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Conflicting Vistas in the Nation's Capital: The Case of the World Technology Trade Center

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Canadian political scientist Donald C. Rowat asserts that determining how to rule the national capital is a difficult task facing every country with a federal system of government. This difficulty, according to Rowat, results from the fact that "there is always a conflict of interests between the national government and the people who live in the capital city." The primary concern of the national government is to manage the capital in the interests of the entire nation, while the city's inhabitants "naturally wish to govern themselves to the greatest extent possible." What is possible usually is determined on the basis of the constitutional rights and privileges enjoyed by the citizens of the nation as a whole.

In addition, Rowat asserts that governance of a federal capital poses a problem inherent in federalism. If any one state in the union governs the national capital, that state could possibly dominate the federation's capital, denying the central government adequate control. Rowat directs his latter assertion mainly at his own country, Canada, where the national capital in

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2. Id.
3. Id.
Ottawa is under the exclusive control of the local legislature of Ontario province. The alternative arrangement is to designate the capital as a federal district or territory under the exclusive jurisdiction of the central government. Rowat cites the District of Columbia (District) as an example of this latter principle.

Although the United States does not face the problem Rowat identifies concerning domination of the National Capital by one of its states, Rowat's central "conflict of interests" thesis applies in all federal countries, particularly the United States. Despite efforts in the United States to present the governmental arrangement in the nation's Capital as a smooth working "partnership," conflicts remain between the national and local governments. The United States is still in search of a system of governance for the District of Columbia that will be satisfactory to the nation as a whole and, at the same time, will provide local citizens with the full democratic rights and privileges to which they are entitled under the United States Constitution.

The fundamental problem in addressing conflicts of interest in capital cities is one of defining federal and local interests. In more than fourteen years of home rule government in the District of Columbia, policymakers have approached this question largely on an individual case basis, relying on common judgment and reason. Neither national nor local government is completely satisfied with the present arrangement and at times each must go to court to settle their differences. Problems continue to arise that require a better and more precise response to the question of defining federal and local interests.

Obviously, some public policy issues generate more controversy than others. This Article examines conflicting Federal and local interests that arose within the context of construction of a trade center in the District of Columbia. This project precipitated a conflict between Federal and local interests centered on land use policy and procedures in the District of Columbia. Control over land use policy may represent the most fundamental attribute of an autonomous local government. The battle for control between the Federal Government and the government of the District of Columbia over this domain took shape in the post-home rule era. Significantly, one of the few times Congress used its veto power to invalidate an enactment of the District of Columbia City Council concerned a bill pertaining to land use policy.

4. Id. at xii, 315.
5. Id. at xii.
6. Id. at xi-xii.
7. District Council Act No. 3-120, The Location of Chanceries Amendment Act of 1979, was rejected by Congress on December 20, 1979. S. Con. Res. 63, 96th Cong., 1st Sess., 125
Another visible skirmish between Federal and local interests in the post-home rule period occurred during the approval of the World Technology Trade Center for High Technology and Information Industries (Techworld). Currently, Techworld is nearing completion at a downtown Washington site. The conflict that raged during the project's approval process consumed more time than was originally projected for the first stages of construction.

The Techworld saga is an important part of the history of the nation's Capital and has special significance for the post-home rule period. First, the case makes an important contribution toward "fleshing out" the skeletal design of Federal and local interest balancing created by the District of Columbia Self-Government and Governmental Reorganization Act (Home Rule Act or Act).\footnote{District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. No. 93-198, 87 Stat. 774 (1973) (codified as amended in scattered sections of 1 D.C. CODE ANN. (Replacement Volume 1987)).} It also provides an ideal case study for examining Donald C. Rowat's theory on the conflict of governments' interests in federal capital cities.

This Article presents a case study of the Techworld development designed to take issue with or refine Rowat's conflict of interest theory. The study qualitatively examines national and local interests as interpreted and articulated by official and unofficial representatives of various branches of the United States and District of Columbia governments. Sources include a variety of legal and judicial documents, newspaper accounts, reports, general government documents, and in-depth consultations with persons involved in the controversy. The general reference period for this Article begins with the commencement of home rule in the District of Columbia in 1975 and continues until the present.

I. THE PLANNING AND ZONING PROVISIONS OF THE HOME RULE ACT: A REVIEW OF HOW THEY CAME TO BE

The Techworld controversy, centering on the comprehensive planning process in the District of Columbia, to some extent, recast some familiar home rule issues first debated in Congress and at the local level during passage of the Home Rule Act in 1973. In order to adequately analyze this controversy, it is necessary to briefly review how the current planning and zoning powers developed in the Home Rule Act.

\footnote{CONG. REC. 36,138 (1979). For a description of Congress' veto power over District of Columbia (District) government enactments, see infra notes 107 and 212.}
A. Public Opinion and Participation in the Home Rule Debate

Congress clearly wrestled with the issue of delegating comprehensive planning authority in the District when it considered home rule legislation in 1973. It faced the question of whether this authority should remain at the Federal level in the hands of the National Capital Planning Commission (NCPC or Commission), or should be transferred to the local level and vested in the Mayor and the City Council. Federal and local leaders strenuously debated local planning and zoning issues both during the passage of home rule legislation and ten years later during the Techworld planning process. Although most of the personalities changed, the focal point of the debate remained the same: Should federal or local authorities determine land use policy for the District of Columbia?

In 1972, the Report of the Commission on the Organization of the Government of the District of Columbia (the Nelsen Commission) emphasized the issue of who should handle local comprehensive planning. Generally, the recommendations of the Nelsen Commission reflected a desire to: (1) strengthen the role of the NCPC as the principal planning agency for the Federal Government in the District and in the National Capital region as a whole; (2) permit the District government to undertake comprehensive physical, social, economic, and transportation planning reflecting the needs of residents and the business community; and (3) create an ongoing system of


10. H.R. Doc. No. 317, 92d Cong., 2d Sess. 25-27 (1972) [hereinafter 1 NELSEN COMMISSION REPORT]. The Nelsen Commission, also known as the "Little Hoover Commission," completed its comprehensive study and report on the organization of the District of Columbia government on March 22, 1972. It was established by Congress "to determine ways to promote economy, efficiency, and improved services for the District government." Id. at xv.
coordinated and "checks and balances" between Federal and local interests.\footnote{11}

The Nelsen Commission identified fragmentation and a lack of coordination among agencies with planning responsibilities in the District as serious obstacles to effective local government.\footnote{12} Furthermore, even though the NCPC played a major role in comprehensive planning, it could not affect local planning because it was not a part of the District government. Compounding this problem was the fact that the District had no central planning authority of its own.\footnote{13} The lack of a clear enabling statute delegating planning authority exacerbated communication problems between the District government and outside agencies.\footnote{14}

The Nelsen Commission recommended that comprehensive planning authority for the city be moved from the NCPC to a municipal planning office under the auspices of the Mayor and the City Council.\footnote{15} Under this plan, the NCPC would remain solely responsible for Federal planning in the District while retaining veto power over local plans that impinged on Federal interests.

Congress subsequently enacted home rule legislation that adopted the major recommendations of the Nelsen Commission with respect to planning in the District.\footnote{16} The planning provisions of the bill required coordination of Federal and local planning efforts.\footnote{17} Under the Home Rule Act, after adoption at the respective levels, local and Federal plans would be combined into a single comprehensive plan. Furthermore, it provided that zoning actions could not be inconsistent with this plan.\footnote{18}

With the endorsement of the Nixon administration, the home rule bill began progressing through Congress during the summer of 1973.\footnote{19} Those

\begin{footnotes}
\item[12] Id. at 24-25.
\item[14] See, e.g., 1 Nelsen Commission Report, supra note 10. See also Self-Determination Legal Research Committee, Nelsen Commission Recommendations as They Relate to the Issue of Self Determination (1973) (available at the Martin Luther King Memorial Library, Washingtoniana Division).
\item[17] D.C. Code Ann. § 1-244(a) (Replacement Volume 1987).
\item[19] Home Rule Legislative History, supra note 9, at 1-2.
\end{footnotes}
interested in the legislation stepped up their efforts to influence its final substance. Citizens groups representing both sides of the controversy joined the debate over local comprehensive planning. The critical dispute between the various groups with regard to the planning provisions of the bill continued to center on whether the power to direct comprehensive planning in the District should remain with the Federal Government or should be shifted, totally or in part, to the new home rule government. To a lesser extent, congressional debate reflected this schism. It was more or less accepted that the planning for Federal lands and projects would remain with the National Government.

