

DEMOLITION BY NEGLIGENCE IN DETROIT AND THE BATTLE TO SAVE HISTORIC TIGER STADIUM:
LESSONS FOR BASEBALL PARK PRESERVATIONISTS

Andy Jacoby*

- I. Introduction
- II. Detroit History, Baseball, and the Evolution of Tiger Stadium
- III. Historic Preservation Statutes – What is Fair and What is Foul?
- IV. Local Historic Districts in Michigan
- V. Detroit’s Local Historic District Ordinance
- VI. Roots of Historic Preservation Law
- VII. Demolition by Neglect and the Decline of Detroit
- VIII. Public Finance of Private Stadiums – The Fight to Prevent New Stadium Construction in Detroit
- IX. The Fight to Prevent Tiger Stadium’s Demolition
- X. Lessons Learned for Ballpark Preservationists

I. Introduction

squinting to see him
another generation
sent to right field

-David Giacalone¹

In the hands of a child, a ticket to a professional baseball game carries magical powers, and it has been this way for generations. To children, local sports stadiums are hallowed ground where heroes perform. These magnificent structures create an aura and are unique to the community. More so than football, basketball, or hockey, baseball has played a greater role in the nation’s history and culture than any other sport. While the game’s roots stretch back centuries, professional baseball first became nationally popular in the late 19th century. The historic parks and stadiums in which early teams played have all too often been bulldozed to make way for new stadiums. Detroit’s Tiger Stadium, aged nearly 100 years, was a rare, precious legacy from baseball’s early era. But Tiger Stadium’s history should not be reduced simply to one of sport. At its essence, the stadium was the heart of the city for decades. It was Detroit’s crossroads, where the city socialized and established its identity. It is not surprising

* Andy Jacoby is an attorney for the Texas Water Development Board in Austin, Texas. He grew up in Ann Arbor, Michigan, and occasionally attended games at Tiger Stadium in his youth. He is a 2008 graduate of Tulane Law School. The opinions and team affiliations expressed herein are the author’s, not his employer’s.

¹ David Giacalone, 4 ROADRUNNER HAIKU JOURNAL (2005), <http://www.roadrunnerjournal.net/pages54/haiku54.htm>.

that when the stadium became threatened by neglect and a hostile city government, baseball fans and preservationists leaped to its defense. The story of how their effort to save the historic structure failed is a lesson for ballpark preservationists everywhere.

Unlike football and basketball, the distinct characteristics of each baseball stadium play a role in the game itself.² When the team plays well, entire communities pour into stadiums or tune in from home, and the pride of the city is bundled up in the performance of the team. These historic stadiums, as much as any local civic building, are often the focal point of a community. Baseball stadiums – ballparks – are not singular in this respect. Historic stadiums of all sports often carry decades of dramatic sports battles, and these stadiums are linked to a city’s collective memory.³ Despite their commanding presence, opportunistic owners and compliant local politicians seek to build new, shinier, more profitable stadiums. All too often the new stadiums are financed by taxpayers, yet benefit team owners disproportionately. Upon construction of the new stadium, old ballparks are often torn down or left to fall apart. This article analyzes the fight to preserve one such stadium, Detroit’s Tiger Stadium, in the broader context of how historic preservation law addresses dilapidation. The article also looks at legal issues surrounding public finance of new stadiums, and concludes with lessons learned for preservationists and sports fans.

II. Detroit History, Baseball, and the Evolution of Tiger Stadium

Spring breeze.

This grassy field makes me
want to play catch.

-Masaoka Shiki⁴

In the nineteenth century, Corktown was the Ellis Island of Detroit. The neighborhood, which sits just southwest of downtown Detroit, was founded by Irish immigrants in 1834 and was a landing spot for immigrants in the following decades. In Corktown, a hay market and dog pound sat at the corner of Michigan Avenue and Trumbull Street until the 1890s. The site was converted to a baseball field in 1896 after its purchase by local businessman George Arthur Vanderbeck. But before the new baseball stadium could be built, the site’s first historic preservation skirmish was fought.

On the land stood twenty-eight giant historic elm and oak trees, which some citizens fought to preserve against Vanderbeck’s wishes. The grove was rumored to be the site of a war

² Take, for example, Boston’s “Green Monster” and the ivy outfield wall in Chicago’s Wrigley Field.

³ Carol Rose, *The Comedy of the Commons: Custom, Commerce, and Inherently Public Property*, 53 U. CHI. L. REV. 711, 759 (1986).

⁴ Interview by Debbie Elliott with Cor Van Den Heuvel, *Spring Signals the Return of Baseball* (Nat’l Pub. Radio broadcast on Mar. 31, 2007). Masaoka Shiki (1867-1902) revolutionized the haiku art form in the 19th century. He played baseball and in 1890 penned “Spring Breeze,” the first baseball haiku. For this achievement he sits in Japan’s Baseball Hall of Fame. Hall of Famers List, *The Baseball Hall of Fame and Museum*, http://english.baseball-museum.or.jp/baseball_hallo/detail/detail_144.html (last visited June 19, 2010).

council conducted by Chief Pontiac during “Pontiac’s War” following the Seven Years’ War.⁵ The context of the war council was an Indian siege against the British at Fort Detroit in 1763. The British prevailed in 1763, and so did Vanderbeck in 1896. Twenty-three of the trees were cut down to build the ballpark, and the remaining five trees were felled within five years.⁶ In the grove’s place, a playing field and wooden grandstand, Bennett Park, were built.⁷

The Detroit Tigers played at Bennett Park in the equivalent of today’s minor league until 1901, when the team joined the professional American League. The acquisition of ballplayer Ty Cobb led to the Tigers’ ascension to three consecutive World Series from 1907-09. The fan enthusiasm generated by the team’s success⁸ caused the owner to replace small, wooden Bennett Park in 1912 with a new, larger concrete and steel stadium dubbed “Navin Field” on the same site. Though Bennett Park was razed completely that year, the flag pole was left undisturbed, and the reconfiguration of the playing field resulted in the flag pole sitting at the deep end of center field in “fair territory.”⁹ A flag pole existed at that spot in center field since the nineteenth century and was the lone carryover from Bennett Park.

The catalyst for Detroit’s ascent into one of the world’s foremost cities took place amidst all this. It turns out that the imprint Detroit would leave on the world was, in fact, a tire track. In 1908, not far from Bennett Park, the first of fifteen million Model T automobiles rolled off a Ford assembly line in Detroit. Navin Field¹⁰ opened in 1912, the same day as Fenway Park in Boston, but this news was overshadowed by the sinking of the Titanic that same week.¹¹ Navin Field included a covered grandstand behind home plate, which extended along the first and third base lines. The structure also contained bleachers in right field and office buildings attached to the grandstands behind the first baseline. Among its quirks, Navin Field contained what may

⁵ RICHARD BAK, *A PLACE FOR SUMMER: A NARRATIVE HISTORY OF TIGER STADIUM* 55 (Wayne St. Univ. Press 1998).

⁶ For a while at Bennett Park, trees were located in the outfield in fair territory.

⁷ Bennett Park was renovated throughout its fifteen-year life, adding bleachers to the outfields, a groundskeeper’s shed, and the players’ clubhouse. In 1896 the Bennett Park held 10,000 fans. By 1911, capacity reached 18,000. GEORGE R. MATTHEWS, *WHEN THE CUBS WON IT ALL: THE 1908 CHAMPIONSHIP SEASON* 188 (2009).

⁸ This is not to be confused with any enthusiasm for Cobb himself. A belligerent racist in constant trouble with the law, Cobb was disliked by fans and fellow players alike. See Charles Klinetobe & Steve Bullock, *Complicated Shadows: Ty Cobb and the Public Imagination*, 18 *NINE: A JOURNAL OF BASEBALL HISTORY AND CULTURE*, Nov. 1, 2009, <http://z3950.muse.jhu.edu/login?uri=/journals/nine/v018/18.1.klinetobe.pdf> Cobb once climbed into the stands and brutally attacked what some sources claim was a physically handicapped fan who had heckled him, which makes Indiana Pacer Ron Artest’s notorious 2004 foray into the stands to fight a Detroit Pistons fan look downright cordial by comparison. See DAN HOLMES, *TY COBB: BIOGRAPHY* xxi (2004) (Introduction). During the 1909 World Series, Cobb had to travel around Ohio to evade an outstanding warrant for his arrest there. [James Kossuth, *How Cobb Got Along With Others*, *TY COBB: THE HOME PAGE*, <http://wso.williams.edu/~jkossuth/cobb/race.htm> (last visited June 30, 2010). Nevertheless, fans appreciate a winning team, and that is what Cobb gave them. Attendance at Bennett Park nearly tripled from 174,000 throughout 1906 to 490,000 in 1909. BAK, *supra* note 5, at 401 (Appendix A).

⁹ BAK, *supra* note 5, at 119.

¹⁰ Capacity: 23,000. BAK, *supra* note 5, at 122.

¹¹ STANTON, *infra* note 18, at 5.

have been the first batter's backdrop in the history of baseball.¹² A press box and second deck of seating¹³ was added in 1923 and 1924 along the first and third base lines.¹⁴

The 1912 Navin Field to a large extent existed until the summer of 2009. Renovations in 1937-38 led to the construction of the structure that became Tiger Stadium directly over and around most of the Navin Field structures, incorporating the original 1912 Navin Field as a base.¹⁵ The renovations retained Navin Field's lower deck grandstands and extended the double-decker grandstands all the way around the stadium. The renovations also spared some of the auxiliary structures. The stadium was rechristened "Briggs Stadium,"¹⁶ though in 1961 it would once again be renamed: Tiger Stadium.

Like all great ballparks, Tiger Stadium had many idiosyncrasies. There was the famous centerfield flagpole, a relic from the days of Bennett Park.¹⁷ There was the right field upper-deck, which protruded a full ten feet over the playing field, occasionally turning a pop fly into a home run.¹⁸ A blue-collar stadium to its core, the beautiful myriad of steel beams created cheap "obstructed view" seats,¹⁹ and the press box, dugouts and bullpens were austere. According to one architect, "by actual mathematical measurement the average seat at [Tiger Stadium] is closer [to the field] than the average seat at any other ballpark."²⁰ It was a stadium built before the era of luxury boxes. The outfield upper deck consisted of bleachers where blue-collar autoworkers ("the Bleacher Creatures") could attend games on a budget.²¹

Baseball has been played at the corner of Michigan and Trumbull for 111 years. Many legends have played the field, and great moments in the sport's history were played here. Baseball fans revere the game's history, and to them Tiger Stadium's field is hallowed ground. Babe Ruth hit his 700th career home run here.²² In fact, more home runs were hit in Tiger

¹² Ballparksofbaseball.com, Tiger Stadium, <http://www.ballparksofbaseball.com/past/TigerStadium.htm> (last visited June 30, 2010). But see Baseball Fever, Blocked out center field sections, <http://www.baseball-fever.com/showthread.php?89182-Blocked-out-centerfield-sections> (last visited June 30, 2010) (debating whether Navin Field was truly the first).

¹³ BAK, *supra* note 5, at 131, 138.

¹⁴ *Id.*

¹⁵ See Statement of the Old Tiger Stadium Conservancy Regarding the Recent Demolition of Tiger Stadium, TIGER STADIUM CONSERVANCY, <http://savetigerstadium.wordpress.com/2009/06/19/statement-of-the-old-tiger-stadium-conservancy-regarding-the-recent-demolition-of-tiger-stadium/> (last visited June 30, 2010).

¹⁶ The structure encompassed 8.5 acres and the stadium's capacity was 52,416. BAK, *supra* note 5, at 213. By the Tigers' 1984 championship season, annual attendance reached 2.7 million. Ballparksofbaseball.com, 198-1989 Attendance, <http://www.ballparksofbaseball.com/1980-89attendance.htm> (last visited June 30, 2010).

¹⁷ Flagpoles in outfield play were common during the nineteenth century, making this preserved relic a direct link to the game as it was played during that time.

¹⁸ TOM STANTON, *THE FINAL SEASON: FATHERS, SONS, AND ONE LAST SEASON IN A CLASSIC AMERICAN BALLPARK* 47 (2004).

¹⁹ *Id.* at 70.

²⁰ JOANNA CAGAN & NEIL DEMAUSE, *FIELD OF SCHEMES: HOW THE GREAT STADIUM SWINDLE TURNS PUBLIC MONEY INTO PRIVATE PROFIT* 90 (2008) (quoting architect John Pastier).

