

Update on U. S. Rehabilitation Tax Credits and the Transfer of Development Rights (TDR)

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In 1984, in Rostock, the Democratic German Republic, I had the privilege of presenting a paper on the U. S. Historic Rehabilitation Tax credit program, and how it was aiding the preservation of building stock around the country. In fact, from 1976 to 1986, federal tax incentives were one of the most effective urban revitalization tools implemented by the federal government. The rehabilitation credits channelled more than \$1.5 billion in private investment into the rehabilitation of 23,300 historic properties between 1976 and 1986. It also created 119,785 housing units, of which 21,600 were low and moderate-income housing.

Unfortunately the Tax Reform Act of 1986 created impediments to the use of the credit program; unfortunately since its enactment, use of the credits declined by 75 percent from its peak in 1985. The National Preservation Coordinating Council in its May 1993 "Historic Preservation agenda for the Clinton Administration" recommended that the Historic Rehabilitation Tax Credit be restored to its pre-1986 effectiveness – President-elect William J. Clinton had made the same recommendation during his presidential campaign. US/ICOMOS is a member of this Council.

According to the Council, restoration of the Historic Rehabilitation Tax Credit would:

- (1) Create an immediate beneficial economic impact as businessmen begin to raise capital for an existing backlog of rehabilitation projects and move quickly to hire workers to begin construction.
- (2) Create quality jobs because historic rehabilitation is more labour intensive than new

construction and can provide long-term, high-earning skills for unemployed young people and displaced workers.

- (3) Provide the needed incentive to attract private developers and investors to provide safe, decent housing and jobs.
- (4) Conserve the nation's resources by rebuilding on its existing infrastructure and avoiding the sprawl that creates both financial and environmental strain on our limited resource.
- (5) Encourage Small business development: 31 percent of all rehabilitation credit projects were done by individuals with adjusted gross incomes of less than \$30,000; 50 percent had incomes of less than \$50,000 between 1982 and 1986. 48 percent of the projects totalled less than \$100,000 and 80 percent were less than \$500,000.
- (6) Return deteriorated, under-utilized buildings to property tax rolls.

Additionally, and not unimportantly, the restoration of the 1976 tax rehabilitation credits would help raise community spirit and reduce crime, as shown by a study of a neighbourhood revitalization project in Jacksonville, Florida, where violent crime fell 39 percent.

Now to "Historic Preservation and the Transfer of Development Right (TDR)." The Arts Club of Washington, D. C., in which I have been an active member for many years, was able to utilize the transfer of development rights (also called the transfer of air rights) in an unanticipated but welcomed situation.

TDR means relocating the amount of square footage or space that can be built on a specific lot and adding that amount to the space that can be built another lot.

The Arts Club of Washington is a non-profit educational organization that was founded in 1916. The Club was organized "to bring into association those devoted to painting, music, literature and drama; to promote cooperation and to further interest in these arts in the Capital City." Shortly after its founding, the Arts Club secured as its home the Monroe House, built in two periods, 1805 and 1808 in the Federal style. In the late 1920's the Club bought the adjoining house known as the Mcfeeley House, built in 1860 of Italianate style. The Monroe House, a National Historic Landmark, and the Mcfeeley House are listed on the National Register of Historic Places. Both preservation programs are administered by the National Park Service, an agency of the U. S. Department of Interior. The Arts Club's galleries are open daily to the public.

President James Monroe lived in the house for approximately three years while he served as Secretary of State and Secretary of War under President James Madison. Monroe's inaugural reception was held on March 5, 1817 at the house, which served as the Executive Mansion for five months during his presidency. (President Monroe served two terms, 1817-21 and 1821-25) President and Mrs. Monroe then left the house and traveled four blocks to the White House, which had been rebuilt following its burning by the British in August 1814. Ironically, the Monroe House was leased to the British Legation in 1821.

The Monroe House is one of five surviving large-scale, high-style residences built in the first years of the Republic. The other four are the White House, built 1792; the Octagon, c. 1802; the Decatur House, 1818; and the Blair-Lee House, 1830. The White House is still the home of U. S. presidents, and the Blair-Lee House across Pennsylvania Avenue is the President's guest house. The Octagon is the historic house

museum of the American Institute of Architects. It was to the Octagon that President Madison moved to serve out his term after the British burned the White House. Decatur House is a historic house museum of the National Trust for Historic Preservation, where US/ICOMOS has its office. Visitors to Washington and those posted there in the 18th and 19th centuries most notably the English commented on how unsophisticated the houses in the capital city were and how they lacked even basic European amenities. In contrast, the Monroe House was praised for its civility and elegance.