The Committee of 100 on the Federal City (Committee of 100) and the Wisconsin Avenue Corridor Committee (WACC), citizen's groups composed primarily of residents of far northwest Washington, D.C., were outspoken advocates of retaining Federal control over all planning within the District. The Coalition for Self Determination for the District of Columbia, another citizen's group, worked closely with Mayor Walter Washington and the District government, and urged Congress to give control of local comprehensive planning to the home rule government. Mayor Washington and citizen's groups supporting local control of planning argued that home rule would be undermined if control over land use and community development did not pass to the city government.

The Wisconsin Avenue Corridor Committee took strong exception to the provisions of the home rule bill that transferred local planning power from the NCPC to the local government. It argued that the transfer of municipal planning authority to the local government was "inherently destructive of sound, responsive planning." The fact that the NCPC retained veto power

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20. Id. at 3012.
21. Id. Under both the House and Senate proposals, the NCPC would remain as the central Federal planning agency.
24. Id.
over local plans that impinged upon Federal interests mattered little to the WACC and other opponents of local control. In response to the veto provision, the WACC pointed out that: "[W]e have seen that the system of relying on veto alone . . . produces inaction, stalemate, and escalating costs through continual revision of finished plans."26 This group had little faith in the Mayor as the architect of planning documents. The WACC charged that pressures on the Mayor and other city officials to augment the city's tax base made "rational long range planning a complete impossibility."27

The comments by the WACC also reflected the intensity of the struggle over planning issues. Among other things, the organization's leadership cited the "grievously deficient" legislation granting some measure of planning oversight to the local government.28 Abrasive remarks on the Senate floor and in committee testimony illustrated the acrimony of the home rule debate.29

Significantly, one of the groups that voiced concern over the planning authority in 1973, the Committee of 100 on the Federal City,30 also later became embroiled in the Techworld controversy. The Committee of 100 took a less combative position than WACC, but clearly favored Federal control of all planning in the Federal District.31 It quickly disposed of the notion that a satisfactory sharing plan could be worked out by stating: "There was no logical Federal-District division."32 It uncompromisingly held to the position that a single agency should plan for the entire District of Columbia: "federal" as well as "district;" public as well as private.33


26. HOME RULE LEGISLATIVE HISTORY, supra note 9, at 1701.
27. Id.
28. Id.
29. Senator Humphrey recalled Sterling Tucker's testimony before the House District of Columbia Committee that compared the hypocrisy of the Federal Government's withholding democracy from the District to a car salesman's selling one make of a car while driving another. 119 CONG. REC. 22,965 (1973). Mayor Walter Washington, in testimony before the House District of Columbia Committee stated: "[I]f these people fear what an elected government will do, they should go all the way and come out against self-determination for the city." Canty, supra note 18, at C1, col. 4.
30. HOME RULE LEGISLATIVE HISTORY, supra note 9, at 441-42; see also infra notes 70-75 and accompanying text (describing history and purpose of Committee of 100 on the Federal City).
31. See Craig Statement, supra note 22.
33. Id.
editorial sharply criticized the NCPC both as comprehensive planning agency and as protector of the Federal interest. The *Post* editorial said:

There are also a number of local citizens and interests, most of them on the western fringes of the city, who suddenly show great concern for the federal interest, particularly as represented by the National Capital Planning Commission, which has often confused the broad federal interest with narrow and selfish local interests.34

The *Washington Star-News* raised some of the same concerns. The *Star-News* pointed out in an article that the residents of northwest Washington made much of the NCPC’s “independence” but “it is exactly this which has often given NCPC’s plans such an air of abstraction.”35 In a direct endorsement of a fresh start for local planning, the *Star-News* wrote:

And beyond the matter of accountability there is the question of the kind of planning Washington needs and where it is most likely to happen.

Washington is a city as well as a capital and it needs a positive kind of city planning. It needs a kind of planning that makes things happen and actively shapes the city’s future, long-range in its vision, but responsive to the immediate needs of the city and its people.36

Although all sides assumed that the NCPC would remain an appointed body, they disagreed on increased District representation on the Commission after home rule.37 Prior to home rule, the NCPC was composed of five “eminent citizens” appointed by the President, only two of whom had to be from the District of Columbia and surrounding areas and seven ex-officio members from the Federal and District governments.38 Under this arrangement, the District government had only one representative out of the twelve NCPC members.39

B. Congressional Response: District Planning Redefined

The United States Senate sought to continue Federal control of all planning in the Federal District by refusing to amend the powers or composition of the NCPC.40 Conversely, the House of Representatives strongly favored

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36. *Id.* at C1, col. 5 and C4, col. 1.
37. *HOMERULE LEGISLATIVE HISTORY, supra* note 9, at 2160, 3069-70, 3093, 3557.
39. Section 2(b)(2) of the National Capital Planning Act requires one of the D.C. resident members to be appointed from at least three nominees of the Board of Commissioners of the District of Columbia. *Id.*
40. The only proposal regarding the planning functions of the NCPC in the Senate bill
relinquishing control of the non-Federal aspects of planning to the District of Columbia. The final resolution of this controversy granted the local government authority over the non-Federal aspects of planning for the first time in the history of the Nation's Capital. On July 1, 1974, the NCPC's mandate changed. Under the final provisions of the Home Rule Act, the NCPC continues as the central planning agency for the Federal Government in the region, and authority over planning functions for the District of Columbia is delegated to the Mayor. The Act specifically exempts Federal and international projects and development within the District from the mayor's authority.

Because the Home Rule Act changed both the mission and the membership of the NCPC, it redefined planning in the District. The District government is charged with the duty to prepare the “District's elements” of the comprehensive plan including land use, urban renewal, redevelopment, social, economic, transportation and population distribution elements, and public works programs. The residual, non-“District elements” fall under explicitly prohibits the District City Council from passing any act contrary to the provisions of the National Capital Planning Act of 1952. See Home Rule Legislative History, supra note 9, at 2912, 2913 n.1. See also S. 1435, 93d Cong., 2d Sess. § 325(d)(5) (1973). But cf. H.R. 9682, 93d Cong., 2d Sess. § 203(a) (1973).

41. The House proposed granting power over municipal aspects of planning to the District government while allowing the NCPC to retain control over the facets of planning that impact negatively on the “federal interest.” H.R. 9682, 93d Cong., 2d Sess. §§ 203(a)(1), 423(a)(1973). See also infra note 46 and accompanying text. Provisions in the House bill pertaining to the makeup of the NCPC also ensured some degree of local input in the Commission’s Federal planning activities. The House bill provided that two members of the NCPC would be appointed by the District’s chief executive. H.R. 9682, 93d Cong., 2d Sess. § 203(b). The House, before conferring with the Senate, offered two compromise positions designed to retain some measure of local control over NCPC activities. Under the so-called NCPC/District proposal, the President could appoint five of the commissioners; one from Maryland, one from Virginia, and at least two would come from a list submitted by the Commissioner, the District’s chief executive. Home Rule Legislative History, supra note 9, at 2910. The other proposal, the Nelsen-Green proposal, gave the President six appointees; at least one each from Maryland and Virginia and at least two from the District. Id. at 2912. Of the two required appointees from the District, at least one had to be chosen from a list of nominees prepared by the District’s chief executive. Id.

43. Id. § 1-244(a).
44. As of January 2, 1975, three of the citizen members must be appointed by the President and two by the Mayor. Presidential appointees are to include at least one resident of both Maryland and Virginia, whereas the two mayoral appointees must be residents of the District. Effective July 1, 1974, the seven ex-officio members became the Secretaries of Defense and the Interior, the Administrator of General Services, the Mayor and the Council Chairman of the District of Columbia, and the Chairmen of the Senate and the House Committees on the District of Columbia. NCPC and Home Rule, NCPC Quarterly 2, 3 (Summer 1974).
45. D.C. Code Ann. § 1-244(a). The Mayor has primary responsibility for preparing the plan which must be approved by the City Council. Id. § 1-244(b).
the jurisdiction of the NCPC, which is required to prepare the comprehensive plan for Federal activities in the National Capital.46 Furthermore, the Act grants the NCPC veto power over the District elements of the plan if the Commission finds that these elements impact negatively on the "interests or functions of the federal establishment."47 While the veto power serves as a check on the District planning activities, increased District representation on the NCPC guards, to a certain degree, against arbitrary exercise of Federal veto authority.