²¹ *Id.*

²² Dwight Chapin, Two tales to tell / The Number's the Same, but the 700 Stories of Ruth and Aaron Have Little in Common, *SAN FRANCISCO GATE*, Sept. 20, 2004, available at http://articles.sfgate.com/2004-09-20/sports/17445608_1_500th-and-600th-home-babe-ruth-homer.

Stadium than in any other ballpark.²³ It was here that Lou Gehrig ended his record streak of 2130 consecutive games played.²⁴ It was the home of Ty Cobb, Hank Greenberg, and Al Kaline.²⁵ The field hosted twelve World Series games and three All-Star games.²⁶

Beyond baseball, the site also carries the historical weight of nearly forty years of professional football. The Detroit Lions, Detroit's professional football team, used the stadium from 1937-74, winning three NFL championships in the 1950s.²⁷ Tiger Stadium is where the traditional Thanksgiving Day NFL game began.²⁸ It was the home of the great Bobby Lane, and hosted a herd of other early NFL greats.

In the early twentieth century, baseball was America's game. Before radio and television came to dominate our lives, sports were witnessed directly. In Detroit, attendance at a professional baseball game was a special event. The Navin Field trolleys would carry thousands of fans from throughout the city to the stadium. The Michigan and Trumbull intersection was the crossroads of the city. It was the place to see and be seen; fans would dress up for the occasion, and Detroit's social elites would attend. Senators and governors tossed ceremonial first pitches. Tiger Stadium was the famous site of baseball battles and football combat, and it drew the city's most powerful leaders to watch its most capable athletes. But to reduce the site to merely baseball and football lore is to rob it of its entire contribution to Detroit history. In fact, Tiger Stadium stands out among stadiums in how much of the city's cultural and social history was woven into it.

Tiger Stadium has been used for much more than baseball and football. The stadium played host to operas, musicals and dramatic comedies in the 1930s.²⁹ The ROTC used the field as a training ground during the 1920s.³⁰ Police officers and firemen held annual field days there.³¹ The Shriners marched in the stadium annually.³² Joe Louis defended his boxing title here in 1939.³³ Jake LaMotta gained his own boxing title here ten years later.³⁴ Also in the 1930s, the United Auto Workers chose Tiger Stadium as the site for massive labor

²³ There were 11,111 home runs, to be exact. See Joel Kurth & David Josar, *Is it the Final Out for Tiger Stadium?*, DET. NEWS, Mar. 16, 2006, available at <http://detnews.com/article/20060314/METRO/6031404/Is-it-the-final-out-for-Tiger-Stadium>.

²⁴ Gregg Krupa, *Tiger Stadium Milestones*, DET. NEWS, June 4, 2009.

²⁵ There are twenty Detroit Tiger players and six Detroit Tiger managers in the Hall of Fame. The Official Site of Detroit Tigers: History: Tigers Hall of Famers, http://detroit.tigers.mlb.com/det/history/hall_of_famers.jsp (last visited June 15, 2010).

²⁶ Mel Antonen, *Once a baseball cathedral, Tiger Stadium Now Sits in Disrepair*, USA TODAY, Oct. 19, 2006, available at http://www.usatoday.com/sports/baseball/al/tigers/2006-10-18-cover-tiger-stadium_x.htm.

²⁷ Detroit Lions Team Page, Pro Football Hall of Fame Official Website, http://www.profootballhof.com/history/team.aspx?FRANCHISE_ID=11 (last visited June 16, 2010).

²⁸ *Id.*

²⁹ STRANDED AT THE CORNER (Michigan & Trumbull LLC 2006).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Box Rec, Boxer: Joe Louis, http://www.boxrec.com/list_bouts.php?human_id=9027&cat=boxer (last visited June 19, 2010).

³⁴ LaMotta won the World Middleweight Belt. Box Rec, Boxer: Jake LaMotta, http://www.boxrec.com/list_bouts.php?human_id=009030&cat=boxer (last visited June 19, 2010).

demonstrations.³⁵ The Tigers were owned at that time by Walter O. Briggs, who made his fortune selling auto parts to car manufacturers. Briggs' power over workers is what brought labor demonstrations to his Tiger Stadium doorstep.³⁶ In the 1950s, Billy Graham preached to thousands of Detroiters from the infield.³⁷ Concerts, conventions, and rallies were held throughout the stadium's history. The Tigers' World Series triumph in 1968 made the stadium Detroit's healing ground after the race riots of 1967.³⁸ Decades later Nelson Mandela addressed the racially-divided city from the field.³⁹ Given this rich cultural, political and athletic history attached to Tiger Stadium, it is unsurprising that the battle to preserve Tiger Stadium was wholeheartedly fought.

III. Historic Preservation Statutes: What is Fair and What is Foul?

Historic preservationists employ a wide range of tools to prevent the deterioration of historic resources. Much preservationist effort is geared towards influencing politics, and generating support in the local community. But since preservationist battles are often bitter, many disputes end up in court. To understand historic preservation generally, and the attempt to preserve Tiger Stadium in particular, it is first necessary to understand what law applies and where power lies.

Unfortunately for stadium preservationists, for Tiger Stadium Section 106 of the National Historic Preservation Act⁴⁰ was not in play. Section 106 requires federal agencies to "take into account" the effect of agency "undertakings" on historic properties.⁴¹ Historic properties include those on, or eligible for, the National Register.⁴² Tiger Stadium is on the National Register.⁴³ However, for Section 106 to be triggered there must be a "[f]ederal or federally assisted undertaking."⁴⁴ That is, federal agency action in the form of an "undertaking,"⁴⁵ which could include federal financial assistance to a local project.⁴⁶ There would be an "undertaking" under Section 106 if there were any federal financial support for Tiger Stadium's demolition. However, the demolition of the stadium was pushed only with city and state funding, not federal support. Thus, the requirements of Section 106 were not met and the Act could not be used in support of preservation.

³⁵ RICHARD BAK ET AL., *THE CORNER: A CENTURY OF MEMORIES AT MICHIGAN AND TRUMBULL* 83 (1999).

³⁶ See generally BAK, *supra* note 5, at 184.

³⁷ Harry Atkins, Farewell to Tiger Stadium, ESPN.COM, Sept. 27, 1999, <http://assets.espn.go.com/mlb/s/1999/0927/81754.html>.

³⁸ Bob Logan, Tiger Stadium: Detroit's Anchor, CHI. TRIB., June 27, 1985, at C3 (describing Tiger Stadium as a "unifying force for a fragmented city").

³⁹ *Id.*

⁴⁰ 16 U.S.C. § 470(f) (2010); 36 C.F.R. § 800.1 (2010).

⁴¹ 16 U.S.C. § 470(f) (2010).

⁴² *Id.*

⁴³ Nat'l Register of Historic Places: MICHIGAN (MI), Wayne County, <http://www.nationalregisterofhistoricplaces.com/mi/Wayne/state6.html> (last visited June 19, 2010).

⁴⁴ 16 U.S.C. §470(f).

⁴⁵ An "undertaking" is a "project, activity or program funded in whole or part under the direct or indirect jurisdiction of a Federal agency" 36 C.F.R. § 800.16(y) (2010).

⁴⁶ *Id.* (noting that federal "undertakings" include activities "carried out with federal financial assistance").

Fortunately, Section 106 is not the only protection for our nation's historic sites.⁴⁷ For real property in Michigan, there are three different layers of historic designations: the National Register of Historic Places,⁴⁸ the state Register of Historic Sites,⁴⁹ and local historic districts.⁵⁰ Of the three, only local historic districts actively protect historic structures from alteration or demolition. Both national and state register designations are "purely honorary."⁵¹ The National Register of Historic Places⁵² and the Michigan Register of Historic Sites⁵³ both honor important historic sites. Tiger Stadium was added to the National Register of Historic Places in 1989⁵⁴ and to the Michigan Register of Historic Sites in 1975.⁵⁵ However, because these designations are merely honorary, they contain no legal handle that could save the structure from alteration or demolition at the hands of the owner. Regardless, assent to either the state or national list is important because it will draw attention if the site becomes endangered. Though not a final legal solution, it is a political step in support of preservation.

To that end, the National Trust for Historic Preservation, a private preservationist group, has devised a way to help prevent a structure's demolition in the absence of legal mechanisms. Each year the National Trust develops a list of the Most Endangered Historic Places in America, an effort geared towards shedding light on the plight of the blight, so to speak. Tiger Stadium made the list in 1991 and 1992.⁵⁶ The National Trust's track record is very strong – of the hundreds of structures on the list since 1988, only a few have been demolished.⁵⁷ But Tiger Stadium was not so lucky. Nevertheless, in spite of the absence of legal handles created by ascension to the national register, it was beneficial to preservationists that the stadium was listed, because it drew attention to the stadium's jeopardy. Unlike the state and national registers, historic district demolition is much more powerful.

IV. Local Historic Districts in Michigan

In 1970 the Michigan legislature passed the Local Historic Districts Act ("LHDA" or "the Act")⁵⁸ to promote historic preservation, safeguard community heritage, support property

⁴⁷ This paper does not address zoning ordinances, which represent an additional and quite powerful legal tool for historic preservationists.

⁴⁸ 16 U.S.C. § 470a (2010); 36 C.F.R. § 60.1.

⁴⁹ 1955 Mich. Pub. Acts 10; MICH. COMP. LAWS § 399.151-52.

⁵⁰ Local Historic Districts Act, 1970 Mich. Pub. Acts 169; MICH. COMP. LAWS § 399.201-.215 (2010).

⁵¹ STATE HISTORIC PRES. OFFICE, LOCAL HISTORIC DISTRICTS IN MICHIGAN 33, available at http://www.michigan.gov/documents/hal_mhc_shpo_LHD_Manual_105011_7.pdf (guidance manual for city and county governments) (last visited May 1 2010).

⁵² 16 U.S.C. § 470a; 36 C.F.R. § 60.1.

⁵³ 1955 Mich. Pub. Acts 10; MICH. COMP. LAWS § 399.151-52.

⁵⁴ Nat'l Register of Historic Places, MICHIGAN (MI), Wayne County, <http://www.nationalregisterofhistoricplaces.com/mi/Wayne/state6.html> (last visited June 19, 2010).

⁵⁵ Ctr. for Geographic Info., Mich. Historical Ctr., State Historic Pres. Office, <http://www.mcgi.state.mi.us/hso/hsmatchname.asp?hsn=navin&hss=0> (last visited Sept. 13, 2009); State Register of Historic Sites, <http://www.ci.detroit.mi.us/legislative/BoardsCommissions/HistoricDesignationBoard/Reports/Statereg.pdf> (last visited Sept. 13, 2009).

⁵⁶ John Gallagher, National Group Defends Madison, DET. FREE PRESS, May 25, 2004, at A1.

⁵⁷ Id. Two of the few were in Detroit.

⁵⁸ Local Historic Districts Act § 399.201-.215.

values, foster civic beauty, improve the economy, and enhance the general welfare.⁵⁹ The Act authorizes counties and cities to create historic districts (“Districts”) and local commissions (“City Commissions”) to oversee those districts.⁶⁰ The creation of a local historic district pursuant to the LHDA gives a local city the power to regulate alterations to, and demolition of, resources and structures within that district.⁶¹ While most historic districts encompass entire neighborhoods or towns, the Act also authorizes a local government to create a single resource district that would encompass a single structure, rather than a neighborhood.⁶² The Act seeks “to provide for preservation of historic and non-historic resources within historic districts.”⁶³ A “historic resource” is a “publicly or privately owned building, structure, site . . . that is significant in the history, architecture, archaeology, engineering, or culture of this state or a community”⁶⁴

The Act authorizes local governments to adopt ordinances to “regulate the construction, addition, alteration, repair, moving, excavation, and demolition of resources in historic districts”⁶⁵ Management of the district, including approval of work permits, is managed by a City Commission made up of five to nine local residents.⁶⁶ The work permit approval power is the crux of the ordinance’s power,⁶⁷ so the power to appointment City Commissioners is correspondingly important. The Act does not require a particular method of appointment to the City Commission, but rather defers to the local governments to create appointment mechanisms.⁶⁸ However, the Act does require that appointments shall be for three-year terms,

⁵⁹ MICH. COMP. LAWS § 399.202, § 2.

⁶⁰ Id. at § 399.204. A study commission must first analyze, then formally propose designation of an historic district.

