rather than “historic preservation,” and that they may have been equally well served by pursuing the increasingly popular “neighborhood conservation district.” For an introduction to the differences between LHDs and neighborhood conservation districts, see JULIA MILLER, PROTECTING OLDER NEIGHBORHOODS THROUGH CONSERVATION DISTRICT PROGRAMS 2-5 (2004).

81. Two categories of respondents showed statistically significant differences from this overall result. For those living on “middle-class” streets, 52% said that the historic nature of their home was a positive factor, compared to only 8% of those on “working-class” streets ($N_{MCS}=25$, $N_{WCS}=12$, chi-square = 6.9, $p < .05$). See *infra* Section II.C and note 94 for definitions and discussion of these concepts. Additionally, 80% of young homeowners (classified as those age thirty-nine and under) said that the historic nature of their home was a positive factor in their purchase decision, and none said it was a negative factor—figures that are striking compared to the 31% of middle-aged and older homeowners who saw this factor as positive and the 9% of that same group who saw this factor as negative ($N_Y=5$, $N_{M+O}=32$, Mann-Whitney $z = -2.0$, $p < .05$). See *infra* note 90 for a definition of the age cohorts used in this Note.

respondents themselves took care of their own homes. These respondents appeared to believe that the primary value of the LHD was preventative (keeping others from undermining the status quo), rather than aspirational (encouraging all members of the community to comply with a generally agreed-upon standard). There are several ways to explain this apparent belief in the need for laws for others but not for oneself. For example, several respondents suggested that they already had a significant interest in maintaining their homes prior to the introduction of the LHD, and that the LHD did not force them to do anything that they would not have done otherwise. As one survey respondent noted, “We are responsible neighbors and committed to keeping this balance in our community.” In addition, some owners did not automatically associate meeting the LHD requirements with “improvement.” As one South Water Street owner stated, “There are plenty of important things like making your home safe, livable, weather-tight—all of those are important for taking better care of your home, but sometimes they conflict with the HDC because the best solutions aren’t necessarily *historic* ones.”

B. The Influence of Information

This study also found that despite significant support for the LHD in general, many owners had incomplete information about their own specific LHD obligations. For instance, there was a surprising discrepancy between the percentage of owners reporting that they favored the creation of the LHD (60%, $N=40$) and the amount of information about LHD regulations that owners felt they had at the time of the vote, with many owners suggesting that they wished they had more information about the LHD prior to its creation. Only 34% of all respondents stated that they had enough information about the advantages and disadvantages of LHD status at the time of the vote, while 24% of all respondents complained that they did not have enough information ($N=41$). Indeed, individual survey respondents consistently rated their support for creating the LHD higher than their level of information about its potential effects. Furthermore, a majority of respondents (56%, $N=36$) reported that they did not believe that the level of information they received was sufficient—including a large minority of owners who actually favored the creation of the district (38%, $N=21$).

This discrepancy is potentially explainable because the strongest push for creating the LHD came at the same time that residents were increasingly

concerned about the proposed widening of Interstate 95.⁸² Community residents therefore embraced the LHD partially for its value as an ad hoc defensive tool with which to fight the highway expansion. In their eagerness to acquire such a short-term legal shield, however, it appears that at least some residents were less than thorough in acquiring information about the long-term implications that LHD status would have on their own homeownership obligations. Furthermore, this research found that few owners rectified their lack of knowledge regarding LHD obligations in the intervening years. Owners consistently complained that they had received little or no information regarding their obligations as owners in an LHD; the survey data revealed that 47% reported knowing “very little” about what the LHD required of them as homeowners, while 20% reported knowing only a moderate amount ($N=51$).⁸³ As one Sea Street resident lamented:

[One] problem is that after we became a local historic district, we thought that we'd get the regulations from the City about what procedures we needed to follow. But we never received anything, which meant that all kinds of rumors were going around about how you couldn't repair your house, or replace your windows, or paint, or do anything – and that just wasn't true.

Moreover, a strikingly high 59% of respondents ($N=51$) reported that they did not know about the federal and state historic rehabilitation tax credits available to property owners in national and local historic districts – credits that can be worth several thousand dollars. Of those who did know about the credits, only 10% ($N=21$) had taken advantage of them.⁸⁴ And perhaps most surprisingly, of the respondent owners who moved into City Point *after* the passage of the ordinance, approximately half (44%, $N=9$) reported not even *knowing* that they had purchased a house in an LHD.

Coupled with the relative lack of sufficient information received prior to the passage of the ordinance, this vacuum of definitive official information about

82. See *supra* Section I.D.

83. The only statistically significant difference between respondents was on the variable of their street of residence. Indeed, 42% of respondents on “middle-class” streets reported having significant knowledge of what the LHD required of them, as opposed to only 13% of respondents on the “working-class” streets ($N_{MCS}=36$, $N_{WCS}=15$, Mann-Whitney $z = -2.0$, $p < .05$). See *infra* Section II.C and note 94 for definitions and discussion of these concepts.

84. The federal program offers tax credits for up to 20% of rehabilitation costs for eligible buildings. Historic Preservation Certifications, 36 C.F.R. § 67 (2005). The Connecticut Historic Homes Rehabilitation Tax Credit Program offers tax credits for up to 30% of eligible rehabilitation costs. CONN. GEN. STAT. § 10-416(b) (Supp. 2006).

the LHD appears to have become a recipe for confusion and opportunism. Most confused owners genuinely wished to follow the law, but their lack of information about their obligations placed them at a disadvantage relative to their informed neighbors.⁸⁵ For example, owners who recognized the implications of the LHD moved quickly to make improvements that would be “grandfathered in” when the ordinance became effective;⁸⁶ 13% of owners ($N=48$) reported having done so.⁸⁷ Those who did not realize the implications of the LHD—but who would have undertaken similar improvements had they known—could only pursue such improvements after undergoing an HDC review or, in the case of improvements like vinyl siding, were foreclosed from pursuing some options at all. These owners are certainly included in the 40% of respondents ($N=50$) who reported that they had avoided engaging in certain maintenance or renovation projects due solely to the existence of the LHD regulations.

In the absence of official information, some owners who were displeased with the ordinance framed the debate over the merits of the LHD on their own terms. By gaining the information advantage early on, these owners were able to shape the beliefs of less informed owners regarding what could and could not be done under the ordinance. This is best illustrated by the incident described at the outset of this Note, in which Hallock Avenue owner Tom Ahern replaced all of his approximately eighty wood windows with vinyl windows without receiving HDC approval. When the HDC learned of this unapproved switch, it issued a citation to Ahern for violating the LHD ordinance. In response, Ahern circulated a neighborhood petition, asking owners and residents to support his *ex post* bid to keep the vinyl windows. After two well-attended formal hearings over the course of two months as well

85. Since the survey data were gathered, the city has created a basic website offering printable application forms, but the substantive information provided remains relatively sparse. City of New Haven, Historic Preservation and the Historic District Commission, <http://www.cityofnewhaven.com/CityPlan/HistoricPreservation.asp> (last visited Nov. 29, 2006).

86. Specific improvements mentioned by survey respondents included replacing wood windows with vinyl windows, adding vinyl siding, building decks and porches, and completing exterior renovations. Many LHD ordinances impose “Interim Protection Provisions” that regulate the changes that can be made to properties while an area is under consideration for historic designation, precisely to limit the potential for this type of activity. NAT’L TRUST FOR HISTORIC PRES., *supra* note 8, at 5.

87. Younger owners appeared to be particularly vigilant about making repairs and additions prior to the effective date of the LHD. Thirty percent of young owners reported engaging in such activities, as opposed to only 8% of middle-aged and older owners combined. Although not statistically significant (Fisher’s Exact = .095), this differential appears worthy of further research with a larger sample.

as informal negotiations between Ahern and the HDC staff, the HDC permitted Ahern to keep the vinyl windows on the sides of the building as long as he replaced the front windows with wooden ones.

This incident has been the most significant controversy involving the LHD to date; nearly every resident referred to it when asked how the LHD had affected the neighborhood.⁸⁸ In particular, this incident illustrates two key ways in which a single owner can step into the information vacuum and shape the beliefs of fellow owners. First, Tom Ahern's cover letter to fellow residents stated the following: "The City Point Historic District can be a protective tool but should not completely impede progress. THE FAILURE TO COMPLY WITH COMMISSION DECISIONS CAN ULTIMATELY RESULT IN HOMEOWNER ARREST."⁸⁹ Although the second sentence is factually incorrect, several relatively less informed owners stated that they were opposed to the LHD because they were afraid that they could be arrested for making a genuine mistake in maintaining their homes. Moreover, these owners frequently mentioned the Ahern petition in conjunction with this fear, implying that the petition was their source of information on this point. Second, this incident permitted skeptical owners like Ahern to frame the debate over the LHD as a debate about the potentially arbitrary nature of individual HDC decisions (a negative approach), rather than in terms of the need for equal compliance by all members of the community in order to maintain the integrity of the LHD (a positive approach). One South Water Street owner acknowledged that LHD supporters had been placed somewhat on the defensive by the Ahern incident, and that they were trying to refocus the debate by emphasizing what they considered to be Ahern's questionable tactics:

[This] guy put in vinyl windows in his house, and *then* went to ask for permission It's different if you made an honest mistake, and didn't know – but to go and intentionally flout the regulations and then try to rally the neighbors against this "injustice" is just *wrong*.