Finally, the Act allows the NCPC to make nonbinding recommendations to the Zoning Commission on all proposed zoning map or text amendments.48 The NCPC's advisory role in zoning matters extends to making a determination as to whether the specific proposal comports with the comprehensive plan.49 While the NCPC's opinion is not binding upon the Zoning Commission, it is accorded substantial weight.50 This provision of the Act ensures that the NCPC will exert influence over both planning and zoning activities in the District.

In addition to procedures that implicitly force communication between the District of Columbia land use and planning agencies and their Federal counterparts, the Act specifically mandates cooperation and collaboration between these competing spheres of influence.51 Ideally, the procedures

46. Id. § 1-2003(a)(1).
47. The NCPC reviews all aspects of the municipal government's plan. If any element of the submission conflicts with the Commission's perception of the Federal interest, the NCPC must certify this finding to the City Council. The City Council may either accept the findings and resubmit the specific element in accordance with the Commission's recommendations, or reject the findings and resubmit the element in a modified form. Id. § 1-2002(a)(4)(A),(B). In either case, if the NCPC rejects the resubmitted version, that element of the plan cannot be enacted as part of the comprehensive plan. Id. § 1-2002(a)(4)(B),(C). While these procedures seem cumbersome, they are intended to promote an ongoing dialogue between the Federal and municipal planning agencies. See id. § 1-2001(a) (Replacement Volume 1987) (general purpose of the provisions of the Act includes promoting "collaboration between federal, state, and local governments in the interest of equity and constructive action"); see also infra notes 51-52.
48. Both the House and Senate versions of the Act contained provisions requiring the Zoning Commission to submit proposed zoning amendments to the NCPC for review and comment. See H.R. 9682, 93d Cong., 2d Sess. § 492(b) (1974); S. 1495, 93d Cong., 2d Sess. § 323(a)(1) (1974).
50. The low standard of judicial review accorded zoning decisions magnifies the importance of the NCPC recommendation. Courts will not overturn an action by the zoning authority unless the findings and conclusions are clearly arbitrary and capricious or not supported by the evidence. See DuPont Circle Citizens' Ass'n v. District of Columbia Zoning Comm'n, 355 A.2d 550, 568 (D.C.), cert. denied, 429 U.S. 966 (1976). Therefore, the NCPC's opinion, because it is part of the record in a zoning case, can serve as the basis for the Zoning Commission's decision.
51. Pursuant to the Act, the Mayor must establish procedures to foster "meaningful consultation with any State or local government or planning agency in the National Capital region.
built into the Act aim at providing both Federal and local input on aspects of planning and zoning. The Techworld case tested this elaborate system of checks and balances, which Congress “painstakingly and carefully” crafted to foster responsible land use policy in the District of Columbia.

II. TECHWORLD: PHYSICAL DESIGN AND LAND ASSEMBLY

Techworld is a mixed-use project currently under construction on a four-acre site adjacent to the District of Columbia Convention Center. Upon completion, it will consist of office and showroom space for companies dealing with computers, office automation, and telecommunications. Ideally, Techworld will provide a central location for the demonstration of products and services related to the information industry. Enhanced by Washington's international character, its developers claim that Techworld will attract buyers and sellers of information technologies and services throughout the Nation and the world.

As proposed, Techworld will encompass approximately 2,430,000 square feet of developed space, 960,000 square feet of which will be office and showroom space. It will contain an 800-room convention hotel, a major conference center, 70,000 square feet of retail, restaurant and public service facilities, a museum of modern technology, and garage space for 2,000 cars.

Simply assembling land for a large development in downtown Washington's dynamic real estate market can be very difficult. Any property located between the United States Capitol and the White House is available only at a high premium. The Techworld project is located directly between the White House and Capitol Hill.

affected by an aspect of a proposed District element of the comprehensive plan . . . affecting or relating to the District.” D.C. CODE ANN. § 1-244(a). In addition, the Act encourages the NCPC to “act in conjunction and cooperation and enter into agreements with any state or local authority or planning agency . . . .” Id. § 1-2003(c)(2).

52. Compare D.C. CODE ANN. § 1-2002(a) (NCPC veto power over local elements of the comprehensive plan) and D.C. CODE ANN. § 1-2006 (NCPC to issue reports and recommendations regarding zoning and subdivision cases) with D.C. CODE ANN. § 1-2002(b) (mandating increased District representation on the NCPC).

53. HOME RULE LEGISLATIVE HISTORY, supra note 9, at 2886.


55. Market Showplace to be Built. COMPUTERWORLD, Nov. 18, 1985, at 138.

56. In late 1987, Techworld’s developer, see infra note 58, stated that it had leased or was close to reaching terms on over 500,000 square feet of space. Tenants included AT&T, Xerox, and NCR Corporation. Washington High Tech Trade Center Bucks Odds. COMPUTERWORLD, Nov. 9, 1987, at 18.

Working quietly between 1979 and 1982, the developer,\textsuperscript{58} International Developers, Incorporated (IDI), assembled most of the land on the block bounded by K, Eye, Eighth and Ninth Streets for the Techworld project.\textsuperscript{59} Realizing later that one block was insufficient space to achieve its objectives, the developer contacted land owners in the block east of the proposed site, between Eighth and Seventh Streets. Through a joint venture arrangement, the developer gained control of most of that block.\textsuperscript{60} However, the entire project remained in doubt without the closing of Eighth Street.\textsuperscript{61}

The Techworld site currently covers approximately four acres bounded by Seventh Street, Ninth Street, K Street, and Eye Street.\textsuperscript{62} It includes 93% of the ground in Squares 403 and 427, as well as a 35,792 square foot segment of Eighth Street between Eye and K Streets.\textsuperscript{63} The site is currently zoned C-4.\textsuperscript{64} Under regulations applicable to this category, the developer may construct, as a matter of right, buildings on the property with gross square footage of 10 times the lot size if the building is more than 110 feet high.\textsuperscript{65} Thus, as planned, Techworld will consist of over 2.5 million square feet of developed space and related parking facilities.\textsuperscript{66}

\textbf{A. Approval to Build}

In order to integrate Eighth Street into Techworld, the developers petitioned the District of Columbia to permanently close the street to traffic and to transfer the street title to the corporation. The developers intend to con-
vert a portion of Eighth Street running through the middle of the project into a pedestrian plaza with shops and restaurants. Approximately 75 feet above this plaza, a five-story span will connect the top five stories of the main structures, creating one large building. Becuase the entire structure will stand 130 feet high, however, IDI met with vocal and tenacious opposition from the time it first unveiled its proposal.

The Committee of 100 on the Federal City, founded in 1923 by Frederick A. Delano, is the oldest planning organization in the District of Columbia. It was created "to restore and promote sound city planning for Washington." It is dedicated to safeguarding the original street pattern for the city as embodied in the L'Enfant Plan for the Federal City. With prodding from the Committee of 100, Congress, in 1926, established what is now known as the National Capital Planning Commission as the central planning agency for both the Federal and District governments. The Committee of 100 entered the Techworld debate on behalf of its members who sought to preserve their use and enjoyment of the open streets and vistas in the National Capital. It alleged that its members would be injured by the closing of Eighth Street and by the Techworld project because of the adverse effect that those measures would have on the aesthetics of the area.

The District of Columbia Preservation League (DCPL), a nonprofit corporation, is dedicated to the protection of the landmarks in the District of Columbia. Part of its mandate includes protecting the original street patterns in the L'Enfant Plan for the Federal City. As a result, the DCPL

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68. IDI originally planned to connect the top six stories of the buildings, thus placing the base of the sky bridge sixty-three feet above the ground. Zoning Commission Order, supra note 59, at 7. However, the developer eliminated the lower span after the Zoning Commission expressed concern over this aspect of the project. Id. at 7, 27, 33; see also infra notes 115-17.