⁶¹ Id. at 399.202, § 2.

⁶² “A single resource historic district in Michigan is one in which the single resource individually meets the criteria for eligibility established by the U.S. Secretary of the Interior for inclusion in the National Register of Historic Places on its own merit for: (a) association with a significant person, (b) association with a significant event or pattern of history, (c) design and construction, or (d) information potential. In other words, boundary selection is based on the nature of the resource’s significance, integrity, and physical setting.” STATE HISTORIC PRES. OFFICE, CRITERIA FOR EVALUATING RESOURCES FOR INCLUSION IN LOCAL HISTORIC DISTRICTS 2, available at http://www.michigan.gov/documents/hal_mhc_shpo_Criteria_EstablishingHistDist_154704_7.pdf (last visited May 1, 2010).

⁶³ Local Historic Districts Act (Preamble).

⁶⁴ MICH. COMP. LAWS § 399.201(a)(1).

⁶⁵ MICH. COMP. LAWS § 399.202, § 2. The City Commission does not review “ordinary maintenance” of a structure. MICH. COMP. LAWS § 399.210, § 10.

⁶⁶ MICH. COMP. LAWS § 399.204, § 4 (noting also that a “majority of the [Commission] members shall have a clearly demonstrated interest in or knowledge of historic preservation,” and that, where available, an architect should be appointed as well. Further, Commissions within larger local government bodies must include two members from a list provided by “duly organized local historic preservation organizations”).

⁶⁷ The Michigan manual for local governments, which explains how to enact the enabling local ordinance, declares: “Though commissioners may face pressure from individuals—and sometimes government officials—to make a certain decision, commissioners must remember that their role is to protect the community’s historic resources.” STATE HISTORIC PRES. OFFICE, LOCAL HISTORIC DISTRICTS IN MICHIGAN 33, available at http://www.michigan.gov/documents/hal_mhc_shpo_LHD_Manual_105011_7.pdf (last visited May 1, 2010).

⁶⁸ MICH. COMP. LAWS § 399.204, § 4.

and shall be staggered, diffusing the appointer's power.⁶⁹ Further, removal of City Commissioners is only permitted if the ordinance expressly authorizes this, and even then removal is only permitted "due to the acts or omissions of the member,"⁷⁰ that is, for "just cause."

The local historic district commission evaluates work permit applications for alterations "affecting the exterior appearance of a resource."⁷¹ The exterior includes that which is visible by the public, but in Tiger Stadium's case could possibly also include the enclosed baseball field and grandstands. The stadium wraps around the field completely, and the stadium is not domed. Thus the field and grandstands are visible by the public not from the street but from the air. It may seem a stretch that a City Commission's power to regulate the "exterior appearance" could enable it to regulate the field and grandstands of a stadium beyond sight from the street. But in a different jurisdiction a Louisiana court found that changes to building's enclosed courtyard fell within the power of the historic commission, since the courtyard could technically be considered "exterior."⁷² In that case, *City of New Orleans v. Impastato*, the Louisiana Supreme Court flushed an owner's plan to create an open-air bathroom in the historic courtyard of the French Quarter's famous Napoleon House.⁷³ Michigan lacks case law clarifying the extent of a City Commission's power to govern the "exterior appearance," so the proposition that a City Commission could interrupt the interior alteration of a wrap-around, undomed stadium within an historic district is unsettled.

When there is a request to demolish a structure in an historic district, in order to approve the request the City Commission must establish one of four elements: (1) The structure is a "hazard to safety of the public;" (2) the structure is a "deterrent to a major improvement program [and the applicant has already] obtained all necessary planning and zoning approvals, financing, and environmental clearances;" (3) an "undue financial hardship" due to action "beyond the owner's control"; or, (4) "retaining the [structure] is not in the interest of the majority of the community."⁷⁴

An aggrieved landowner may appeal denial of her work permit or demolition request to the state historic preservation review board.⁷⁵ If the review board rules against her, she may appeal directly to her local Michigan circuit court.⁷⁶ The citizen need not pursue remedy from the state review board before appealing to the circuit court.⁷⁷ Importantly, Michigan's LHDA contains a citizen suit provision for any citizen or historic preservation organization "aggrieved by a decision of the historic district commission."⁷⁸ The Detroit ordinance provides standing to enforce historic district requirements to "any property owner or association of property owners

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ MICH. COMP. LAWS § 399.205, § 5(1).

⁷² *City of New Orleans v. Impastato*, 3 So. 2d 559, 560 (La. 1941).

⁷³ *Id.*

⁷⁴ MICH. COMP. LAWS § 399.205, § 5(6)(a)-(d).

⁷⁵ *Id.* AT §§ 399.209(1), .211, .205(2).

⁷⁶ *Id.*

⁷⁷ MICH. COMP. LAWS § 399.211, § 11.

⁷⁸ *Id.*

within the district.”⁷⁹ Thus, a preservationist group, or neighbor to an historic property owner, could step in to preserve a structure within an historic district where a City Commission was not diligent.

The City Commission is also authorized to determine if a structure is “threatened with demolition by neglect.”⁸⁰ “Demolition by neglect means neglect in maintaining, repairing, or securing a resource that results in deterioration of an exterior feature of the resource or the loss of structural integrity of the resource.”⁸¹ In the event the City Commission makes a determination that a structure is threatened with demolition by neglect, the City Commission can require the owner to repair the structure.⁸² If an owner does not make the repairs, the City Commission is authorized to enter the property, make the repairs itself, and then charge the work costs to the owner.⁸³ This provision is unique within the statute in that it is a positive power by which the City Commission can compel an owner to repair her property; the commission’s remaining powers are mostly prohibitive. A watchful City Commission could compel, or even itself repair at the owner’s expense, a building with exterior features that are dilapidating.

V. Detroit’s Local Historic District Ordinance

In 1976, Detroit passed a local ordinance, the Detroit Historic District Ordinance (“the Detroit Ordinance”), creating the Detroit Historic District Commission (“the Detroit Commission”).⁸⁴ The Detroit Ordinance incorporates powers authorized by the LHDA. The Detroit Commission is composed of seven members, appointed by the mayor and subject to the approval by the City Council.⁸⁵ Two of the seven Detroit Commission members must be selected from a list provided by local historic preservation organizations; and one must come from a list provided by the local chapter of the American Institute of Architects.⁸⁶ Although the City Council evaluates the mayor’s appointees,⁸⁷ the Detroit Commission is often viewed as subject to mayoral influence. Detroit Commission members can only be removed for cause.⁸⁸ The City Council is authorized to create historic districts within the city,⁸⁹ and can designate a single structure as an “historic district.”⁹⁰ Detroit’s local ordinance retains the full power afforded by the LHDA to prevent any alteration to the “exterior appearance” of an historic structure. The Detroit Commission approves work permits on structures within historic

⁷⁹ DETROIT, MICH., CODE § 25-2-10(b).

⁸⁰ Id. at § 399.205(11).

⁸¹ Id. at § 399.201(a)(f).

⁸² Id. at § 399.205(11)(a).

⁸³ Id. at § 399.205(11)(b).

⁸⁴ DETROIT, MICH., ORDINANCES § 161-H (1976); DETROIT, MICH., CODE § 25-2-50 (2010).

⁸⁵ DETROIT, MICH., CODE § 25-2-51.

⁸⁶ Id.

⁸⁷ Id.

⁸⁸ DETROIT, MICH., CODE § 25-2-53.

⁸⁹ DETROIT, MICH., CODE § 25-2-4. The Historic Designation Advisory Board generally proposes the creation of an historic district to the Commission. The Commission recommends district creation to the City Council. Id. However, any person in the city may request the City Council to designate an historic district.

⁹⁰ DETROIT, MICH., CODE § 25-2-4(a)(1), § 25-2-2 (“Historic District”).

districts,⁹¹ including owner applications to demolish their structures.⁹² The Detroit Commission's oversight extends to both private and publicly-owned buildings.⁹³

Regrettably, the robust historic district ordinance defenses and City Commission guardianship of historic structures did not protect Tiger Stadium. Although Tiger Stadium has been recognized by the national and state registers as an historic site, the stadium was not individually identified as a local historic resource,⁹⁴ nor was it included within the boundaries of an historic district. The stadium was located adjacent to the Corktown Historic District but not within it, despite being wedded to the neighborhood's history. Accordingly, the strong protections for historic structures available under Michigan historic district law were not available to protect Tiger Stadium.

It is unclear whether local historic district designation for Tiger Stadium would have saved the stadium from its fate, however, it is an avenue that should have been pursued. The battle over Tiger Stadium was ongoing for twenty years and citizens should have petitioned City Council to adopt the stadium as a single structure "Historic District." In 2007, the Detroit City Council voted to demolish the stadium, but that is not to say that during the past twenty years no previous City Council would have passed a bill establishing the stadium as an historic district. Such a designation would have forced an additional preventative measure making demolition more difficult in that it would have required that any demolition plan be evaluated for approval by the Detroit Commission. Although the Detroit Commission is under sway of the mayor's office, commissioners are not easily removed, and with three of the seven coming from local preservation-oriented organizations, it is possible that independent-minded commissioners could have obstructed the stadium's demolition. There is precedence for such independence.⁹⁵ If not actively blocking demolition, the Detroit Commission's authority could have persuaded the City Council to be more agreeable to preservation and renovation for alternative use.

The first lesson we can learn from the demise of Detroit's Tiger Stadium is that placing an historic stadium within a state historic district can add an additional obstacle in the event a team owner or city leaders are bent on demolishing the relic.

VI. Roots of Historic Preservation Law

The concept that preservation and remediation of a city's deteriorating historic structures can revive a city in decline is not new to Detroit. As they say, history is instructive. The most successful stadium preservation ever is also the most historic – the Roman Empire's Colosseum. Unsurprisingly, the effort to preserve the Colosseum involved some of the world's earliest historic preservation laws.

⁹¹ Id. at 25-2-18.

⁹² Id. at § 25-2-2, § 25-2-4.

⁹³ Id. at § 25-2-2 ("Historic District").

⁹⁴ Historic Dis. Com of Detroit: Nevin Field, Brigg Stadium, Tiger Stadium, http://www.detroitmi.gov/historic/districts/tiger_stadium.pdf (last visited June 19, 2010).

⁹⁵ See *infra* at p. 16.

The powerful, centuries-old Roman Empire was so grand that its decline and collapse took centuries. In its ascent, the empire generated a wealth of statutes, monuments, buildings, and in 80 A.D., a massive Colosseum. The Colosseum is the famous site of gladiator battles and beast vs. human combat, and it drew the empire's most powerful leaders to watch the empire's most capable athletes. Today, two millennia later, the Colosseum remains a world historical treasure of great importance to the country of Italy, and a centerpiece among ancient monuments in the city of Rome.

Rome's emperors recognized the power that ancient structures carry through the ages.⁹⁶ In 458 A.D., centuries after the Colosseum began hosting Rome's version of "sports," the Emperor Majorian wrote one of the world's first historic preservation laws to repair and protect it and other Roman monuments from threats of decay and looting. By that time, the Roman Empire was under pressure from enemies and Roman leaders knew that protecting ancient Roman monuments had a symbolic value.⁹⁷ Much like modern historic preservation statutes, Majorian's law banned demolition of ancient structures, but as a practical matter established a governmental review process for exceptions in the public interest.⁹⁸ Majorian proclaimed that:

We, the rulers of the state, with a view to restoring the beauty of our venerable city, desire to put an end to the abuses which have already long excited our indignation. It is well known that in several instances public buildings have been destroyed with the criminal permission of the authorities, on the pretext that the materials were necessary for public works. Splendid ancient buildings have been overthrown, and the great has been everywhere destroyed in order to erect the little. . . . We accordingly command, by universal law, that all buildings which were of old erected for the public use or ornament, be they temples

⁹⁶ "Our care is for the whole Republic, "in which, by the favour of God, we are striving to bring back all things to their former state;" but especially for the City of Rome. We hear that great depredations are being committed on public property there...'(4) Temples and other public buildings, which at the request of many we have repaired, are handed over without a thought to spoliation and ruin." THOMAS HODGKIN, *THE LETTERS OF CASSIODORUS, BEING A CONDENSED TRANSLATION OF THE VARIAE EPISTOLAE OF MAGNUS AURELIUS CASSIODORUS SENATOR* 213-14 (1886). "Let nothing lie useless which may redound to the beauty of the City. Let your Illustrious Magnificence therefore cause the blocks of marble which are everywhere lying about in ruins to be wrought up into the walls by the hands of the workmen whom I send herewith." *Id.* at 174.