Regardless of one's opinion of Ahern's strategy, the incident certainly appears to have influenced the views of *uninformed* owners, emphasizing the rights that the LHD takes away and deemphasizing the advantages that the LHD provides. In sum, on the question of whether those affected by the law

88. Of course, different individuals referenced this incident in different ways. Some interviewees noted that if a debate over a few windows was the biggest problem that had arisen in four years, the LHD was largely a success. Others saw the incident as a premonition of things to come and said that the incident had made them more skeptical of the value of the LHD.

89. Letter from Tom Ahern to City Point Residents (Apr. 2004) (on file with author).

actually know what the law is, this research suggests the answer is an emphatic “no.”

C. How Groups Differ in Their Views – “Middle-Class” Versus “Working-Class” Streets

The survey also revealed differences in opinion when responses were aggregated and then analyzed according to various independent variables. Eleven bifurcated groups were constructed from the demographic data: (1) respondent’s age;⁹⁰ (2) respondent’s street;⁹¹ (3) respondent’s race;⁹² (4) year the home was built (pre- or post-1890, the median year of construction for City Point); (5) purchase year pre- or post-1995 (the median purchase year of all owner-occupied homes); (6) purchase year pre- or post-1990 (identifying “old-timers”); (7) purchase year pre- or post-2000 (identifying “newcomers”); (8) 2002 assessed value of the home (above or below the median); (9) square footage (above or below the median); (10) acreage (above or below the median); and (11) presence of multiple units in the dwelling (yes or no).⁹³ Every survey question was then reanalyzed through the filter of these demographic variables. Approximately 90% of the time, these reanalyses confirmed that there was no statistically significant relationship between the demographic category and the distribution of responses to a particular survey question. Yet with respect to the respondent’s street, there were numerous statistically significant differences, including the fact that those living on the more elegant streets were significantly more favorable toward the LHD and were less likely to feel that they were bearing a disproportionate burden of LHD regulations relative to their neighbors.

On the broad question of whether the advantages of the LHD had outweighed the disadvantages, those living on the historically “middle-class streets” (MCS) of Howard Avenue, South Water Street, and Sea Street were

90. To construct a bifurcated age variable, three separate age measures were employed: younger versus (middle + older); middle versus (younger + older); and older versus (middle + younger). “Younger” was defined as under the age of forty; “middle” as ages forty to sixty-four; and “older” as over the age of sixty-four.

91. This variable functioned as a proxy for social class. For more detail, see *infra* note 94 and accompanying text.

92. Race was identified by visual assessment of the respondent. Due to the relatively small number of racial minorities in any given ethnic category, this variable was bifurcated as white versus (black + Latino + mixed-race households).

93. Although wealth and income levels would have been valuable categories to examine directly, it is difficult to determine accurate wealth and income levels through self-reporting survey instruments.

much more favorable toward the LHD than those living on the historically “working-class streets” (WCS) of Sixth Street, Hallock Avenue, and Greenwich Avenue.⁹⁴ Moreover, MCS respondents were more likely than WCS respondents to believe that the LHD had increased their home value (78% to 60%, $N_{MCS}=36$, $N_{WCS}=15$), and less likely to believe that the LHD had decreased their home value (3% to 13%, $N_{MCS}=36$, $N_{WCS}=15$). Although the difference was not statistically significant, these data strongly support the statistically significant finding that MCS respondents were more likely than WCS respondents to be happy with the effect they believed the LHD had on their home value (91% to 58%, $N_{MCS}=32$, $N_{WCS}=12$, $p < .05$). These findings were not necessarily surprising, considering that as a group, the MCS homes on Howard Avenue, South Water Street, and Sea Street had both higher average assessed values⁹⁵ and greater average square footage⁹⁶ than did the homes on Greenwich Avenue, Hallock Avenue, and Sixth Street.

However, a more in-depth examination of the survey data presents a puzzle. Given that MCS owners had a more favorable impression of the LHD than did their WCS counterparts, it might logically be expected that MCS respondents would be more accepting of the rigidity of the LHD standards. It might also be expected that if MCS owners were already maintaining their historic homes appropriately (and appreciated the advantages of the LHD in

94. This difference was statistically significant. See *supra* note 79. Streets were designated as MCS or WCS on the basis of assessed value per unit and an overall visual assessment. There were seventy-one total homes in the MCS group, with forty-seven owner-occupiers; of those owner-occupiers, thirty-six responded to the survey. There were thirty-seven total homes in the WCS group, with twenty-three owner-occupiers; of those owner-occupiers, fifteen responded to the survey. Appraisal data was derived from Vision Appraisal Tech., *supra* note 75, and compiled in Fall 2004, when this study was conducted. (All appraisal data are contained in the Excel data file available at <http://www.yalelawjournal.org/abstract.asp?id=630>.) The average MCS assessed value per unit using 2004 appraisal data was \$61,380, whereas the average WCS assessed value per unit was \$51,915 (approximately a 15% differential). In New Haven, assessed value is 70% of market value. The visual assessment incorporated factors including whether the home was built in a distinct high architectural style, the quality of (and materials used in) exterior home maintenance, the spatial relationship between homes on a given street, and building placement within the lot. Representative photographic examples of homes on each of the City Point Streets are available at <http://www.yalelawjournal.org/abstract.asp?id=630>. While assessed value and external appearance are admittedly imperfect proxies for income (given that different individuals do not necessarily allocate their wealth toward housing in similar proportions), they are the best proxies available, and the representativeness problem inherent in extrapolating from individual-level data is mitigated somewhat by examining aggregate-level data (as this survey does).

95. See Vision Appraisal Tech., *supra* note 75.

96. According to the Vision Appraisal data, *id.*, the MCS group of homes had an average of 2387 square feet, whereas the WCS group of homes had an average of 1910 square feet.

improving their property values), they would be less concerned than WCS owners about the cost and effort required to comply with the LHD regulations. Surprisingly, however, there was no statistically significant difference between the responses of the two groups concerning the on-the-ground impact of the LHD. Approximately 60% of respondents in both groups thought that the HDC should be more flexible in interpreting LHD regulations ($N_{MCS}=35$, $N_{WCS}=14$) and that LHD regulations had not substantially changed their own home maintenance regime ($N_{MCS}=35$, $N_{WCS}=15$). About 25% of both groups found compliance with LHD regulations to be inexpensive ($N_{MCS}=33$, $N_{WCS}=14$). (At the other end of the spectrum, only 15% of WCS respondents found compliance to be expensive, in contrast to 33% of MCS respondents ($N_{MCS}=33$, $N_{WCS}=14$).) And both MCS and WCS respondents were equally divided as to whether they were bothered by having to comply with LHD regulations—approximately one-third of each group were “not bothered,” a third of WCS respondents (and about half of MCS respondents) *were* bothered, and the balance of respondents were neutral ($N_{MCS}=36$, $N_{WCS}=14$).⁹⁷

The answer to this puzzling discrepancy between the overall satisfaction of MCS and WCS respondents and their nearly indistinguishable complaints regarding LHD obligations may lie in the statistically significant MCS/WCS distinction on questions concerning community relations. MCS respondents were much more likely than WCS respondents to believe that City Point residents generally had good neighborly relations (97% to 77%, $N_{MCS}=36$, $N_{WCS}=13$); to report that they personally knew their neighbors well (72% to 27%, $N_{MCS}=36$, $N_{WCS}=15$); to feel comfortable telling neighbors that they might be violating the LHD regulations (31% to 0%, $N_{MCS}=36$, $N_{WCS}=15$); to be a member of the City Point Neighborhood Association (77% to 33%, $N_{MCS}=35$, $N_{WCS}=12$); and to believe that the neighborhood association had improved the quality of the neighborhood (63% to 21%, $N_{MCS}=35$, $N_{WCS}=14$).⁹⁸

These data suggest that although both MCS and WCS respondents expressed similar frustrations with the burdens imposed by the LHD, MCS respondents were much more confident than WCS respondents that, on an individual level, they themselves were not bearing the burdens of LHD compliance disproportionately in relation to their neighbors. LHDs, like other policies that aim to create significant positive externalities, have the potential

97. See *infra* app. tbls.1-5. The Appendix is also available at <http://www.yalelawjournal.org/abstract.asp?id=630>.

98. See *infra* app. tbls.6-10. All of these differences between MCS and WCS respondents were statistically significant at $p < .05$.

for creating free-riders.⁹⁹ In the LHD context, free-riders are owners who are content to let their neighbors bear the costs of restoring historic homes (thereby increasing the aesthetic and financial value of the neighborhood as a whole), while doing only the bare minimum to meet LHD standards for their own homes. The more that any individual owner believes that she is bearing a disproportionate amount of financial responsibility (relative to her individual gain) for providing the positive externalities of an aesthetic neighborhood, the less happy she will be about the prospect of doing so. Conversely, individual owners who are confident that their neighbors will contribute proportionately to maintaining the positive externalities created by LHD regulations will be more likely to accept a requirement that they themselves contribute proportionately. In short, while the confident owner and the disgruntled owner may be equally annoyed on an individual level at rigid regulations and added expenses, the critical distinction is that the confident owner sees an overall benefit proportional to the cost (primarily in terms of increased property value), whereas the disgruntled owner may not.