69. Pursuant to the Height of Buildings Act of 1910, D.C. CODE ANN. § 5-405(a) (Replacement Volume 1988), no building in the District may be taller than the sum of the width of the street on which it fronts plus twenty feet. Techworld fronts on K Street, which is 110 feet wide at that point, therefore allowing a maximum height of 130 feet. See Zoning Commission Order, supra note 59, at 17, 24; Techworld, 648 F. Supp. at 120-23. The preservationists vigorously contested the calculation on which the court and the Zoning Commission based their conclusions. Zoning Commission Order, supra note 59, at 21; Techworld, 648 F. Supp. at 120.

70. Craig Statement, supra note 22, at 230.

71. Id.

72. Id.

73. See supra note 9.

74. Id.


77. See, e.g., Techworld v. L'Enfant's World, N.Y. Times, Mar. 29, 1986, § 1, at 7, col. 3
became involved in the Techworld controversy on behalf of members who alleged injuries similar to those of the members of the Committee of 100. Members of both organizations claimed to live, work, and spend leisure time in the vicinity of the proposed project. 78

Throughout the Techworld epic, 79 some District government officials and members of the developer's staff sought to discredit these preservationist groups for their supposed suburban, elitist views. 80 Referring to the orientation of the preservationist groups, District officials and the developers maintained that the organizations did not represent or reflect the prevailing interests of the citizens of the District of Columbia. 81 Officials of the DCPL and the Committee of 100 denied these charges and contended that their membership merely reflected the organizations' agendas. 82

Although residency within or without the official boundaries of the District of Columbia does not conclusively determine the representative character of preservationist organizations, an analysis of the membership of both groups reveals that a majority of the members are District residents. For example, of the 1553 members of the DCPL, approximately 66.1% reside in the District, 28.3% live in the Washington suburbs, and 5.6% reside elsewhere in the United States. 83 The Committee of 100 has a total of 170 members, of which more than 75% live in the District of Columbia, 21% reside (Robert Peck, President of the District of Columbia Preservation League (DCPL), claimed that Techworld could "sound the death knell" for the L'Enfant plan).

78. While the area around Techworld consists mainly of commercial development, the project lies in proximity to major employment centers such as the District of Columbia courts complex, the federal district court, the Capitol Hill area, and several large federal office buildings.

79. Seven years have elapsed from the time the developer first conceived the project until the present. See Northeast Notebook; Washington: A Showcase for Technology, N.Y. Times, June 26, 1988, § 10, at 25, col. 4.


81. Id.

82. Interview with Emily Durso, Vice President of Marketing, Techworld Corporation (Sept. 11, 1987); interview with Mike Quinn, Executive Director, District of Columbia Preservation League (Jan. 19, 1988); interview with Dorn C. McGrath, Chairman, Committee of 100 on the Federal City (Mar. 21, 1988).

83. Preservationist Groups

Geographical Distribution of Members

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>D.C. Preservation League</th>
<th>Committee of 100</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Members</td>
<td>Percentage</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>1,027</td>
<td>66.1</td>
</tr>
<tr>
<td>Virginia</td>
<td>230</td>
<td>14.8</td>
</tr>
<tr>
<td>Maryland</td>
<td>210</td>
<td>13.5</td>
</tr>
<tr>
<td>U.S.A.</td>
<td>86</td>
<td>5.6</td>
</tr>
<tr>
<td>Total</td>
<td>1,553</td>
<td>100.0</td>
</tr>
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</table>
in the Washington suburbs, and 2.3% come from other parts of the country.\textsuperscript{84} These organizations remained "dogged opponents" of Techworld throughout the entire process of administrative review of the project. When all of their efforts failed, both groups kept their promise to take legal action to stop the project.\textsuperscript{85}

The preservationists' efforts centered on the developer's plan to close Eighth Street between Eye and K Streets.\textsuperscript{86} The United States Government held title to Eighth Street,\textsuperscript{87} and IDI filed an application to close the street with the city surveyor.\textsuperscript{88} Pursuant to regulations promulgated under the Street and Alley Closing and Acquisition Procedures Act of 1982 (the Street Closing Act),\textsuperscript{89} the surveyor solicited comments from the NCPC, the National Historic Preservation Review Board (HPRB), the fire and police departments, the Office of Planning, the Department of Planning and Community Development, and the Department of Environmental Services.\textsuperscript{90} With the exception of the HPRB, each agency recommended approval of the application with some modifications.\textsuperscript{91}

Following these reviews, the Committee on Public Works of the Council of the District of Columbia considered the proposal.\textsuperscript{92} On September 26, 1984, the Public Works Committee submitted its final report that, in recommending the closing of Eighth Street, declared that Techworld would have "a positive fiscal impact" on the District economy.\textsuperscript{93} In recommending approval, the Committee endorsed a list of proposed restrictions the reviewing

Table 1. Statistics used to compile this chart were obtained and are available from the Committee of 100 and the DCPL.

84. Id.
86. See supra note 61 and accompanying text.
87. Techworld, 648 F. Supp. at 111. The government, therefore, argued that the Eighth Street Closing Acts were acts concerning Federal Government property within the meaning of the Home Rule Act's prohibition and, consequently, were void.
90. See D.C. Mun. Regs. tit. 24, §§ 1401.2-.15, 1402. There is no specific restriction on the surveyor's ability to solicit additional comments. Nor do the regulations require review of the application by each of the agencies.
92. Id.; see also D.C. Mun. Regs. tit. 24, §§ 1403-1405 (1985) (procedures for the surveyor's transmittal of agency recommendations to the Council and notice requirements attaching to Council action).
93. Techworld, 648 F. Supp. at 109; see Zoning Commission Order, supra note 59, at 9, 10 (Techworld is projected to produce over 6,000 permanent jobs and direct annual tax benefits to the District of over $15,000,000).
agencies had suggested. These conditions reflected the reviewing agencies' desire to limit the impact of the closing on the public welfare. Specifically, the Public Works Committee reviewed and approved conditions requiring the developer to: (1) grant the city a permanent easement for emergency vehicles; (2) grant a 45,000 square foot easement for pedestrian circulation; (3) grant another easement to preserve the view along Eighth Street from the Carnegie Library to the Museum of American Arts/National Portrait Gallery; (4) commit to the basic components of the development; and (5) install a sprinkler system throughout the project.

The proposal, thus approved, proceeded to consideration by the full City Council. In November 1984, the Council voted unanimously to close Eighth Street and to transfer title to the developer. The Council originally approved the closing and transfer of title in emergency legislation passed on November 7, 1984. Permanent legislation was approved on November 29, 1984. The final language of the act conditioned transfer on the developer's execution and recordation of the five Public Works Committee covenants. The developer had previously complied with this requirement on November 16, 1984.

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94. While the Council possesses broad authority to close streets and alleys, see D.C. CODE ANN. § 7-421 (if the Council deems the specific thoroughfare “unnecessary for street or alley purposes” it may use its closing power), the individual Council members are not experts qualified to assess the precise ramifications of a specific closing. By farming out the street and alley closing applications to various agencies of the District and Federal governments, the Council, through the Surveyor’s office, fills this vacuum of knowledge. See, e.g., D.C. Mun. Regs. tit. 24, § 1401.2(a) (the Director of the Department of Environmental Services reviews the application to determine if the closing will adversely affect sewer and water facilities and solid waste collection). As with zoning decisions, the scope of judicial review is effectively narrowed. Cf. Lynchburg v. Peters, 145 Va. 1, 133 S.E. 674 (1926) (no injunctive remedy available against city council to prevent a legislatively authorized street closing).

95. See D.C. Mun. Regs. tit. 24, § 1401.2 (the impact of a closing on the public welfare is a function of the effect it will have on available public facilities).


97. Id.

98. Id.

99. Id.

100. Id.

101. D.C. Act No. 5-212, 31 D.C. Reg. at 6422.

102. Emergency acts take effect immediately and remain in effect for 90 days. D.C. CODE ANN. § 1-229(a) (Replacement Volume 1987). Such measures require a two-thirds majority vote by the Council. Id. Therefore, the Council effectively closed Eighth Street upon passing D.C. Act No. 5-206, 31 D.C. Reg. 5984 (1984).