⁹⁷ "You have called our attention to the ruinous state of your walls, and ask leave to use for its repair the stones of the amphitheatre, which have fallen down from age and are now of no ornament to your town, in fact only show disgraceful ruins. You have not only our permission to do this, but our hearty approval. Let the stones, which can be of no use while they lie there, rise again into the fabric of the walls; and your improved defence will be our boast and confidence." *Id.* at 224-25.

⁹⁸ To achieve these ends, Majorian proscribed that "if any building must be torn down for necessary considerations, for the public construction of another work or on account of the desperate need of repair, We direct that such claim shall be alleged with the suitable documents before the . . . Senate." JUKKA JOKILEHTO, *A HISTORY OF ARCHITECTURAL CONSERVATION* 49 (1986).

or other monuments, shall henceforth be neither destroyed nor touched by anyone whomsoever.⁹⁹

Majorian's edict lamented that "splendid cities and towns . . . fall into ruins through age," and proscribed that "all buildings that have been founded by the ancients as temples and as other monuments and that were constructed for the public use or pleasure shall not be destroyed by any person."¹⁰⁰ Public servants that approved or facilitated the destruction of ancient public structures faced punishment of fines or even having their hands chopped off. It seems that in ancient times, as in modern Detroit, compliant public servants facilitated the destruction of public monuments.

Decades later in 508 A.D., Emperor Theodoric of the Goths, King of Italy, moved to preserve the Colosseum and the empire's other historically important monuments.¹⁰¹ Emperor Theodoric ruled that dilapidating structures would not be looted for bricks to build new structures. Instead, new bricks would be created and used.¹⁰² At the same time, he appointed a "curator statuarum," "architectus publicorum," and other guardians of important public structures, including the Colosseum.¹⁰³ In a beautiful edict that sought to harmonize Rome's past structures with its present constructions, Emperor Theodoric proclaimed:

- Much do we delight in seeing the greatness of our Kingdom imaged forth in the splendour of our palace.
- Thus do the ambassadors of foreign nations admire our power, for at first sight one naturally believes that as is the house so is the inhabitant.
- The Cyclopes invented the art of working in metal, which then passed over from Sicily to Italy.
- Take then for this Indiction the care of our palace, thus receiving the power of transmitting your fame to a remote posterity which shall admire your workmanship. See that your new work harmonises well with the old. Study Euclid—get his diagrams well into your mind; study Archimedes and Metrobius....
- When we are thinking of rebuilding a city, or of founding a fort or a general's quarters, we shall rely upon you to express our thoughts on paper [in an architect's design]. The builder of walls, the carver of marbles, the caster of brass, the vaulter of arches, the plasterer, the worker in mosaic, all come to you for orders, and you are expected

⁹⁹ ANTHONY M. TUNG, PRESERVING THE WORLD'S GREAT CITIES (2001).

¹⁰⁰ JOKILEHTO, *supra* note 98, at 48.

¹⁰¹ JOKILEHTO, *supra* note 98, at 6.

¹⁰² BALTHASAR JENICHBN, THE DESTRUCTION OF ANCIENT ROME: A SKETCH OF THE HISTORY OF THE MONUMENTS 78 (1899) ("Thus thoroughgoing repairs were made, not at the expense of other edifices, as in the case of the predecessors of Theodoric, but with brick . . .")

¹⁰³ JOKILEHTO, *supra* note 98, at 6.

to have a wise answer for each. But, then, if you direct them rightly, while theirs is the work yours is all the glory....

- As a mark of your high dignity you bear a golden wand, and amidst the numerous throng of servants walk first before the royal footsteps [i.e. last in the procession and immediately before the King], that even by your nearness to our person it may be seen that you are the man to whom we have entrusted the care of our palaces.¹⁰⁴

Emperor Theodoric's edict was right on the money, except for the part about the Cyclops. Preservation can certainly lead to societal rejuvenation.¹⁰⁵ Centuries later in Detroit, battles won by preservationists have led to neighborhood rejuvenation (see *infra* discussion of Detroit's Orchestra Hall). Where preservationists failed to curtail demolition by neglect, neighborhoods have not been rejuvenated through new development. Though praised for having given "new life to the empire" and for rejuvenating Roman culture, Theodoric could not stop Rome's decline.¹⁰⁶ But his efforts to beautify the city through preservation ensured a legacy that makes Rome one of the world's most magnificent cities. Looking back, it is hard to imagine that one Roman emperor planned to demolish the Colosseum to make way for a road.¹⁰⁷ "Progress" is in the eye of the beholder.

VII. Demolition by Neglect and the Decline of Detroit

After decades of intense growth and wealth fueled by the rise of the automobile industry, Detroit has in many ways been in decline for about fifty years. It is unsurprising, then, that the cry of "demolition by neglect" is typical of Detroit's historic preservationists. When inner-city Detroit was largely abandoned after the race riots of 1967, it left tens of thousands of abandoned buildings, including many magnificent structures built in Detroit's early-century heyday.¹⁰⁸ Auto plant closures exacerbated the exodus and economic collapse. Detroit's population in 1900 was just under 500,000; it peaked in 1950 at about 2,000,000, and in 2000 was back down to

¹⁰⁴ HODGKIN, *supra* note 96, at 323-24.

¹⁰⁵ "[O]ther municipalities were ordered not to mourn for past glory, but to revive ancient monuments to new splendor, not to let fallen columns and useless fragments make cities look ugly, but to clean them and give them new use in his palaces." JOKILEHTO, *supra* note 98, at 25.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 47.

¹⁰⁸ See generally WILLIAM J. V. NEILL, *URBAN PLANNING AND CULTURAL IDENTITY* 113-14 (Routledge 2004). The wealth that built such structures stemmed in part from Henry Ford's car manufacturing strategy, called "Fordism": well-paid workers would specialize at one task on fast assembly lines. The Henry Ford "five-dollar-a-day" wage was shockingly high, and the dilapidating factories associated with that 1914 promise (Piquette, Highland Park and River Rouge) are now the focus of preservation battles to save them from the wrecking ball. Sam Haymart, Birthplace of the Model T Named as a National Historic Landmark, *THE MUSTANG NEWS*, Feb. 22, 2006, http://themustangnews.com/fomoco_06/st0206_pqnhl.htm;

David Andrews; River Rouge: *Alter of Industry: River Rouge, Henry Ford's Factory of the Future*, COMMON GROUND (National Park Service, Washington, D.C.), Spring 2004, at 20-32.

950,000.¹⁰⁹ The city is now a huge time capsule. Although the city's expansive boundaries could fit all of Manhattan, San Francisco and Boston,¹¹⁰ not a single new building construction permit was issued in the city in 1988.¹¹¹ Unfortunately, although many of the abandoned structures are beautiful and well-built, others are an increasing eyesore as they dilapidate. Detroit is a spotted landscape of the abandoned: lots, homes, office buildings, schools, etc.¹¹² It is a city where "pre-Depression skyscrapers fell victim to civic indifference and urban scavengers."¹¹³ Many abandoned structures have been torn down, though clearing title is often a legal hindrance.¹¹⁴ As of 2004, there were 40,000 vacant homes and lots in Detroit, and cloudy land title issues affect roughly half of these.¹¹⁵

And that was before the recent economic crisis. In December 2008, the median price of a home sold in Detroit dropped to a mere \$7500.¹¹⁶ Whether Detroit homeowners have the financial resources to address dilapidating homes is doubtful, as the median household income in Detroit has dropped twenty-four percent since 2000.¹¹⁷ While the cost of upkeep is onerous, so is the cost of neglect. Studies have shown that abandoned properties lead to increased crime, increased fire hazard, reduced home values for nearby homeowners, and reduced tax revenues for the city.¹¹⁸

Detroit's local ordinance defines "demolition by neglect" slightly differently than the state enabling law. Under Detroit's ordinance "demolition by neglect" is:

[N]eglect in the maintenance, repair or security of a site, building or structure, resulting in . . . :

¹⁰⁹ NEILL, *supra* note 108, at 113-14. For reference, Rome's population experienced similar volatility – from one million in the fourth century, down to ten thousand in the fourteenth, then back up to nearly four million by the twenty-first century. *Id.*

¹¹⁰ Tim Jones, *Where a Home Can Cost \$7,500: Detroit is on the Edge of Bankruptcy, and Still 15 People Want to be Mayor*, CHI. TRIB., Jan. 29, 2009, at C4.

¹¹¹ Keith Schneider, *Oh My Gosh, That's So Cool*, MICH. LAND USE INSTITUTE, May 29, 2003, available at <http://www.mlui.org/growthmanagement/fullarticle.asp?fileid=16491>.

¹¹² Symposium, *Gentrification in Detroit: Renewal or Ruin?*, 4 J. L. SOC'Y 45, 56 (Fall 2002) (description by George Galster, Professor of Urban Affairs, Wayne State University); NEILL, *supra* note 108, at 114. The abandoned, overgrown structures make for amazing portraits. See James Griffioen, *School's out Forever*, VICE MAGAZINE, FEB., 2009, <http://www.viceland.com/int/v16n2/htdocs/schools-out-forever-625.php?country=>; see also *Forgotten Detroit*, <http://www.forgottendetroit.com> (last visited May 1 2010); Kevin Bauman, *100 Abandoned Houses*, <http://www.100abandonedhouses.com> (last visited May. 2, 2010).

¹¹³ Geoffrey Gagnon, *City of Blight*, LEGAL AFFAIRS, July/Aug. 2005, at 8-9.

¹¹⁴ Schneider, *supra* note 111.

¹¹⁵ *Id.* For comparison, three years after Hurricane Katrina, there were over 71,000 unoccupied residences in New Orleans. Gordon Russell, *Vacant, Ruined Properties Put N.O. at Top of Heap*, NEW ORLEANS TIMES-PICAYUNE, Aug. 21, 2008, available at http://www.nola.com/news/index.ssf/2008/08/vacant_ruined_properties_put_n.html. As of August 2008, thirty-one percent of New Orleans residences were vacant or unoccupied; in Detroit (the second highest rate), the pre-economic crisis figure was eighteen percent. *Id.*

¹¹⁶ Jones, *supra* note 110, at C4.

¹¹⁷ *Id.*

¹¹⁸ Mary Elizabeth Evans, *The Prevention, Management, and Re-Use of Jefferson County's Tax Delinquent Property*, at 7-8 (Apr. 5, 2005), <http://blog.al.com/bn/2007/08/evans.pdf>; see also *Pereplechikoff v. City of Los Angeles*, 345 P.2d 261 (Dist. Ct. App. 1959); *York v. Hargadine*, 171 N.W. 772, 775 (1919).

- I. The deterioration of exterior walls or other vertical supports;
- II. The deterioration of roofs or other horizontal members;
- III. The deterioration of exterior chimneys;
- IV. The deterioration of exterior plaster, mortar, or stucco;
- V. The ineffective weatherproofing of exterior walls, roofs and foundations, including broken windows and doors; or
- VI. The serious deterioration of any documented exterior architectural feature or significant landscape feature which in the judgment of the commission produces a detrimental effect upon the character of the district.¹¹⁹

Demolition by neglect usually comes into play when a structure's owner or custodian wishes to demolish the structure, but cannot obtain commission approval to do so. Instead, the owner allows the structure to deteriorate until it becomes such an eyesore or public safety risk that demolition becomes necessary, or at least more difficult for the Commission to oppose. Under the Detroit ordinance, "If it is determined by the [Commission] that a structure in an historic district is being demolished by neglect, the commission, on its own initiative, and to insure that the structure shall be preserved and protected . . ." may (1) require "correction of defects or necessary repairs," or (2) "cause the necessary corrections or repairs to be made and the cost, if not paid promptly by the property owner, to be reported to the board of assessors for levy as a special assessment against the property."¹²⁰

The Commission's power to repair a dilapidating structure and bill the owner is a powerful tool at the Commission's disposal. There are many reasons to retain such a provision, most importantly, to counter the incentive for a property-owner to deliberately let her property fall apart until it becomes a "hazard to the safety of the public."¹²¹ Where an historic district commission can step in and affirmatively require repair, a landowner may prefer not let a structure fall into disrepair in the first place. In Detroit, the Commission's demolition by neglect power is actively exercised.¹²² The Commission has even twice taken the rare measure to repair a structure and bill the owner.¹²³ However, in both instances the owner sold the property and the new owner agreed to make needed repairs.¹²⁴ The mere threat of fine that attaches to the property or remediation by the city is enough to compel most owners to repair their buildings.¹²⁵

An aggressive commission wielding its forced-repair power could wreak havoc in a district. Possible consequences of an overactive commission include driving down property values in the short-term and forcing poor homeowners to make costly repairs, potentially causing poor homeowners to sell and move out of the district. Such an action might also improve

¹¹⁹ DETROIT, MICH., CODE § 25-2-2(g) ("Demolition by neglect").