These two remaining historic 19th-century structures are in a block dominated by high-rise commercial office buildings. The two houses are a vital document of the scale of the 19th-century buildings in downtown Washington from its earliest days. They form a record which is rapidly disappearing with the intensive development in the center city.

In 1974, when Terry B. Morton (President, US/ICOMOS) was Director of Publications for the National Trust for Historic Preservation, the Trust and the University of Illinois Press (Urbana, Ill., 207 pp.) published *Space Adrift: Landmark Preservation and the Marketplace*, written by John J. Costonis. The U.S. Department of Housing and Urban Development awarded the Trust a demonstration grant for the support and publication of this study. "The technique labeled the transfer of development rights, in the case of historic property," wrote Professor Costonis, "is the unused development potential of landmark buildings for use on non-landmark sites—transferring the cost of preservation from the owner or the city of the development process."

In the mid-1970's the unused air rights of the historic Christian Heurich Memorial Mansion were sold to a developer who was building a new office structure on an adjacent lot. The owner, the Columbia Historical Society, used the funds for restoration and

But once the funds were obtained and sent, the income to historic property owners from air rights was gone forever. However, in the case of the Arts Club of Washington, the air rights were not sold, but leased for three 99-year periods. In spite of the fact that the concept of the transfer of development rights (TDR) with historic property had great potential, the concept has been used infrequently. The Arts Club agreement is thought to be the first example in the country of a lease rather than a sale of undeveloped air rights. A lease which makes the TDR concept of even greater importance for the protection of historic property.

In 1987, the construction of a new high-rise office building came before the D.C. Zoning Commission for review and approval of a Planned Unit Development (PUD). Specifically the applicants requested the transfer of 37,000 square feet of gross floor area from the Arts Club of Washington site.

The transfer of floor area ratio to lot size (FAR) was to be accomplished by a lease between the Arts Club and the developer. This lease, with a term of 99 years and two 99-year extensions, would provide funds to the Arts Club on an annual basis over the term of the lease, in exchange for the transfer of unused FAR.

Income from the lease the first 15 years is set at \$2,020,000. Years 16 through 99 and beyond have base payments of \$120,000 yearly with additional payments figured on a formula keyed to the annual increases of the Consumer Price Index, which keyed to the country's inflation.

In studying the proposed TDR, the Zoning Commission concluded that "the proposed application, relating to the

Arts Club of Washington, can be approved with the conditions which ensure that the development will not have an adverse effect on the surrounding community, but will enhance the neighbourhood and ensure the neighbourhood stability."

By decree of the Zoning Commission, the funds from the lease between the Club and the developer provide the basis for preserving and restoring the Monroe and McFeeley Houses and enhancing the Club properties. The Club retained professional advisers to provide information as to how best to preserve and maintain the buildings. The Club hoped to accomplish the most immediate preservation and rehabilitation needs within a three to four year period. This included deferred maintenance of the buildings - its roofs, floors and walls - and utilities such as the kitchen, bathrooms and electrical and air conditioning.

The Club planned to use the income from the lease in the following manner; at the outset, "approximately 80 per cent of the funds for structural, mechanical and architectural maintenance and improvements, and 20 per cent for community art-oriented programs." It was thought that this allocation would likely change in later years and a larger allocation made to programs once the most significant physical work is completed. The Club also proposed to spend an increasing amount of the funds for the Club's community programs, including rotating art exhibits, a broader scholarship program, annual awards in the arts and seminars with recognized scholars whose papers will be published and preserved. Open house discussions would be designed to bring together various segments of the arts community around and near the Arts Club buildings.

Public hearings were held on the project, in accordance with laws under purview of the Zoning Commission. Discussions were held with the Neighborhood Advisory Commission 2A, the Office of Planning and other District of Columbia agencies. The original public benefits and amenities

package, submitted by the developer as part of the original application, was augmented substantially by the Zoning Commission to include the following items:

- (1) Preservation of the south facades of the historic Monroe and Mcfeeley houses;
- (2) Expansion of the Arts Club's programs to support the arts and serve the arts community and District of Columbia residents;
- (3) Public art in a space or spaces adjacent to the new building to be provided by the developer. One percent of the actual construction costs of the base building was to be used for this public art, which now stands on the sidewalk in front of the new Monroe Building.
- (4) A £50,000 contribution to the Ellington Fund to expand the amount of services and supplies that the Fund is able to provide for students at the Duke Ellington School of the Arts;
- (5) A £25,000 contribution to fund a program under which the Arts Club would provide for use of the Club's facilities by community groups.
- (6) An agreement with the National Park Service to provide £25,000 for immediate improvements to a small nearby Monroe Park, plus £10,000 annually for a five-year period to maintain the park;
- (7) A £15,000 design study for the improvement of other nearby public spaces, coordinating the details with the National Park Service; and
- (8) Enhancement of the streetscape along the two major streets on which the new building sits.

