

REUSING INDUSTRIAL LOFT BUILDINGS FOR HOUSING: EXPERIENCES OF NEW YORK CITY IN REVITALIZATION AND MISUSE

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I. INTRODUCTION

Before April 9, 1981, when the City of New York adopted a land use policy as part of a comprehensive program to govern the transformation of lofts¹ into housing, the loft conversion market had been operating for about ten years in a unique position: loft conversion

1. The New York City Planning Commission defines "loft" as follows:
A type of building generally constructed prior to 1930 for commercial and manufacturing use, and which is now or has been occupied by manufacturing tenants. A loft building is constructed such that it covers most of its lot, leaving relatively little open space. The interior has few columns and, therefore, has large unencumbered space.

entirely was unregulated by the city or state. The history of loft conversion and the changing social, economic, and aesthetic values that influenced it—and that it in turn influenced—provide a rare opportunity to examine the effects of the free market working unhindered in the realm of urban housing.

This Article examines the combination of pressures that caused conversions of industrial space to residential use, considers the effects of conversion on a city that depends upon its industrial tenants, and explores the reasons conversions went unregulated for so long. The Article concludes with an evaluation of the city's response to the problem—its loft program.

The urban renewal efforts of the 1950s and 1960s heralded large scale local and federal government intervention to induce private investment in urban areas. The public as well as the architectural and planning professions accepted the efforts to revive inner city areas by removing slums and blight. Blocks of older buildings were leveled because they were inadequate according to the standards of the time and were replaced by buildings designed under contemporary planning and design theories.

In the 1960s the South of Houston Street Industrial Area (SoHo), which contains a large concentration of mid- to late-nineteenth century loft buildings, was slated for clearance and rebuilding with high-rise housing and a major east-west arterial highway. SoHo was not razed, however, mainly because of the New York City Planning Commission's decision, based on Chester Rapkin's 1963 study for the Commission,² which identified this locale as an important industrial job center. The highway was never built because of public opposition.³

Nevertheless, the area immediately north of SoHo, which contained the same type of loft buildings, was designated for urban renewal and leveled. Two housing projects⁴ were completed in the mid-1950s and 1960s: they were high-rise apartment buildings located in an expanse of open space. By the 1970s, though, this ethic—

NEW YORK CITY PLANNING COMMISSION, *LOFTS: BALANCING THE EQUITIES* 150 (1981).

2. C. RAPKIN, *THE SOUTH HOUSTON INDUSTRIAL AREA* (Report for the City Planning Commission, 1963).

3. In 1969, Mayor John V. Lindsay dropped the highway project in the midst of a close re-election campaign. *Mayor Drops Plans for Express Roads Across 2 Boroughs*, N.Y. Times, July 17, 1969, at 1, col. 2.

4. Silver Towers (1966) and Washington Square Village (1956-1958).

that new is better—gradually lost momentum because of increasing public acceptance of what preservationists had repeatedly stated: intrinsic and irreplaceable values are associated with older buildings. Public perception had so changed by 1973 that the formerly doomed SoHo was formally designated the “SoHo Cast-Iron Historic District.”

In place of clearance, SoHo and later other loft neighborhoods underwent a new, but no less drastic, form of urban renewal. The loft buildings remained standing, but their new occupants altered loft interiors to accommodate residential use.

In response to this new phenomenon, beginning in 1964,⁵ the state and city adopted a series of amendments to the State Multiple Dwelling Law⁶ and the City Zoning Resolution⁷ to permit artists to live in lofts. In 1976⁸ and 1977⁹ the city and state again amended these laws to allow limited residential occupancy of lofts by nonartists. In spite

5. In 1964, the city adopted the administrative policy of “artist in residence” (AIR), which gave property owners the option to allow up to two residential units in their commercial and industrial buildings irrespective of the zoning district, without changing the certificate of occupancy to a multiple dwelling. (By state law, a multiple dwelling contains three or more dwelling units.) The AIR option acknowledged the reality that some people, primarily artists, chose to live in an unconventional housing unit. At the time, lofts were perceived as the habitat for artists only. The AIR option allowed an artist to live legally in a nonresidential building under a commercial lease if the unit had minimum egress and fire protection.

6. N.Y. MULT. DWELL. LAW §§ 275-78 (McKinney 1974 & Supp. 1983-84).

7. The present New York City Zoning Resolution, enacted in 1961, reflected the land use policy of its day by strictly dividing the city into three types of zoning districts: 1) manufacturing districts, which allow manufacturing and commercial uses and permit no residential use; 2) commercial districts, which permit commercial and residential uses, but no manufacturing uses; and 3) residential districts, which allow residential use but no commercial or manufacturing use. In 1971, individuals in the SoHo manufacturing district—mostly artists—successfully petitioned the city to allow artist use of certain buildings by creating a new manufacturing use group—“joint living work quarters for artists.” This mixed-use zoning—artists coexisting with manufacturers—was applauded because it gave those living there illegally a means to legalize their status without a variance and also provided a mechanism for the creation of future artist housing from mostly vacant lofts. By excluding the general residential population from SoHo it was thought that the conversion market could be limited, and manufacturers and artists would live together successfully because the artist was a small manufacturer, thus providing a compatible use.

8. In 1976, the city also rezoned NoHo (North of Houston Street), a manufacturing district, to allow “joint living work quarters for artists” in certain buildings. In the same year the city rezoned Tribeca (Triangle below Canal Street), a manufacturing district south of SoHo with a large illegal residential community, to permit artists and general residential use with certain restrictions.

9. The New York State Legislature amended N.Y. MULT. DWELL. LAW §§ 275-78

of these well-intentioned statutes, nearly all loft conversion was done illegally: the conversions did not have residential certificates of occupancy which indicate that the zoning permitted residential use and that the minimum standards for fire protection, egress, light, and air as set forth in the building code, Multiple Dwelling Law, and other codes were met.

In addition, many conversions were illicit in other ways. Some conversions took place in areas where zoning permitted residential use, but without the filing of plans for the work with the city. In other instances, landlords leased space for residential use under commercial leases that prohibited these uses. Sometimes landlords sold space in buildings without the offering plan required by state law.

The new form of urban renewal proved as controversial as its predecessor, but not primarily because of its illegalities. Manufacturers, artists, other "pioneer" early residential loft tenants, more affluent second-generation loft residents, property owners, developers, community groups, and civic organizations discovered they were in competition with each other. Because of the widespread illegality, the competition had no rules.

New York's comprehensive loft program is an attempt to provide a set of rules to structure the competition. The city's approach is aptly characterized by the City Planning Commission as "balancing the equities."¹⁰ In a competition between legitimate land uses, there is no right or wrong. Each position is meritorious.

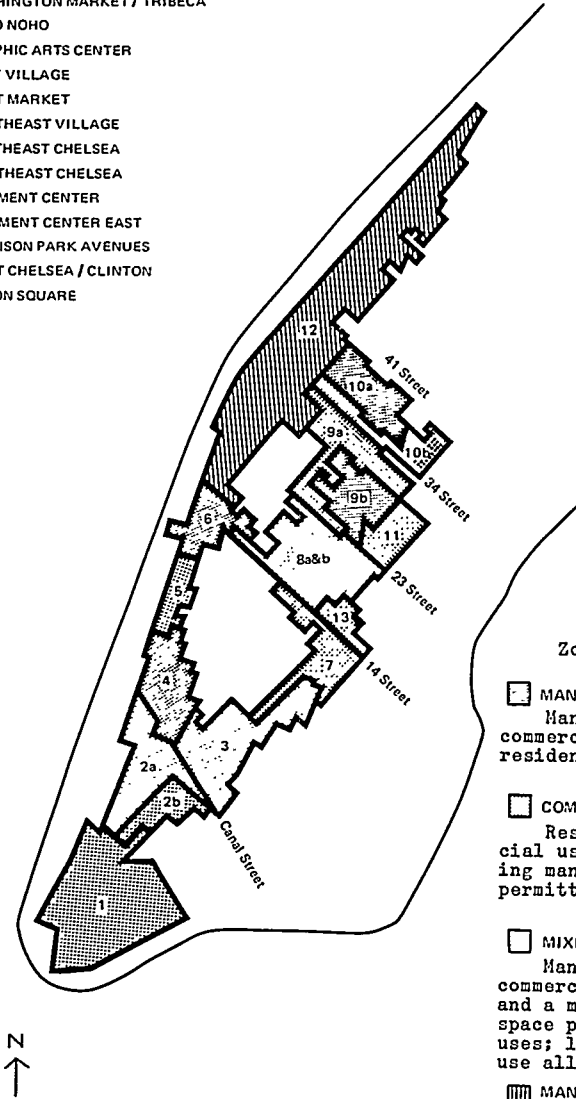
(McKinney 1974 & Supp. 1983-84), known as Article 7B, to include occupancy standards for general residential use as well as artists' use in 1977.

10. Norman Marcus, counsel to the New York City Planning Commission, first applied the term "balancing the equities" to lofts. The panel he organized and chaired, "Loft Conversion: Balancing the Equities," was held on December 8, 1980, at The Association of the Bar of the City of New York.

MANHATTAN LOFT NEIGHBORHOODS

- 1 LOWER MANHATTAN CBD
- 2a&b WASHINGTON MARKET / TRIBECA
- 3 SOHO NOHO
- 4 GRAPHIC ARTS CENTER
- 5 WEST VILLAGE
- 6 MEAT MARKET
- 7 NORTHEAST VILLAGE
- 8a&b SOUTHEAST CHELSEA
- 9a&b NORTHEAST CHELSEA
- 10a GARMENT CENTER
- 10b GARMENT CENTER EAST
- 11 MADISON PARK AVENUES
- 12 WEST CHELSEA / CLINTON
- 13 UNION SQUARE

Map Courtesy of the N.Y.C. Department of City Planning



Zoning Districts

- MANUFACTURING
Manufacturing and commercial uses permitted; residential use not allowed
- COMMERCIAL
Residential and commercial uses permitted; existing manufacturing uses permitted to expand
- MIXED USE
Manufacturing and commercial uses permitted and a minimum amount of space preserved for such uses; limited residential use allowed
- MANUFACTURING
FURTHER STUDY NEEDED

II. EVOLUTION OF MANUFACTURING IN MANHATTAN

In the heated competition and debate among loft interest groups, there is one element on which all sides agree: heavy industrial use of space in Manhattan is the product of another era.

Manufacturing grew in Manhattan in an age when the transportation system precluded the dispersion of factories far from their customers, suppliers, and workers. When overland freight movement was limited to a choice between horse and wagons or railroads, and workers traveled to work primarily by foot or streetcar, Manhattan offered substantial locational advantages over other parts of the New York metropolitan area. Manhattan also coupled a seemingly endless supply of low-wage immigrant labor with excellent port facilities. Thus, by 1919 Manhattan contained the largest concentration of industrial activity in the nation, accounting for nearly 387,000 jobs.¹¹

To accommodate this industrial activity, developers built manufacturing lofts over large areas of Manhattan,¹² either through new construction or the reuse of economically or locationally obsolete commercial buildings. In the years immediately following the Civil War these buildings tended to be in lower Manhattan. They were primarily five- or six-story buildings of masonry or cast iron, the latter a precursor of the modern skyscraper developed by James Bogardus and others.¹³ For their day, these buildings offered manufacturers large unobstructed operating spaces, with fourteen to twenty-five feet between columns or walls. Elisha Otis' development of a practical elevator, first used in the Haughwout Building in SoHo in 1857, made possible the use of the upper floors for production and goods movement.¹⁴

With the advent of steel as a building material, the last decades of the nineteenth century and the early years of the twentieth century saw the construction of taller and larger loft buildings, mostly in newer industrial districts in "midtown south"—Manhattan between 14th and 42nd Streets, north of the older districts. Because of the heavy loads these industrial buildings were designed to support, col-

11. DEPARTMENT OF CITY PLANNING, CITY ASSISTANCE FOR SMALL MANUFACTURERS 18 (rev. draft Mar. 1982).

12. L. Kahn, *The Loft Building in the Central Business District of Manhattan* 7-27 (1963) (unpublished thesis, Pratt Institute).

13. M. GAYLE & E. GILLION, JR., *CAST IRON ARCHITECTURE IN NEW YORK* x-xiii (1974).

14. N. WHITE & E. WILLENSKY, *AIA GUIDE TO NEW YORK CITY* 48 (1978).

umn spacing generally remained at or below twenty-five feet. By 1920, Manhattan contained one hundred seventy-five million square feet of loft space.¹⁵

In the 1920s Manhattan began to lose its advantages as a location for manufacturing. In 1924, Congress restricted immigration from southern and eastern Europe, then the major source of New York City's immigrant labor pool. At the same time, the increasing use of trucks for goods movement and automobiles for commuting opened vast new areas for industrial use within the New York metropolitan area and throughout the country.¹⁶ Attempting to remain competitive, Manhattan builders constructed newer, more modern industrial buildings that resulted in the creation of the Garment and Graphic Arts Centers¹⁷ with still taller and larger buildings. As healthy industries moved to these newer facilities, fewer manufacturers occupied the downtown lofts. In spite of the new facilities, Manhattan industrial employment declined during the 1920s. Though the Depression slowed the relocation of industry, general economic conditions resulted in a continued loss of industrial jobs in Manhattan.

The combination of an increasing supply of industrial space with a shrinking industrial base meant that the substantial numbers of industrial firms in Manhattan could choose between "modern" space in the newer industrial neighborhoods at higher prices and "older" space at lower prices. The older post-Civil War industrial neighborhoods became occupied, on the whole, by activities that often could not supply sufficient rental income to ensure the long-term maintenance and code compliance of their buildings.¹⁸

Although a surge in manufacturing employment associated with World War II doubled New York City's industrial workforce, manufacturing's reprieve was short-lived.¹⁹ With postwar prosperity, there was a dramatic increase in the availability of the automobile and truck, as well as improved roads. The containerized cargo ship fur-

15. See DEPARTMENT OF CITY PLANNING, *supra* note 11, at 17 (estimates prepared by John Stern of Tri-State Regional Planning Commission).

16. Zukin, *Loft Living as "Historic Compromise" in the Urban Core: The New York Experience*, 6 INT'L J. URB. & REGIONAL RESEARCH 260 (1982).