¹²⁰ DETROIT, MICH., CODE § 25-2-2(a) ("Enforcement").

¹²¹ MICH. COMP. LAWS § 399.205, § 5(6)(a).

¹²² Telephone Interview with Susan McBride, Principal Planner, Detroit Historic District Comm'n (Sept. 18, 2009) (describing a list of 123 homes designated under demolition by neglect rules).

¹²³ Id.

¹²⁴ Id.

¹²⁵ Id.

neighborhoods by reducing blight and possibly increasing property values in the long-term. Evaluating the trade-offs is not easy.

There is another consequence to not enforcing a demolition by neglect provision. In Detroit's case, deterioration can be such an eyesore and public safety hazard that the city becomes willing to step in and pay for a structure's demolition. This creates another perverse incentive for landowners to allow their building to deteriorate. It is often the wealthiest citizens that can coerce a city to use public funds to demolish their property. A case in point is the Madison-Lenox Hotel, built in 1900.¹²⁶ Abandoned and allowed to languish for nearly two decades in downtown Detroit, this historic hotel was demolished using city funds despite being owned by the wealthy Ilitch family. Mike Ilitch also owns the Detroit Tigers, and as caretaker for Tiger Stadium, he has similarly allowed it to dilapidate at the same time he has pushed for its demolition. The Madison-Lenox Hotel was destroyed despite being named to the National Trust's "Most Endangered Historic Places in America" list in 2004.¹²⁷ The empty lot now sits without any interested developers. Interestingly, Detroit's Historic District Commission had initially blocked the efforts by Ilitch and Mayor Kwame Kilpatrick to demolish the building,¹²⁸ which illustrates the power of the Commission and its ability to stand apart from the person appointing its members. Another example of "successful" demolition by neglect is the Statler-Hilton Hotel. The Statler-Hilton Hotel (1914) was one of Detroit's nicest hotels until it was also demolished using public funds.¹²⁹ This lot now also sits empty with no plan for development.¹³⁰

Demolition by neglect provisions are not unique to Michigan historic preservation law.¹³¹ The constitutionality of ordinances giving a positive duty to repair dilapidation was established in *Maher v. City of New Orleans*.¹³² Many cities employ such a code. A Washington D.C. code, repealed, prohibited demolition by neglect and allowed the mayor to order repair or may make the repair himself, while billing the owner for the repair cost.¹³³ The New Orleans demolition by neglect ordinance also enables the city to repair a structure and bill the owner.¹³⁴ Charlottesville, Virginia, and Vicksburg, Mississippi "work with owners to try to sell the properties as a principle strategy" to remedy demolition by neglect.¹³⁵ In Islington (London), England, in the context of a housing shortage, and where abandoned properties were becoming "ghastly eyesores" and havens for crime, a 2006 ordinance compels abandoned property owners to repair

¹²⁶ Preservation Wayne: Legal, <http://www.preservationwayne.org/legal.php> (last visited May 1, 2010).

¹²⁷ John Gallagher, National Group Defends Madison, DET. FREE PRESS, May 25, 2004, at C4.

¹²⁸ John Gallagher, National Group Defends Madison, DET. FREE PRESS, May 25, 2004.

¹²⁹ Preservation Wayne, *supra* note 126; David Josar, Another Strike for Tiger Stadium?, DET. NEWS, Mar. 19, 2007, at 1B.

¹³⁰ Preservation Wayne, *supra* note 126.

¹³¹ JULIA H. MILLER, A LAYPERSON'S GUIDE TO HISTORIC PRESERVATION LAW: A SURVEY OF FEDERAL, STATE, AND LOCAL LAWS GOVERNING HISTORIC RESOURCE PROTECTION 13-15 (National Trust for Historic Pres. 2005) (1997); Demolition by Neglect, SM056 ALI-ABA 527, 531-36 (2007). Other cities employing demolition by neglect codes include Austin, San Francisco, New York City, Seattle and Portland. Demolition by Neglect, *supra* note 119.

¹³² 516 F.2d 1051, 1059 (5th Cir. 1975).

¹³³ WASH. D.C. CODE § 6-1104.02 (repealed).

¹³⁴ NEW ORLEANS, LA., CODE Art II, § 84-108.

¹³⁵ Sakina B. Thompson, *Saving the District's Historic Properties From Demolition by Neglect*, GEO. L. HISTORIC PRES. PAPERS SERIES (2004), available at http://scholarship.law.georgetown.edu/hpps_papers/

14/.

and lease residential units.¹³⁶ In Islington, “a dedicated officer, working across all six boroughs, has the power to force the landlord into a compulsory purchase or compulsory leasing scheme.” Whether because of a lack of funds to repair a dilapidating structure, or by “benign indifference or a deliberate strategy to circumvent historic preservation restrictions against demolition,”¹³⁷ demolition by neglect can drag a neighborhood and city down. The greater good may suffer inversely and disproportionately compared to the individual owner.¹³⁸

A review of some of the more prominent cases of demolition by neglect in Detroit highlights the effectiveness of the tactic employed by owners who hope to demolish their historic structures. In addition to the Madison-Lenox and Statler-Hilton hotels, Detroit’s Hudson’s Department Store (1891) was one of the country’s largest department stores. Preservationists pushed plans to renovate the structure into lofts and restaurants.¹³⁹ It was allowed to dilapidate for fourteen years in the middle of downtown Detroit.¹⁴⁰ Finally, it was demolished, and is now also the site of a parking lot. Michigan Central Depot (1913) sits dilapidating and vacant. The Depot is fenced off, its future uncertain. It received an “11th hour save” from Detroit’s City Council, but such victories are often temporary.¹⁴¹ Unlike the razed buildings mentioned above, its demolition by neglect is still in progress, and it sits today easily accessed and at the mercy of looters and criminals.

Detroit preservationists have also cheered some notable victories in cases of demolition by neglect. The Penobscot Building (1928) was a dilapidating, rundown office building before a \$10 million renovation turned it into high tech office suites. Lit every night in art deco style, it is a jewel of downtown Detroit.¹⁴² The Book-Cadillac Hotel was once the world’s tallest hotel.¹⁴³ In the years after it was abandoned in 1980 it dilapidated severely. But a few years ago it was saved, renovated, and successfully converted into condos. Orchestra Hall (1919) was saved from the wrecking ball in the eleventh hour by a bassoonist-turned-historic preservation activist. Orchestra Hall had been earmarked for replacement with a McDonald’s.¹⁴⁴ Instead, after renovations the structure is now a theatre, orchestra performance space, and restaurant.¹⁴⁵ The Hall is a beautiful cornerstone of a successful neighborhood regeneration.¹⁴⁶

Tiger Stadium was left to dilapidate in a manner similar to the other magnificent Detroit properties. Over the past few years, a walk through the ballpark revealed peeling paint and trees growing up through the concrete. There were “huge pools of standing water, and the wood over sections of the ballpark [was] rotting.”¹⁴⁷ Looters tore the stadium up, and eventually the city

¹³⁶ Press Release, Borough of Islington, London, England, Use it or Lose it - Council has Powers to Take Away Eyesore Properties (May 24, 2006), available at <http://www.islington.gov.uk/Council/CouncilNews/PressOffice/2006/05/2499.asp>.

¹³⁷ Thompson, *supra* note 135.

¹³⁸ Evans, *supra* note 118.

¹³⁹ Maureen McDonald, Preservationists Winners & Losers, DET. NEWS, Apr. 4, 2001 (on file with author).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Gagnon, *supra* note .

¹⁴⁴ CAGAN & DEMAUSE, *supra* note 20, at 98.

¹⁴⁵ McDonald, *supra* note 139.

¹⁴⁶ *Id.*

¹⁴⁷ Josar, *supra* note 129.

auctioned off the stadium's jewels.¹⁴⁸ The city could have invited local children to play in the great baseball cathedral. It would have been a rare bright spot for an inner-city child growing up in a broken city. Instead the stadium was left to fall apart, then demolished. Why was this allowed to happen, and who allowed it?

The Detroit Tigers owned the stadium until 1977, when it was sold to the city for one dollar in exchange for publicly-financed renovations.¹⁴⁹ In the deal, the stadium was leased back to the Tigers for thirty years.¹⁵⁰ The stadium and the property became city-owned; the team is, of course, privately-owned. City-owned property is managed by the Detroit City Council.¹⁵¹ The struggle among competing parties to influence the fate of Tiger Stadium was a struggle in two phases. The first phase involved ballpark preservationists attempting to block the team's move into a new stadium in the 1990s as the team's lease expiration drew near. It was thought that such a move would seal the fate of the historic stadium.¹⁵² The second phase began after the preservationists lost the fight to keep the Tigers in their historic den. The second phase attempted to prevent the demolition of abandoned Tiger Stadium.

VIII. Demolition by Public Finance of Private Stadiums: The Fight to Prevent New Stadium Construction in Detroit

The battle to save historic Tiger Stadium began when local baseball fans first got wind of the interests of the city and Tigers owner to move the team.¹⁵³ The Tiger Stadium Fan Club ("Fan Club") formed in 1987 when Tigers owner Tom Monaghan grumbled about moving the team. Monaghan had bought the Tigers after earning a fortune as founder of Domino's Pizza.¹⁵⁴

¹⁴⁸ John Gallagher, Tiger Stadium Auction a \$192,729 Home Run, DET. FREE PRESS, Oct. 14, 2007, at A1; Press Release, State Historical Marker Apparently Stolen from Tiger Stadium, Mich. Dept. of History, Arts, and Libraries (May 31, 2006), available at http://www.mi.gov/som/0,1607,7-192-29938_34758-144396--,00.html.

¹⁴⁹ PATRICK JOSEPH HARRIGAN, THE DETROIT TIGERS: CLUB AND COMMUNITY 1945-1995, at 258 (1997).

¹⁵⁰ Id.

¹⁵¹ John Gallagher, Time Running Out for Tiger Stadium, DET. FREE PRESS, Mar. 8, 2007, at E1.

¹⁵² HARRIGAN, supra note 149, at 225, 264-76, 311.

¹⁵³ This was not the first time an impending departure caused fan outcry. In a scene that would foreshadow events nearly three decades later, in 1972 the Tigers owner announced his intention to build a new stadium, causing uproar among fans. As a result, voters rejected bonds at the polls that would have funded the construction of a new stadium. The county government "actually got as far as issuing \$126 million in bonds for the dome before a pair of local activists sued the city and won, arguing successfully that the bond issue had been fraudulently presented – the county had led voters to believe the bonds were backed entirely by stadium revenue, when in fact county taxpayers would be liable for paying any shortfall. The bonds were recalled, and the dome died on the drawing board." CAGAN & DEMAUSE, supra note 20, at 85. The Detroit Lions had better luck in 1975, managing to persuade the public to finance a new domed NFL football stadium in the suburbs – the Pontiac Silverdome.

¹⁵⁴ Monaghan is the founder of Ave Maria Law School. Mariah Blake, How an Eccentric Right-Wing Pizza Billionaire's Attempt to Build Catholic Law School Ended in Disaster, WASH. MONTHLY, Sept. 8, 2009, available at http://www.alternet.org/belief/142499/how_an_eccentric_right-wing_pizza_billionaire%27s_attempt_to_build_catholic_law_school_ended_in_disaster. He is known recently for his attempt to build the next "New Harmony" utopia town of Ave Maria, Florida, a move that is being challenged in court by the ACLU (no sale of contraceptives or pornography is permitted in the town, which is owned entirely by Monaghan) and Defenders of Wildlife (city's encroachment on the habitat of the endangered Florida Panther).