103. D.C. Act No. 5-206, 31 D.C. Reg. at 5987.

104. D.C. Act No. 5-212, 31 D.C. Reg. at 6421.


warded the measure to both houses of Congress for a mandatory thirty-day review period. Congress failed to exercise its power, and the legislation became law on December 29, 1984.

The approval process for the project lasted over eighteen months. During this time, several agencies, including the Zoning Commission, the NCPC, the Fine Arts Commission, the HPRB, and the City Council's Committee on Public Works held public hearings on the proposal. The agencies then recommended approval and suggested several limitations and conditions, which were designed to ensure that the street closing and the project as a whole would be advantageous to the city. The developer repeatedly changed and modified the project to address the concerns of the reviewing bodies.

B. Emerging Issues

While the Eighth Street closing application was pending, the developer forged ahead with rezoning and planned unit development (PUD) applications. Both the NCPC and the Zoning Commission rejected the initial

107. D.C. CODE ANN. § 1-233(a) (Replacement Volume 1987). All permanent legislation passed by the District Council must be sent to the United States Congress for a 30-day review period before it effectively becomes law. Id. § 1-233(c)(1).

108. The Zoning Commission did not review the application to close Eighth Street. It became involved at the second stage of the proceedings when the developer sought to rezone the property and gain approval for a planned unit development (PUD) application. See generally D.C. CODE ANN. §§ 5-412(e), 5-413 to 5-414 (Replacement Volume 1988) (Zoning Commission is empowered to enact zoning maps and regulations and amendments thereto; all amendments must be “not inconsistent” with the comprehensive plan); D.C. Mun. Regs. tit. 11, § 2400 (1984) (purpose of PUDs); see also supra note 47 and accompanying text (regarding comprehensive planning under the Home Rule Act).

109. The NCPC reviewed the application for the closing of Eighth Street. See Zoning Commission Order, supra note 59, at 17-18; Techworld, 648 F. Supp. at 109. Further, the NCPC exercised its right to review the rezoning and PUD application and make a nonbinding recommendation. D.C. CODE ANN. § 1-2006 (Replacement Volume 1987).

110. The Fine Arts Commission (FAC) reviewed only the rezoning and PUD application. See D.C. CODE ANN. § 5-410 (Replacement Volume 1988). It is unclear whether the FAC recommended denial of the rezoning and PUD submission. See Zoning Commission Order, supra note 59, at 18 (FAC expressed “concern” over the project).

111. The Historic Preservation Review Board (HPRB) recommended denial of the Eighth Street closing. Techworld, 648 F. Supp. at 109. The Zoning Commission’s decision approving the rezoning and PUD application makes no mention of the HPRB’s recommendation on that submission. However, the Zoning Commission concluded that the project would not denigrate the historic L’Enfant Plan. Zoning Commission Order, supra note 59, at 23-24.


113. IDI submitted two fully-developed alternative designs for Techworld. Zoning Commission Order, supra note 59, at 3. Additionally, the developer also submitted numerous “alternative schemes.” Id. at 7.

114. In the District of Columbia, the Zoning Commission hears and decides such applica-
tions. See D.C. CODE ANN. § 5-413 (Replacement Volume 1988); D.C. Mun. Regs. tit. 11, § 102.3 (1984). The Zoning Commission assigns zoning classifications through the promulgation of zoning regulations which delineate the various zones and describe the uses permitted in each. See generally D.C. Mun. Regs. tit. 11, § 105.1 (1984) (use districts or zones described). It applies these general provisions to specific properties in the city through the official zoning map, which is incorporated by reference into the zoning regulations. See D.C. Mun. Regs. tit. 11, §§ 106.7, 107.1 (1984) (the zoning map shall show the boundaries of the zoning districts).

A property owner may apply to the Zoning Commission to change the zoning classification applicable to his property. Id. § 102.2(a). Such applications, if granted, constitute amendments to the official zoning map. See D.C. CODE ANN. § 5-414 (Replacement Volume 1988). Property owners seek such amendments in cases where their plans for the use of the property do not coincide with the uses permitted as a matter of right in the current zoning classification. A rezoning reassigns or expands the uses permitted as a matter of right. In making such amendments, the action of the Zoning Commission shall not be “inconsistent with the comprehensive plan” and generally shall be designed to, inter alia, “promote the health and general welfare” of the citizens of the District. Id. The Zoning Commission must follow specific procedures in all rezoning cases. See generally D.C. Mun. Regs. tit. 11, §§ 106, 3000-3099 (1984).

In addition to standard rezonings described above, a property owner may seek to have his development designated as a planned unit development. Id. §§ 2400, 2404. Ideally, PUDs allow “greater flexibility in planning and design than may be possible under conventional zoning procedures . . . .” Id. § 2400.5. Pursuant to the PUD regulations, the developer agrees to submit to a two-phase review process, id. § 2402, whereby the Zoning Commission and the Office of Planning scrutinize the proposal. Id. § 2405. Given the detailed information that the applicant must submit as part of this process, these procedures allow the Zoning Commission to shape specific aspects of the development such as design, location of structures, architectural elevations, and landscaping. Id. § 2404 (application requirements); see also id. §§ 2405.8, 2406.6 (the Zoning Commission may modify or attach conditions to the approval of any PUD application).

In return for ceding this control to the Zoning Commission, the developer may obtain the right to construct its project at a density beyond that normally allowed in the zoning classification applicable to the property. Id. § 2403.10 (1984); see also id. § 199.9 (1987) (definition of floor area ratio). The Zoning Commission may also allow the developer to exceed the height limitations generally applicable in the underlying zoning category. Id. § 2403.4. In order to gain these advantages, the applicant must demonstrate that public benefits and other “meritorious aspects” will result from the construction of the project as submitted. Id. §§ 2403.4, 2403.10.

In contrast to these procedures, where a property owner decides to develop without PUD approval, land use and construction must conform strictly to the regulations and uses applicable in the pertinent zoning category. Id. § 101.5 (1984). In such cases, the developer loses the opportunity to realize height and density increases, and the city loses much of its ability to shape the specifics of the project. See generally Kransnowiecki, Planned Unit Development: A Challenge to Established Theory and Practice of Land Use Control, 114 U. PA. L. REV. 47 (1965); P. ROHAN, ZONING AND LAND USE CONTROLS § 32.01 (1978).

In the Techworld case, IDI sought both a rezoning and PUD approval. The property was originally split-zoned HR/C-3-C and C-3-C. Zoning Commission Order, supra note 59, at 2. The HR/C-3-C category is a commercial zone to which special regulations apply; these are designed to promote the development of hotel facilities on the properties so designated. See D.C. Mun. Regs. tit. 11, §§ 105.1(d)(3)(C), 1100-1199 (1984). Without the “HR” designation, the C-3-C zone generally allows “high bulk” major business and employment centers. Id. § 105.1(d)(3)(C). IDI sought approval for a rezoning to the C-4 category. Zoning Commission Order, supra note 59, at 2. The C-4 zone was designed to allow various commercial
Techworld design submitted in the spring of 1984. The Zoning Commission cited concerns that the project was, perhaps, too big and poorly designed. At that stage in the proceedings, it was particularly concerned about the “massive” bridge spanning Eighth Street. However, the NCPC and the Zoning Commission ultimately agreed that the project’s design regarding Eighth Street did not substantially impair the vista the preservationists sought to protect.

These conclusions ran contrary to the NCPC staff recommendations. The NCPC staff maintained that while the revised plan represented an improvement over the original, it did not address its most serious concerns. The staff recommended denial of the plan because the bridge spanning Eighth Street would block the landmark vista between the Carnegie Library in Mount Vernon Square and the National Portrait Gallery. The staff also stated that the project’s proposed 130-foot height violated District of Columbia law. It further noted that Techworld’s size would literally and figuratively overshadow Mount Vernon Square.