Furthermore, if the ability to minimize free-riders makes an owner confident as opposed to disgruntled, confident owners are likely to display characteristics that limit the ability of their neighbors to free-ride. The easiest way to free-ride is to remain relatively anonymous, thereby avoiding the obligation to contribute to the common good. In contrast, it is difficult to free-ride when one's actions are monitored by those with whom one has a set of mutual relationships and shared social norms.¹⁰⁰ Knowing one's neighbors well, being involved in a neighborhood association that one believes makes a difference, and feeling confident in speaking to one's neighbors about an individual action that has communal effects are all indicative of an environment in which free-riding will be extremely difficult. These are precisely the factors that distinguished MCS respondents from WCS respondents.¹⁰¹

The other main point of divergence between MCS and WCS respondents centered on a profound disagreement over precisely what the term "historic" should mean. For many MCS respondents, the concepts of "historic" and "aesthetic" converged. The historic homes on these streets—those buildings that are most crucial to telling the architectural and social history of the City Point neighborhood, such as its oysterman's houses and its "streetcar suburb"

99. For an overview and explanation of the free-rider problem, see Paul A. Samuelson, *The Pure Theory of Public Expenditure*, 36 REV. ECON. & STAT. 387 (1954).

100. See generally MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION* (1971) (setting forth the theory that there are qualitative as well as quantitative differences in the ways that small and large groups operate).

101. See *infra* app. tbls.6-10.

mansions— are also quite aesthetically pleasing. Moreover, MCS houses that do *not* have any overriding historical or architectural significance have still largely been maintained at a high level of quality, allowing the externalities of these maintenance regimes to be captured by neighboring owners, who tend to reciprocate in kind. For these MCS residents, there was no conflict between the concept of the LHD as a tool that encourages aesthetic improvement, as a tool that preserves the neighborhood in its pre-2001 state, and as a tool that provides a desirable increase in property values.

However, these definitions were not as closely aligned in the minds of WCS respondents. For many WCS residents, there was a distinct tension between their disinclination (or financial inability) to transform their homes into the aesthetic gems of Howard Avenue and their desire to ensure that the neighborhood retained its fundamental character, unencroached upon by highway expansions or potential new condo developments. For these WCS residents, the primary value of the LHD was that it assisted in maintaining some semblance of the neighborhood status quo. Although these residents appeared to appreciate the positive contribution that the LHD has made to neighborhood stability, they tended to resent the accompanying aesthetic obligations, particularly because they did not view their homes as being crucial contributing elements to the historic nature of City Point.¹⁰² Indeed, many WCS owners echoed the sentiments of one Sixth Avenue owner, who argued that protecting and retaining the *historic* elements of City Point should not necessarily mean holding all residents to the same high *aesthetic* standards¹⁰³:

I'm actually in favor of the district because of the protections it provides. But at the same time, we shouldn't be trying to create a museum—there needs to be some middle ground between letting people do whatever they want, and applying the same standards that they use for preserving National Historic Landmarks.

Arriving at a common agreement within the City Point community on the meaning of the LHD was one of the most significant challenges facing the

102. This assertion may seem odd given the data presented *infra* app. tbls.1-5, which show that as a group, WCS respondents found it easier to comply with the LHD regulations than did their MCS counterparts. However, it is worth noting that the qualitative evidence suggests that MCS owners often encountered the LHD regulations as they attempted to make an *already* aesthetically pleasing home even more so, whereas WCS owners often encountered the LHD regulations when they attempted to make more essential changes that often had little to do (in their minds) with aesthetics.

103. This issue of using a “historic district” designation to pursue essentially aesthetic ends is discussed in David F. Tipson, *Putting the History Back in Historic Preservation*, 36 URB. LAW. 289 (2004).

neighborhood as a whole. Indeed, while approximately 80% of both MCS and WCS respondents said they would consider purchasing a \$75 “City Point Historic District” plaque for their homes ($N_{MCS}=36$, $N_{WCS}=15$), MCS respondents put their money where their mouth was. While 42% of MCS respondents reported having purchased a plaque, only 7% of WCS respondents had done the same ($N_{MCS}=28$, $N_{WCS}=13$). And as one Sea Street owner observed with only a slight hint of exaggeration, “You can tell pretty easily where people stand on the historic district—those who have plaques are in favor of it, and those who don’t, aren’t.”

III. THE EMPIRICAL EVIDENCE: MANAGING AND ENFORCING LHD OBLIGATIONS

This Part examines how City Point owners managed their own LHD obligations and how they enforced (or declined to enforce) the ordinance in the event of violations by their fellow owners. Section A demonstrates that while many LHD owners did follow the HDC regulations—despite their complaints about the HDC process—some LHD owners sought instead to evade LHD-associated expenses. This raises the extremely important issue of enforcement: how the LHD regulations are actually enforced in practice, by whom, and to what effect, all of which are discussed in Sections B and C. This Part explores the effectiveness of the three main enforcement options available to address such evasions: first-party enforcement by the individual owner, second-party enforcement via neighborhood social norms, and third-party enforcement by the HDC.

A. Managing One’s Own LHD Obligations: First-Party Enforcement

Under the first-party enforcement model, an individual owner will voluntarily recognize that a particular alteration project requires HDC approval, will initiate the HDC permitting process, and will not begin work until all approvals have been finalized. The first-party enforcement model is the ideal theoretical enforcement model because if owners had full information and adhered solely to this model, there would be uniform enforcement of the applicable laws without excess transaction costs.¹⁰⁴ The percentage of likely first-party enforcers in the City Point LHD can be roughly approximated by looking at the percentage of owners who reported that they were “not

104. These excess transaction costs could come either in the form of unnecessary applications by owners or in the failure of owners to make applications that should have been made.

bothered” by complying with the regulations (32%, $N=50$). One particularly striking empirical finding supporting this method of identifying potential first-party enforcers is the fact that, of the subset of respondents who were “not bothered” by the need to comply with the LHD regulations, 53% found compliance “difficult” ($N=15$). This pattern fits quite well with the concept of first-party enforcement because the theory would predict that a first-party enforcer would act out of conviction regarding the value of the act itself, rather than on the basis of a cost-benefit analysis.

In order to measure first-party enforcement, this study examined whether the LHD had any effect on the ways in which individual respondents actually maintained their own properties. In particular, owners were asked whether they felt that LHD regulations had led them to take better care of their homes than they would have otherwise; a substantial majority of respondents (90%, $N=49$) said that the regulations had *not* led them to do so.¹⁰⁵ Such findings initially suggest that because few respondents seemed to believe that the LHD regulations had affected their behavior, few respondents would have found compliance to be difficult, expensive, or bothersome. Yet a more detailed examination of the survey results revealed just the opposite, with numerous respondents complaining about the difficulty, expense, and bother of compliance.