The Fan Club knew that if the team moved, the stadium would be in jeopardy.¹⁵⁵ The team and Mayor Coleman Young allegedly misrepresented an engineering study as portraying the stadium as structurally unsound.¹⁵⁶ Threats to move the team away from downtown Detroit followed.¹⁵⁷ Accompanying him in the push for a new stadium, Monaghan gained supporters in the new Mayor (former Michigan Supreme Court Justice Dennis Archer¹⁵⁸) and the Governor (John Engler). The city pushed a plan for a city-financed new stadium downtown, arguing that it would create jobs, improve neighborhoods, and be economically profitable in the long-run.¹⁵⁹ It was the early 1990s. The Tiger Stadium Fan Club, a small group of fans-turned-preservationists without any experience, got ready to fight Goliath.

It can be said of modern stadium building that if you are rich, you can build your own stadium; but if you are really rich, you can get the public to build you one. Just ask Paul Allen, co-founder of Microsoft.¹⁶⁰ Allen bankrolled the publicity campaign and funded a public election that authorized the public financing of Qwest Field in Seattle, an NFL stadium.¹⁶¹ For team owners, getting the public to pay for your team's stadium is a sweet deal.¹⁶² Teams usually get the lion's share of the profit from the investment while only having to chip in a fraction of the capital investment.¹⁶³ Taxpayers pay for the stadium and pointlessly take the financial risk.¹⁶⁴ When the economy goes sour, as in recent times, the true winners and losers become

¹⁵⁵ CAGAN & DEMAUSE, *supra* note 20, at 83-102.

¹⁵⁶ *Id.* at 65, 88; Amy Wilson, *Throwing the Big Boys a Curve: Tiger Stadium Fan Club Shows Unexpected Clout*, DET. FREE PRESS, Apr. 3, 1994, at J1.

¹⁵⁷ Wilson, *supra* note 156, at J1.

¹⁵⁸ In 2003, Archer became the first African-American president of the American Bar Association, and in 2004 was appointed legal guardian of civil rights icon Rosa Parks. Interview by Tavis Smiley with Dennis Archer (Nov. 2, 2005), available at http://www.pbs.org/kcet/tavissmiley/archive/200511/20051102_archer.html.

¹⁵⁹ STRANDED AT THE CORNER, *supra* note 29; But see Lynn Waldsmith, *Do Stadiums Enrich Cities?*, DET. NEWS, July 7, 2002 (noting that, "Taxpayers are persuaded to foot a substantial portion of the bill with promises of increased tax revenues, local economic development, and job creation. Study after study, however, shows that despite their popular appeal, the value of new stadiums to the communities they serve is dubious.").

¹⁶⁰ In 2009, Paul Allen was ranked the nation's seventeenth richest person by Forbes magazine, with a net worth of \$11.5 billion. *The 400 Richest Americans*, FORBES, available at http://www.forbes.com/lists/2009/54/rich-list-09_Paul-Allen_1217.html. Allen, along with platoon of eighteen lobbyists, coerced the Seattle electorate to approve an arrangement whereby he would pay only \$130 million of the \$430 million cost of the total new stadium, yet keep the bulk of the revenue. Taxpayers funded the remaining \$300 million. See Associated Press, *Seattle to Get Expansion MLS Franchise for 2009*, ESPN.COM (Nov. 9, 2007) <http://socccernet.espn.go.com/news/story?id=480678&cc=5901>.

¹⁶¹ CAGAN & DEMAUSE, *supra* note 20, at 115, 165.

¹⁶² See Brent Bordson, *Case Note and Comment, Public Sports Stadium Funding: Communities Being Held Hostage by Professional Sports Team Owners*, 21 *HAMLIN L. REV.* 505, 507 (Spring 1998).

¹⁶³ KEVIN J. DELANEY & RICK ECKSTEIN, *PUBLIC DOLLARS, PRIVATE STADIUMS: THE BATTLE OVER BUILDING SPORTS STADIUMS* (Rutgers University Press 2005). On average, the public generally pays approximately eighty percent of the cost for a new MLB baseball facility, and seventy percent of the cost for a new NFL football facility. Martin J. Greenberg, *Sports Facility Financing and Development Trends in the United States*, 15 *MARQ. SPORTS L. J.* 93, 123 (2004).

¹⁶⁴ Bordson, *supra* note 162, at 507.

clear.¹⁶⁵ It is a counter-intuitive result whereby stadium developers face strong public opposition, yet manage to push their plans through on the backs of local taxpayers. It is often accomplished by well-funded, savvy media campaigns.¹⁶⁶ Such a marketing campaign may be effective, but its underlying premise is highly suspect.¹⁶⁷ Indeed, stadium deals often include “revenue bombs, with financial traps like balloon payments on debt in later years and sweeteners [such as initial property tax rebates] to win public support.”¹⁶⁸ In the Detroit suburb of Pontiac, the massive 80,000-seat Pontiac Silverdome was built with public funds in 1975, but the promised economic boon to Pontiac never materialized, and the Silverdome now sits abandoned.¹⁶⁹ Eventually, the \$1.5 million annual upkeep costs became a burden for taxpayers, not a boon.¹⁷⁰ In November 2009 a Canadian company snatched up the Silverdome and 127 surrounding acres, which had hosted both the NFL Super Bowl and soccer’s World Cup, at auction for a mere \$583,000, the rough equivalent of a prime parking space in New York City.¹⁷¹ In 1975 the Silverdome cost \$55.7 million to build (about \$220 million in 2009 dollars), but the November 2009 sale earned the city “pennies on the dollar.”¹⁷² The Tigers’ owner, Mike Ilitch appears poised to perform the same trick with another of his sports teams, NHL’s Detroit Red Wings.¹⁷³ Although Ilitch “enjoy[s] what is considered the best lease arrangement of any NHL team at Joe Louis [Arena]. Olympia Entertainment [owned by Ilitch] leases the hockey arena, Cobo Arena and an adjacent parking structure for \$475,000 a year, while the city tosses in free police protection, landscaping and snow removal.”¹⁷⁴ The lease is a great deal for the team

¹⁶⁵ Ken Belson, *As Revenue Plunges, Stadium Boom Deepens Municipal Woes*, N.Y. TIMES, Dec. 25, 2009, available at <http://www.nytimes.com/2009/12/25/sports/25stadium.html> (“From New Jersey to Ohio to Arizona, the stadiums were sold as a key to redevelopment and as the only way to retain sports franchises. But the deals that were used to persuade taxpayers to finance their construction have in many cases backfired, the result of overly optimistic revenue assumptions and the recession.”).

¹⁶⁶ Bordson, *supra* note 162, at 507.

¹⁶⁷ Waldsmith, *supra* note 159 (noting that, “Taxpayers are persuaded to foot a substantial portion of the bill with promises of increased tax revenues, local economic development, and job creation. Study after study, however, shows that despite their popular appeal, the value of new stadiums to the communities they serve is dubious.”); see also Belson, *supra* note 165 (describing stadium deal marketing pitches that promise “transformation” that “spur development,” after which “the architects of the deals are long gone by the time the bill comes due.” (quoting Mark Rosentraub, author of *MAJOR LEAGUE LOSERS: THE REAL COST OF SPORTS AND WHO’S PAYING FOR IT* (BASIC BOOKS 1999))).

¹⁶⁸ Belson, *supra* note 165 (quoting Mark Rosentraub, author of *MAJOR LEAGUE LOSERS: THE REAL COST OF SPORTS AND WHO’S PAYING FOR IT* (BASIC BOOKS 1999)).

¹⁶⁹ Editorial, *Stadiums Don't Equal Growth*, DET. NEWS, Jan. 7, 2002 (on file with author) (“The dome does have a firm place in Michigan history. It unforgettably illustrated the folly of sinking substantial public funds into a sports facility in the hope of reviving a struggling city. The Silverdome never came close to reaching the revenue figures its promoters from the city of Pontiac had boosted.”); see also Allen R. Sanderson, *In Defense of New Sports Stadiums, Ballparks and Arenas*, 10 MARQ. SPORTS. L.J. 173, 173-75 (Spring 2000).

¹⁷⁰ Mike Martindale, *Silverdome Sale Price Disappoints*, DET. NEWS, Nov. 17, 2009.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ See David Josar, *Future of The Joe Uncertain as Red Wings Consider Move*, DET. NEWS, June 24, 2009, at 3A.

¹⁷⁴ *Id.*

owner, to the detriment of the city.¹⁷⁵ But why rest on a great deal if you can get the taxpayers to build you an even bigger, more profitable arena?

In this public-pays arrangement there is an incentive to abandon older, classic stadiums. In *Public Dollars, Private Stadiums: The Battle Over Building Sports Stadiums*, authors Delaney and Eckstein argue that cities with local economic growth organizations, compliant media, and strong and business-oriented mayors tend to have the best chance at pushing through new stadium development.¹⁷⁶ On the other hand, the authors argue, cities with large urban populations tend to mobilize to oppose new stadiums more so than commuter cities.¹⁷⁷ Applying the Delaney and Eckstein factors to the situation in Detroit in the 1990s, every factor leaned in favor of new stadium development in Detroit. But Delaney and Eckstein have a piece of advice for new stadium critics: push for laws to prevent public financing, and mount legal challenges to city spending on stadiums. Indeed, this is just what the Tiger Stadium Fan Club did.

In 1992, the Fan Club attempted a prophylactic measure designed to prevent the Tigers' move by precluding city funds from being used toward any new stadium construction. The Fan Club collected enough signatures to get the measure on the ballot, and with grassroots promotion managed to get the bill passed by a two-to-one margin.¹⁷⁸ In the meantime, the group also managed to get the Stadium placed on the National Register of Historic Places to help make it politically harder to tear the stadium down.

Mike Ilitch, the founder of Detroit's other pizza empire, Little Caesar's Pizza, bought the Tigers from Tom Monaghan shortly after Monaghan's 1992 defeat at the ballot. Before founding Little Caesar's Pizza, Ilitch was a baseball player in the Detroit Tigers' farm system.¹⁷⁹ As he built his wealth, he has created a huge entertainment empire, owning the Tigers, the Detroit Red Wings of the National Hockey League, Olympia Arenas, Inc.,¹⁸⁰ the Fox Theatre, the Detroit Rockers professional soccer team, and a series of local theatres, restaurants and comedy clubs.¹⁸¹ From the beginning, the powerful Ilitch opposed any use of Tiger Stadium, and insiders say that he does not want any nearby ballpark as potential competition for the Tigers, who now play in their new ballpark close to the site of Tiger Stadium.¹⁸² Ilitch was more politically astute than Monaghan¹⁸³ and maneuvered to persuade Michigan's Governor Engler to help him build a new downtown stadium. While the Detroit local ordinance prevented city funds from being applied towards a new stadium, there was no similar provision preventing state funds from being used. However, even though Engler supported Ilitch's new stadium plan, the Michigan Legislature, not the governor, holds the power of the state purse. To get around this, Engler redirected funds received by his executive branch without seeking appropriation by the

¹⁷⁵ See also Belson, *supra* note 165 (describing the "lopsided" and "sweetheart leases" afforded to professional teams in Cincinnati).

¹⁷⁶ See generally DELANEY & ECKSTEIN, *supra* note 163 (Rutgers University Press 2005).

¹⁷⁷ *Id.*

¹⁷⁸ CAGAN & DEMAUSE, *supra* note 20, at 94.

¹⁷⁹ Bill McGraw, *Ilitch's Anguish*, DET. FREE PRESS, May 2, 1994, at 1A.

¹⁸⁰ The management company for Detroit's Joe Louis Arena and Cobo Arena.

¹⁸¹ McGraw, *supra* note 179.

¹⁸² Jack Lessenberry, *Detroit's missing the pitch for Tiger Stadium*, TOLEDO BLADE, Mar. 31, 2006.

¹⁸³ See CAGAN & DEMAUSE, *supra* note 20, at 95 (noting that "two separate city-development directors would lobby hard for a new stadium then leave public office only to turn up on Ilitch's payroll.").

Michigan legislature. In 1995, the Tiger Stadium Fan Club brought suit to prevent the state government's use of these funds to construct a new stadium.¹⁸⁴ The case was premised on the Michigan Constitution's separation of powers doctrine,¹⁸⁵ and addressed the delegation of funds to new stadium construction where those funds were collected by Governor John Engler from local Indian tribes.