There were also restrictions under which the two historic houses were to be maintained. The Arts Club must report annually to the D.C. Zoning Administrator and the D.C. Historic

Preservation Office. Within 18 months of the zoning order, the Arts Club had to develop a preservation plan to preserve the historic property. The Arts Club must consult with the D.C. Historic Preservation Office in the preparation of subsequent implementation of the work. The Zoning Administrator determines whether the funds have been expended in the implementation of this work plan.

In addition, the developer had to undertake architectural and engineering services necessary to the preservation of the south facades. Plans were developed with the Arts Club Board and were required to be submitted to the D.C. Historic Preservation Office within nine months of the date of the zoning order. The work was to commence no later than six months after receiving approval by the D.C. Historic Preservation Office. In the event that the facade preservation did not exceed £100,000 in construction expenses, exclusive of architectural and engineering services, the excess funds were to be applied to the restoration of the Arts Club's program. The facade preservation actually exceeded £200,000!

The Arts Club retained 5,960 square feet of gross floor area for a future rear addition. Any addition or exterior renovation to the structure had to be reviewed by the D.C. Historic Preservation Office and all other appropriate D.C. regulatory agencies. Also the percentage of lot occupancy, including any potential additions constructed on the Arts Club lot could not exceed 85 percent. This insured that a large garden would remain behind the Arts Club. In the event that the Arts Club should sell its property, the Zoning Commission declared that "the benefits and burdens of the lease shall run with the land."

Following the final approval of the Planned Unit Development, the lease was secured by a first mortgage against the developer's property in an amount to be mutually determined, with lien rights of £2,450,000 until substantial completion of the project.

Following the substantial completion of the new structure, the lease was guaranteed by a continuing letter of credit in the amount of £2,450,000 until the value of the developer's equity was in excess of £5,000,000. At that time, the developer had to issue a promissory note, secured by a recorded mortgage in the amount of £5,000,000 against the developer's property.

In carrying out its zoning Commissions requirements, the Arts Club prepared a preliminary plan and submitted it to the Commission. With the assistance of a Getty Grant of £35,000 and a £15,000 grant from the D.C. Historic Preservation Office, the Club submitted an extensive master plan. It also held a school-type training program open to the community for research and evaluation during the planning process. The architecture firm of Archetype, with a speciality in preservation, was selected to do the master plan. The Club understands that implementation of any master plan must be phased, with perhaps additional money to be raised.

This highly successful project was a team effort between the city, the Arts Club and the developer. Historic preservation brought all of the components together for the betterment of the community.

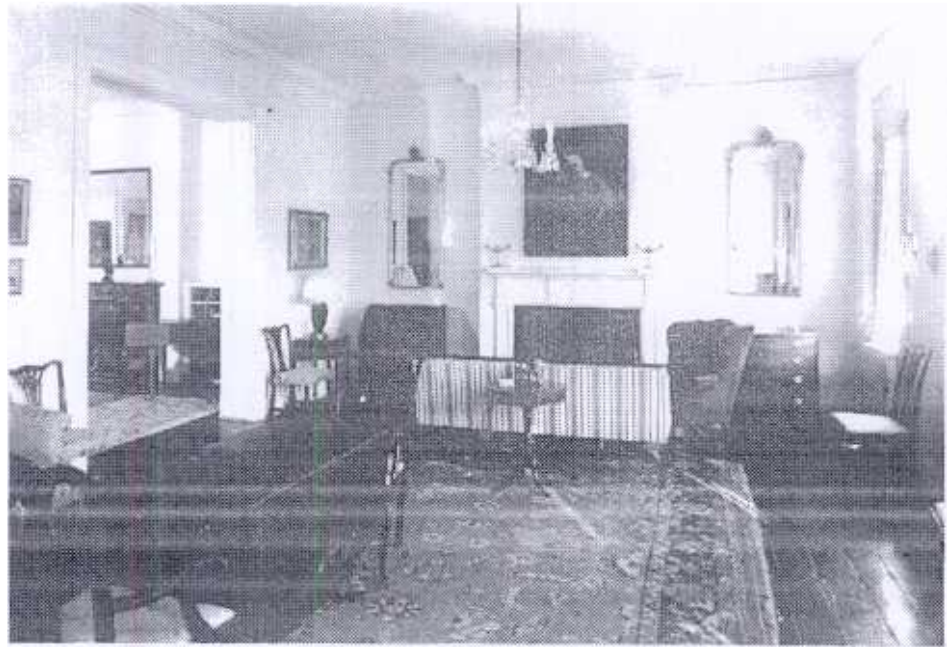
To quote Professor Costonis again, "The tool of development rights transfer is promising because it speaks to cost allocation issues – funds generated by selling diminutive landmark's unused development potential to a builder for use on a non-landmark site. Development rights transfer shifts preservation costs from the city and the landmark owner to the downtown