Looking first at difficulty of compliance, only 33% of respondents found it was “easy” or “very easy” to comply with the LHD regulations, compared to 67% who found compliance to be either moderately or extremely difficult ($N=49$). Furthermore, while 58% of respondents reported having at least a moderate amount of knowledge about what the LHD regulations required of them as homeowners ($N=51$), there was absolutely no correlation between their level of knowledge about the regulations and the ease of compliance ($p=.833$).¹⁰⁶

There appear to be three possible explanations for why even those who *knew* about the regulations often had difficulty complying with them. First, owners may simply have known (or heard from others) that obtaining HDC approval is a time-consuming process and felt that this process itself created

105. Indeed, as was noted *supra* Section II.A, few respondents had ever even seen the LHD regulations.

106. It should be noted that in answering these particular questions, survey respondents were reporting their own subjective level of knowledge and perceptions of what constituted difficulty of compliance, rather than rating these issues on an objective scale. The remainder of this Section discusses the consequences of the fact that different respondents defined these terms in different ways.

difficulties.¹⁰⁷ Second, it is possible that while owners may not have known how the LHD ordinance operated in close cases, they were aware that the ordinance would forbid them to knock down exterior walls, install decks, and engage in other large-scale projects without HDC approval, and therefore refrained from such activities. Indeed, a significant minority of respondents (40%, $N=50$) acknowledged that they had intentionally forgone making certain improvements because the LHD was in effect. Some of these improvements—such as replacing clapboard siding with vinyl—may be legally impossible now that the LHD is in effect, yet others—such as adding on an addition or a porch—are merely more difficult. It is therefore possible that owners who do not know about the specific provisions of the ordinance still have a good general sense of projects that would indisputably require HDC approval.

Third, this lack of correlation between “level of knowledge” and “ease of compliance” may indicate that owners were setting a higher compliance bar for themselves than is legally required. As one South Water Street owner noted, “[My neighbor has] owned his house for over twenty-five years, and even after the ordinance passed he thought that he would have to repaint it the color it was when he bought it!” When owners are uncertain about their precise obligations under the LHD,¹⁰⁸ it appears that many of them overcompensate by avoiding smaller improvements that might actually be permissible. Indeed, this is the most likely explanation for the finding that a significant minority of owners (44%, $N=50$) were “bothered” by having to comply with the LHD regulations, despite the fact that most respondents reported that they did not know precisely what those regulations entailed.

Turning to the expense of complying with the LHD regulations, a majority of respondents reported that they found it either somewhat more expensive (48%) or much more expensive (28%) to maintain their properties post-LHD, although a smaller percentage (24%) stated that the LHD had not significantly impacted their budgets ($N=46$).¹⁰⁹ The qualitative evidence revealed that the main expenses associated with LHD compliance were the relatively higher costs of historically appropriate building materials and the administrative costs of the HDC process. These financial hurdles were viewed as strong compliance disincentives by many respondents; those on low or fixed incomes frequently

107. For more detail on owner perceptions of the HDC process, see *infra* Section III.C.

108. For example, when an owner believes that the New Haven LHD ordinance forbids exterior repainting or interior renovations—neither of which is actually prohibited.

109. This latter finding should be evaluated in the context of the relatively recent passage of the LHD ordinance. It is quite possible that many respondents have not had to engage in major repair or maintenance projects and therefore have not experienced the financial implications of the LHD to the same extent as have some of their neighbors.

noted that they felt forced to compromise between following the law and being financially responsible. As one Sea Street resident observed:

We're a blue-collar neighborhood. . . . There are older people here; they can't afford to spend \$360 on a window. So I'd like to see the Commission recognize [that] the people who live in these houses want to do the best they can to comply with the historic district standards, but can't afford to pay out of their own pocket to make changes that don't really create a huge aesthetic difference.

The issue of *evading* expense should also be considered in a discussion of the expense of meeting LHD requirements. Evasion occurred primarily through “grandfathering” improvements, because in the several months between the vote for the LHD and its enactment, the ordinance was imminent but inoperative. During this time, approximately 13% of respondents took advantage of the opportunity to make repairs, install vinyl windows or siding, and engage in exterior renovations.¹¹⁰ These owners were therefore able to avoid both the fees for HDC review and the possibility that the HDC would reject their improvements as historically inappropriate. Several owners elaborated upon this point, accentuating the crucial nature of the timing of the repairs. One South Water Street owner said, “For example, it’s easier to maintain your house with plastic windows, and for those who did it earlier, they came out ahead.” And a Hallock Avenue owner noted, “I know of at least thirty people who made changes before the district went into effect, and at least six who made changes afterwards [without going through the HDC process], because vinyl windows are just better, and they make the cost of heating your house much less.” The law therefore mattered to these owners and influenced their first-party behavior—but not in the manner that preservation-minded proponents of the LHD may have desired.

Given the evidence presented in this Section, the majority sentiment that the LHD regulations had “little effect” on respondents’ activities seems unlikely to reflect accurately the impact of the regulations themselves. Although respondents may not have had detailed familiarity with the LHD regulations, many respondents certainly had well-formed *perceptions* of what the regulations required them to do. The evidence further suggests that owners tended to act upon these perceptions—accurate or not—when making decisions about how to maintain their own homes. In this respect, the existence of the LHD regulations clearly did have the effect of altering the status quo maintenance regime of City Point homeowners.

110. See *supra* note 86 and accompanying text.

B. Community Standards and LHD Regulations: Second-Party Enforcement

Given the practical difficulties of entrusting the provision of a public good (like an LHD) solely to norms of first-party enforcement, a second-party or third-party enforcement model might be expected to predominate as the mechanism for resolving LHD disputes. This Section focuses on second-party enforcement, defined for these purposes as the enforcement of communal standards by other members of the community, relying on the community's own internal social norms rather than on external "third-party" enforcement by official governmental entities such as the HDC.

1. Neighborhood Relations in City Point

The effectiveness of second-party enforcement in City Point might be expected to be high because the City Point LHD is so new and because many of the owners who voted to create the district—and who had longstanding communal bonds that preceded the vote itself—still live in the community. As such, it seems likely that these owners would have a stronger conception of what a violation entails (and how it should be addressed) than owners who arrived in the district after it had been established. However, while 92% of respondents ($N=49$) felt that City Point residents generally had good relations with their neighbors, and while 78% of respondents ($N=51$) felt they knew their neighbors at least fairly well, a majority of residents (59%, $N=51$) reported that they would feel uncomfortable telling a neighbor that she might be violating an LHD regulation. This result may suggest that neighborly relations in City Point are so positive precisely because neighbors actively attempt to avoid controversies and do not inform one another that they might be violating the law. Yet one might also imagine that a good neighbor would want to warn another neighbor before a small potential violation became a major and expensive one. The information gap might also explain why such a neighborly warning system might not be evident;¹¹¹ if owners are not confident that a neighbor's activity is actually a violation, they may be reluctant to voice their concerns. This rationale is bolstered somewhat by the finding that 71% of owners ($N=49$) reported that they had at least some trust that their neighbors would comply voluntarily with the LHD regulations.

However, significant second-party enforcement effects can be created by a small minority of owners, especially if these owners are particularly vigilant and vocal. Such effects certainly appeared to be present in City Point; indeed,

111. See *supra* Section II.B.

several owners mentioned—with equal parts admiration and exasperation—one particular resident who had acquired a reputation as the local second-party enforcer. According to respondents, this resident engaged in second-party enforcement by employing a combination of informal gossip about owners who were not meeting LHD standards, vigilant observation of actual alteration projects, and the willingness to report stubborn violators to the HDC. In a neighborhood as small and compact as City Point, second-party enforcement by a small minority is eminently feasible; however, it also appeared that there were many LHD supporters who, presumably for reasons of maintaining good relations with their neighbors, were willing to free-ride quietly on the second-party enforcement actions of this one individual. Thus, the reputational consequences of warning resistant neighbors about potential violations were concentrated in a single individual rather than diffused among neighbors throughout the district. As one strong LHD supporter admitted:

The woman who is sort of the [neighborhood] head of the historic district has a reputation for reporting people who violate the regulations. And now that she's stepping down, some people have asked if I'd take over. But my wife doesn't want me to take her place because she's afraid that the neighbors won't like us anymore.

Clearly, there are several problems with the structure of this second-party enforcement system. For instance, any underlying neighborhood resentment about LHD enforcement in general may become directed toward one specific neighbor, who comes to be viewed as part neighbor and part spy. Overreliance on a single individual also suggests that the neighborhood has not developed a broader second-party enforcement base. If this base is well developed, one neighbor who refuses to acquiesce to the second-party warnings of another will likely face additional pressure from other neighbors, thereby limiting the need to resort to third-party adjudication. If there is only one “enforcing” neighbor—and if his or her warning goes unheeded—the only alternative for that second-party enforcer is to pursue third-party adjudication at the HDC. The adequacy and desirability of a third-party remedy is discussed further in Section C.

2. *The Informal Violation Enforcement Formula*

More evident, however, was the informal neighborhood norm that—despite the official text of the LHD ordinance—all violations were not deemed to be equal. Because these owners were largely the same ones who voted for the LHD ordinance, they generally felt confident in asserting and enforcing their beliefs about what constituted a violation and what did not, under the

somewhat tautological rationale that they would not have voted to create a district that deemed certain marginal improvements to be violations.