These comments reflected the preservationist groups’ testimony at hearings before the NCPC. During NCPC hearings in November 1984, an architectural historian from the Smithsonian Institution and representatives of the Committee of 100 in the Federal City and the District of Columbia Pres-
ervation League expressed fears that the proposed span, the narrowing of Eighth Street, and the massive structure in general would seriously reduce the scope and quality of the historic vista along the street. 124

In recommending denial, the NCPC staff equated the Federal interest with the historic Eighth Street vista. 125 Yet, in spite of the staff recommendation, in late November 1984, the NCPC voted seven to four to approve what had become an intensely controversial proposal. 126 The NCPC vote included an approval of the requested rezoning and the PUD application. 127

Philosophical differences split the Commission. 128 The cleavage among the members revolved around divergent perceptions of what constituted the Federal interest within the context of the project being considered. 129 While the NCPC was bound to protect the Federal interest in planning decisions affecting the National Capital region, 130 its members possessed different conceptions of this charge. Some members viewed the Eighth Street vista in a historic context, emphasizing the original design of Pierre L’Enfant and focusing on the architectural splendor and aesthetic ambience of the Capital City. 131 Other members of NCPC purportedly accepted the full importance of the L’Enfant vista. They, however, recognized the overriding importance of supporting and nurturing development in the downtown area. 132

Faced with these divergent views, the Commission’s resolution of approval took a distinctively Solomon-like approach. The NCPC adopted a statement saying that it approved the project with “‘appropriate height and bulk modifications.’” The NCPC, however, failed to specify the modifica-

124. Id. at F12, cols. 1-2.
125. Id. at F1, col. 4.
126. Id.
127. Id.
128. Id. at F12, col. 2. Some members of the NCPC felt that the Zoning Commission was the appropriate body to consider the potential economic benefits of the project.

The Executive Director of the NCPC, however, argued strenuously for adoption of the staff recommendation. In his view, the protection of the Federal interest in the context of Techworld was inextricably tied to the L’Enfant plan. Current economic conditions and reinterpretations of supposedly established goals and designs held only secondary importance. Emphasizing the importance of the NCPC charge, the Executive Director stated: “If this were on any street but Eighth Street it might be acceptable, but this street is very special. We’ve got to be as strong as we can on the issue of the federal interest.” Id.

Commissioner Helen Scharf expanded on this view: “The NCPC is the only agency in Washington called on to protect the federal interest . . . . I fear we will be obligating commission members who will follow us if we decide this issue on something other than the federal interest.” Id. Joining Scharf in opposition were the Commissioners from General Services Administration, the Department of the Interior, and the United States Senate. Id.
129. Id. at F1, col. 4.
130. Id.
131. Id. at F12, col. 1.
132. Id.
tions it considered appropriate. It probably expected the zoning process to define the appropriate modifications. Actually, the NCPC statement of approval was no more than an endorsement of the Deputy Mayor for Economic Development Curtis McClinton's pro-development stance. Deputy Mayor McClinton had defended the project, including the proposed bridge over Eighth Street, and stated that Techworld required the open, continuous floor space that the span would create. He further expressed belief that the project would bring needed business to the District's Convention Center. By endorsing the proposal, the NCPC showed support for the Mayor's efforts to bring jobs to the city by championing a project that could act as a catalyst for development in that part of the city.

While the City Council of the District of Columbia is not bound by the recommendation of the NCPC in deciding a rezoning petition, the NCPC report can be a key factor in the Council's deliberations. The Eighth Street Closing Act, in some respects, presaged the division voiced at the NCPC hearing on the rezoning. While it approved the closing, the Eighth Street closing legislation conditioned the approval on the developer's promise to maintain the view along Eighth Street. Therefore, the conditional approval reflected the Council's attempt to placate the developer and the District government by granting the closing, while simultaneously seeking to appease preservationists by restricting the project's encroachment into L'Enfant's prized vista.

C. The Planned Unit Development Application: Submission and Withdrawal

Following the City Council's approval of the Eighth Street closing, the Zoning Commission considered the rezoning and PUD application. This application received substantial attention throughout the remainder of the Techworld controversy. Charges and counter-charges centered on the filing of the PUD application, the response from the Zoning Commission, and the subsequent withdrawal of the application.

133. Id. at F1, col. 4.
134. Id.
135. Id. at F12, col. 1.
136. Id.
137. Id.
139. See supra note 50 and accompanying text.
140. Zoning Commission Order, supra note 59, at 13, 18.
141. Id. at 22-26.
142. See supra notes 114, 116-17 and accompanying text.
From the outset, the Zoning Commission expressed reservations about the project's proposed architectural design and strongly suggested a change.\textsuperscript{143} The developer sought to comply with the Zoning Commission's many suggestions.\textsuperscript{144} After numerous public hearings that consumed fifty hours,\textsuperscript{145} many revisions, and a completely new design, the Zoning Commission finally granted the PUD application, subject to thirty-seven conditions.\textsuperscript{146} In particular, it would allow the proposed design only if the developer agreed to restrict the project to those trademart uses that supposedly necessitated the design. The Zoning Commission specifically found that:

much of the building [must] be used as a trademart. . . . If the project were not a trademart, the connecting bridge and other elements of the design would not be necessary. Accordingly, if any use other than a trademart is proposed for the designated portion . . . as limited by this order, approval of the Zoning Commission will be required.\textsuperscript{147}

The "designated portion" constituted roughly one-third of Techworld, which was restricted for perpetual use as a trade center. Other restrictions required the developer to commit to strict ratios of show room, display, and office space.\textsuperscript{148}

The Zoning Commission acted despite charges by the opposition that trademarts in other cities were not as successful as originally anticipated, and that if the project failed as a technology mart, it could become just another office building.\textsuperscript{149} The Zoning Commission apparently sought insurance against these predictions\textsuperscript{150} by requiring that Techworld could be occupied only by high-technology trademart tenants.\textsuperscript{151} The developer found this condition particularly onerous because it interfered with efforts to obtain financing.\textsuperscript{152} Lenders were unwilling to finance a project in which

\begin{itemize}
  \item \textsuperscript{143} Zoning Commission Order, \textit{supra} note 59, at 1, 26.
  \item \textsuperscript{144} \textit{Id.}
  \item \textsuperscript{145} \textit{IDI Prepares More Techworld Design Work After Zoning Commission Victory}, \textit{Bus. REV.}, Mar. 18, 1985, \textsection{} 1, at 35, col. 1.
  \item \textsuperscript{146} Zoning Commission Order, \textit{supra} note 59, at 30-35.
  \item \textsuperscript{147} \textit{Id.} at 30.
  \item \textsuperscript{148} \textit{Id.}
  \item \textsuperscript{149} \textit{No Guarantee on Techworld}, Wash. Post, Apr. 1, 1985, (Wash. Bus. sec.), at 1, col. 1 & 23, col. 3.
  \item \textsuperscript{150} The Zoning Commission pointed out that IDI was not legally bound to prove the economic feasibility of the project. Zoning Commission Order, \textit{supra} note 59, at 25.
  \item \textsuperscript{151} \textit{Id.}
  \item \textsuperscript{152} \textit{Techworld Architect Cecchi Seeks Concessions from City}, Wash. Bus. J., Aug. 5, 1985, at 2, col. 3. IDI initially denied that this was the reason for abandoning the PUD proposal. Later, the developer admitted that lender delays were threatening the project's bottom line, but insisted that the PUD application was withdrawn because the conditions "restricted the flexi-
leasing flexibility was restricted indefinitely into the future.\textsuperscript{153}

The developer returned to the Zoning Commission seeking relief from this rigid requirement.\textsuperscript{154} Negotiations continued but the Zoning Commission stood firm, finding that the evidence did not justify approval of the project without the restrictions imposed.\textsuperscript{155} During the street closing procedures, the developer repeatedly referred to its plan to apply for PUD approval for the site.\textsuperscript{156} However, in August 1985, IDI announced that it would withdraw its PUD request and develop the project under existing zoning regulations.\textsuperscript{157} As a result, the conditions delineated in the PUD approval no longer bound the developer.\textsuperscript{158} By proceeding to develop pursuant to the existing zoning regulations, the development was governed by standards already contained in the zoning code.\textsuperscript{159}