Governor Engler and the tribes had negotiated a consent agreement pursuant to the federal Indian Gaming Regulatory Act.¹⁸⁶ The consent agreement resulted in the tribes maintaining their monopoly on casino gaming in the state, while in return the state would receive semi-annual payments from the tribes.¹⁸⁷ Under the agreement, the tribal payments would go to a special state fund called the Michigan Strategic Fund ("MSF"). The MSF is a public corporation managed by the state's executive branch under Governor Engler.¹⁸⁸ A portion of these payments to the states would be redirected to the local government units near the casinos. The Michigan legislature approved the consent agreement.¹⁸⁹ The governor then sought to transfer these MSF funds to the city to help finance the new baseball stadium. The governor relied on a state statute to create the Center for Community Redevelopment, which would "make grants to municipalities" for "public infrastructure including land acquisition and site development for . . . public improvements which are related to a specific identifiable project."¹⁹⁰

While the Michigan legislature approved the consent agreement which brought in funds from the tribes,¹⁹¹ the Tiger Stadium Fan Club attempted to block the funds from being appropriated by the governor without further approval from the Michigan legislature. The funds received from the tribes, the Fan Club argued, were "state funds," and thus could only be appropriated by the legislature.¹⁹² The Michigan Constitution's Appropriation's Clause provides that the legislature alone may appropriate state funds,¹⁹³ while the Separation of Powers Clause precludes one branch from usurping another branch's powers.¹⁹⁴

Unfortunately for the Fan Club, the Michigan Court of Appeals found the Governor's actions laudable.¹⁹⁵ The court ruled that the tribal funds constituted "public funds not subject to appropriation."¹⁹⁶ These public funds did not constitute "state funds" under the Michigan

¹⁸⁴ Tiger Stadium Fan Club v. Governor, 553 N.W.2d 7 (Mich. App. 1996).

¹⁸⁵ "The powers of government are divided into three branches; legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this Constitution." MICH. CONST. art. III, § 2.

¹⁸⁶ 25 U.S.C. §§ 2701-2721 (2010).

¹⁸⁷ Tiger Stadium Fan Club, 553 N.W.2d at 9.

¹⁸⁸ Engler was for the MSF before he was against it. He originally opposed the fund, calling it "corporate welfare." CAGAN & DEMAUSE, *supra* note 20, at 95.

¹⁸⁹ Tiger Stadium Fan Club, 553 N.W.2d at 9.

¹⁹⁰ MICH. COMP. LAWS § 125.2007(q).

¹⁹¹ Tiger Stadium Fan Club, 553 N.W.2d at 9.

¹⁹² *Id.* at 10.

¹⁹³ "[N]o money shall be paid out of the state treasury except in pursuance of appropriations made by law." MICH. CONST. art. IX, § 17.

¹⁹⁴ MICH. CONST. art. III, § 2.

¹⁹⁵ Tiger Stadium Fan Club, 553 N.W.2d at 12.

¹⁹⁶ *Id.*

Constitution because they were “akin to . . . a grant . . . for a specific purpose.”¹⁹⁷ However similar to a “grant” these funds were, they were not technically grants but rather payment of a lawsuit settlement.¹⁹⁸ The court stated that “state funds” were distinct from the funds at issue in Tiger Stadium Fan Club, because the revenues at issue were not the result of taxes, fees, gifts or grants to the state, or rents or royalties collected.¹⁹⁹ They were not received as “payment of debts or as penalties,”²⁰⁰ and they did not stem from the extraction of natural resources.²⁰¹ Finally, they did not result “from the sale, relinquishment, waste, or damage of state assets.”²⁰² Instead, “[t]he payments here are gratuitous payments specifically designated for the MSF, not for the state. The MSF is expressly authorized by statute to accept gifts, grants, loans, and other aids.”²⁰³ Because the funds did not fall within the ambit of the Appropriations Clause, the court likewise found that the Separation of Powers Clause was not violated.

The Tiger Stadium Fan Club ruling came down in 1996 at the same time that a well-funded marketing campaign by Ilitch, along with public officials actively promoting the bill, caused a law to be passed that effectively retracted the 1992 ban on public fund use and created a new public stadium development entity.²⁰⁴ With state funds and city funds now in play, the city maneuvered to build a new stadium without further legal impediment.²⁰⁵ The resulting stadium, Comerica Park, was built at a cost of \$260 million: \$40 million from the city, \$40 million from the county, \$55 million from the state of Michigan, \$66 million from a bank for naming rights, and about \$60 million from the Tigers.²⁰⁶ The Tigers moved into their new den in 1999.

IX. The Fight to Prevent Tiger Stadium’s Demolition

With the new stadium built and the team moved, the second phase of the fight to preserve Tiger Stadium was just getting started. The city owned Tiger Stadium and the City Council has authority over city-owned land. The City Council called upon the Detroit Economic Growth Corporation (“DEGC”) to evaluate proposals on what to do with the newly-vacant Tiger Stadium. The DEGC is a public/private partnership made up of local businessmen appointed by

¹⁹⁷ Id.

¹⁹⁸ Id. at 11-12.

¹⁹⁹ Id. at 13.

²⁰⁰ Id.

²⁰¹ Id.

²⁰² Id.

²⁰³ Id.

²⁰⁴ See 1948 Mich. Pub. Acts 31 (1996), MICH. COMP. LAWS §§ 123.951-965 (1996).

²⁰⁵ Ironically, although the move cost the taxpayers dearly, had the city simply renovated the stadium, federal funds could have been directed to the project. Some local governments, including Detroit, are eligible for grants from the National Park Service for historic preservation of nationally registered sites. Beyond grants, there are state and federal tax credits available for historic preservation. See, e.g. MICH. COMP. LAWS § 206.266 (2010).

²⁰⁶ WILLIAM J. V. NEILL, *supra* note 108. The total cost to build the stadium is a matter of debate. Sources disagree on the exact contribution by the Tigers, but all agree that the Tigers’ ante was much less than half of the total. See, e.g., Martin J. Greenberg, *Sports Facility Financing and Development Trends in the United States*, 15 MARQ. SPORTS L. J. 93, 123 (2004) (indicating a higher ante by the Tigers).

the mayor.²⁰⁷ While DEGC's recommendations are given heavy consideration, the City Council retains ultimate decision-making authority on all city-owned property. In short, the DEGC was the reviewing entity, and the City Council was the ultimate decision-maker on the fate of Tiger Stadium. A clear conflict of interest was immediately present: DEGC had already been pushing for complete demolition of the stadium while soliciting commercial retailers.²⁰⁸ Unsurprisingly, other developers hoping to preserve or renovate the stadium, in whole or in part, found the DEGC hostile to their ideas.²⁰⁹

In the interim, while the city was deciding what to do with the site, the City Council could have maintained the structure itself or contracted this out to a security service. Instead the city chose to enter into an agreement with the Tigers whereby the departed team would "maintain" and "provide security" for the old park.²¹⁰ As a result, the city retained ownership, and the team would act as the stadium's custodian. Such a delegation of custodian authority begs the question: If the Tigers' owner wished that Tiger Stadium be torn down, what incentive did he have to maintain and protect the stadium? The city paid the Tigers up to \$400,000 annually to maintain the stadium,²¹¹ though this consisted essentially of a single security guard.²¹² A local preservationist organization offered to maintain the stadium at no cost to the city, but the city preferred to send millions of dollars to one of its most powerful citizens in order to ensure that the stadium's caretaker was the person most interested in its demise. The conflict of interest led to the obvious result: The stadium was encouraged to dilapidate and was not maintained or protected. It was demolition by neglect. Looters stole much of the stadium, and there were problems with standing water, rotting wood, rusting beams, and trees growing in the stadium's cracks.²¹³

At about this time a new face emerged in the battle to save Tiger Stadium. Ernie Harwell, who recently passed away on May 4, 2010, first started announcing baseball games in 1948. He gave the play-by-play for the first ever coast-to-coast live telecast of a professional baseball game, which was, incidentally, the famous 1951 pennant playoff match in which Bobby Thompson hit the "shot heard 'round the world."²¹⁴ He was so highly valued for his play-by-

²⁰⁷ The DEGC "serves as the lead implementing agency for business retention, attraction and economic development initiatives in the city of Detroit." Detroit Economic Growth Corp., <http://www.degc.org/about.aspx> (last visited Sept. 13, 2009). The president of the DEGC is also the mayor's chief development officer. John Gallagher, Proposal to Demolish Tiger Stadium Hits Bump, DET. FREE PRESS, July 12, 2007, at 1A.

²⁰⁸ David Josar, Tiger Stadium Plan Hits a Snag, DET. NEWS., July 13, 2007, available at <http://detnews.com/article/20070713/METRO/707130375/Tiger-Stadium-plan-hits-a-snag>.

²⁰⁹ Curt Guyette, *A Hole in the Heart: Corktown's Lost Field of Dreams*, METRO TIMES, Aug. 6, 2003; Gallagher, supra note 207.

²¹⁰ Tyler Kepner, A Former Baseball Cathedral Now Lies Neglected and Decrepit, N.Y. TIMES, July 10, 2005, available at <http://query.nytimes.com/gst/fullpage.html?res=9A0DE6D9153DF933A25754C0A9639C8B63&sec=&spon=&pagewanted=all>.

²¹¹ Neil deMause, Tiger, Tiger Turning Blight, FIELD OF SCHEMES BLOG, Mar. 14, 2006, http://www.fieldofschemes.com/news/archives/2006/03/2761_tiger_tiger_tur.html.

²¹² Jack Lessenberry, Detroit's Missing the Pitch for Tiger Stadium, TOLEDO BLADE, Mar. 31, 2006, available at <http://news.google.com/newspapers?nid=1350&dat=20060331&id=DckwAAAIBAJ&sjid=aQQEAAAIBAJ&pg=6886,4452273>.

²¹³ Josar, supra note 129.

²¹⁴ Mike Brudenell, *Ernie Harwell's Big Ten List*, DET. FREE PRESS, Sept. 13, 2002, available at http://www.baseball-almanac.com/legendary/ernie_harwell_top_tens.shtml.

play broadcasting that he became the only broadcaster ever traded for a player.²¹⁵ He was the voice of the Tigers from 1960-2002, and a statue of him stands in front of the Tigers' new home, Comerica Park.²¹⁶ Despite his statutory presence at the new park and the fact that Harwell welcomed the Tigers' move across town, Harwell vigorously opposed Tiger Stadium's demolition. He hoped to convert it into a museum, to which he was prepared to donate much of his historic baseball memorabilia. His ambitious efforts could not stop the momentum against the stadium. By the time he became active, Tiger Stadium was in its final throes. Proposed development schemes had flooded in, running the gambit of uses, including turning the stadium into condos, an amusement park, a fitness center, a music/sports museum, a kids and amateur sports tournament field, a greeting card company headquarters, a boxing gym, a minor-league baseball field, a gospel music hall, a football field, a Wal-Mart, a bullfighting ring, a rugby stadium, and a jail and police headquarters.²¹⁷ But developers who pitched deals to the city report that the city strung them along or simply wouldn't return calls and letters.²¹⁸ The City Council vote to demolish the stadium seemed a foregone conclusion.

That the City Council would vote to demolish is unsurprising from an historical standpoint. Historic stadiums, cherished by fans, are often torn down upon construction of new stadiums. In addition to demolishing old stadiums, unbeknownst to some fans many old stadiums have been reconstructed, in whole or in part, south of the border for Mexican baseball teams.²¹⁹ For instance, a California Angels grandstand was installed for the Hermosillo Orange Pickers; the Texas Rangers old scoreboard sent to the Ciudad Obregon Yaquis; the Seattle Kingdome's scoreboard now belongs to the Cordoba Coffee Growers; the Kansas City Chiefs' scoreboard went to the Mexicali Eagles; and the Oakland Athletics' Jumbotron went to the Tabasco Olmecas.²²⁰ But for most stadiums, the wrecking ball is the destiny.

²¹⁵ Pat Zacharias, *Ernie Harwell and Tiger Stadium: Two Old Friends*, DET. NEWS, Aug. 22, 1998, available at <http://apps.detnews.com/apps/history/index.php?id=108>.

²¹⁶ Harwell was also an ex-Marine and former spokesman for Blue Cross/Blue Shield. His contract "lasted until he is 95, but he has the option to extend – for another 10 years." Jack Lessenberry, *Ernie Harwell Leading Late-Inning Rally to Save Tiger Stadium*, TOLEDO BLADE, Aug. 3, 2007. Ernie Harwell did just about everything in his life. In addition to an illustrious baseball career, he wrote country music for Homer & Jethro's "Thinking Man's Hillbillies" and in 1975 performed a voice-over for the film "One Flew Over the Cuckoo's Nest."