17. L. Kahn, *supra* note 12, at 25, 35.

18. C. RAPKIN, *supra* note 2, at 291-92.

19. DEPARTMENT OF CITY PLANNING, *supra* note 11, at 18, 27. Manufacturing jobs, however, are not necessarily production jobs. They may not even be located at a facility where production takes place.

ther reduced the advantages conveyed by New York's rail lines and docks. New methods of production encouraged the use of one-story operations not available in central city locations such as Manhattan. Between 1947 and 1969, New York City's industrial employment declined by twenty-three percent. During the next six years it dropped by another twenty-seven percent from its 1947 total.²⁰ By 1976 no less than twenty million square feet of Manhattan loft space stood vacant. Nevertheless, 537,000 jobs classified as manufacturing remained in New York City in 1975, of which 294,000 were in Manhattan.

Ideally, the city would like to encourage conversion while retaining industrial jobs. To a certain extent, this is possible. Because of manufacturing's continuing long-term decline in New York, some loft space constantly becomes available for conversion, although not at an annual rate sufficient to meet the demand for housing.²¹ Between 1975 and 1980, industrial employment in Manhattan declined by 17,600,²² a rate of 3,520 per year. At that rate, an estimated 1,056,000 to 1,408,000 square feet of loft space is made available each year by vacating manufacturers. At least a portion of this decline in manufacturing is attributable to firms that conversion displaced and that did not relocate within New York City.²³ Between twenty and thirty million square feet of loft space have been converted to date,²⁴ almost all of it during the 1970s. In the past few years, the average annual residential demand has been for one to two million square feet of loft space more than industry was vacating, without accounting for the competition for manufacturing space from commercial users.

Because of the substantial vacancies that resulted from the rapid loss of industrial jobs in New York between 1969 and 1975, this shortfall presented no problem initially. By 1979, however, with the vacancies mostly filled, displacement of manufacturers was common-

20. *Id.* at 27.

21. *Id.* at 39, 216.

22. *Id.* at 33 (citing New York State Department of Labor Statistics).

23. As part of the Department of City Planning's work on lofts between 1978 and 1980, staff members followed the experiences of firms along Broadway in SoHo and NoHo that had contacted the city because conversion was threatening to displace them. By 1980, 14% of these jobs had left the city or the firms had closed. At least 20% of the original total were in businesses that had not yet moved.

24. DEPARTMENT OF CITY PLANNING, *supra* note 11, at 212.

place.²⁵ A 1980 study²⁶ found a vacancy rate in Manhattan's four most important industrial areas of less than two percent.

III. EVOLUTION OF HOUSING IN MANHATTAN'S LOFT BUILDINGS

Who seeks to live in lofts that are becoming increasingly more scarce?

Artists and craftspeople popularly are recognized as the first group to use lofts as places to live and work. Their decision to live and work in the same space is an individual and economic choice rather than the product of an intrinsic need to have both together. Actually, only a small percentage of the New York Standard Metropolitan Statistical Area's artists live in lofts.²⁷ Nonetheless, the combination of a need for open spaces with high ceilings to produce large works, the image of certain locales as providing proximity to other artists and other lifestyle attributes, and the economics of combining a home and studio led to the growth of artists' communities in loft neighborhoods in Manhattan after World War II.

Just as earlier in the twentieth century, when Greenwich Village was a low-rent neighborhood that became a Bohemian center (later to evolve into a conventional neighborhood), other artists' neighborhoods were established at Tenth Street, Coenties Slip, the Bowery, and the East Village after World War II.²⁸ In the 1950s an artists' community was located on East Tenth Street between Third and Fourth Avenues known as "Tenth Street," with "artists' studios, the Club, the galleries, the street itself and the Cedar Tavern . . . [that] combined to create an inspiring environment."²⁹ By the mid-1950s

25. J. Ross, *Manufacturing Loft Conversion 2-4* (Dec. 5, 1979) (unpublished memorandum, United Hatters, Cap, and Millinery Workers International Union).

26. NEW YORK CITY PLANNING COMMISSION, *supra* note 1, at 38 (Real Estate Board of New York Study).

27. According to the 1970 United States Census, New York City, Westchester, Rockland, Nassau, and Suffolk counties had a population of actors, dancers, musicians, composers, painters, sculptors, photographers, writers, artists, and entertainers not elsewhere classified of 40,418. The 1977 Kristina Ford study identified 44.9% of illegal lofts with households headed by artists. K. FORD, *HOUSING POLICY AND THE URBAN MIDDLE CLASS* (1978). In 1983, the Loft Board estimated that there were 6,000 illegal loft units that would indicate 2,694 artists in illegal lofts. The Ford study also estimated that of the heads of all loft households—legal and illegal—24.3% were artists. Assuming that there are 14,000 loft units city-wide—legal and illegal—this would yield an artist loft population of 3,402.

28. J. STRATTON, *PIONEERING IN THE URBAN WILDERNESS* 30 (1977).

29. J. BARD, *TENTH STREET DAYS THE CO-OP'S OF THE 50'S* iii (1977).

other artists, particularly some former Tenth Street artists,³⁰ moved to Coenties Slip near the southern tip of lower Manhattan. This community remained until developers rebuilt the area with high-rise office buildings in the mid- to late-1960s. The 1970s saw the rise of the distinctly identifiable loft neighborhoods of SoHo, NoHo (North of Houston Street), and Tribeca (Triangle below Canal) amidst enclaves of manufacturers.

Initially, the most desirable buildings for residential use were the smallest, oldest and, therefore, the most obsolete for manufacturing, with antiquated elevators and deteriorating physical structures. Because these types of buildings were the least wanted by manufacturers, they had the lowest rents and the most vacancies. Yet, because of their desirability as a housing resource, the value of these properties as parking lots was not high enough to justify demolishing the buildings.

The early loft neighborhoods, although desolate after working hours, were on the periphery of the established residential neighborhoods of Greenwich Village, Little Italy, and Chinatown where residential amenities were located.

By the mid-1970s the character and location of residential use of lofts had changed. The makeup of the residential population widened from predominantly artists to a broader spectrum of residents that were more affluent and employed in careers with more upward mobility. Articles extolling the joys of living in an industrial neighborhood reflected and stimulated the wider acceptance of loft living. Fran Lebowitz succinctly described this transition of users and uses in SoHo:

One day a Big Artist realized that if he took all of the sewing machines and bales of rags out of a three-thousand-square-foot loft and put in a bathroom and kitchen he would be able to live and make Big Art in the same place. He was quickly followed by other Big Artists and they by Big Lawyers, Big Boutique Owners, and Big Rich Kids. Soon there was a SoHo and it was positively awash in hardwood floors, talked-to plants, indoor swings, enormous record collections, hiking boots, Conceptual artists, video communes, Art book stores, Art grocery stores, Art restaurants, Art bars, Art galleries, and boutiques selling tie-dyed raincoats, macrame flower pots, and Art Deco salad

30. J. STRATTON, *supra* note 28, at 24.

plates.³¹

This shift and growth of users increased the demand and prices for loft space. The higher price also shrunk the typical size of a loft. Originally, conversion took place ad hoc within buildings as individual floors became vacant. When the demand for lofts increased, entire buildings were emptied for luxury conversions.

Part of the reason that loft conversion became popular with developers was that it was cheaper to create lofts than to build new conventional apartment buildings. Loft conversion was clearly more profitable for the building owners than industrial use. In 1979, the Department of City Planning compared costs per square foot for loft buildings. Residential use in a legal apartment in a converted building or in a conventional apartment building rented for \$10.00 per square foot compared to \$2.75 to \$4.00 per square foot for a unit in an illegally-converted building. The Department found that although industrial use is profitable, the potential for increased profit is far greater from residential use. The return on a rental building with a 25 percent equity investment was 11.4 percent for industrial space, 35.4 percent for an illegal, partially-converted building, 100 percent for an illegal, completely-converted building, 3.2 percent for a legal residential building without tax benefits, and 17.6 percent for a legal residential building which qualifies for tax relief.³² More remunerative than any of these was the sale of both legal and illegal residential cooperatives in formerly industrial and commercial buildings. There, profits were as high as six hundred percent.

As the conversion market heated up, the focus shifted from "obsolete" smaller buildings, undesirable for manufacturers and often having high vacancies, to large buildings, often occupied with industrial tenants. Developers wanted the larger buildings because of the economies of scale (a greater number of units per building and lower development cost whether the conversion be legal or illegal), increased residential demand, and an exhaustion of the supply of smaller buildings. As a result, the competition between manufacturing and residential users heightened.

By the end of the 1970s, converted lofts were scattered throughout Manhattan south of 59th Street irrespective of zoning regulations. Those desiring further isolation to escape Manhattan's burgeoning

31. F. LEBOWITZ, METROPOLITAN LIFE 158 (1978).

32. DEPARTMENT OF CITY PLANNING, MANHATTAN LOFT CONVERSION PROPOSAL 17 (1980).

loft market, or to pay less rent, moved to the Brooklyn and Queens waterfront manufacturing districts. They found, however, that they could not escape “future shock”:³³ each new area developed more rapidly than the previous one. While at least two decades had passed in Manhattan between the first generation of loft dwellers living illegally and the legal luxury development, the time between the first illegal generation and the luxury generation in Brooklyn was merely a few years.

The legal status of a conversion did not concern developers or prospective loft dwellers. Conversion occurred wherever the marketplace chose. Zoning and code enforcement against illegal conversion was nonexistent before 1978 and sporadic between 1978 and 1981 because municipal officials perceived conversion as inherently “good.” It was not until the late 1970s that they heard otherwise.

During this period, public officials either were naive or emulated ostriches. They did not know the extent of illegal conversion in Manhattan, nor did they know that the zoning changes for SoHo in 1971 and for NoHo and Tribeca in 1976 had little effect in either producing legal conversions or legalizing existing illegal ones. City planners were under the impression that the 1970s zoning changes were solving the zoning impediment by making conversion legal. In an astonishing demonstration of a lack of foresight and an absence of hindsight, the city and state adopted and amended the zoning regulations and Multiple Dwelling Law over several years with no consideration of how they would work, nor any study after adoption to see if they produced the desired results. Inherent in the response was the gut notion that conversion was without fault. City officials viewed conversion as a means of revitalizing vacant and underused space while providing residents with a chance to find homes in a housing market that had become extremely tight.

A look at the history of the conventional housing market in New York City shows how this market pressure developed. New Yorkers share the American dream of owning a single-family house on a quarter acre of land. In the post-World War II period, the development of the suburbs met a large part of the New York region’s hous-

33. A. TOFFLER, *FUTURE SHOCK 2* (1971). In this Article, “future shock” refers to disorientation arising from rapid changes without the opportunity to adjust. Toffler defines it as “the shattering stress and disorientation that we induce in individuals by subjecting them to too much change in too short a time” and describes it as “the disease of change.” *Id.*

ing demand. Nevertheless, housing construction within the city remained relatively strong throughout the 1950s, averaging thirty-two thousand units annually.³⁴ In 1963 sixty thousand new units³⁵ were built, a post-war high.

New York's housing market has changed dramatically since then and these changes have played a major role in stimulating the demand for converted lofts. To understand the interrelationship of converted lofts to the city-wide housing market it is necessary to examine the impact of six factors: 1) the 1961 Zoning Resolution; 2) the availability of vacant land and government housing programs; 3) household size; 4) race; 5) the attraction of Manhattan; and 6) rent regulation.

A. *Housing Production and the 1961 Zoning Resolution*

The surge in housing construction in the early 1960s can only be explained in the context of New York's adoption of the 1961 Zoning Resolution.

In 1916, New York pioneered land use regulation in the United States by importing the European concept of zoning "to secure safety from fire and other dangers and to promote the public health and welfare, including so as conditions may permit, provision for adequate light, air and convenience of access."³⁶ To accomplish this, the Zoning Resolution regulated the height, bulk, and density of buildings, and the area of yards, courts, and open spaces.

While the Resolution prevented unlimited construction, it was relatively liberal in its regulation of density. For a city that has never surpassed the eight million mark in population, the Resolution theoretically permitted sufficient residential construction to house a population of seventy million.³⁷ To ensure adequate employment for such a multitude, the resolution permitted enough nonresidential construction to support a workforce of an astronomical three hundred twenty million.³⁸

In 1961, the city adopted a new Zoning Resolution. The Resolu-

34. DEPARTMENT OF CITY PLANNING, NEW DWELLING UNITS COMPLETED 1978-1980 24 (1982).

35. *Id.*

36. NEW YORK, N.Y., ADMIN. CODE § 200-1.0 (1976).

37. HARRISON, BALLARD & ALLEN, PLAN FOR REZONING THE CITY OF NEW YORK xv (Report for the City Planning Commission, 1950).

38. *Id.*

tion substantially reduced the total amount of residential development permitted. In place of an upper limit of seventy million, the new zoning regulations capped the potential residential population at eleven million.³⁹ The authors of the Zoning Resolution estimated that by 1975, the city's population would grow to 8,585,000 people, requiring an estimated 2,854,000 housing units.⁴⁰ The new zoning regulations allowed a total of 3,595,000 housing units.⁴¹

The new requirements lowered property values by reducing permitted density. The city, therefore, gave property owners a grace period of two years after the adoption of the Zoning Resolution to complete foundations of buildings under the old zoning regulations. If the foundations were timely, the city extended another two-year grace period to complete the development without having to comply with the new, more stringent zoning regulations.⁴²

Developers of new housing obviously paid close attention to the implications of the new zoning regulations.⁴³ During the four-year grace period, developers completed 208,000 housing units, thirty-four percent more than in any other four-year period since 1929.⁴⁴ Subsequently, housing production plummeted, dropping to an annual rate of 32,000 in 1966, 23,000 in 1967, 17,000 in 1968 and 1969, and 14,000 in 1970. This decline is especially striking when viewed in comparison with housing production nationally, which remained constant during this period.⁴⁵

While it was reasonable for the city to reduce its buildable density

39. VORHEES, WALKER, SMITH & SMITH, ZONING NEW YORK CITY FOR THE CITY PLANNING COMMISSION vii (Report 1958).

40. *Id.*

41. *Id.*

42. NEW YORK, N.Y., ZONING RESOLUTION §§ 11-30 to -324 (1961). Norman Marcus suggested that, as a practical matter, the city should permit virtually all buildings that met the foundation test to complete construction under the former zoning resolution.