It also appeared that owners had developed an informal system for dealing with potential violations. Under this formula, the level of tolerance for a violation depended on the extent of the violation—both in scope and in visual prominence—as measured against the income or wealth level of the violator. Given this result, a small positive adjustment would then be made if there was good-faith error or necessity, while a small negative adjustment would be made if there was bad faith or if the action was taken for mere convenience. The comments of many owners supported this theory:

I like the idea of the historic district a lot, but I do think that they need to be a bit more flexible on things like windows, particularly for some of the elderly on fixed incomes. Oil is becoming so expensive, and people really need to be able to save money on their fuel costs, and making sure you have insulated windows is a big part of that. (Howard Avenue Owner)

We want things to look nice, but we also need them to be aware that all of this costs money. There should be differentiated standards—that houses that are really nice, and could be renovated to a really high quality by people who have the money to do so, should be held to a higher standard. (Sea Street Owner)

The result of this formula was that those who could not afford to meet the letter of the law, but who did the best that they could in good faith, were unlikely to be reported. Far from being divorced from a concern about other neighbors' well-being, this informal formula appeared to be viable largely *because* of the high levels of neighborliness reported by respondents—without knowledge of the financial situations of one's neighbors, it would be impossible to make the calculation with any accuracy.

Moreover, this informal social norm formula also helps explain the varying community responses to the three types of scenarios in which owners intentionally evaded LHD regulations. In the first scenario, owners who made minor alterations often justified their actions by arguing that the burden of seeking HDC approval was excessive in light of the change that was being made, or that the alteration was so commonsense that their neighbors would not be concerned. As one Greenwich Avenue resident noted:

People install things all the time without going to the Commission. For example, I installed these railings to the front door without the Commission's approval, because my wife had a stroke and the doctor

said that we needed railings. I'm not going to the Commission to get their approval—I just put on the same railings that everyone else on the street has, because it was a medical necessity.

In this particular situation, the owner made a small improvement, consistent with other houses on the block, for a reason that other owners deemed to be a necessity. Although his income was somewhat higher than that of his neighbors, this factor was not deemed to outweigh the minor nature of the alteration, even though the alteration was clearly visible from the street.

In the second scenario, owners stated that they followed the LHD regulations, but did so without actually seeking formal HDC approval. For example, one Howard Avenue owner noted that although he had replaced a broken window without seeking HDC approval,

I went and got a nice six-over-one wood window, which was historically accurate even though it didn't match precisely what I replaced. And in doing so, I was *thinking* along the lines of what would be required by the Commission—so even though I didn't meet the letter of the regulations, I'm certain that I met the substance of the regulations.

This scenario did not tend to provoke a second-party enforcement response from the community, as it appeared that the owner made a relatively minor and historically accurate alteration and sought to act in good faith and in accordance with the spirit of the law.

Finally, in the third scenario, owners like Tom Ahern knew that their improvements or alterations would be unlikely to receive HDC approval if they applied yet made the changes anyway. In contrast to the first two scenarios, the third scenario did provoke a second-party response because it concerned a large-scale violation (numerous windows being replaced) and was conducted in a manner that many neighbors thought was in bad faith by an owner who was using the properties for rental income (and therefore presumably had the ability to pay for wood replacements). Indeed, several owners mentioned that they warned Tom Ahern that he might be violating the ordinance, yet his refusal to voluntarily heed the neighborhood social norms made it necessary to employ a third-party enforcement mechanism.

In sum, it appears that while second-party enforcement does exist in City Point, it is frequently employed in a more nuanced manner than might initially have been expected.

C. *The Role of the Historic District Commission: Third-Party Enforcement*

This Note has demonstrated that many City Point owners were willing to ignore or attempt to evade the HDC in certain circumstances. Notably, while most survey respondents felt that the HDC had extremely good intentions, many also felt that the unintended consequences of HDC policies often hindered the very preservation goals that the HDC process was designed to foster. The survey highlighted three main barriers to the HDC's becoming a truly effective third-party enforcement mechanism for LHD disputes: the costs associated with HDC review, the absence of clearly delineated safe harbors, and the perceived failure of the HDC to adequately understand or accommodate local needs. In particular, 59% of respondents stated that they had found the HDC to have been "rigid" in its interpretation of the LHD regulations, while only 6% believed that the HDC had been "flexible" ($N=49$). When asked how they felt the HDC *should* operate, 63% of respondents felt that the HDC should be "more flexible" in interpreting the LHD regulations, whereas only 12% felt that the HDC should be "more rigid" ($N=49$). This Section therefore seeks to determine *why* these owners displayed resistance to cooperating with the very institution that not only had the legal power to govern their actions, but was also the most effective third-party mechanism for enforcing the regulations that the owners themselves voted overwhelmingly to adopt.

1. *Participant Costs in Time and Resources*

The first barrier to the HDC's effectiveness as a third-party enforcement mechanism was the cost associated with pursuing and receiving HDC approval. Notably, the respondents who raised concerns about cost were not strictly—or even mostly—expressing a complaint about the application fee per se. Certainly, several respondents complained that because of the flat fee, the financial cost of seeking HDC approval could often constitute a large percentage of the cost of a relatively small project, such as replacing a single window. Indeed, several respondents complained of "having to pay \$80 simply to ask a question." Yet most respondents understood that the fiscal realities of underfunded local government entities might necessitate such fees. What was more troubling to respondents was that the HDC fee created a disincentive for compliance. As one respondent noted, owners who could not afford the fee would often simply avoid the HDC process entirely:

One big problem is that it costs money to ask a question—and that's a bad incentive. For example, my neighbor does *whatever* he wants, since

he doesn't want to pay the money, and he's pretty sure that no one is going to complain. (South Water Street Owner)

Several respondents also noted that the structure of the fee schedule often created disincentives even for those owners who *did* want to comply with the HDC. In particular, many owners were exasperated that the fees were charged on a per-appearance, rather than per-project, basis; these owners argued that they began the process in good faith yet found themselves paying multiple fees to receive approval. As one owner recounted:

I went to the HDC because I wanted to put a deck on, and I paid the \$75, and they approved everything and then asked me to make one change. So I made the change, and then they asked me to pay another \$75 to approve it. And I told them "you're just increasing the incentives for people not to go to the Commission." This kind of a policy seems to defeat the whole purpose of the district. (Sea Street Owner)

This concern about the de facto multiphase process for HDC approvals was shared by other respondents for a related reason: the length of time that it often took to receive the final HDC approval. Many respondents felt that the HDC approval process seemed ill suited to the actual needs of homeowners who wanted to make rapid repairs. For example, one South Water Street respondent recounted the stress of making seven successive trips to the HDC to seek approval to repair a porch that was in danger of collapse, and her reluctance to take any interim emergency measures due to her fear of being fined. In short, many well-intentioned owners felt blindsided by what they perceived as unnecessary delays and charges.

More troubling, however, are the potential long-term consequences of these negative interactions for the community as a whole. Homeowners in LHDs are repeat players in their relationships with the HDC, as it is extremely likely that, over time, they will want to make multiple home improvements that will require HDC approval. The HDC automatically begins at a disadvantage in such situations because the homeowner is concerned not only with historic preservation and aesthetics, but also with the practical realities of replacing drafty windows or fixing crumbling masonry. In deciding whether or not to seek approval from the HDC, rational repeat-player owners will incorporate their previous interactions with the HDC into their informal calculus. If these previous interactions were positive, it is likely that owners will be positively (or at least neutrally) disposed toward a repeat interaction.

If, however, the first interaction was a good-faith attempt by the owner to comply with the regulations, yet the owner felt that the HDC did not reciprocate with equally good-faith responses, the community as a whole may

lose on two fronts in the long term – even if the owner is required to adhere to the letter of the LHD regulations in the short term. First, a negative experience makes it less likely that this particular owner, disenchanted by his initial experience, will seek HDC approval on subsequent occasions if he can possibly avoid doing so. Second, this owner may refrain from complaining about a neighbor who has committed an LHD violation, knowing that the neighbor may have to face a similar ordeal before the HDC. Both of these results serve to weaken the authority of the HDC over the long term, a result that is ultimately detrimental to the LHD as a whole.

2. *The Absence of Clearly Delineated Safe Harbors*

The second barrier to the effectiveness of the HDC as a third-party enforcement mechanism was the absence of clearly delineated safe harbors.¹¹² Several respondents stated that the absence of safe harbors created substantial uncertainty among residents as to whether any given proposal would receive rapid approval by the HDC. As one Howard Avenue resident stated, “No one actually knows what the Commission will accept or reject. You’d think that they’d send you the regulations when you buy a house in a historic district, so you knew where you stood – or have a website with up-to-date guidelines – but they don’t.”¹¹³ Furthermore, respondents felt the absence of documented safe harbors meant that the HDC started every proceeding “from scratch,” rather than by considering its disposition of previous similar requests. Indeed, many interviewees believed that this *de novo* approach both increased the delays associated with receiving approvals and contributed to a sense of arbitrariness in the Commission’s decisions:

Part of the problem is that we’re not exactly sure what the Commission will allow and what it won’t, because there haven’t been that many situations in which people have made formal requests. . . . I’d like to

112. In this context, safe harbor provisions would consist of a certain set of HDC-approved alterations that an applicant could make without full HDC review. For example, the HDC could waive the need for a full hearing if the proposed alteration was to replace non-wood siding with wood siding of the same color on a pre-1940 building. Any owner who sought to make this change could do so simply by notifying the HDC of her intent, rather than spending the time and money to go through the HDC approval process.