²¹⁷ John Gallagher, *Harwell's Plan to Save Tiger Stadium Growing*, DET. FREE PRESS, Aug. 21, 2007, available at <http://preservedetroit.blogspot.com/2007/08/harwells-plan-to-save-tiger-stadium.html>; Tyler Kepner, *A Former Baseball Cathedral Now Lies Neglected and Decrepit*, N.Y. TIMES, July 10, 2005, available at <http://query.nytimes.com/gst/fullpage.html?res=9A0DE6D9153DF933A25754C0A9639C8B63&sec=&spon=&pagewanted=all>; David Josar, *Stadium Proposals Fell Short*, DET. NEWS, July 19, 2007, available at <http://detnews.com/article/20070719/METRO/707190382/Tiger-Stadium-proposals-fell-short>; John Gallagher, *Tiger Stadium is Eyed as Cop Site*, DET. FREE PRESS, July 16, 2005; CAGAN & DEMAUSE, *supra* note 20, at 102.

²¹⁸ Curt Guyette, *A Hole in the Heart: Corktown's Lost Field of Dreams*, METRO TIMES, Aug. 6, 2003; See also, John Gallagher, *Proposal to Demolish Tiger Stadium Hits Bump*, DET. FREE PRESS, July 12, 2007.

²¹⁹ Joel Millman, *Ballparks Never Die, When Mexico Puts Them Back Together – El Mecano Was in Houston and Called Colt Stadium; Today, It Lives in Tampico*, WALL ST. J., Sept. 5, 2000, at A1 ("In an age of instant nostalgia, when old stadiums are demolished so millions of dollars can be spent putting up 'retro' ballparks, Mexico still treasures Major League castoffs. Today, 30 years after El Mecano ceased to be in the U.S., a thriving trade in stadium parts continues to serve fans south of the border.")

²²⁰ *Id.*

In July 2007 the Detroit City Council debated whether to approve Mayor Kilpatrick's²²¹ demolition plan. Ernie Harwell's presence and support for the stadium brought clout. Harwell received a warm welcome from council members, and he asked that the Council give the preservationists more time. In the end, even Harwell could not move the Council, which voted in favor of demolition, 5-4, with Motown-legend-turned-councilwoman Martha Reeves²²² casting the deciding vote.²²³ However, at the same meeting, the city balked, voting not to transfer the stadium's land title to the DEGC, which was given the green light to demolish the building to make way for retail and residential buildings.²²⁴ The land title vote briefly delayed the inevitable. As part of the concessions, the city and the DEGC agreed in a Memorandum of Understanding to allow a local preservationist group, the Old Tiger Stadium Conservancy ("Conservancy"),²²⁵ to get first dibs at putting up the money for a project that would include retail and residential, but that would also preserve the remnants of the Navin Field structure that Tiger Stadium was built on top of.²²⁶ As part of the arrangement, Harwell agreed to support a new, reduced plan to save as much of the stadium as possible. He agreed to join the Corktown-based Conservancy as a board member. These last-minute maneuvers sought to preserve 3,000 seats, both dugouts, a locker room, and the playing field itself, but only if the group could arrange for \$10 million in financing.²²⁷ The Conservancy set about raising money.

In October 2007, Tiger Stadium's most valuable treasures were auctioned off. Seats, tables, signs, washtubs, lockers, World Series banners, and even urinals were sold, raising money for demolition.²²⁸ The stadium was methodically hollowed out. The Old Tiger Stadium Conservancy submitted its development plan to save the five percent of the stadium that constituted the old Navin Field ground and structures, mostly dating from 1912. The Conservancy's final plan would save the original 1912 grandstand, the 1923 upper deck, the

²²¹ Mayor Kilpatrick is perhaps better known for the spectacular conclusion to his political career, which came after sending nearly 14,000 text messages in four months to a woman other than his wife, presumably not about the fate of Tiger Stadium. The scandal was a nail in the coffin for Detroit's youngest ever mayor. Jim Schaefer & M.L. Elrick, *Kilpatrick, Chief of Staff Lied Under Oath, Text Messages Show*, DET. FREE PRESS, Jan. 24, 2008, at A1, available at <http://www.freep.com/article/20080124/NEWS05/801240414/Kilpatrick--chief-of-staff-lied-under-oath--text-messages-show>.

²²² Martha Reeves became famous leading Martha and the Vandellas during Motown's heyday. Their hits include "Dancing in the Street" (1964), "Nowhere to Run" (1965), and "(Love is Like a) Heat Wave" (1963).

²²³ Editorial, *Struck Out*, METRO TIMES, Aug. 1, 2007. Council President Ken Cockrel Jr. said that it was "one of the most difficult decisions of his career." *Id.*

²²⁴ *Id.* Although their actions supported demolition for Tiger Stadium, the DEGC has supported preservation in other instances. George W. Jackson, Jr., *Preservation is Part of the Picture*, MODEL D, Aug. 11, 2009, <http://www.modeldmedia.com/features/jackson20309.aspx>.

²²⁵ Harwell had originally supported a different stadium preservation group, but out of necessity joined the Old Tiger Stadium Conservancy when it became clear that the Conservancy's scaled-back plan was the only option that had a chance with the City Council. *Harwell Scales back Tiger Stadium Plan, Field of Schemes* (Sept. 16, 2007) (http://www.fieldofschemes.com/news/archives/2007/09/3229_harwell_scales.html).

²²⁶ David Josar, *Tiger Stadium Preservation Plan Gets Boost*, DET. NEWS, Sept. 11, 2007, available at <http://www.detnews.com/apps/pbcs.dll/article?AID=/20070910/UPDATE/709100436/1129/SPORTS0104>.

²²⁷ *Id.*

²²⁸ *Id.*

dugouts, clubhouses, broadcast booth, and, of course, the historic playing field itself.²²⁹ Thus, the 1930s Tiger Stadium shell would be demolished, leaving the earlier structures that Tiger Stadium had been build upon. The Conservancy's development plan to save the original Navin Field components was approved by the city. In late 2008, the city demolished most of Tiger Stadium, leaving the Navin Field structures for the most part undisturbed. The Conservancy began to raise donations from fans to make escrow payments, and meanwhile prepared to receive millions in federal and state tax credits.²³⁰

The group found investors and arranged for tax credits, but had already struggled to meet escrow and plan deadlines. Behind the scenes, the DEGC was ignoring investors interested in investing in the stadium's rehabilitation.²³¹ Finally, in an unpublicized meeting on June 1, 2009 the Economic Development Corp., an extension of the DEGC, voted to allow the immediate demolition of the remaining Navin Field structures.²³² The Conservancy was caught by surprise²³³ and scrambled to get a Temporary Restraining Order on June 5 to halt the demolition.²³⁴ Despite the restraining order, demolition "resumed and later intensified until a supporter jumped the fence and gave the [temporary restraining] order to the demolition operator."²³⁵ "The demolition seemed to be intended to cause the most damage . . . in the shortest time."²³⁶ Then on June 8, 2009, a judge ruled that final demolition could proceed.²³⁷ The dream to preserve Navin Field was over and the remaining stadium was demolished.

As of September 2009, a visitor to the corner of Michigan Ave. and Trumbull St. would find a pile of rubble surrounding a lone elevator shaft reaching skyward. The city has no alternative plans for the property, and will lose the \$18 million secured thus far in federal earmarks, grants and tax credits.²³⁸ The funds secured by the Conservancy to support the project will be returned to donors.

²²⁹ Breaking: Updated Statement on Funding Needs & Resources, OLD TIGER STADIUM CONSERVANCY BLOG, Sept. 25, 2008, <http://savetigerstadium.wordpress.com/2008/09/25/breaking-updated-statement-on-funding-needs-resources>.

²³⁰ The final amount the city required was about \$15 million, \$4 million of which would come from a federal earmark, and \$6 million from various tax credits, including brownfields and historic preservation tax credits. Breaking: Updated Statement on Funding Needs & Resources, OLD TIGER STADIUM CONSERVANCY BLOG, Sept. 25, 2008, <http://savetigerstadium.wordpress.com/2008/09/25/breaking-updated-statement-on-funding-needs-resources>.

²³¹ Nancy Kaffer, Conservancy Gets Restraining Order to Stop Tiger Stadium Demolition, CRAIN'S DET. BUS., June 5, 2009.

²³² Mary Kramer, Who are the Winners in Tiger Stadium Tear-Down?, CRAIN'S DET. BUS., June 5, 2009.

²³³ Id.

²³⁴ Nancy Kaffer, Conservancy Gets Restraining Order to Stop Tiger Stadium Demolition, CRAIN'S DET. BUS., June 5, 2009, available at <http://www.crainsdetroit.com/article/20090605/FREE/906059989#>.

²³⁵ Statement of the Old Tiger Stadium Conservancy Regarding the Recent Demolition of Tiger Stadium, OLD TIGER STADIUM CONSERVANCY BLOG, (June 19, 2009), <http://savetigerstadium.wordpress.com/2009/06/19/statement-of-the-old-tiger-stadium-conservancy-regarding-the-recent-demolition-of-tiger-stadium>.

²³⁶ Id.

²³⁷ Margaret Foster, Tiger Stadium Demolition Resumes, PRESERVATION MAGAZINE, June 9, 2009.

²³⁸ Id.

X. Lessons Learned for Ballpark Preservationists

season's end

every pennant on the stadium roof

pointing south

-Ed Markowski²³⁹

More so than any other sport, baseball is a game that each generation passes along to the next. It seems odd that revered stadiums would be so readily destroyed. But the reasons they have less to do with the will of the community, and more to do with the relationship between team owners and municipal governments. While each community is unique, ballpark preservationists would be wise to study the losing battle in Detroit, and take away three important lessons.

Lesson One: Use political clout and public favor when it is available to push for a local ordinance to prevent public funds from being used towards a new stadium. This preventative maintenance includes pushing for city and state laws to this effect. Studies indicate that the new stadium momentum generated by wealthy owners and complying politicians can form a juggernaut to constructing a new stadium.²⁴⁰ Studies also show that publicly-financed stadiums are a bad deal.²⁴¹ Ordinances should be pushed through locally-elected bodies early, when the timing is most favorable, rather than waiting until the new stadium promoters establish well-marketed momentum for their project. Baseball park preservationists should reach beyond their sports fan ranks to public interest organizations mindful of the public till. Sweet deals for team owners means wasted taxpayer funds, which ought to galvanize entire communities, but only if the message is conveyed beyond the sports fan community.

Lesson Two: Make sure your ballpark is on the state and national registers. Although this will not prevent their ultimate demise, it can make demolition politically more difficult. At the very least it can help bring attention when a ballpark is threatened. Further, there are federal funds (and often, accompanying state funds) available for historic preservation of listed sites. For this reason, registration has the added benefit of dangling money in front of owners to preserve registered stadiums, and making it financially less appealing to build new stadiums.

Lesson Three: Make sure your site is protected by a local historic district. Local protection is a formidable tool available for preservationists. A watchful local commission can prevent unfavorable renovations or demolition. A commission could stand up to political pressure, and can occasionally force an owner to prevent demolition by neglect. Maneuvering a stadium into an historic district should be done as a preventative measure. The most politically advantageous

²³⁹ Ed Markowski, F/K/A (David Giacalone ed.), <http://blogs.law.harvard.edu/ethicalesq/baseball-haiku-page> (last visited June 19, 2010).

²⁴⁰ See generally DELANEY & ECKSTEIN, *supra* note 163 (Rutgers University Press 2005).

²⁴¹ Waldsmith, *supra* note 159 (citing studies).

moment could be in the afterglow of a team championship. If successful in getting listed, stadium preservationists should monitor the commission, particularly in the appointment of commissioners.

Protecting America's heritage should include preservation of the nation's ageing baseball cathedrals. As inventor of the game, and keeper of its traditions, the country would be wise to learn the lessons of the Roman Empire. The empire promulgated some of the first historic preservation laws, and as a result of their continuous protection through the centuries, Rome retains some of the world's most spectacular historical treasures. In a sense, preservation laws create a legally recognized public interest in a privately owned building. Comparatively, a community's collective attachment to a sports stadium visited by millions is much greater than the community's interest in the façade of a private home. Yet stadiums are often unprotected by historic preservation law. But by prudently taking the steps outlined in this article at opportunistic moments, preservationists and sports fans can help ensure that their local stadiums have the best chance to continue to grace their community.