43. In 1960 and 1961 developers completed approximately 35,000 housing units annually. In the first year of the grace period, 47,000 units were finished. In 1963, the year by which foundations had to be completed, 60,000 units were finished. In the last two years of the grace period, 1964 and 1965, developers completed 52,000 and 49,000 units respectively. DEPARTMENT OF CITY PLANNING, *supra* note 34, at 24.

44. *Id.*

45. According to the January 1981 ECONOMIC REPORT OF THE PRESIDENT, total U.S. housing production stood at 1,509,700 units in 1965 and 1,469,000 units in 1970. Private housing construction stood at 1,239,800 units in 1965 and 1,351,500 units in 1970.

to a manageable level, such an extensive "downzoning" was unnecessary. Although the theoretical population that the 1916 zoning regulations permitted was astronomical, simple lack of demand for this much housing precluded the construction of more than a fraction of it. Yet, with the new Zoning Resolution permitting a population of eleven million people, why did housing production fall so precipitously?

To answer this question, it is necessary to examine two typical one hundred by one hundred foot building sites: one in the southern part of Brooklyn, the other in northern Brooklyn. During the grace period, developers built many six-story apartment buildings on these sites. Under the 1916 zoning laws, it was possible to build a six-story building without having to set it back from the street. A six-story building could have had 33,000 square feet of floor area. If the market was strong enough, additional floors were set back one foot from the street for every one and a half feet in additional height.

Under the 1961 Zoning Resolution the southern site is in a district zoned R4. In an R4 district, the total allowable floor area may not exceed seventy-five percent of the area of the lot. Because the size of this hypothetical lot is 10,000 square feet, only 7,500 square feet of floor area could be built. Therefore, the amount of floor area likely to be built had declined by seventy-seven percent compared to the old zoning regulations. This so altered the economics of development that many projects were no longer practical.

The northern site is zoned R6 which permits a theoretical maximum floor area ratio of 2.43 times the size of the lot or 24,300 square feet of floor area. In order to encourage developers to provide open space in a congested city, however, the zoning permits the maximum floor area to be achieved only in a thirteen story high-rise covering nineteen percent of the site. Unfortunately, a thirteen story building with 1,900 square feet per floor is a very inefficient building to construct and operate. None were built. Although not irrational, the drafters of the 1961 Zoning Resolution worked at a time when large scale urban renewal programs made the assemblage of large sites, on which apartment houses could be built, more practical. Some apartment houses were built on substantially larger sites, however, most R6 development has been two and three family row houses.

At least a portion of the post-1965 drop in housing production is also attributable to the relative abundance of vacant apartments. Following the surge in construction associated with the grace period,

New York City experienced its highest post-war vacancy rates in 1965—3.19 percent.⁴⁶ While low by national standards, this vacancy rate stimulated “give-aways” to entice people to rent the new apartments and discouraged new housing production until the surplus was absorbed.

B. *Vacant Land and Housing Programs*

The 1961 Zoning Resolution was not the only restriction on the development of new housing. From its inception, New York City has expanded outward. Once a small Dutch village at the tip of Manhattan Island, the settlement grew in population as it gobbled up farmland and outlying villages. Bridges and subways brought more and more outlying land within the domain of the expanding metropolis. The 1898 consolidation of New York City with the surrounding communities enabled most expansion to occur within the confines of the municipality. As a result, while Manhattan’s population showed a net decrease of 152,000 people between 1900 and 1960, the combined populations of the other four boroughs increased by 4,497,000.⁴⁷

With the exception of Staten Island, which has no subway connection to Manhattan and was not connected to Brooklyn by bridge until 1964, few substantial tracts of undeveloped land were left in New York City by the 1960s. This was particularly true in Manhattan.

“The spirit of pulling down and building up”⁴⁸ has been the traditional Manhattan response to the lack of sufficient vacant land. While it is attractive economically to tear down an old, low-density mansion or several brownstones to create a buildable site, it is far more difficult to demolish high-rise or mid-rise developments. With each successive wave of construction, the number of potentially buildable sites decreased.

Confronted with the difficulty of producing housing in the central city (which, though not peculiar to New York, was perhaps greater because of the intensity of the earlier development) government stepped in to assist. In the name of slum clearance and keeping the middle class in the city, public agencies developed large areas of New York City, beginning in the 1950s, as middle-income housing; some

46. M. STEGMAN, *THE DYNAMICS OF RENTAL HOUSING IN NEW YORK CITY* 93 (1982).

47. N. WHITE & E. WILLENSKY, *supra* note 14, at 576-77.

48. See C. LOCKWOOD, *MANHATTAN MOVES UPTOWN* 13 (1976) (quoting statement Phillip Hone made in 1839).

projects initiated then continue to this day. Nevertheless, by the late 1960s and early 1970s, these programs were discredited and no longer active. These programs succumbed to accusations that urban renewal was black removal or that housing projects were replacing vibrant neighborhoods that would become the sterile slums of the future.⁴⁹

C. Household Formation

While building new housing for the middle class became more difficult, changes in lifestyles increased the demand for housing. Between 1950 and 1970 New York City's population essentially remained constant.⁵⁰ Nevertheless, the number of households increased⁵¹ because of a drop in average household size.⁵² These trends were most acute in Manhattan where by 1980 average household size fell to 1.96 persons, the lowest for any county in the United States, with the exception of Kalawao County in Hawaii, a leper colony.⁵³

D. Race

While New York's overall housing market was tightening considerably, racial attitudes exacerbated an already bad situation. Racial prejudice, although rarely acknowledged, is certainly one of the most important considerations in determining where people, particularly the white middle and upper-middle class, choose to live.

Between 1940 and 1970, as more blacks arrived in New York, the boundaries of the "ghetto" expanded and whites "fled." White neighborhoods, such as the Brooklyn neighborhoods of Crown Heights, Bushwick, East New York, Brownsville, East Flatbush, and Flatbush, became black.⁵⁴ The middle-income housing market shunned enormous areas of central Brooklyn, northern Manhattan,

49. See generally J. JACOBS, *THE LIFE AND DEATH OF GREAT AMERICAN CITIES* (1961).

50. U.S. Census of Population, 1950 and 1970.

51. Households increased from 2,433,000 to 2,805,000. 2 I. LOWRY, J. DE SALVO & B. WOODFILL, *RENTAL HOUSING IN NEW YORK CITY* 21 (1971).

52. Average household size declined from 3.15 to 2.73 persons. In Manhattan, average household size dropped to 2.17 in 1970 from 2.8 in 1950. *Id.*

53. U.S. Census of Housing, 1980.

54. Whites also fled from the heavy influx of Hispanics during the post-World War II period.

the southern Bronx, and central and southern Queens. Most of the whites remaining in these neighborhoods lacked the economic option to leave.

"White flight" exacerbated the demand for middle class housing elsewhere in the city. The exodus to the suburbs relieved some of this demand, but two areas within the city came under heavy housing pressure. One was the outer rim of the city beyond the expanding black and Hispanic neighborhoods. The other was the core itself, consisting of most of Manhattan south of 96th Street. Located within the core, Manhattan's loft neighborhoods became the "beneficiary" of white housing preferences.

E. *The Attraction of Manhattan*

When the baby-boom generation came to the age of household formation by the mid-1960s, the need for dwelling units increased.⁵⁵ Although their parents had opted for less urban locations in boroughs other than Manhattan, or in the suburbs, or in the equivalent locations in other metropolitan areas, a significant portion of these young households looked to the central core as a place to live.

Manhattan emerged as the place where young professionals could live with others of similar interests while theoretically having the city's ethnic diversity⁵⁶ at their doorstep. Unlike the suburbs, which they consider stodgy,⁵⁷ the young professionals are attracted to Manhattan as a place of "ideas."⁵⁸ In addition, New York's emergence as a "world city"⁵⁹ also has attracted foreigners and out-of-towners.⁶⁰ New York's press dubbed the city "magical,"⁶¹ though it recognized that at least a part of this magic includes high rent levels.

The arrival of these affluent people led to the development of chic boutiques and restaurants to cater to their needs and, more importantly, their whims. As more stores open in a place like SoHo the neighborhood becomes desirable to many people who previously

55. I. LOWRY, J. DE SALVO & B. WOODFILL, *supra* note 51, at 2.

56. Fleetwood, *The New Elite and the Urban Renaissance*, N.Y. Times, Jan. 14, 1979, § 6 (Magazine), at 35. Needless to say, the ever-increasing presence of young professionals is destroying the same ethnic diversity.

57. *Id.* at 22.

58. *Id.* at 21.

59. *Id.*

60. *Id.*

61. New York Daily News, Oct. 28, 1980, at M2, col. 1.

would not have tolerated the disadvantages of urban life—high crime relative to the suburbs, a deteriorating subway system as compared to the comforts of one's own car, and the inconvenience of living in a nonresidential neighborhood without a supermarket or dry cleaner. The newcomers bring still more boutiques and restaurants, which in turn attract more residents, tourists, and writers to further report the marvels of Manhattan.

Manhattan has not been the only beneficiary of people's desire to live in the core. Priced out of Manhattan, many young professionals have sought and found a compromise alternative near the fringe of the expanding core in areas such as brownstone neighborhoods in Brooklyn, and also in Jersey City and Hoboken, New Jersey.⁶² Because of the distance of these neighborhoods from the core, however, their less cosmopolitan character as compared to Manhattan and their proximity to minority communities, these alternatives are not expanding fast enough to meet the demand for upper-income housing.⁶³

To "real Manhattanites,"⁶⁴ it makes sense to live in a tiny studio apartment in Greenwich Village even though the rent for that apartment is higher than the cost of a six-room apartment with a garden in a fringe area. Saul Steinberg portrayed it best without words in his classic illustration for the cover of *The New Yorker*, showing a view of the United States that consists mostly of Manhattan, with the rest of the nation, and the world beyond, barely visible as distant bumps in the horizon beyond the Hudson River.

F. Rent Regulation

A final often-cited factor in the housing squeeze is New York's system of rent regulation, which some claim has depressed construction of new housing and provided a disincentive to the upkeep of existing buildings.⁶⁵ They also assert that rent regulation has discouraged oc-

62. Brown, *Heaven, Hell . . . or Hoboken*, METROPOLIS, June 1982, at 12-15.

63. The law of supply and demand dictates that prices rise when supply becomes inadequate to meet demand. If gentrification of peripheral areas occurred fast enough, price rises would slow both in the core and in peripheral areas; this is not the case in New York City.

64. Quindlen, *Exquisite Agony of Living in Manhattan*, N.Y. Times, Mar. 28, 1982, § 8, at 7.

65. See THE REAL ESTATE BOARD OF NEW YORK, *TROUBLE AT HOME 3* (1983); THE REPORT OF THE PRESIDENT'S COMMISSION ON HOUSING 91-94 (1982).

cupants of rent-regulated apartments from moving, thus reducing the supply of available conventional housing, which pushes those seeking residential space towards lofts. It is not our intention to evaluate the merits of rent regulation. Instead, our thesis is that rent regulation, at most, has had only a modest impact on the loft market. The primary causes of loft demand—the dramatic drop in post-1965 housing production and the increasing demand for housing within the core—were not altered significantly by rent regulation.

IV. ARGUMENTS FOR UNRESTRICTED CONVERSION

Against this history of industrial abandonment and pressure for housing, proponents and opponents of loft housing have debated industry's future in the city. The proponents contend that central city industrial use has little or no future. Pointing to the dramatic decrease in industrial employment, they argue that manufacturing located in multi-story lofts is unable to compete with suburban locations. Depending on which of the housing proponents was speaking, manufacturers either: 1) No longer want space in old multi-story loft buildings;⁶⁶ 2) no longer want space in smaller loft buildings;⁶⁷ 3) or no longer desire to remain in Manhattan, New York City, the Northeast, or the United States.⁶⁸

To support their claims, housing proponents point to the delays caused by Manhattan's generally intolerable level of traffic congestion, delays caused by multiple users sharing old and often inadequate elevators, the meager distances (by today's standards) between columns in lofts that prohibit the use of large modern equipment, and the difficulty of operating a business on multiple floors, both in terms of the constant movement of goods and the burden of supervising employees.⁶⁹ Additionally, they argue that New York is an inhospit-

66. Testimony of Earl Altman before the New York City Board of Standards and Appeals on the application for a variance to permit the residential conversion of 1 Dominick Street, Manhattan (BSA Cal. No. 1170-79BZ).

67. E. POTTER, RESIDENTIAL USE OF MANHATTAN LOFT BUILDINGS: ANALYSIS AND RECOMMENDATIONS (Report of the Real Estate Board of New York, 1975) (recommended allowing the conversion of the upper floors of all loft buildings with floors of less than 7,500 square feet).

68. Smith, *Info City*, NEW YORK, Feb. 9, 1981, at 25.

69. Tobier, *Gentrification: The Manhattan Story*, 5 NEW YORK AFFAIRS 24 (1979). The argument that loft buildings were obsolete did not originate with the loft conversion movement. In 1962, the City Club criticized the Planning Commission for its reluctance to recommend the demolition of obsolete commercial slums, now known

table place for manufacturing because of high taxes and utility rates. Each of these claims has some merit.

The housing proponents are not prophets of doom. In place of manufacturing they envision a white-collar and service economy. Their alternative was best expressed in an article suggesting that New York City would thrive as the communications and information center of the western world and blatantly advising New Yorkers to "forget manufacturing."⁷⁰ As Manhattan's office and service economy grew rapidly in the late 1970s, gaining 210,000 jobs⁷¹ between 1977 and 1981, housing proponents urged City Hall to give loft conversion its unconditional blessing as a means to provide the biggest housing bargains in the city⁷² so that the office workers would have a place to live when they moved back to the city.⁷³ Not only would loft conversion provide the city with additional housing but the development would increase tax revenues paid to the city. Furthermore, the residences would help make New York a viable community because they would offer a strong alternative to the suburban movement, by providing a central location to the city's many and varied activities. Residential tenants would create increased street activity during evening hours and on weekends that would contribute to safer streets.⁷⁴

Underlying this position was the faith its advocates have in the free market. If manufacturing is no longer the highest and best use for land in midtown Manhattan, it should give way to economically

as SoHo. At that time, the United Hatters, Cap, and Millinery Workers Union supported the demolition of SoHo to make way for housing for its members. In 1962, however, they still expected urban renewal funds to subsidize more modern facilities. See Zukosky, *The Urban Renewal Battle over Manhattan's "Valley,"* N.Y. Herald Tribune, Dec. 9, 1962.

