

U.S. Supreme Court to Hear Grand Central Terminal Case

by Frank B. Gilbert

On December 5 the United States Supreme Court granted review of the New York State Court of Appeals decision in the case involving the proposed construction of a 2,000,000 square-foot office building on the site of Grand Central Terminal, a designated New York City landmark. The decision by the Supreme Court in this case, *Penn Central Transportation Co. v. City of New York*, may have great impact on municipal landmark and historic district ordinances and the entire field of historic preservation. The case was brought because the New York City Landmarks Preservation Commission turned down the proposed construction.

Briefs have now been filed in the Supreme Court by the parties in the case, and oral argument before the Court was to be scheduled for April.

In its brief the Penn Central argued that its right to construct an office building over Grand Central is valuable private property fully protected by the Constitution and that it is entitled to receive compensation for the taking away of its development rights. Penn Central also questioned the view of Chief Judge Breitel of the Court of Appeals that the owner of a landmark "is not absolutely entitled to receive a return on so much of the property's value as was created by social investment." Breitel has said that government had created much of the value of the terminal property through its investment in the building, the railroads, and connecting transportation.

The City of New York argued that the designation of Grand Central Terminal as a landmark was a proper exercise of the police power by government. It said, "The power in restricting land use has been extended to legislation for aesthetic and other similar purposes having to do with the quality of life."

This article is an update of Mr. Gilbert's "The Grand Central Case: The Preservation of Individual Historic Landmarks," which appeared in the Summer 1977 edition (vol. 2, no. 1) of *Real Estate Issues*.

Frank B. Gilbert, landmarks and preservation law counsel for the National Trust for Historic Preservation, participated in amicus curiae briefs in favor of the preservation of Grand Central Terminal during the litigation described in his article. From 1965 to 1974 he was secretary and then executive director of the New York City Landmarks Preservation Commission; in those years much of his time was spent on the Grand Central proceedings. He received his J. D. degree from Harvard Law School.

The city also said that the property owner failed to show that the landmark designation interfered with continued use of the terminal or prevented it from earning a reasonable rate of return. The brief observed that it was "insufficient to show that the regulation deprived the property owner of the most profitable use of his property."

The Real Estate Board of New York filed an amicus curiae brief in support of the Penn Central. Several friend of the court briefs have been filed backing New York City, including ones by the U.S. Department of Justice, the State of New York, the State of California, and the National Trust for Historic Preservation.