Many officials involved in the street closing process expressed the view that, by withdrawing its PUD application, the developer repudiated promises made to obtain the Eighth Street closing.\textsuperscript{160} After rejecting the developer’s request to remove the conditions, Zoning Commission Chairwoman Maybelle T. Bennett, a supporter of the project, said: “I feel betrayed. I want something like this to work. But as far as I’m concerned, we’ve already given away the company store.”\textsuperscript{161}

The developer responded to these charges by countering that conditions limiting uses within the project compelled it to abandon the PUD application.\textsuperscript{162} Despite scores of contrary representations made during the previous year, IDI expressed confidence in the viability of the Techworld concept under the matter-of-right development. The developer, through its presi-
dent, declared that "[we] didn't ask them to impose such conditions."\(^{163}\) The president of the company clearly blamed the Zoning Commission and stated: "They're pushing me to [use] matter-of-right [zoning] . . . . If that's what they make me do, I'll do it. The project is going ahead."\(^{164}\)

\section*{D. Mayor Barry and Economic Development}

Mayor Marion S. Barry's endorsement of and enthusiastic support for Techworld was closely linked with his desire to promote economic development in the District of Columbia.\(^{165}\) Downtown revitalization has been a centerpiece of the Barry administration.\(^{166}\) Early in his tenure, the Mayor sought to develop strong ties with the business community as a part of his plan to inject new life in the downtown area while simultaneously expanding the job market.\(^{167}\)

It would have been impossible for the developer to successfully navigate the labyrinthian approval process without the Mayor's support.\(^{168}\) IDI representatives met with the Mayor in late 1983 to launch the Techworld project.\(^{169}\) This meeting resulted in a memorandum from the developer detailing the discussion. In order to realize the benefits from this "unique and exciting" project, the developer made it clear to the Mayor that IDI required assistance from his office in several areas, including:

1. gaining approval for the Eighth Street closing;
2. allowing for the construction of buildings up to 130 feet in height;
3. gaining approval for both the PUD and rezoning applications;
4. gaining approval for the exclusion of the southeast corner of Square 427 from the proposed Downtown Historic District, if that District is nominated to the National Register of Historic Places; and
5. gaining approval for closing of all public alleys in Square

\begin{footnotes}
\footnotetext[163]{Bredemeier, supra note 154, at B5, col. 6.}
\footnotetext[164]{Id.}
\footnotetext[165]{Id.}
\footnotetext[166]{See infra text accompanying notes 176-79.}
\footnotetext[167]{See, e.g., $20 Million District Building Renovation, Wash. Post, Mar. 7, 1986, at B1, col. 1; Business Giving Big to Barry Bid, Wash. Post, Jun. 13, 1986, at B6, col. 1. In his 1986 State of the District address, the Mayor stated: Economic development has always been one of my highest priorities, because Washington's success depends on a strong and healthy business community. We have 19,000 businesses in this city. Six out of every ten jobs are in the private sector. \textit{And when I say business, I mean jobs.} Marion S. Barry, Jr. State of the District Address (1986).}
\footnotetext[168]{Techworld Timetable Moved Up, Wash. Post, Dec. 14, 1983, at C8, col. 3.}
\footnotetext[169]{Id.}
\end{footnotes}
In return for his support, the Mayor required commitments from the developer with respect to jobs, employment, training, and overall economic development.\(^{171}\) IDI agreed to participate in the "First Source Employment" program in the city and to encourage Techworld tenants to do likewise.\(^{172}\) It was also agreed that special priority in the program would be given to persons living near the project.\(^{173}\) Further, the developer gave assurances that qualified minority-owned firms would receive fair and equal access to business opportunities created by Techworld.\(^{174}\) In line with the Mayor's emphasis on job training, the developer further agreed to initiate and support a training program for entry level employment at Techworld, promising to work with local universities and the public school system in designing and implementing this program.\(^{175}\)

At this early stage, few, if any, of the later hurdles and obstacles could be anticipated. At a press conference on December 9, 1983, Mayor Barry, joined by several city officials and business leaders, announced IDI's plans for development.\(^{176}\) The Mayor promised full support of the project.\(^{177}\) In his remarks, Mayor Barry hailed the project as "testimony to the positive effect [of] the convention center."\(^{178}\) The Mayor also thought that the project would encourage further development east of 15th Street Northwest, in the vicinity of the Convention Center.\(^{179}\) Mayor Barry summed up his enthusiasm for the project by saying: "Any Mayor would welcome this kind of Christmas present to his city."\(^{180}\)

So long as IDI intended to proceed with the PUD proposal, the Mayor's support was vitally important, due to the composition of the NCPC. Four members of the Commission were aligned with the Mayor directly, and another, the Chairman of the House Committee on the District of Columbia, consistently supported the Mayor's position on land use issues.\(^{181}\) It was no

\(^{170}\) Memorandum from Linowes & Blocher to Marion S. Barry, Jr. (June 22, 1983).

\(^{171}\) Zoning Commission Order, \textit{supra} note 59, at 9-10, 34.

\(^{172}\) \textit{Id.}

\(^{173}\) \textit{Id.}

\(^{174}\) \textit{Id.}

\(^{175}\) \textit{Id.} at 34.


\(^{177}\) \textit{Id.} at C9.

\(^{178}\) \textit{Id.}

\(^{179}\) \textit{Id.} As a member of the pre-home rule District of Columbia Council, Mayor Barry had been a prime mover in winning congressional approval to build the center.


\(^{181}\) The mayor appoints two members of the Commission. \textit{D.C. Code Ann.} \S 1-2002(b) (Replacement Volume 1987). Additionally, the mayor and chairman of the City Council sit as \textit{ex officio} members. \textit{Id.}
coincidence that in both the street closing vote and the PUD recommendation, these commissioners supported the Techworld development. After the Eighth Street closing and IDI's withdrawal of its PUD application, the Mayor put forth a valiant effort to settle the conflict between the developer and the preservationists. A number of attempts at negotiation failed, making it clear that legal action could not be avoided.

### III. The Legal Battle

The District of Columbia Preservation League and the Committee of 100 on the Federal City are both preservation organizations concerned with the protection of landmarks and the historic character of the District of Columbia. In October of 1985, they wrote to the Regional Director of the Department of the Interior's National Capital Region, arguing that the Eighth Street Closing Acts were an unlawful appropriation of United States property. Their letter demanded that the Department of the Interior immediately move to reclaim the street, and threatened a mandamus action if the Department refused. The preservationists also persistently threatened the developers and the District of Columbia government officials with legal action to halt the development of Techworld.

Three months later, their demands still unmet, the preservationists filed suit in the United States District Court for the District of Columbia seeking declaratory and injunctive relief against IDI, Mayor Marion Barry, the District Council, several District of Columbia officials, and the NCPC. The preservationists also sued the Department of the Interior for mandamus relief. On the same day, IDI brought an action against the District of Columbia Preservation League, the Committee of 100 on the Federal City, and the District of Columbia, seeking a declaration as to the legality of the trans-

184. Id.; see also Letter from D.C. Preservation League and Committee of 100 on the Federal City to Manus J. Fish, Junior Regional Director, National Capitol Region, Department of the Interior (Oct. 30, 1985).
188. Techworld, 648 F. Supp. at 110.
fer of the Eighth Street property.\textsuperscript{189} 

Responding to the mandamus petition,\textsuperscript{190} the United States Department of Justice filed a quiet title action with respect to the Eighth Street property on behalf of the Department of the Interior, the Smithsonian Institution, and the NCPC.\textsuperscript{191} The Justice Department also asked that IDI be required to shave twenty feet from the planned height of the two square block project.\textsuperscript{192} While some viewed the entrance of the United States Government into the case as a challenge to home rule, the government instead emphasized that the issue was the preservation of Pierre L'Enfant's city street plan.\textsuperscript{193} Later, the preservationists consented to dismissal of the mandamus action, and the quiet title action was consolidated with the other two actions.\textsuperscript{194}

The preservationists and the Federal Government set out numerous substantive and procedural arguments attacking the validity of the closing and bridging of Eighth Street as well as the proposed development of the surrounding property. Initially, the preservationists argued that the District Council acted beyond the authority the Home Rule Act\textsuperscript{195} granted to it when it purportedly ceded the Eighth Street tract to the developers under the Eighth Street Closing Acts. They claimed that Congress had reserved this power to itself.\textsuperscript{196} Alternatively, the preservationists argued that even if the District Council did act in accordance with the will of Congress, the Home Rule Act represented an unconstitutional delegation of authority to District officials under the appointments clause of the United States Constitution.\textsuperscript{197} Next, the preservationists argued that the enactment of the Eighth Street Closing Acts was itself flawed for failing to meet the procedural requirements of the National Historic Preservation Act (NHPA).\textsuperscript{198} They also claimed that even if the transfer to the developers was proper, the devel-