70. Smith, *supra* note 68, at 24-29.

71. Speech delivered by S. Ehrenhalt at the Fifteenth Annual Institute on the Challenges of the Changing Economy of New York City (Apr. 28, 1982) (discussing the New York City labor market).

72. Horsley, *A Push for a Residential Midtown*, N.Y. Times, Dec. 12, 1976, § 8, at 4. At the time, an unfinished "raw" loft sold for about \$12.50 per square foot with an estimated additional cost of \$2.50 per square foot to "finish" the space. Two years later, in a market in which illegal conversion proliferated, a similar loft sold for \$30 per square foot. By 1980, before any city attempt to regulate conversion, "finished" lofts were selling for \$100 per square foot.

73. Fleetwood, *supra* note 56, at 35.

74. Statement by S. Lobel in support of an application at the Board of Standards and Appeals for a variance to permit the residential conversion of 1 Dominick Street (BSA Cal. No. 1170-79BZ). These sentiments were expressed widely in many variance applications, newspaper articles, and public discussions.

stronger activities. According to this view, government involvement interfered with the functioning of the marketplace, except when it benefited conversion in programs such as the city's generous J-51 tax subsidy. Until 1980 this subsidy permitted residential developers to abate property taxes equal to ninety percent of the "certified reasonable" cost of converting the amount they put into renovating the building.⁷⁵

V. THE NEED TO REGULATE CONVERSION

Despite these arguments, industrial use of space in New York, although down, is certainly not out. Following the city's industrial decline in the early 1970s, the loss of manufacturing slowed significantly, dropping only 3.5 percent of the 1947 employment total between 1975 and 1980. In 1980 manufacturing accounted for 499,000 jobs in New York City, 276,400 of them in Manhattan.

Although modern production and distribution methods work optimally in single story operations with superior vehicular access—a type rarely available within the central business district—the nature of most industrial firms remaining in Manhattan made relocating elsewhere unattractive.

The city's largest industry is comprised of the "needle trades," which produce and market clothing and related items such as pocket-books and leather goods. Small firms, averaging less than fifty employees, dominate the industry.⁷⁶ These firms generally are undercapitalized and, therefore, prefer to rent rather than own their space. Because of their lack of capital, they also are limited in the amount of goods or equipment they can maintain. As a result, they frequently cluster together to realize the advantages of linkages with other firms. Within a few blocks they can purchase almost anything they need on very short notice.⁷⁷ In general, the trend in this industry has been away from production and shipping within the central business district and towards use of such space for selling products.⁷⁸ Although loft buildings do not offer the advantages of modern one-

75. NEW YORK, N.Y., ADMIN. CODE § J51-2.5(b)(2) (Supp. 1980-81). The manufacturers also have professed a belief in the free market, except when they were losing the fight for loft space.

76. Interview with Lance Michaels, Senior Planner, New York Department of City Planning (an expert on the garment industry).

77. L. Kahn, *supra* note 12, at 21.

78. DEPARTMENT OF CITY PLANNING, *supra* note 11, at 63.

story structures, the needle trades operate comparatively well in the old buildings. Much of Manhattan's stock of loft buildings was built specifically for use by needle trades firms,⁷⁹ and production methods have changed little since these buildings were built.⁸⁰

The central location of Manhattan's loft buildings and the accessibility of the subway permit firms located there to draw employees from working-class neighborhoods throughout the city. One large and expanding segment of the needle trades work force is Chinese-American. These parts of the garment industry must be within walking distance of Chinatown to permit access to sufficient Chinese labor.⁸¹ Owners of these companies have little choice but to tolerate the inconveniences of loft buildings.

Marketing is tied even more closely to the use of multiple floor buildings for showrooms and offices. Individual buildings function as merchandise marts for particular types of products,⁸² permitting out-of-town buyers to shop from firm to firm within one building or within a cluster of buildings. Because of manufacturers' reliance on out-of-town buyers,⁸³ showrooms need nearby services to accommodate them, such as hotels, restaurants, and entertainment.

The second major industry in Manhattan is commercial printing, which services the financial, advertising, and corporate headquarters in New York City. Unlike needle trades firms, many printing establishments, particularly the larger operations, use large equipment that can make many loft buildings impracticable.⁸⁴ Coupled with high energy costs, taxes, technological improvements, and a dispersion of

79. L. Kahn, *supra* note 12, at 23.

80. It is not difficult to fit several sewing machines between columns spaced twenty feet apart. Because most of the firms are small, they are not troubled by the problems of supervising workers on multiple floors.

81. Because of language barriers and social customs such as school children going to lunch with their mothers at factories, many Chinese workers will not work at great distances from their homes.

82. Michaels, *supra* note 76.

83. New York City accounted for 51.6% of all wholesale apparel sold in the United States in 1977.

84. A modern web press, together with room for loading and unloading paper, can require an undivided space 100 feet long and at least 20 feet wide. Robert Hort, Chairman of the Board of Enterprise Press, Inc., mentioned this fact in public statements and in a letter to Community Board 2 in support of Enterprise's request for a variance to convert their building at 627 Greenwich Street (May 8, 1981). Enterprise wished to finance their relocation to larger quarters by selling their loft building for a residential conversion (BSA Cal. No. 182-81BZ).

their corporate clients, one-story locations outside of Manhattan frequently have become attractive alternatives.

Nevertheless, several factors cause printers to remain in Manhattan.⁸⁵ Although most loft buildings are inadequate for their needs, some of the buildings erected in the 1920s and 1930s were built specifically for use by printers. The floors can handle the heavy loads demanded by printers, and the buildings often have off-street loading facilities and large elevators that reduce delivery problems. These buildings also have large floor sizes permitting many printers to operate on one floor.

More significantly, printers have remained in Manhattan for reasons relating to marketing, in addition to the advantages of specialization gained by the clustering of many printing firms. Because of the need for clients to review the material that the printer prepares, it has been important to be close enough to allow the client easy access.⁸⁶ Improvements in electronic communication technology may reduce this linkage, but the advantages of clustering are not likely to diminish. By choosing a Manhattan location where thirteen percent of the nation's printing trade services are nearby,⁸⁷ printers can reduce their overhead yet continue to provide their clients with the broadest range of services.

A third industry for which a Manhattan location has remained suitable is wholesale meat. This industry is concentrated in several compact markets in New York City. The most important is the Gansevoort-14th Street Meat Market in Manhattan.⁸⁸ In this market, which includes many hotels, restaurants, and institutions, linkages between firms are crucial to their efficient operation.⁸⁹ Generally, only the first floor is used for cutting, processing, and storing meat, thus eliminating the problems of multiple floors. Numerous proposals to relocate the market have faltered, primarily because of opposi-

85. DEPARTMENT OF CITY PLANNING, *supra* note 11, at 99. Two-thirds of all New York City employment in printing and related trade services is within the Manhattan central business district. In 1979, these trades provided 27,000 jobs in Manhattan.

86. M. Mammano, A. Pizzicara & M. Kessler, *Loft Conversion: A New Policy Approach for SoHo-NoHo 5-6* (interdepartmental memorandum, Department of City Planning, 1975).

87. DEPARTMENT OF CITY PLANNING, *supra* note 11, at 95, 102.

88. A. STEIN, NEW YORK COUNTY OVERALL ECONOMIC DEVELOPMENT PROGRAM 1979/1980 106 (1979).

89. *Id.*

tion from market firms. Rather than move, meat market firms have invested millions of dollars to make their facilities comply with code and statutory requirements.⁹⁰

Activity by individual users who remain continues to be very important for the city's economic health. Blue-collar employment is one of the best sources of jobs for the city's substantial population of semi-skilled and unskilled workers.⁹¹ While the service and office sectors of the city's economy grew dramatically in the late 1970s, offsetting the slower loss in manufacturing jobs, New York City residents accounted for as little as 5.9 percent of the net increase in employment.⁹² The rapid loss of significant portions of the remaining industrial economy almost certainly would result in an increase in the already substantial number of unemployed, and unemployable, New York City residents.

As the demand for public assistance increases, taxes also increase. Higher taxes can only mean that more businesses will leave the city⁹³ creating still more unemployment and higher taxes. Although people without jobs eventually may migrate to areas where employment is plentiful (assuming such areas exist), these migrations take place over an extended period of time.⁹⁴ In the interim, it is the "safety net" paid out of the public treasury that sustains people. Although new economic activity is being generated in the central city—through a growing office and service sector, expanded housing for the upper classes, and the increased retail activity they stimulate—the revenue generated is insufficient to offset the drain from the municipal till caused by increased demand for public assistance.

What then is the economic effect of conversion on New York City? In 1977, the Center for Urban Policy Research (CURR) examined

90. NEW YORK CITY PLANNING COMMISSION, *supra* note 1, at 40. Much of the money was invested to meet the requirements of the Wholesale Meat Act that Congress passed in 1967. To ensure reliable refrigeration, many of the meat market firms coordinated efforts to install a new refrigeration plant.

91. NEW YORK CITY PLANNING COMMISSION, *PLANNING FOR JOBS* 40 (1971).

92. *Prial, Manhattan in Change: The Future of the Economy*, N.Y. Times, July 14, 1982, at B, col. 1. More recent estimates range as high as one-third of the net increase.

93. As one of the nation's most highly-taxed localities, New York City has experienced firsthand the business community's expression of its dissatisfaction: departure. See Kenneth T. Laub & Co., Inc., *Survey on Corporate Location* (1980) (found personal, not business taxes, a major factor in a business' decision to leave New York).

94. New York City's unemployment rate, which rose along with the city's job losses in the early 1970s, has not recovered despite a 10.9% drop in population.

the present value of the net gain or loss in municipal revenue from conversion,⁹⁵ which did not include any costs resulting from displaced manufacturing activity (summarized in the Table 1, Part A). The Center calculated the 1977 present value of the net loss over twenty-five years from the conversion of one dwelling unit at almost \$6,000. By far the major factor in this loss was almost \$8,000 in taxes foregone through the city's J-51 tax abatement and exemption program. As it applied to conversion in 1976, the J-51 program provided a twelve-year exemption against any increase in assessed value resulting from the conversion. It also provided an abatement of existing taxes in an amount equal to ninety percent of the reasonable cost of the conversion. As a rule, in 1976, conversions with J-51 were excused from paying any real estate taxes for a period of twelve to twenty years.

Even if the city had eliminated this tax subsidy program, the 1977 present value of the gain to the municipal treasury would barely exceed \$2,000 per dwelling unit. This would not have offset the loss of commercial occupancy taxes, business taxes, taxes paid by employees of the manufacturing concerns displaced by conversion, and the multiplier effects of money circulating in the economy spent by a business and its employees.

If manufacturing displaced by conversion does not relocate in New York, the economic loss is great, because the residential user does not make up for the departure of the industrial user. A 1976 study⁹⁶ concluded that each manufacturing employee generated \$1,395 annually in municipal revenue without considering multiplier effects (summarized in the Table 1, Part B). Applying the CUPR's discount rate, the 1976 present value of the lost revenue is approximately \$15,000 per manufacturing employee over twenty-five years. Assuming a net ratio of total municipal revenues to total municipal costs for industrial use of 2.6:⁹⁷ the net municipal gain from manufacturing is approximately \$9,200 per employee. Without the J-51 tax abatement program, the 1977 present value of the net loss to the city from the creation of one residential unit that displaced manufacturing is approximately \$25,500 to \$34,700. At the rate of job loss from conver-

95. K. FORD, *supra* note 27.

96. NEW YORK TEMPORARY COMMISSION ON CITY FINANCE, *THE EFFECTS OF TAXATION ON MANUFACTURING IN NEW YORK CITY* 36 (1976).

97. See R. RODDEWIG, *LOFT CONVERSIONS: PLANNING ISSUES, PROBLEMS AND PROSPECTS* 17 (1981).

sion between 1978 and 1980 of fourteen percent,⁹⁸ the average unit that conversion created cost the city between \$1,873 and \$3,156. Since 1980, the likelihood of a displaced firm relocating within the city has diminished as the amount of vacant loft space has decreased.

Even this analysis underestimates the costs of displacing manufacturers for residential conversion. While the early conversions were concentrated in the older lower Manhattan neighborhoods previously occupied by the more marginal industrial uses, by the late 1970s conversion occurred in almost all loft areas, including those occupied by closely linked, relatively healthy segments of the industrial sector. In disrupting the linkages between firms, these conversions threaten to undermine one of the most important reasons for industry to remain in New York. Usually this happens slowly, shrinking the size of the cluster one firm at a time. Occasionally, it is more dramatic, such as when an illegal loft conversion threatened one of the city's three fur shearers with displacement.⁹⁹ If this conversion had displaced the shearer, the city's fur industry would have been seriously compromised.

The protection of the city's remaining industrial loft tenants is imperative. This protection, however, need not come at the expense of housing. In the 1960s approximately fifty-eight thousand units of market-rate housing were constructed in Manhattan. In the 1970s the construction of new market-rate housing declined dramatically to approximately twenty thousand units.¹⁰⁰ As new construction declined in the mid-to-late 1960s, the affluent sought new ways of satisfying their desire for central-city housing. Their solution was to renovate existing housing or loft buildings. The Department of City Planning estimated¹⁰¹ that the number of market-rate housing units that the affluent created totaled approximately forty-five thousand during the 1970s, bringing the number of market-rate units produced in the 1970s up to virtually the same level produced in the 1960s.

Just as millions of people moved from the city to the countryside, transforming it into suburbia, the increasing popularity of lofts has resulted in their becoming more expensive, smaller, and more like

98. See *supra* note 23.

99. The city sued to stop the illegal conversion at 151 West 28 Street, Manhattan. *City of New York v. Groff Studios*, Index No. 42080/79 (N.Y. Sup. Ct. May 19, 1980) (unpublished opinion).

100. DEPARTMENT OF CITY PLANNING, *supra* note 11, at 207.

101. *Id.* at 215.

apartments. Indeed, housing now being produced in lofts is not very different from that which new construction can produce—and it is sold at similar prices.

The question that must be asked is whether increasing the level of new construction, both in Manhattan and in other boroughs that can attract Manhattan-oriented households, would dampen the demand for converted lofts while satisfying the need for new market-rate housing. The answer appears to be affirmative.