113. While the HDC has recently produced a pamphlet outlining various actions that would require HDC approval, its examples are illustrative rather than comprehensive. CITY OF NEW HAVEN, LOCAL HISTORIC DISTRICTS IN NEW HAVEN 3, <http://www.cityofnewhaven.com/CityPlan/pdfs/HistoricPreservation/LocalHistoricDistricts.pdf> (last visited Dec. 18, 2006). While this list provides useful examples for some clear-cut situations, there are still significant gray areas left to HDC discretion.

renovate the attic—but I’d also like to put in dormer windows, and I’m not sure if the Commission is going to approve them. (South Water Street Owner)

The adverse impact of this problem upon the HDC’s effectiveness is twofold. First, if local homeowners are uncertain about whether a proposed change will receive rapid approval or face innumerable delays, many may take the risk of opting out of the review process entirely. (Alternatively, owners might take the “Ahern position” that it is easier to beg for forgiveness than to ask permission.) The second problem is more subtle but no less important. By requiring *all* proposed alterations to undergo HDC review, the HDC not only guards against *undesirable* alterations (from a historic preservation perspective), but it also raises the costs for those who wish to make *desirable* alterations. By failing to identify safe harbors, the HDC is forced to use the same blunt tool of full review to manage two very different situations. The consequence of this approach is that, paradoxically, owners who might otherwise engage in alterations that would increase the historic or aesthetic value of the neighborhood may be dissuaded from doing so, due to the uncertainty engendered by the very review process that is supposed to encourage such activities.

3. *The Failure To Demonstrate Responsiveness to Local Needs*

The third barrier to the effectiveness of the HDC as a third-party enforcement mechanism was the sense among respondents that the HDC often failed to demonstrate responsiveness to the local needs of City Point homeowners. As noted in Part II, historic preservation policies that worked well in governing affluent and aesthetic historic districts may not meet the needs of the new generation of historic districts—those that encompass average homes owned by people of average means. While the 2002 median home value in all three New Haven LHDs was higher than the citywide median, there was also a substantial difference in median home value between Wooster Square, the city’s most elegant (and earliest) LHD, and the more recent vernacular City Point and Quinnipiac LHDs.¹¹⁴ At present, City Point homeowners have more in common with the average New Haven homeowner than they do with Wooster Square homeowners, yet they felt that the HDC was designed to deal more with the latter than the former.

One common refrain from respondents was a plea for the HDC to strike a balance between its preservation goals and the practical burden that strict

114. CITY OF NEW HAVEN, *supra* note 57, at IV.10.

compliance placed on some (well-meaning) owners. As one Greenwich Avenue owner complained, “For people who are on a budget, they could use the money they’d be spending on [historic] windows to help keep up the rest of their house, and make sure that the *entire* house looks better.” Respondents also felt that the HDC process was not designed to encourage owner participation or to assist owners in meeting their obligations, despite the fact that the HDC was exercising its jurisdiction because of the express invitation of the owners themselves. One Sea Street owner noted:

I wouldn’t mind if the [HDC fee] went to help people in the *community* learn about preservation, but I have a sense that it just goes to the Commission and the city—and that doesn’t leave anyone here [in the community] any better off than they were before in terms of learning either how to care for their homes or how to avoid making the same mistakes in their own [HDC] applications.

Several respondents offered other examples of how the existing HDC process created unnecessary distance between owners and the HDC. Some noted that holding the formal HDC monthly meetings at City Hall (several miles from City Point) discouraged community participation, particularly among those who found it difficult to attend such meetings due to transportation limitations or childcare needs. Others, such as this South Water Street owner, pointed out that the “formal hearing” could be intimidating for owners who were unfamiliar with either government proceedings in general or the terminology of historic preservation in particular:

When I went to the [Commission] for the first time, I just didn’t “speak their language,” and my request was denied. So I went and spoke with my neighbor, who had some experience with this kind of thing, and she reworked the language of my application—for the same proposal—and it was *approved*. It’s that she spoke the language they needed to hear, with the right keywords, and I didn’t. So I was lucky, but not everyone has an advocate like that.

In short, many respondents seemed to feel that the HDC was designed for those who had knowledge of historic preservation, experience with the political system, and the money necessary to implement the best solution (rather than merely the most affordable one). This is almost certainly not the image that the HDC sought to convey, yet to at least some owners, these were the messages that the current HDC structure *did* convey. By failing to disabuse skeptical LHD owners of these notions, the HDC inadvertently undermined its own legitimacy among those who could most benefit from its expertise.

The evidence presented in this Section should not be construed as suggesting that the HDC is unimportant. Indeed, the HDC fills an extremely important role as a third-party enforcement mechanism, particularly because its experience in reviewing historic preservation alterations provides a level of consistency and continuity that can be lacking in first- and second-party enforcement. Nor is this evidence meant to suggest that respondents did not empathize with the inherent limitations faced by a volunteer part-time governmental body with extremely limited resources. What the evidence presented here does suggest is that some of the theoretical advantages of the HDC process were compromised by what City Point residents viewed as the practical disadvantages. Although the current process may work well for the majority of LHD residents, the 44% of residents who suggested that they were “bothered” by having to comply with the regulations will be crucial in determining the relative success or failure of the LHD over the long run. Finally, while many of the residents’ comments recounted in this Section may be either technically or legally inaccurate, such factual issues are almost beside the point. Accurate or inaccurate, these *are* the perceptions of owners in City Point, and the HDC must work to correct these perceptions if it is to become the truly effective third-party enforcement mechanism that is necessary for the long-term success of the City Point LHD.

IV. DISCUSSION AND POLICY RECOMMENDATIONS

This Part places the empirical case study evidence in the broader legal policy context, providing both conclusions about the initial experiences of City Point LHD owners and policy recommendations for improving the effectiveness of the LHD in the future. By identifying the general policy lessons of the City Point LHD, this Part seeks to provide insights that will help New Haven and other cities in their efforts to both improve their LHDs and preserve their vernacular built environments.

A. Has the City Point LHD Been a Success?

Overall, the short answer is yes. This research found that a majority of respondents supported the LHD at its creation, felt that the advantages of the LHD continued to outweigh its disadvantages, and believed that the quality of life in City Point ten years from now would be worse if the LHD were not in place.¹¹⁵ While only a plurality of respondents felt more favorably toward the

115. See *supra* Section II.A.

LHD than they did at the time of the vote in 2000, very few respondents felt less favorably toward the LHD. Indeed, most respondents believed that the LHD increased their home values and brought stability to a neighborhood that was in danger of falling into a cycle of higher crime and lower owner-occupancy rates.¹¹⁶

However, the lesson for historic preservationists in the City Point experience is that few respondents saw historic preservation per se as the primary advantage of the LHD.¹¹⁷ Instead, respondents appeared to be following William Fischel's "homevoter hypothesis," approving programs that they believed would increase home values and bring stability to their neighborhood, regardless of the program's other intrinsic merits.¹¹⁸ This finding has two implications for preservationists seeking to increase the prevalence of vernacular LHDs. First, preservationists need to recognize that although homevoters may be as eager as traditional preservationists to receive the fiscal benefits of preservation policies, homevoters are likely to be much less understanding of the aesthetic restrictions that accompany the benefits than are their traditional counterparts. Second, preservationists should nevertheless recognize that this homevoter tendency offers significant advantages in efforts to increase the number of LHDs. Preservationists have primarily promoted LHDs by employing arguments about history and aesthetics, while mentioning the financial advantages (such as preservation tax credits) only as ancillary benefits. Yet given the increasing evidence connecting historic preservation to increased home values and neighborhood stability,¹¹⁹ preservationists should strongly consider emphasizing the economic benefits of historic preservation when targeting homevoter neighborhoods like City Point.¹²⁰

116. Numerous studies indicate that historic designation tends to increase home values, particularly if the designation is of a historic district rather than of a single property. See, e.g., Robin M. Leichenko et al., *Historic Preservation and Residential Property Values: An Analysis of Texas Cities*, 38 URB. STUD. 1973, 1976 (2001) (noting that of fourteen studies surveyed, seven showed a positive impact of designation, five showed a neutral or mixed impact, and only two (both conducted in Philadelphia in 1994 by Paul Asabere and co-authors) showed a negative impact).