development process itself... TDR provides substantial economic evidence of what preservationists have long contended – that old buildings can indeed be economically preserved and used."

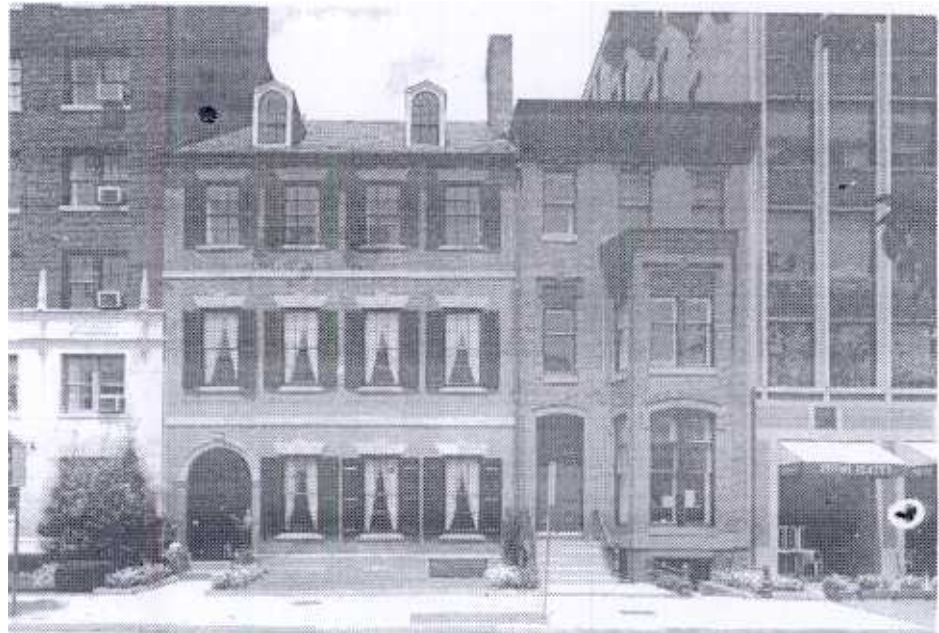
Use of the TDR for the protection of historic property has not lived up to the potential that preservationists had hoped for. One reason has been the poor state of the U.S. economy. Also, legal authority for the TDR must exist, and be backed up with programs to control development and manage the projects. Areas, other than large metropolitan ones, do not have the expertise to administer TDR projects. Economists, urban design teams and preservationists are needed to ameliorate risks. The Arts Club case was possible because of the existence of the D.C. Zoning Commission, the D.C. Historic Preservation Office and the sophisticated Board of Governors and membership of the Arts Club.

The transfer of development rights will be more successful in countries where there is a free urban real estate market, rather than where much of the land is owned by the state.

Some of you visited the Arts Club of Washington at the time of the 1987 ICOMOS in Washington. There was a Sunday afternoon reception for delegates. There was also an exhibit of projects by area university architecture students and another exhibit by the American Institute of Architects D.C. Chapter's Historic Preservation awards. Be sure to visit the Arts Club when you are in Washington. The Club is proud of its preservation and rehabilitation accomplishments made possible by its unusual financial "windfall."



Second floor front drawing room, the Monroe House. (Photograph by Jack E. Boucher)



The Monroe and Mcfeeley Houses, 2017 I Street, N. W., Washington, D.C. (Photograph by Jack E. Boucher)