As a group, loft residents are not conspicuously different from the people that constitute the gentrifying population of central cities across the United States, as seen by comparing a 1977 study of loft

TABLE 1
Present Value Analysis of Municipal Revenue and Costs
Resulting from Residential Conversion of
Manufacturing Lofts (1976-77)

<u>PART A</u> Gain or Loss to New York City from Conversion with and without J-51		
1	Taxes foregone through J-51	(\$7,947)
2	Taxes produced through construction spending and fees	580
3.	Sales and income taxes created by residents induced to live in New York City attributable to lofts	789
4	Tax revenues created by multiplier effects of #2 and #3	1,951
5.	Per household cost of common municipal services for residents induced to live in New York City attributable to lofts	(\$1,344)
<hr/>		
6	Net loss per unit from conversion with J-51	(\$5,971)
7	Net gain per unit from conversion without J-51	\$1,976
<u>PART B</u> Gain or Loss to New York City from Displaced Manufacturing		
8	Municipal revenue per manufacturing worker	\$14,891
9	Municipal expenses per manufacturing worker at a ratio of municipal revenue to cost of 2.6:1	(\$5,727)
<hr/>		
10	Net municipal revenue per manufacturing worker	\$9,164
11	Number of manufacturing workers per 1,200 sq. ft. (typical size of a residential loft)	3-4
12	Potential net loss from displaced manufacturing per 1,200 sq. ft. unit	(\$27,492-36,656)
13	Potential net loss from displaced manufacturing per 1,200 sq. ft. unit, including gain from conversion in #7	(\$25,516-34,680)
14.	Net average loss per converted unit assuming 14 percent of jobs leave New York City, including gain from conversion in #7	(\$1,873-3,156)

residents¹⁰² with studies examining gentrifying neighborhoods in seven American cities.¹⁰³ In the cities for which income data were available, incomes consistently were considerably above the 1975 national median of \$14,900 per household. The populations were generally young, with usually half or more between twenty-five and thirty-four years of age, with about eighty percent below forty-four. At a time when only 14.7 percent of the United States population had completed a four-year college degree program, between sixty-two and ninety-seven percent of the gentrifiers were college graduates.

Among loft residents, median income was \$22,783. Among residents of illegally-converted lofts, allegedly unable to afford the costs of code compliance, median income stood at \$19,390.¹⁰⁴ Loft residents were also young and well-educated: 81.6 percent were between twenty and thirty-nine years of age and 74.2 percent had completed four or more years of college.

Because loft dwellers did not differ significantly from other gentrifiers, one may conclude that their housing preferences were also similar. When asked,¹⁰⁵ only 7.7 percent of loft dwellers responded that they would not live in the city if their loft or a similar unit was unavailable.

VI. THE RESPONSE TO THE PROBLEMS OF CONVERSION

Despite the clear need for sound control of loft conversion, municipal and state officials have only recently abandoned the belief that residential conversion is inherently good. Until 1977, city and state officials lacked any comprehension of the widespread illegal nature of the loft movement and its negative impact on the city's economy.

By the end of 1978, three major events occurred. The first was a report issued in December 1977 by the Department of City Planning¹⁰⁶ indicating that 1,023 (23.5 percent) of the 4,354 loft buildings

102. K. FORD, *supra* note 27, at 1-51.

103. Gale, *Middle Class Resettlement in Older Urban Neighborhoods*, 45 J. AM. PLAN. ASS'N 293-304 (July 1979).

104. This number may be inflated. Occupants of illegal conversion with lower socio-economic characteristics may have been less likely to have responded to the survey.

105. K. FORD, *supra* note 27, at 1-51.

106. DEPARTMENT OF CITY PLANNING, *RESIDENTIAL RE-USE OF NON-RESIDENTIAL BUILDINGS IN MANHATTAN 22-24* (1977).

in Manhattan's loft neighborhoods were wholly or partially (three or more units) converted to residential use, and that 936 of these (91.5 percent) were illegal conversions. Moreover, this illegal conversion activity was not concentrated in a few locations but scattered throughout Manhattan south of 59th Street.

The second event occurred in the spring of 1978 during state and local hearings on continuation of the state enabling legislation for the J-51 tax abatement program. Manufacturers and labor unions spoke out against the program and blamed it for the loss of jobs. In order to salvage the legislation, Mayor Edward Koch established an inter-agency Task Force on Loft Conversion to make city and state policy recommendations concerning loft conversions.

The third event was a recommendation by the Task Force to have the Department of Buildings inspect the illegal buildings identified in the City Planning report. Once city officials realized the magnitude of illegal conversions, it became clear that a major fire or structural calamity could occur. Therefore, in the spring of 1978, building inspectors inspected these buildings and cited those not in compliance with the zoning and building codes.

Like Rip Van Winkle, loft owners awoke. Some ignored the violations and others used them to threaten their tenants with rent increases. Other loft owners petitioned the city to leave them alone claiming that they and their tenants were doing fine until the city stepped in.

Owners and tenants, however, were not doing fine. Many residential loft tenants faced steep rent increases and eviction. They had begun to fight back on an individual basis by going to the courts. Catalyzed by the 1978 inspections, illegal loft tenants formed organizations to address their problems.¹⁰⁷ By necessity, the tenants identified with the beleaguered manufacturer because both were being displaced from their lofts.

While residential loft tenants formerly had preferred freedom of choice to zoning and building code restrictions, they now turned to the restrictive hand of government for help. Composed of a young, educated population, schooled in an era of social and anti-war protest and with access to the media and affluent patrons, the arts community and other "pioneer" loft tenants chose to fight.

107. These organizations were Lower Manhattan Loft Tenants, Chelsea Loft Dwellers Association (which later merged into Lower Manhattan Loft Tenants), and Brooklyn Loft Tenants.

Credited with originating the loft movement, artists accounted for 24.3 percent of the heads of households residing in converted buildings in 1977.¹⁰⁸ Of those in illegally-converted lofts, artists accounted for 44.9 percent. By comparison, in 1970 only 2.1 percent of New York City heads of households were classified as artists. As a group, the artists have come to see their status in New York in terms of their ability to acquire or keep their lofts. The claim that artists "need" lofts remains unsubstantiated. Artists and their patrons, however, believe it and the media report it.¹⁰⁹

Artists have argued that the arts are a multibillion dollar industry in New York City that will be seriously compromised if the artists lost their lofts. The galleries, which they claim depend on their art, will disappear. Other cities quickly will attract what New York will lose.

This argument has some merit. Just as New York grew in importance in the art world when Paris waned, other cities, including Paris, can gain if New York declines. Loft conversion is not a phenomenon peculiar to New York, and if artists and lofts go hand in hand other cities may offer artists something New York can not—large amounts of centrally-located space at an affordable price. A number of cities have explored promoting artists' housing and cooperatives; they are not unique to New York.¹¹⁰

Others have made claims upon the city. The generation of nonartist pioneers that helped the artists create residential communities now find that their combined success has produced a housing market where none previously existed. While this is desirable if one owns a loft in a cooperative, residents, artists and nonartists alike, are usually renters. When loft cooperative prices rose eightfold between 1976 and 1980,¹¹¹ old-time renters found themselves priced out. Identifying and allying themselves closely with artists, they have proved to be potent political and legal adversaries of real estate owners and developers.

New York's liberal political establishment was quick to identify

108. K. FORD, *supra* note 27, at 21.

109. Glueck, *Neighborhoods: SoHo is Artists' Last Resort*, N.Y. Times, May 11, 1970, at 37, col. 1. The number of newspaper articles, magazine articles, television reports, and radio reports that adopted this position is staggering.

110. Project Arts in San Francisco is an example.

111. Horsley, *supra* note 72, at 4.

first with the need for artist housing¹¹² and later with the protection of all early loft dwellers.¹¹³ Articulate, sophisticated, and able to gain access to the media, the relatively small loft tenant population¹¹⁴ brought their grievances to the public's attention. They also were fortunate to be represented by potent, liberal city and state legislators. In a city where most housing is rented, successive municipal administrations have found it difficult to ignore the pleas of the loft tenants without appearing insensitive.

In addition to using political strength, loft tenants have turned to the courts. Relying on a substantial body of relatively protenant law and generally sympathetic judges, loft tenants have won in court some of the rights available to occupants of conventional housing. In *Lipkis v. Pikus*,¹¹⁵ one of the leading loft cases, the Civil Court of the City of New York held that although both landlord and tenants had participated in an illegal conversion and the tenants had signed commercial leases, the conversion constituted a de facto multiple dwelling and, therefore, the landlord was not entitled to receive rent until the building was made code compliant.

Through litigation,¹¹⁶ loft tenants fought landlords to a stalemate.

112. Clarity, *Artist Plan Draws Laughs and Noes in Assembly*, N.Y. Times, Feb. 20, 1968, at 76, col. 5.

113. Goldstein, *Have I Got a Bargain for You*, Village Voice, Nov. 4, 1980, col. 1, at 24, 25.

114. The Loft Board estimates that approximately 1,000 illegally-converted loft buildings exist, or approximately 6,000 loft units. Assuming a typical Manhattan occupancy of 1.9 people per unit, illegal loft dwellers account for about 11,400 people, less than 0.2% of the city's population.

115. 96 Misc. 2d 581, 409 N.Y.S.2d 598 (N.Y. Civ. Ct. 1978), *aff'd in part and modified in part*, 99 Misc. 2d 518, 416 N.Y.S.2d 694 (N.Y. App. Term), *aff'd*, 72 A.D.2d 697, 421 N.Y.S.2d 825 (N.Y. App. Div. 1979).

116. For background on loft litigation prior to the Loft Law, see Weisbrod, *Loft Conversion: Will Enforcement Bring Acceptance*, 6 N.Y. AFFAIRS 52-53 (1981); Note, *An Evaluation of New York Conversion Law*, 10 FORDHAM URB. L.J. 511, 523-29 (1982). Before the Loft Law, the New York courts generally addressed four issues. The first issue was residential occupancy. In general, courts held that a building constituted a de facto multiple dwelling if it contained three or more units and the tenants occupied the premises with the consent of the landlord, even if the building lacked a residential certificate of occupancy.

The second issue was minimum safety standards. In the leading case of *Lipkis v. Pikus*, the trial judge invoked the sanction of § 302(1)(b) of the State's Multiple Dwelling Law, which barred the collection of rent in a multiple dwelling lacking a residential certificate of occupancy. The Appellate Term, in an opinion adopted by the Appellate Division, modified the trial court's use of § 302 and required the tenants to pay rent into court until the owner obtained a residential certificate of occupancy.

The prospect of thousands of loft tenants on rent strike provided a powerful incentive to find a legislative solution. Otherwise, landlords would have found themselves in the awkward position of trying to recover rent by maintaining that they ran commercial buildings in which these tenants lived illegally. The courts would have had to sort out the conflicting claims on a case-by-case basis.

Equity provided another incentive. Loft tenants and owners made their bargain with each other in the 1960s and early 1970s to their mutual advantage. Landlords rented space that had very little value in the marketplace. Tenants got a great deal of space in the heart of one of the most crowded places in the world and they got it cheaply.

Whether the real estate market and the general population would have discovered loft buildings without the presence of the artists, other pioneers, and the glamorous image of it presented by the media is unknown. Other urban neighborhoods throughout North America and Europe are experiencing an influx of the affluent without the presence of artists as a drawing card. On the other hand, at least in New York—absent massive government intervention such as urban renewal—gentrification begins slowly until enough individual pioneering households have moved in to create a sufficient “critical mass” to attract the attention of the general populace.¹¹⁷ Arguably, the presence of artists at least accelerated the pace of gentrification in Manhattan’s loft neighborhoods.

While tenants and landlords initially had benefited equally from their arrangement, with the expansion of the market, landlords benefited at the expense of their earlier tenants. The tenants found this

For obvious reasons, owners did not obtain certificates of occupancy for illegally-occupied buildings.

A third issue considered by the courts was rent regulation. In *Mandel v. Plitkowsky*, 102 Misc. 2d 478, 425 N.Y.S.2d 92 (N.Y. App. Term), *aff’d*, 76 A.D.2d 807, 429 N.Y.S.2d 550 (N.Y. App. Div. 1979), the court found that rent stabilization applied to loft tenants.

The final issue that the courts considered prior to the Loft Law involved services. In *Corris v. 129 Front Co.*, 85 A.D.2d 176, 447 N.Y.S.2d 480 (N.Y. App. Div. 1982), the court conditioned the provision of housing maintenance services upon the payment of rent. The few cases pertaining to the applicability of the warranty of habitability to lofts do not give a clear interpretation of the warranty’s applicability.

117. Thus, in 1977, A. Barkan of James Felt Realty described real estate in Brooklyn’s Park Slope section as “marginal property” in spite of a gentrification process that had been underway for at least eight years. By 1981, Park Slope was no longer marginal but, rather, “hot, trendy [and] affordable.” *NEW BROOKLYN MAGAZINE*, vol. 4, no. 2 (1981).

unfair.¹¹⁸ They vigorously pressed their argument with city and state officials.

The government, however, was at odds with itself and unprepared to act effectively. The state attorney general's office took the position that the affluent people, involved in buying and selling spaces for illegal conversions and pricing the pioneer tenants out of the loft market, were not violating state law.

The protection of consumers is one of the attorney general's responsibilities. In terms of the public sale of real estate, this is accomplished by requiring the filing of an offering plan or prospectus with the attorney general's office. The state's General Business Law requires that every offering plan fully disclose all the facts that may affect a potential purchaser's decision.¹¹⁹

The attorney general's office does not verify the accuracy of all mandated material facts. It merely reviews the offering plan to make certain that all the required categories of information are included. It then accepts the offering plan for filing. An approval disclaimer appears on the front cover of a typical loft offering plan.¹²⁰ The purpose of the offering plan is to inform the consumer about potential pitfalls in the purchase of the offered property. Once warned, let the

118. This also can be viewed in the context of attitudes toward the wisdom of the marketplace's invisible hand. When they illegally moved into lofts, loft tenants complained that foolish government regulations impaired their freedom of choice. When faced with the realization that the marketplace would take their lofts from them, they turned to the government to restrict the freedom of property owners. At the same time, however, loft tenants objected to the most minimal requirements, such as registering as a nonconforming use and artists' certification.

Artists also resisted other proposed solutions to their housing problems. Proposals to attract artists to low-income neighborhoods were met with ridicule by artists. The residents of these neighborhoods also opposed artists' housing, fearing that it was the first step in the gentrification process.