117. See *supra* Section II.A.

118. See WILLIAM A. FISCHEL, *THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND-USE POLICIES* 4 (2001) (arguing that homevoters "balance the benefits of local policies against the costs when the policies affect the value of their home, and they will tend to choose those policies that preserve or increase the value of their homes").

119. See, e.g., Leichenko et al., *supra* note 116.

120. For an excellent analysis of the soundness of such an approach, see DONOVAN D. RYPKEMA, *THE ECONOMICS OF HISTORIC PRESERVATION: A COMMUNITY LEADER'S GUIDE* (2d ed. 2005).

B. Solving the Dilemma of the “Working-Class” Streets

Another significant finding of this research was the difference in attitudes toward the LHD expressed by those who lived on middle-class streets as opposed to those who lived on working-class streets. MCS respondents were consistently more favorable in their assessments of the LHD than were WCS respondents, and it appeared that this differential was partially explained by the significantly higher levels of community involvement and neighborly trust present among MCS respondents.¹²¹ The key policy issue raised by this finding is how to solve what might colloquially be termed the “WCS dilemma” – that is, determining how to design an LHD to encourage participation from owners in all parts of the LHD and avoid alienating owners whose homes might not be historic or architectural gems.

It seems that this policy issue has the greatest potential to arise when either HDCs or preservationists make the tacit presumption (almost certainly unwittingly) that because the buildings in the LHD share a common historical context, there is likely substantial homogeneity among the homeowners as well. While this distinction may be irrelevant for the more “traditionally historic” LHDs (where the majority of homes are owned by preservation-minded owners), the discrepancy is clearly evident in an LHD like City Point, where although the homes may be similar, the homeowners are not. As historic preservationists increasingly target ordinary neighborhoods for preservation, they should reevaluate the existing model of LHD design to address—or at least acknowledge—this dilemma. While this problem presents no easy answers and is worthy of future targeted research, one policy option would be to set the HDC review fee on a sliding scale based on a percentage of the assessed home value, with an absolute cap at a certain point. Although assessed value is admittedly only a rough proxy for wealth, such a sliding scale might help encourage WCS owners to participate more fully in the LHD.

C. Do Policy Instruments Matter?

One major question posed by this research was the extent to which formal historic preservation policy instruments (like LHDs) actually matter in practice. This Note suggests that there are two answers, depending upon the use to which the policy instrument is put. First, it appears that for fighting *other* “definable policy instruments,” such as governmental highway expansion plans or condo development proposals, a formal policy instrument like the

121. See *supra* Section II.C.

LHD can be of significant value. For example, although the City Point LHD may be of limited legal value in fighting the highway expansion or the condo development, the LHD certainly provides a strong symbolic statement to potential adversaries that the residents of the neighborhood are serious and organized in the face of external threats.¹²²

Second, this research suggests that although formal policy instruments may send general signals to local owners about what they can and cannot do with their property, the practical enforcement of the LHD regulations can depend significantly on the informal community norms that have developed as a result of preexisting neighbor and community relations.¹²³ Indeed, while respondents' home maintenance regimes were almost certainly influenced by the presence of the LHD ordinance, this influence was based upon a general perception of the ordinance rather than its actual text.¹²⁴ Moreover, this research found that respondents had created their own informal formula for determining when a technical LHD violation would trigger second- or third-party enforcement mechanisms and that this formula was designed to be more responsive to local community factors, neighborliness, and notions of reciprocity than a literal interpretation of the statute would be.¹²⁵ While the HDC presumably has some limited equitable discretionary authority to take these "informal" factors into account,¹²⁶ the formal "Application for Certificate of Appropriateness"¹²⁷ that forms the basis of an owner's petition to the HDC asks only for photographs, drawings, and plans.

These results are consistent with Robert Ellickson's research on the interplay between law and social norms. In City Point, the threat of reporting an LHD violator to the HDC was certainly employed for the purposes of "invigorat[ing] informal control."¹²⁸ However, citizens who had strong communal bonds with their neighbors also tended to try and reduce their

122. See *supra* Section I.D.

123. Because this case study was limited to the City Point LHD and the New Haven HDC, it is certainly possible that HDCs in other cities have been more successful at engaging with LHD owners and residents and in enforcing their respective ordinances. It would be exceptionally valuable for future researchers to test the conclusions presented here in the context of other HDCs.

124. See *supra* Section III.A.

125. See *supra* Sections III.B-C.

126. See *supra* notes 35-43 and accompanying text.

127. New Haven Historic Dist. Comm'n, Application for Certificate of Appropriateness, <http://www.cityofnewhaven.com/CityPlan/pdfs/HistoricPreservation/ApplicationCertificateofApprop112005.pdf> (last visited Nov. 29, 2006).

128. ROBERT C. ELICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES 280-86 (1991).

transaction costs by engaging in negotiations that allowed them to avoid formal third-party adjudication whenever possible.¹²⁹ The broader lesson for preservationists appears to be that in order to maximize the long-term success of an LHD, the focus should be on developing strategies for actively increasing and sustaining first- and second-party enforcement. The more common (and less expensive) strategy is for a small yet dedicated minority to push for a broad general policy that can then be enforced through third-party means. However, this research found that such an approach does little to engage actively the majority of owners who are critical to the success of an endeavor that relies so much on broad community participation. These empirical findings suggest that the long-term success of an LHD likely requires seeking out existing neighborhood organizations and tailoring each LHD to take advantage of the strengths of these community groups. In City Point, this might entail forging a relationship with the students and faculty of the two schools located in the neighborhood or organizing “field workshops” in collaboration with the existing neighborhood association to provide owners with hands-on advice for how to conduct basic home maintenance in a preservation-friendly manner.

D. Improving the HDC Process and Structure

Even in a system with strong first- and second-party enforcement mechanisms, it is still necessary to have a third-party mechanism for issuing legal sanctions should other methods fail. Indeed, even when a neighborhood demonstrates strong initial support for the concept of an LHD, this research suggests that the practical realities of LHD obligations set in quickly among owners, requiring an entity like the HDC to maintain the standards of the LHD in the absence of complete internal enforcement. This research also found that in the context of an “ordinary” neighborhood LHD like City Point, owners frequently attempted to circumvent the HDC process—thereby defeating the very preservation goals that the review process was designed to foster. Thus, although the HDC system may work quite well for obviously historic neighborhoods in which self-enforcement levels are often quite high,¹³⁰ it is not ideally structured to address situations in which owners are either less intrinsically preservation-minded or less able to afford the time and resources that the HDC approval process requires.¹³¹ If a primary goal of preservationists

129. *Cf. id.*

130. *See, e.g., TYLER, supra note 2; see also text accompanying note 27.*

131. *See supra* Subsection III.C.1.

is to ensure the preservation of local neighborhoods, HDC processes must be oriented toward the latter type of owners as well as the former.

Fortunately, this research suggests several policies that could make the HDC more responsive to the needs of its changing constituency. First, there is a significant demand for better communication between the HDC and LHD homeowners. This study found that very few respondents felt that they had enough information about the LHD at the time they voted on it and that only a minority of owners felt that they currently knew enough about what the LHD regulations required. Furthermore, the absence of official information created an information vacuum,¹³² enabling those who sought greater leniency in LHD enforcement to shape the perceptions of the LHD in the minds of their neighbors. To remedy this deficiency, the HDC should ensure that every homeowner receives a copy of the LHD ordinance. The HDC should also expand its website to include a step-by-step guide to the HDC review process, a detailed explanatory example of a model application, and a clarification of the fee schedule to indicate when a single project may be subject to a multiple-submission fee. Given that a sizeable minority of homeowners in City Point and other New Haven LHDs are native Spanish speakers, the HDC should offer each of these services in Spanish as well as in English.

Second, the HDC should attempt to provide applicants with more support in the review process. One possibility would be to authorize a member of the City Plan staff to review and approve a category of actions classified by the HDC as “minor,” with referrals to the full HDC only when the staff finds the proposal has the potential to be contrary to the ordinance. An alternative would be to permit the HDC to utilize subcommittees for minor reviews, allowing the full HDC to focus only on potentially controversial proposals. A more radical proposal in this vein would be for the HDC to develop safe harbor provisions beyond the current like-for-like standard,¹³³ which would allow homeowners to make certain alterations without a full review. Under such a provision, the default presumption of HDC scrutiny would be reversed, with the burden placed on the HDC to demonstrate why the change should *not* be made (rather than on the owner to demonstrate why it should be). The HDC would then set forth a hierarchy of building materials in which any move up the hierarchy would be presumptively allowed and could be made by the owner without a fee (or for a reduced fee). For example, the safe harbor could permit asbestos-shingle siding or vinyl siding to be replaced by wooden siding, or vinyl windows to be replaced by wooden windows.