Although artists voluntarily pursued careers in the arts, with the probability that such a decision would result in a reduction in their income, artists did not believe they should be poor. Often raised in middle-class homes and college educated, they expected many of the comforts of middle-class American life, at least being able to live in desirable locations.

119. N.Y. GEN. BUS. LAW § 352-e (McKinney Supp. 1983-84).

120. A typical disclaimer stated: "THE FILING OF THIS PLAN WITH THE DEPARTMENT OF LAW OF THE STATE OF NEW YORK DOES NOT CONSTITUTE APPROVAL OF THE ISSUE OR THE SALE THEREOF BY THE DEPARTMENT OF LAW OR THE ATTORNEY GENERAL OF THE STATE OF NEW YORK. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL." (Offering plan, a plan to convert to cooperative ownership, 133-137 Greene Street, Manhattan).

buyer beware. For the sale of cooperative units in loft buildings this warning process failed.

The cooperative sale of lofts began in 1966 when an artist "working in the dadaist tradition of anarchistic and irreverent art"¹²¹ had a vision that artists needed to own their lofts. One would not expect the requirements of the General Business Law to trouble an anarchistic artist and this one was not. Loft buildings were "sold" without offering plans, sometimes without even legally transferring title. Anarchy did have its advantage: lofts were sold for \$1.00 or less per square foot compared to as much as \$2.00 per square foot if offering plans had been filed. In contrast to this, by 1981 residential cooperative lofts sold for \$100 per square foot.

The problems with this approach surfaced quickly. Artists desired to protect their property interests. Eventually the attorney general stepped in. However, because his mission was to protect the consumer, and consumers were now the owners of these buildings, invalidating these illegal cooperatives was not acceptable public policy.¹²² Illegality had won round one.

Round two was more complicated. Offering plans were submitted to the attorney general and accepted for filing by his office. The front cover of a plan resembled the warning on a pack of cigarettes: "THIS OFFERING INVOLVES CERTAIN RISKS, AMONG WHICH IS THAT THE PREMISES ARE NOT AND CANNOT PRESENTLY LAWFULLY BE OCCUPIED FOR RESIDENTIAL PURPOSES."¹²³ Inside the offering plan were one or two other warnings about the illegality of living in these lofts. Nevertheless, the offering plan usually went on to describe the "apartments," tax benefits available under the Internal Revenue Code for home ownership and, most incredibly, a proprietary lease which sometimes required that the loft be used for residential purposes only.

The attorney general took the position that he only would require "full disclosure" and that the warnings constituted such disclosure.¹²⁴

121. C. SIMPSON, *SoHo: The Artist in the City* 155-56 (1981).

122. In 1975, the attorney general established a procedure, Cooperative Policy Statement 4 (CPS 4), for illegally sold cooperatives to file offering plans after the fact.

123. Offering Plan, 133-137 Greene Street, Manhattan.

124. Conversation with Joel DeFern of the attorney general's staff. Gerald Coleman, an official of the United Hatters, Cap, and Millinery Workers International Union, when recounting his own conversation with the attorney general's staff repeated the rhetorical question: "Would the attorney general's office accept for filing

If people occupied lofts in violation of city building and zoning laws, the city should enforce those laws. Whenever the city moved against a cooperative, which was always after the consumers had bought in,¹²⁵ the cooperative loft dwellers asserted the state attorney general had "allowed" them to buy in. They stated the city should prosecute the sponsor who was gone. If the sponsor had not participated in the conversion itself, he or she had not broken city law, or, in the interpretation of the attorney general, state law either. Illegality had won round two. Given such enforcement paralysis, potential loft dwellers believed that the government was giving the process its blessing.

Although consumers purchasing the loft did not ask for protection, manufacturers screamed for regulation. In mid-1978 the New York State Legislature finally acted. It amended the General Business Law to require that the attorney general could only accept an offering plan involving the conversion of a nonresidential building to residential use if the sponsor had obtained approved plans from the Department of Buildings. This made certain that the proposed conversion comply with all zoning and building codes.¹²⁶ Furthermore, the sponsor was required to complete all common area work in accordance with those plans.

The city and state sent other mixed signals to the loft conversion market. To assist in the production of housing, they offered two tax exemption and abatement programs. The 421 program, designed to spur new housing construction, also can be used for conversions. Under this program, property with new housing units is exempted from any increase in assessment resulting from the new residences.¹²⁷ The amount of the exemption declines on a sliding scale over a ten-year period. The J-51 program¹²⁸ was much more generous. Both of these programs were available only for buildings with a residential certificate of occupancy, which represented only a small fraction of the conversions. Nevertheless, they had a dramatic effect, particularly J-51.

an offering plan for an obviously illegal activity such as an opium den as long as there was full disclosure?"

125. Ironically, the city's first actions against illegal conversions often occurred when such conversions sought an *ex post facto* variance from zoning restrictions prohibiting residential use in manufacturing zones. Examples include 280-290 Lafayette Street (BSA Cal. No. 670-77BZ) and 644 Broadway (BSA Cal. No. 488-78BZ).

126. N.Y. GEN. BUS. LAW, § 352-ee (McKinney Supp. 1983-84).

127. N.Y. REAL PROP. TAX LAW § 421 (McKinney 1984).

128. NEW YORK, N.Y., ADMIN. CODE § J51-2.5(b)(2) (Supp. 1980-81).

Developers and loft dwellers contended that they were only doing what the city's J-51 program wanted—converting lofts to housing. From a land-use standpoint, the abatement programs were a disaster. The zoning prohibited conversion in manufacturing areas, the government was prepared to subsidize it if the Board of Standards and Appeals (BSA) would grant a zoning variance.

The BSA is the Zoning Resolution's safety valve. Legally, it allows a property owner who is unable to achieve a reasonable return on his property because of the zoning restrictions to use the property in a more profitable manner.¹²⁹ Practically, the BSA can use its power to grant variances from the zoning requirements to permit development not authorized by generic zoning categories but which the Board nevertheless feels is desirable. Although BSA decisions are subject to review in the courts,¹³⁰ the courts view the BSA as a body of experts and rarely overturn their decisions.¹³¹

Between 1971, when the BSA heard its first loft case, and 1979 the BSA granted eighty-nine variances to permit loft conversions—or to legalize existing ones—and denied none. Whether the building was large or small, whether it had been vacant for many years or the manufacturing tenants were in the process of being forced out, the BSA always found a reason to grant the variance.

Sheltered by its "independence"—BSA members cannot be removed from office except for cause during their terms—BSA decisions increasingly conflicted with the city's public commitment to protect manufacturing. Everyone involved in illegal loft conversion, developers and consumers alike, came to believe that it did not matter which laws or policies were being flaunted: if they were caught they could obtain a variance to legalize from the BSA. In 1980, when the city's belated loft policy was in the public review process, the BSA finally denied two variance applications for illegally-converted

129. NEW YORK, N.Y., ZONING RESOLUTION § 72-21 (1961); CHARTER OF THE CITY OF NEW YORK § 666 (1963).

130. In 1977, an amendment to the City Charter gave the Board of Estimate, a quasi-legislative body, the power to review BSA decisions and to overturn variances if they were not supported by substantial evidence in the BSA record. Although the BSA's decisions have been overturned frequently through this process, the courts often reinstate the BSA's variance decisions.

131. *Falvo v. Kerner*, 222 App. Div. 289, 225 N.Y.S. 747 (1927). See 2 R. ANDERSON, NEW YORK ZONING LAW AND PRACTICE 206 (1973).

buildings.¹³²

The city's method for assessing loft buildings also encouraged the spread of illegal conversion. During the early years of conversion, in the 1960s and early 1970s, the city assessed loft buildings for industrial use. At the time, these assessments reflected the value as the highly desirable industrial buildings they once were. Assessments were quite high for the amount of industry that occupied them. Nevertheless, they were lower than they would have been if assessed as converted lofts. Loft dwellers, therefore, became the beneficiaries of this bargain.

Toward the end of the 1970s, prices for residential lofts soared. Assessors realized how underassessed loft buildings had become and began to reevaluate. This reassessment included both converted lofts and potentially residential lofts. In a bizarre development, the assessors increased the assessment of at least one industrially-used loft building in a zoning district that did not even permit conversion. Referring to all the illegal conversions, the assessors argued that the owner could have converted the loft illegally. It was not until 1981 that the city adopted a policy that did not penalize an owner of an industrial building with manufacturing tenants.¹³³

Money made illegal conversion a powerful force. The early rental buildings required very little work because improvements were modest and usually made by the incoming residential tenant. The tenant later "sold" his improvements to the next tenant for a "fixture fee."¹³⁴ Beginning with the first primitive cooperatives, capital was needed to acquire a building. Initially, this came from foundation grants. These foundations were supportive of the notion of artist cooperatives. This source soon dried up, as the grantors either were frightened by the fire hazards or interested in larger, more legitimate artists' housing projects.¹³⁵

For the next several years, conversion was financed without institutional support. The previous owner took back a purchase money

132. 151 West 28 Street (BSA Cal. No. 1070-79BZ) and 40 West 24 Street (BSA Cal. No. 665-79BZ).

133. In 1981, city assessors agreed to stop assessing industrial buildings at their potential residential value.

134. In New York State, unless the lease provides otherwise, such fixtures (e.g., kitchens, bathrooms, and other tenant-added improvements) are the property of the landlord. As the value of the fixtures increased with the growing popularity of lofts, many landlords refused to permit tenants to sell their fixtures.

135. C. SIMPSON, *supra* note 121, at 156-57.

mortgage. The downpayment came from the developer's pocket or from preselling shares in the cooperative. By 1974, legal conversion was beginning and banks started lending funds. As conversion became popular and banks became aware of the lucrative potential of illegal conversions, they began to make loans to finance the purchase of individual cooperative lofts without inquiry into the legality of the conversion.

It was not until 1978 that the banks realized that financing illegal conversions was a risky venture. Although the city's enforcement of the law was no concern—because nobody believed the city could or would enforce—the marketplace posed two risks. First, most loft buildings were insured as industrial property. If substantial damages resulted from the injury or death of an illegal loft dweller, an insurance company might use illegality to avoid liability. The uninsured bank loans were not secure. The city's policy of reassessing lofts at their residential value created a second risk for lenders: if the assessments jumped to full value as required by law, taxes would increase by several hundred percent, beyond the financial capacity of many of the loft dwellers. Although the J-51 programs offered a way to reduce taxes dramatically, illegal conversions did not qualify for the benefit.

At least a decade passed before the loft conversion movement coalesced and another decade passed before it developed the mechanisms for its rapid growth. By 1975, all the elements for the survival of the conversion movement were in place. Then, like the dinosaur overpopulating and destroying its habitat, the movement's expansion proceeded to consume the very environment that nurtured it.

VII. NEW YORK CITY'S MANHATTAN LOFT PROGRAM

Between the issuance of recommendations by the Task Force on Loft Conversion in July 1978 and the mayor's announcement of his administration's loft program in September 1980, battling constituencies pushed and pulled at a government caught up in its own interne-cine debate. The discussion concerned the response to an increasingly large and agitated public with widely differing concerns about loft conversions.

The city recognized that additional minor zoning changes would be useless. In consultation with the city planning, buildings, housing, cultural affairs, appeals board, and economic development agencies, the mayor set forth a comprehensive and innovative program that

required various city and state actions.¹³⁶ A six-part program ultimately was approved.

A. *Zoning Amendments that Regulate all Conversions in Manhattan South of 59th Street*

The amendments¹³⁷ liberalized legal conversion, increasing by seven million square feet the amount of convertible loft space to a total of eighty-seven million square feet.¹³⁸ As a practical matter, the amendments increased the amount of loft space protected from conversion from zero to seventy-two million square feet.

The Planning Commission categorized loft neighborhoods according to four criteria for evaluation: 1) importance of industrial activity;¹³⁹ 2) building size and location;¹⁴⁰ 3) existing conversion;¹⁴¹ and 4) availability of residential services.¹⁴² The evaluations resulted in the division of loft neighborhoods into three types of zoning districts: manufacturing districts, which prohibit conversion; commercial districts, which permit as-of-right conversion; and mixed-use districts, which permit some conversion but mandate the preservation of substantial space for commercial or manufacturing use. In the old mixed-use districts (SoHo/NoHo and Tribeca), space is preserved by restricting conversion to buildings with smaller floor sizes. In the new mixed-use areas of midtown (Southeast Chelsea and Garment Center East), a portion of each building may be converted based on lot size and floor area; the remainder must be preserved for commercial or manufacturing use. To permit developers the option of fully

136. DEPARTMENT OF CITY PLANNING, PROPOSED MANHATTAN LOFT POLICY (1980) contained five of the six elements. It would take almost two years for the sixth element, Article 7C, to take shape and win approval.

137. These amendments to the zoning resolution were calendared as zoning text change N800458ZRM and zoning map changes C800459ZMM.

138. Of this total, an estimated 20,000,000 to 30,000,000 square feet already have been converted. The 87,000,000 square feet represent the potential amount of conversion permitted in all districts where residential use is as-of-right.

139. DEPARTMENT OF CITY PLANNING, PRELIMINARY REPORT MANHATTAN LOFT CONVERSION PROPOSAL 29 (1980). When industrial occupancy rates are high or when firms of a particular industry cluster together, industry should be protected.

140. *Id.* Areas with higher concentrations of smaller loft buildings were considered more appropriate for conversion than areas with mostly larger buildings.

141. *Id.* Areas that had experienced significant amounts of conversion were more appropriate for conversion than areas with little existing conversion.

142. *Id.* Neighborhoods with good access to existing residential services were acceptable locations for residential conversion.

residential and fully nonresidential buildings in the new mixed-use areas, "conversion rights" and "preservation obligations" may be transferred between buildings. In both the old and new mixed-use districts, a Planning Commission special permit allows the conversion of the "preserved space." The special permit is tied to market conditions. If the market for nonresidential space is strong, the Commission generally cannot grant the special permit. It becomes easier to make the findings required for the permit if the market for such space softens. To ensure an adequate living environment, the amendments incorporate housing standards into the zoning, which regulate density, apartment size, apartment dimensions, and rooftop open space.

The zoning amendments institutionalized the role of the manufacturing sector to ensure that its concerns were aired in considering future land use changes. To accomplish this result, the Industrial Loft Advisory Council (ILAC) was created consisting of representatives from the various segments of the industrial community.

B. *A Relocation Incentive Program that Applies to all Conversions Affected by the Zoning Amendments*

By offering substantial financial assistance to industrial firms displaced by conversion,¹⁴³ the city sought to encourage these firms to relocate within New York City. The program is paid for entirely with funds supplied by developers.¹⁴⁴ The relocation payments generally are sufficient to cover all of a displaced firm's moving expenses.

143. NEW YORK, N.Y., ZONING RESOLUTION §§ 15-50 to -582 (1981).

144. NEW YORK CITY PLANNING COMMISSION, *supra* note 1, at 32: Prior to the issuance of a building permit a developer of a loft building would be required to pay a \$9 per square foot "conversion contribution" to the . . . Business Relocation Assistance Corporation (BRAC). A developer . . . [is] able to take advantage of a 50 percent discount by making a \$4.50 per square foot "direct help payment" available to his tenants at the time of relocation. Tenants relocating in New York would receive the benefit from this direct help payment. Manufacturing establishments would receive the full \$4.50, while other industrial type tenants [such as warehouses] would receive \$2.25 per square foot. Any funds not received by such tenants would go to BRAC to provide relocation assistance where needed.

In 1983, the conversion contribution was raised to \$10.60 per square foot.

C. *Limiting Tax Incentives for Conversion to Zoning Districts that Permit Residential Use of As-of-Right*

Because tax incentives play a crucial role in institutional financing of conversion, targeting them away from manufacturing districts reduces the inducement for conversions in these areas.

D. *Amendments to Article 7B of the New York State Multiple Dwelling Law*

These amendments¹⁴⁵ further simplify standards for fire protection, egress, light and air, and make conversion less expensive without compromising safety.

E. *An Enforcement Program to Stop New Illegal Conversion and Oversee the Legalization of Currently Occupied Illegal Loft Buildings*

For the first time in two decades, land use, building, and tax regulations were coordinated with each other and with the realities of the marketplace. Thus, the marketplace functioned within the law.

Yet, credible enforcement was essential for the loft program to overcome two decades of illegality. A special enforcement effort, placed in the mayor's office, emphasized the seriousness of the city's commitment to stop illegal loft conversion. Since early 1981, when the zoning was adopted and the enforcement office established, illegal conversions of buildings have ceased in Manhattan.

The Mayor's Office of Loft Enforcement (MOLE) combined the inspection function of the Department of Buildings and the litigation capabilities of the Law Department into one small unit of planners, inspectors, investigators, and attorneys. Through investigations, inspections, and civil litigation, MOLE demonstrated that a small office devoted exclusively to the goal of preventing new illegal loft conversion by enforcing the zoning, administrative, and other codes, effectively can persuade potential illegal converters that the era of illegal loft conversion is over.

In New York zoning and code enforcement proceedings violators are issued summonses; if conditions are not corrected, a minimal fine is levied. This hardly deters a multimillion dollar illegal conversion. The Law Department rarely takes more affirmative action in zoning

145. N.Y. MULT. DWELL. LAW. §§ 275-78 (McKinney Supp. 1983-84).

matters, relegating such items a low priority in a complex city. MOLE was not given any extraordinary enforcement powers, but concentrated solely on one enforcement priority. MOLE's capability of rapidly sending inspectors to problem spots permits staff attorneys to petition the civil court expeditiously to obtain restraining orders, injunctions, fines, and building closures.

Zoning works best when it is self-enforcing. The ultimate testament to MOLE's success will occur when voluntary compliance is the norm rather than the exception.¹⁴⁶ At that time, special enforcement will no longer be needed. In September 1982, MOLE became a part of the New York City Loft Board's staff.

F. *Enactment of Article 7C of the New York State Multiple Dwelling Law*

Article 7C establishes a Loft Board to oversee code compliance of illegal loft buildings and to mediate landlord-tenant disputes during the process.¹⁴⁷ This new statute, called the "Loft Law" and enacted in June 1982, compels owners to legalize their illegally-occupied buildings. It defines these buildings as "interim multiple dwellings" if they contain three or more units that were occupied on April 1, 1980, in an area where the zoning permits residential use.¹⁴⁸ Property owners must register these buildings with the Loft Board, file an alteration application, obtain a building permit and receive a residential certificate of occupancy within three to five years.¹⁴⁹ The cost of code compliance is passed on to tenants based on a Loft Board schedule of costs that is amortized over a ten or fifteen year period.¹⁵⁰

When a certificate of occupancy is obtained, the building ceases to be "interim" and becomes a "Class A" multiple dwelling that leaves the Loft Board's purview. Thereafter, the dwelling unit is folded into the rent stabilization system that mandates rent renewals at the option of the tenant at fixed percentages established by New York City's Rent Guidelines Board. The mayor appointed the members of the Loft Board in October 1982. Its responsibilities are to determine whether a building is an interim multiple dwelling, resolve hardship

146. Weisbrod, *supra* note 116, at 56.

147. N.Y. MULT. DWELL. LAW §§ 280-87 (McKinney Supp. 1983-84).

148. *Id.* §§ 281(1)-(3).

149. *Id.* § 284(1)(i).

150. *Id.* § 286(5).

applications, adjudicate claims for rent adjustment, issue and enforce minimum housing maintenance standards, and resolve disputes over the fair market value of fixtures.

The Loft Board has been sorting out the thorny problems of landlord-tenant relations. Although some tenants and owners desire to legalize, many see little to be gained. For tenants, legalizing means substantial rent increases, although ultimately they will possess a rent-stabilized unit that eventually will become a bargain. For the owner, it mandates operating a residential building and expending large sums of money to make the building code compliant, which will take years to recoup through increased rents. Because the market for office use of lofts has improved, many loft owners would rather vacate their residential tenants and restore their buildings to commercial use.

Owners may submit a hardship application to the Loft Board to vacate residential units if either the costs of code compliance are excessive in terms of the future return or code compliance will displace commercial and industrial tenants in the building. If the Loft Board grants a hardship, the owner must file an irrevocable covenant stating that the space will remain in nonresidential use for fifteen years.

VIII. THE LOFT PROGRAM'S PUBLIC REVIEW PROCESS

An almost unprecedented cooperative effort between the planning, housing, enforcement, economic development, buildings, cultural affairs, and appeals agencies contributed to the development of the city's loft program. This cooperation also was evident in the discussions between government officials and the interested members of the public.

To facilitate the discussion of the proposal, the city undertook an interagency public information effort that remains intact. Prior to the adoption of the new zoning, the Planning Commission published a book¹⁵¹ specifically written to maximize public awareness and elicit public responses. The publication contained the Planning Commission report in zoning parlance and plain English explaining the Commission's recommendations and their effects.

The initial reaction to the proposed loft program resulted in almost universal criticism. Manufacturers and their unions opposed allowing any conversion. Residential loft tenants wanted the city to

151. NEW YORK CITY PLANNING COMMISSION, *supra* note 1.

delay implementing the rest of the proposal until the state approved Article 7C. In an effort to stop the zoning, they supported the manufacturers in urging its defeat. Developers wanted more conversion, but not more regulation. They called for the defeat of the proposal but attributed their opposition to a professed concern for protecting manufacturing. Civic organizations and community boards generally expressed qualified approval but joined the chorus calling for additional protection of industry.

This political lineup greatly strengthened the manufacturing sector's position. It also simplified the job of negotiating a revised program. If the manufacturers and their unions could be convinced to support the proposal, their opponents would have no choice but to cooperate.

The city made substantive changes to accommodate industry while making numerous technical zoning changes requested by the various parties. This combination of changes resulted in a more workable and politically acceptable program than the city's original proposal, and led to the approval of all six parts of the program.

IX. EVALUATION OF THE LOFT PROGRAM

In an era of decreasing public support for government regulation of private industry, New York City chose to intervene in the loft marketplace. The city's loft program has been in operation since 1981. New York's mayor often asks, "How'm I doin'?" It is important to ask the same question of the city's loft program. It has three major goals: providing new housing in converted buildings, protecting manufacturing space from competing residential uses, and bringing illegally-converted lofts into compliance with appropriate building codes. The question arises whether these goals are being met.

A. *Providing New Housing in Converted Loft Buildings*

Since the passage of the loft zoning amendments in 1981, developers have continued converting loft buildings to residential use, but the rate of conversion is slower than it was during its heyday in the late 1970s.¹⁵² This is due in part to the 1981 and 1983¹⁵³ changes

152. Most legal loft conversions receive J-51 tax abatement. A building is eligible for J-51 when it has a temporary or final certificate of occupancy. A 1983 Loft Board study (based on statistics from the City's Department of Housing Preservation and Development of former industrial buildings converted citywide to multiple dwellings that received J-51) showed the following: 1979—37 buildings (1,464 units); 1980—55

limiting the applicability of the J-51 tax abatement and exemption program for conversions, and the loft program's requirement that developers who displace manufacturers contribute to a relocation fund.

Although it ranges from zero to four percent of the total project cost, depending upon its impact on land cost, the relocation payment can increase a developer's up-front cash requirement by as much as seventy-five percent. The slowdown in the conversion rate is also attributable to changing market conditions unrelated to the loft program. Many developers, including some former loft developers, now invest in new residential construction in Manhattan. Another factor in the conversion slowdown is the steep rise in office rents in midtown Manhattan, which has displaced many small office users, particularly architecture, law, graphic design, publishing, and advertising firms. Beginning in the early 1980s, these businesses began moving to loft buildings in downtown Manhattan that offered lower rents as well as unusual, high-ceilinged spaces, which were considered acceptable even desirable alternatives to the modern glass box buildings of midtown. Owners began converting loft buildings to office uses because office tenants pay higher rents than manufacturers and are believed to cause fewer problems than residential tenants.¹⁵⁴ Newly-gentrified neighborhoods, like SoHo, also created new demands for high-priced retail and service businesses downtown. These changes in the commercial real estate market have affected significantly the rate of loft conversions.

Although the loft program was not the major factor in slowing the conversion rate, it did delay inadvertently individual conversions proposed shortly after its enactment. Some delay was inevitable; the rules and administrative procedures governing conversions had changed drastically and developers were unfamiliar with them. These rules also were complicated. To obtain a building permit, even for an as-of-right conversion, a developer may have to deal with as

buildings (1,458 units); 1981—70 buildings (1,703 units); and 1982—62 buildings (2,567 units). The 1983 and 1984 data are available only for conversions of nonresidential buildings to multiple dwellings. This includes the conversion of buildings such as hospitals, schools, and offices in addition to lofts. These figures are: 1983—75 buildings (1,909 units); and 1984—40 buildings (732 units).

153. In 1983, J-51 was eliminated in some parts of Manhattan and its benefits reduced considerably in others. These changes were not linked to the loft program.

154. In addition to saving relocation costs, developers of office conversions can avoid concern about the legal protections available to residential tenants in New York City.

many as five city agencies. City officials aggravated these problems by not moving quickly to implement the loft program after it was passed. They had concentrated their efforts on building public support for the program while it was in its planning and public review stage, and gave little thought to the mechanics of its administration. Consequently, the first projects reviewed under the loft zoning were delayed while city agencies promulgated new application forms, trained staff to review applications, and set up new processing procedures.

The Department of City Planning set up a loft conversion unit in 1981 to process applications for new conversions and residential "grandfathering,"¹⁵⁵ and to study a number of still unresolved loft policy questions.¹⁵⁶ Nevertheless, considerable time was added to the approval process in these cases.¹⁵⁷ By forcing residents in illegal loft buildings to file for grandfathering by a specified date in order to protect their rights of occupancy, however, the city removed the incentive for them to remain in hiding and helped overcome the belief of many tenants that illegality is preferable to regulation.¹⁵⁸

The most common criticisms of the loft zoning are that it is too complex, too lengthy, and too difficult to understand. The administrative processes also are criticized as excessively cumbersome. The loft zoning covers a wide variety of special situations. It did not,

155. "Grandfathering" is "a zoning technique which permits certain existing illegal residential loft tenants to become legal non-conforming uses in a particular district. The legalization is dependent on the dwelling units conforming to the requirements of the New York Multiple Dwelling Law, the Building Code, and the obtaining of a new Certificate of Occupancy." NEW YORK CITY PLANNING COMMISSION, *supra* note 1, at 149.

156. Among the issues were the artist-only provisions of SoHo and NoHo, the need for appropriate regulations for loft areas in Brooklyn and Queens, and the reuse of loft buildings for offices.

157. A sampling of eight special permit applications made to the City Planning Commission for residential grandfathering showed that an average of 12 months passed before the Commission made a recommendation to the Board of Estimate, which adopts, denies, or modifies the Commission's recommendation. In accordance with § 197(c) of the New York City Charter, special permits must pass through a public review process, which takes a minimum of four months. NEW YORK, N.Y., CITY CHARTER § 197(c) (1976 & Supp. 1983-84). Also, some delay may be attributable simply to the staff's desire for additional information from applicants.

158. The sunset date for residential grandfathering was June 1983; approximately 2,500 units filed for grandfathering. This is in contrast to the response to the rezoning of SoHo and NoHo in 1976, which permitted legalization. By September 1978, only six percent of the illegally-occupied buildings had obtained certificates of occupancy.

however, anticipate all the special problems that arise in the conversion of older buildings. Some zoning text changes have been required since 1981. Processing these changes takes at least three months and contributes to start-up delays of affected projects.

All of these problems exasperated developers, many of whom were skeptical of the zoning amendments from the outset because they believed that the city was cutting back on conversion. In 1981, however, the city rezoned seven million square feet of loft space to allow for as-of-right residential conversions.¹⁵⁹ Now, the initial problems in implementing the zoning aspects of the loft program have been resolved.

B. *Protecting Manufacturing Space*

For manufacturers occupying loft space in Manhattan, the loft program generally has succeeded in reducing the threat of displacement. The zoning enforcement efforts of MOLE and its successor agency, the New York City Loft Board, have stopped seventy-one illegal conversions in Manhattan and Brooklyn between July 1981 and December 1983.¹⁶⁰ The success of these efforts is attributable largely to the loft program's combination of several mechanisms: 1) zoning changes that channelled conversions to certain areas of the city and away from others; 2) changes in the J-51 tax abatement and exemption; and 3) provisions for relocation payments to displaced manufacturers that served as disincentives for development in areas not considered suitable for residential conversions.¹⁶¹

Three other changes in the conversion market facilitated the success of the loft enforcement program: 1) the growing popularity of commercial as opposed to residential conversions; 2) the dearth of

159. The 1981 loft zoning amendments technically were more liberal in regulating conversion. Because the former regulations routinely had been ignored, however, the 1981 zoning had the effect of being more restrictive.