132. See City of New Haven, *supra* note 85.

133. See *supra* note 36 and accompanying text.

The HDC could also create a neighborhood “pattern book” with visual illustrations of presumptively acceptable options for certain alterations. This book would enable owners to draw upon existing templates rather than face the uncertainty that their proposed alteration might require multiple trips to the HDC for approval. Such provisions would not only make more efficient use of HDC time, they would also encourage homeowners who wished to make their properties more “historic” (by replacing nonhistoric components with historic materials) to engage in such repairs without being discouraged by the delays inherent in the current HDC review process.

Third, the HDC should widen its focus by emphasizing proactive assistance in addition to reactive adjudication. This research found that many owners harbored trepidation about the HDC review process, largely because they were unsure whether any given project was likely to receive approval. While increased information would mitigate this problem, so too would the possibility of a prereview consultation, in which homeowners could receive preliminary feedback about their application while it was still in a conceptual stage. Such services could be provided through a partnership agreement with the nonprofit New Haven Preservation Trust, or by existing HDC staff (who are full-time employees of the New Haven City Plan Department and are assigned only part-time to HDC duties). By drawing on these existing resources, it would be quite possible to keep the costs of such prereview consultations to a minimum and to avoid passing such costs on to the owners. Providing owners with the option of receiving a preliminary advisory opinion would also encourage owners to view the HDC process as a collaborative endeavor, rather than as a potentially adversarial high-stakes hurdle that needs to be overcome in a single leap. Proactive assistance could also reap significant benefits in the promotion of state and federal rehabilitation tax credit programs. The fact that few respondents had ever heard of such programs, and that even fewer had taken advantage of them, suggests that the HDC is not assisting LHD owners in obtaining the tax incentives that might encourage greater voluntary compliance with LHD regulations.¹³⁴

In summary, historic preservationists should work to ensure that homeowners are knowledgeable about the review processes of their local HDCs as well as about the benefits that are available to LHD owners. As the main local governmental entity in charge of preservation, the HDC has an extremely important role in encouraging voluntary compliance, particularly in neighborhoods like City Point where owners may not necessarily be inclined to comply. By demystifying the review process, ensuring the provision of

134. See *supra* Section II.B.

complete information, and providing proactive assistance to owners, the HDC can reduce its own adjudicative workload while increasing the likelihood of successful preservation.

E. Recognizing “First-Generation” Issues

Finally, this Note suggests that new LHDs may face unique issues due to the presence of first-generation LHD owners (i.e., those who resided in the district prior to its creation), which differ from the issues facing more established LHDs. In particular, the qualitative evidence suggested that first generation City Point owner-voters appeared quite confident in setting their own social norms and standards regarding LHD enforcement—indeed, many owner-voters stated in interviews that they “knew what they meant” by “historic district” because they were the ones who sought (and voted) to have it designated as such.¹³⁵ Because a full exploration of this issue would require comparative research of multiple LHDs of different ages, it is beyond the scope of this Note. However, this Note provides preliminary evidence that the perceptions of “first-generation” owners may differ substantively from those of subsequent generations of owners, given that the latter move into an already-designated district and may be more deferential to the official textual statement defining the rules of the LHD.

The key policy point is that an LHD with a substantial proportion of first-generation owners appears to require a different approach from local government and local preservationists than does an established LHD. For instance, it might be prudent to waive the fee for each owner-voter’s first HDC application to encourage owners to participate in the process and learn how the HDC interprets what is meant by a “historic district.” This “training wheels” approach would allow owners to learn about the role of LHD regulations in a less adversarial context and might help diffuse any frustration resulting from a disparity between the owners’ beliefs and the way the HDC implements the regulations in practice. For City Point, however, the HDC did not take any steps suggesting that it recognized that LHDs in different stages may have different needs. Because treating new and old LHDs in the same manner may not lead to the optimal level of support and preservation over the long term, policymakers must commit themselves to seeking dynamic policy solutions that can accommodate LHDs in various stages of development.

135. See *supra* Subsection III.B.2.

CONCLUSION

Historic preservation is no longer a policy whose reach is confined to birthplaces of the famous, grand public buildings, and elegant suburbs. Increasingly, historic preservation is focusing on preserving ordinary communities—communities whose stories were frequently lost in the quest for urban renewal and whose survival today offers a unique window into the American past. Yet while the historic preservation movement has expanded in this new direction, there has been no empirical research on how these communities and their homeowners have reacted to this development. This Note fills that gap in the empirical literature by examining how owner-occupiers in New Haven’s City Point Local Historic District viewed, negotiated, and managed their obligations under a relatively recently approved LHD ordinance. It is hoped that the empirical results and policy recommendations presented above will assist local governments, homeowners, and preservationists alike in balancing the preservation of the past, the needs of the present, and the inheritance of the future.

APPENDIX

Table 1.

HOW RIGID OR FLEXIBLE THE HDC SHOULD BE IN INTERPRETING LHD REGULATIONS
(N=49)

	MORE RIGID (%)	NEUTRAL (%)	MORE FLEXIBLE (%)
WCS Respondents	21.4	21.4	57.1
MCS Respondents	8.6	25.7	65.7

Differences between WCS and MCS respondents in Tables 1 through 5 were not statistically significant.

Table 2.

HOW MUCH THE LHD REGULATIONS CHANGED THE RESPONDENT'S HOME
MAINTENANCE (N=50)

	A LITTLE (%)	MODERATELY (%)	SUBSTANTIALLY (%)
WCS Respondents	60.0	13.3	26.7
MCS Respondents	62.9	11.4	25.7

Table 3.

PERCEIVED EASE OR DIFFICULTY OF COMPLYING WITH LHD REGULATIONS (N=49)

	EASY (%)	NEUTRAL (%)	DIFFICULT (%)
WCS Respondents	42.9	28.6	28.6
MCS Respondents	28.6	51.4	20.0

Table 4.

PERCEIVED EXPENSE OF COMPLIANCE COMPARED TO PRIOR MAINTENANCE COSTS
(N=47)

	INEXPENSIVE (%)	NEITHER (%)	EXPENSIVE (%)
WCS Respondents	23.1	61.5	15.4
MCS Respondents	24.2	42.4	33.3

Table 5.
HOW MUCH IT BOTHERED THE RESPONDENT TO COMPLY WITH LHD REGULATIONS
(N=50)

	NOT BOTHERED (%)	NEUTRAL (%)	BOTHERED (%)
WCS Respondents	28.6	35.7	35.7
MCS Respondents	33.3	19.4	47.2

Table 6.
OPINION ABOUT WHETHER CITY POINT RESIDENTS GENERALLY HAVE GOOD RELATIONS
WITH THEIR NEIGHBORS (N=49)

	YES (%)	NO (%)
WCS Respondents	76.9	23.1
MCS Respondents	97.2	2.8

Differences between WCS and MCS respondents were statistically significant: chi-square = 5.2, $p < .05$.

Table 7.
HOW WELL THE RESPONDENT KNEW HIS OR HER NEIGHBORS (N=51)

	NOT WELL (%)	NEUTRAL (%)	WELL (%)
WCS Respondents	66.7	6.7	26.7
MCS Respondents	2.8	25.0	72.2

Differences between WCS and MCS respondents were statistically significant: Mann-Whitney $z = -3.9$, $p < .05$.

Table 8.

RESPONDENT'S LEVEL OF COMFORT IN TELLING NEIGHBORS THEY WERE NOT IN COMPLIANCE WITH LHD REGULATIONS (N=51)

	UNCOMFORTABLE (%)	NEITHER (%)	COMFORTABLE (%)
WCS Respondents	73.3	26.7	0.0
MCS Respondents	52.8	16.7	30.6

Differences between WCS and MCS respondents were statistically significant: Mann-Whitney $z = -1.8, p < .05$.

Table 9.

WHETHER THE RESPONDENT WAS A MEMBER OF THE CITY POINT NEIGHBORHOOD ASSOCIATION (N=47)

	YES (%)	NO (%)
WCS Respondents	33.3	66.7
MCS Respondents	77.1	22.9

Differences between WCS and MCS respondents were statistically significant: chi-square = 7.6, $p < .05$.

Table 10.

PERCEIVED EFFECTIVENESS OF THE NEIGHBORHOOD ASSOCIATION IN IMPROVING THE QUALITY OF THE NEIGHBORHOOD (N=49)

	INEFFECTIVE (%)	NEITHER (%)	EFFECTIVE (%)
WCS Respondents	28.8	50.0	21.4
MCS Respondents	17.1	20.0	62.9

Differences between WCS and MCS respondents were statistically significant: Mann-Whitney $z = -2.3, p < .05$.