160. OFFICE OF LOFT ENFORCEMENT, FINAL REPORT OCTOBER 1, 1980-SEPTEMBER 30, 1982 10-11 (1984); NEW YORK CITY LOFT BOARD, REPORT OCTOBER 1, 1982-DECEMBER 31, 1983 9 (1984).

161. Free market advocates have argued that high interest rates and liberalized zoning—not the city's loft program—is responsible for the reduction in illegal activity. This argument is not supported by the history of conversions. In the 1970s the city liberalized zoning that affected lofts on three occasions, with little impact on the number of illegal residential conversions. Moreover, when interest rates climbed above 20%, illegal activity continued unabated. Finally, illegal conversions, which usually were not funded institutionally, historically have been immune to interest rate fluctuation.

inexpensive loft buildings suitable for conversion; and 3) the realization by consumers and lending institutions of the liabilities involved in investing in illegal residential buildings.

Since 1981 several persons attempted to obtain zoning variances for residential use of lofts. Among these were two in the Graphic Arts Center, a reaffirmed manufacturing district. These attempts so contravened the loft program that, if granted, they would have broken the policy. The BSA denied these applications.¹⁶² As a result, a number of buildings that were on the market for residential conversion in manufacturing districts instead have been leased for manufacturing or commercial use. In another important instance, the City Planning Commission denied a special permit for residential use of a vacant building in NoHo,¹⁶³ formerly used for manufacturing, because the owner did not renew leases and did not undertake a good faith effort to market the space for nonresidential use. The owner is now converting the building for office use. These and other denials for variances and special permits have dampened developer enthusiasm for seeking exceptions to the land use policy.¹⁶⁴

The continued success of the loft program in preserving manufacturing space, however, increasingly may be compromised by the Loft Board's lack of attention to zoning enforcement. MOLE, which now serves as the enforcement arm of the Board, is involved increasingly in administering several key provisions of Article 7C. This includes enforcing the registration of loft buildings as interim multiple dwellings (IMDs), processing tenant service complaints, and determining whether owners are meeting legalization deadlines prescribed by Article 7C.

The most serious potential threat to manufacturers, however, is the trend to office conversions in Manhattan's loft neighborhoods. The loft program only addressed the competition between manufacturers and residential tenants. As a result, the city lacks an existing mechanism for regulating office conversions. Moreover, the city is only now in the process of developing a policy to deal with these conversions. Since 1981, city staff has studied the effect of conversions on the city's

162. 627 Greenwich Street, Manhattan (BSA Cal. No. 182-81BZ); 636 Greenwich Street, Manhattan (BSA Cal. No. 1104-80BZ).

163. 656 Broadway, Manhattan (CPC No. C820248ZSM).

164. The City Planning Commission also has denied permission to convert vacant floors in a number of partially-converted buildings. *E.g.*, 419 Lafayette Street, Manhattan (CPC No. C820987ZSM).

economy but has not yet reached any conclusions. The city, however, is attempting to mitigate the negative impact of office conversions on manufacturing. Recently, the city has implemented the Industrial Retention Program that provides grants to manufacturers who relocate from certain loft neighborhoods in Manhattan, Brooklyn, and Queens to outlying areas of the city. Many manufacturers, however, are wary of moving to areas that are not readily accessible by public transportation, lack support services, and have high crime rates. Whether or not the Retention Program will succeed is speculative.

Two other proposed ideas remain under review. One idea recommends the building of new, publicly-subsidized industrial space on underutilized land in Manhattan west of the Garment Center. The second proposal would make conversion of certain manufacturing buildings to offices the subject of a special permit review process. To date, no city officials have committed themselves to the desirability or feasibility of either approach.

Other safeguards for manufacturers included in the city's loft program have enjoyed limited success—notably the establishment of a manufacturing advisory board and the Business Relocation Assistance Corporation.

The loft zoning mandated the establishment of an Industrial Loft Advisory Council (ILAC), which was intended to give manufacturing a voice in city government. It formed slowly, taking fifteen months to hold its first meeting and convening only intermittently since then. ILAC has taken positions on particular variance and special permit applications, rezoning proposals, and Loft Board policies. ILAC's opposition to two variance applications played a part in the withdrawal of one and the denial of the other. Because its fifteen members are part-time and unsalaried, however, ILAC is unable to address the broad range of issues affecting manufacturers. The staff of ILAC is assigned by the city's economic development agency, compromising its ability to act independently on city-supported projects. It is uncertain whether ILAC will have the long-term effect on government decisionmaking envisioned by the drafters of the loft program.

The Relocation Incentive Program encourages developers to make relocation payments directly to manufacturers. From September 1982 to July 1984 developers paid approximately \$1,088,000 for relocation directly to forty-nine manufacturing firms (representing 484 jobs) that conversion had displaced, for relocation in the city. After

an initial start-up delay, the BSA won praise for administering compliance with the relocation program. Although developers dislike paying relocation money, they have accepted it as a business cost. A city survey indicated that approximately one-third of the firms involved based their decision to remain in New York City on the availability of these funds.¹⁶⁵ The Relocation Incentive Program's success rate in this regard has been better than expected, considering the success rate of several tax abatement programs.¹⁶⁶

The Business Relocation Assistance Corporation (BRAC), a part of the relocation program, has not functioned as well as expected. To date, most of the converted floor space has not involved tenants who qualify for relocation money because: there is no industrial tenant to relocate; the conversion is of vacant space; the tenant relocates to smaller space; the tenant fails to claim the benefits within the statutory timeframe; or the tenant is only eligible for the lower benefit category. In these cases, BRAC collects the money for use by other tenants who require more relocation money and by other targeted recipients. By June 1984, BRAC had collected about two million dollars from developers. None of this money, although available to assist manufacturers, has been spent. The Relocation Incentive Program has had some success in assisting displaced manufacturers, but until BRAC begins to distribute this considerable amount of money, the relocation program will not realize its full potential.

Still, although manufacturers face stiff competition for space in Manhattan and assistance programs operate imperfectly, the loft program has alleviated the pressure of residential conversion on the city's manufacturing firms. On balance, the manufacturing community is supportive of the city's loft program and considers it a qualified success.

C. *Code Compliance for Illegally-Occupied Lofts*

The third and final goal of the loft program is to ensure that interim multiple dwellings comply with Article 7C. This goal has not yet been met. In fact, the Loft Board has yet to promulgate regula-

165. OFFICE OF ECONOMIC DEVELOPMENT, SUMMARY OF FINDINGS: SURVEY OF RECIPIENTS OF RELOCATION ASSISTANCE THROUGH BRAC 2 (Report, 1983). Although technically incorrect, the acronym BRAC is often used to refer to the Relocation Incentive Program.

166. See D. MANDELKER, G. FEDER & M. COLLINS, REVIVING CITIES WITH TAX ABATEMENT 34, 36 (1980).

tions implementing Article 7C's code compliance scheme¹⁶⁷ and, once implemented, the scheme will take up to five years to complete the legalization of an estimated one thousand IMDs with their six thousand dwelling units. If these units are not legalized, the success of the entire loft program will be seriously undermined.

The delay in promulgating code compliance regulations already has compromised the statutory code compliance scheme. Article 7C requires owners to legalize in stages, according to a specified timetable. Because code compliance regulations have not been issued, this timetable effectively has been mooted. Owners cannot be expected to begin code compliance work within their buildings before the Board gives them notice of how the work should be performed and how its costs will be allocated among tenants. As a result, the June 1985 deadline set forth by Article 7C for obtaining a final certificate of occupancy will have no effect in most cases.¹⁶⁸

The inability of the Loft Board to proceed rapidly is not surprising. The Board's effectiveness was hampered at the outset by the deep mistrust and rancor that permeates relations between loft owners and tenants, many of whom do not appear to want to legalize or to be regulated at all, and by the complexity of the tasks assigned to the Board by Article 7C. These problems are worth examining in brief.

Because of the difficulties the state legislature encountered in forging a compromise between owners and tenants, it took two years to pass Article 7C. The bill that the legislature finally enacted left open some very sensitive questions for resolution by the Loft Board.¹⁶⁹ These included determining: 1) The residential occupant covered by the law; 2) the appropriate level of residential services in IMDs and allocating their costs; 3) the manner in which to measure the "fair market value" of fixtures, which is the price at which outgoing ten-

167. The Loft Board has scheduled a vote on code compliance regulation for February 1985.

168. Article 7C mandates interim multiple dwellings to obtain certificates of occupancy by June 1985, although the Board may grant two one-year extensions if reasonable progress is made toward code compliance. As of August 1984, 636 buildings were registered as interim multiple dwellings with the Loft Board; of these, 434 have filed alteration applications for legalization. In addition, there are five applications at the Loft Board for rent pass throughs to tenants in buildings that have become code compliant since the passage of Article 7C.

169. N.Y. MULT. DWELL. LAW. § 282 (McKinney Supp. 1983-84) (outlines the duties of the Loft Board).

ants may sell their fixtures to incoming tenants;¹⁷⁰ 4) what code compliance work is "necessary and reasonable" and should be paid for by tenants in the form of rent increases; 5) allowable costs for code compliance work; and 6) how rent pass throughs will be allocated among individual tenants.

Meeting on a frequent basis since its inception in September 1982, the Loft Board has enacted a number of regulations, several of which address the questions noted above. These questions include the definition of "residential occupancy" and the determination of essential residential services that building owners must provide.¹⁷¹ In its two years of operation, however, the Board has failed to pass regulations governing the two most important and controversial areas: fixture sales¹⁷² and code compliance.

The biggest problems facing the Loft Board in promulgating regulations consist of both the enmity between owners and tenants, and the Board's own failure to reach a consensus on controversial questions. Occasionally, disputes among members effectively have paralyzed the Board.

The Board includes one owner representative (until October 1984 an owner of an interim multiple dwelling) and one tenant representative (a loft tenant). Each has used the Board as a forum for airing the grievances of their constituents and has been unable or unwilling to resolve differences with the other. Each side has the attitude that being legal protects their rights while placing restrictions on others. They are reluctant to give up what they believe are the advantages of illegality.¹⁷³ The dissatisfaction of both owners and tenants with Ar-

170. *Id.* § 286(6).

171. The Board also has passed regulations governing the registration of IMDs, internal board procedures, and the processing of cases, fees, and hardship applications by owners seeking exemptions from Article 7C and interim rent guidelines.

172. The Loft Board has had difficulty with fixture regulations. Since May 1983, it has held numerous public discussions and two public hearings on four different sets of proposed fixture regulations. A vote on this regulation is scheduled for February 1985. The failure to issue regulations governing the sale of fixtures has contributed to confusion regarding loft tenancies in general. Loft tenants who have moved in the last two years were forced to sell their fixtures outside of the law, and many of these sales ultimately may be voided by whatever regulation the Board finally adopts. The effect of this on purchasing incoming tenants is unclear.

173. In this manner, the loft conversion phenomenon has exemplified the American Search for "absolute personal freedom, privacy, . . . the desire . . . to be a free agent, [and] live by one's own rules." J. DIDION, *SLOUCHING TOWARDS BETHLEHEM* 71 (1968).

ticle 7C and the Board itself has resulted in the filing of twenty-three lawsuits against the Board by August 1984, including challenges to some of its regulations.¹⁷⁴

Exacerbating the effect of the conflicts between the tenant and owner representatives on the Board is the inability of its four public members to reach compromises—to define and support strong middle positions between landlords and tenants. Thus, the Loft Board has failed to articulate a coherent policy regarding the respective rights of owners and tenants under Article 7C. This has limited the Board's ability to promulgate regulations, undermined its credibility, and contributed to a growing backlog of cases involving individual landlord-tenant disputes.

Ideally, code compliance for interim multiple dwellings will transform substandard housing into legal, safe housing before the normal impetus for government to respond occurs: a major disaster. In December 1983, two serious fires occurred in two illegal loft buildings, resulting in one death. These events brought further urgency to the critical task of ensuring rapid code compliance. If Article 7C is properly administered, it should effect a workable compromise between loft owners and tenants that will keep lofts affordable for most tenants and allow owners to make reasonable, if not maximum, profits on their buildings.

From the least favorable viewpoint, interim multiple dwelling legalization is an experiment in mitigating the effects of gentrification on a highly articulate and politically savvy group of middle- and upper-class tenants who arguably do not need the aid of the government. Moreover, other neighborhoods in New York City are being gentrified. Yet, the protections available to residents of these neighborhoods may prove less encompassing than those provided to loft tenants by Article 7C.

X. CONCLUSION

The ultimate success of the six-part loft program in preserving industrial space, encouraging residential conversions in appropriate neighborhoods, and upgrading illegally-occupied lofts will depend upon the willingness of city officials to evaluate the wisdom of their

174. This has hampered the Board's ability to enforce the zoning when legal action is required. Its legal staff has been preoccupied with defending the Board in these lawsuits, although the Board did commence four affirmative zoning actions in the courts and one intervention during the same time period.

loft policies and their success in implementing them. The loft program is complicated. It requires the cooperation of several city agencies, loft developers, building owners, and tenants. Its success also will depend on its ability to respond to changing market conditions.

Since the implementation of the loft program, a knowledgeable and concerned core staff in each of the agencies involved in administering it has remained in almost daily contact and, for the most part, has succeeded in resolving problems as they arise. Agency personnel change over time.¹⁷⁵ Whether their replacements will have the same experience and expertise in the area of loft conversions or the same commitment to the success of the loft program remains to be seen.

The loft program was the subject of heated debates while it was in the planning stage. Controversy over its inability to meet all of its goals remains. The successes of the program so far, however, have silenced most of its critics. Questions regarding the city's loft zoning, relocation program, tax abatement policies, building code changes, and enforcement efforts virtually have disappeared from the arena of public debate. Significantly, a 1984 proposal to extend the zoning and relocation program to Brooklyn and Queens generated no public opposition. The ultimate success of the loft program, however, depends on the successful upgrading and legalization of the almost one thousand illegally-converted loft buildings within the Loft Board's jurisdiction. Until these buildings are made code compliant, the loft program cannot be fully and finally evaluated.

175. Only two of the original agency personnel who set up the loft program now plays a major role in the implementation of any of its six parts.

NOTES