\footnotesize{\textsuperscript{189} Id.  
\textsuperscript{190} Id.  
\textsuperscript{192} \textit{Techworld}, 648 F. Supp. at 120. See United States Quiet Title Complaint, supra note 191, at 12, \S\ e.  
\textsuperscript{193} United States Quiet Title Complaint, supra note 191, at 6, \S\ 16.  
\textsuperscript{194} \textit{Techworld}, 648 F. Supp. at 110.  
\textsuperscript{196} See infra text accompanying notes 203-20.  
\textsuperscript{197} See infra text accompanying notes 221-35.  
\textsuperscript{198} See infra text accompanying notes 244-53.}
A. Local Authority to Close Federally Owned Streets Under the Home Rule Act

Although the city had been closing streets for over half a century, the United States lawsuit challenged the District government's authority to close those streets falling within the original L'Enfant city plan, which includes all of downtown Washington. Specifically, the Home Rule Act prohibits the District government from "enact[ing] any act . . . which concerns the functions or property of the United States." Therefore, the preservationists argued that because the Eighth Street property was Federal property within the meaning of the Home Rule Act, the District government had overstepped its authority when it transferred the property to the developers under the Eighth Street Closing Acts. Because the transfer was beyond the Council's power, it was completely void.

The court's inquiry was whether Congress intended to abrogate the Dis-
District's power to close streets when it enacted section 1-233(a)(3) of the Home Rule Act. The court examined the history of the congressionally-delegated street closing power in the District. Congress first expressly delegated the power to the District government in 1932. Each time Congress reorganized the structure of the District government, the power to close streets was passed on to the reorganized District government, along with all other previously held powers.

The court also looked to the purpose of the Home Rule Act. It concluded that the Act was intended to further free Congress from the onus of administering the local concerns of the District by giving the District government most of the powers of other municipalities. Congress retrieving the street closing power from the District would achieve a result in direct conflict with the Act's stated purpose. Thus, the court concluded that it would be ludicrous to read an isolated section of the legislation in a manner contrary to the stated purpose of the Act. The fact that the power was not expressly excepted from the inherited powers, coupled with the "paradigmatically local" interests affected by a street closing, provided strong evidence that the District did have the authority to close federally owned streets.

All permanent legislation passed by the District of Columbia Council must be reviewed by Congress. As additional evidence of Congress' intent that the District of Columbia Council should have the power to close streets, the court noted that not only had Congress reviewed and not vetoed the Eighth Street Closing Acts, but Congress also failed to veto a District statute changing the street closing procedures. This latter statute is premised on the assumption that the District has the power to close streets and alleys. The court concluded that if Congress wanted to circumscribe the District's authority to close streets, it would have done so in the context of one of these

210. Techworld, 648 F. Supp. at 113-14; see also supra note 195.
212. See D.C. CODE ANN. § 1-233(c)(1) (Replacement Volume 1987). Congress has 30 days to review the action and veto acts passed by the Council before the Council action becomes law. Id. However, when two-thirds of the Council deem that an act must be immediately effective because of an emergency, the act takes effect immediately, but for no more than ninety days. See id. § 1-229; see also supra text accompanying note 107.
acts by exercising its veto authority.\textsuperscript{215}

The court concluded that section 1-233(a)(3) of the Home Rule Act, which prohibited District legislation concerning federal functions or property, was intended to “'safeguard the operations of the [F]ederal [G]overnment on the national level.'”\textsuperscript{216} Therefore, section 1-233 would prohibit District legislation concerning Federal property of “national significance” or “used by the United States in connection with federal governmental functions.”\textsuperscript{217} Legislation concerning the national monuments or Federal buildings was not authorized by the Home Rule Act. Essentially, the government argued that the L'Enfant plan was just as much a monument and national treasure as the Washington Monument or the White House.\textsuperscript{218} Because it was of “national significance,” the Eighth Street vista contemplated in the L'Enfant plan was the kind of property protected from District council legislation by section 1-233(a)(3). Unimpressed by this argument, the court instead characterized the Eighth Street property as “a small street in [n]orthwest Washington,”\textsuperscript{219} not as a component of the L'Enfant plan. The court, therefore, concluded that the street alone did not rise to the level of “national significance” and was not beyond the reach of District Council legislation.\textsuperscript{220}

\textbf{B. The Appointments Clause Challenge}

The preservationists next argued that even if Congress intended to delegate the street closing authority to the City Council, the delegation of authority was unconstitutional because it violated the principle of separation of powers under the appointments clause of the United States Constitution.\textsuperscript{221} The appointments clause\textsuperscript{222} provides that officers of the United States must be nominated by the President and that the Senate must confirm certain high-ranking presidential nominees.\textsuperscript{223} The preservationists argued that the closing of Eighth Street constituted the exercise of “significant federal authority pursuant to the laws of the United States”\textsuperscript{224} which constitutionally

\begin{footnotesize}
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\item 215. See \textit{Techworld}, 648 F. Supp. at 114.
\item 216. \textit{Id.} (citing District of Columbia v. Greater Washington Cent. Labor Coun., AFL-CIO, 442 A.2d 110 (D.C. 1982)).
\item 217. \textit{Id.} at 115.
\item 220. \textit{Id.}
\item 221. \textit{Id.}
\item 222. U.S. CONST. art. II, § 2, cl. 2.
\item 223. \textit{Techworld}, 648 F. Supp. at 115 (citing U.S. CONST. art. II, § 2, cl. 2).
\item 224. \textit{Id.}
\end{itemize}
\end{footnotesize}
may be exercised only by an officer appointed by the President. Therefore, the preservationists reasoned that the exercise of the street closing authority by the City Council (authorized by Congress under the Home Rule Act) was an unconstitutional infringement of executive authority.

The court distinguished the delegation of street closing authority under the Home Rule Act from the delegation of authority resulting from the executive appointment involved in Buckley v. Valeo, a case upon which the preservationists relied. In Buckley, Congress reserved to itself the power to appoint certain members of the Federal Election Commission, whose members "exercised executive authority, specifically 'enforcement power, exemplified by . . . discretionary power to seek judicial relief.'" The United States Supreme Court determined that the delegation of certain administrative functions of the Commissioners violated the appointments clause of the United States Constitution at the expense of maintaining the separation of powers. Here, the City Council was exercising authority delegated to it by Congress in an area where the Constitution gives Congress plenary authority to act. "As Congress can pass the Eighth Street Closing Acts itself, the [appointments] clause does not forbid it from allowing the City Council to pass it, subject to congressional review."

Additionally, the court concluded that because Congress may legislate for the District, the passing of the 1932 Street Closing Act was really a municipal act, as opposed to a national act, and therefore not an exercise of Federal power. Because it was not an exercise of Federal power, the delegation of authority to close streets, and the subsequent exercise of that authority by the City Council, did not implicate the appointments clause at all. Therefore, no unconstitutional breach of the separation of powers principle was possible in this case.

225. Id.
226. Id.
228. Techworld, 648 F. Supp. at 115 (citing Buckley. 424 U.S. at 138 (emphasis added)).
229. Buckley. 424 U.S. at 141, 143.
230. Techworld, 648 F. Supp. at 115-16. See also U.S. Const. art. I, § 8, cl. 17, which provides in part: "The Congress shall have Power . . . To exercise exclusive Legislation in all Cases whatsoever, over [the District of Columbia] . . . and to exercise like Authority over all Places purchased . . . for the erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings." Id.
232. See supra note 203 and accompanying text.
234. Id. at 117.
235. See id. at 116.
The plaintiffs also challenged the propriety of the developer's decision to forego PUD zoning. Preservationists argued that the City Council's decision to transfer the Eighth Street property was made conditional on the developer's willingness to file and comply with five separate covenants governing the use of the property. The preservationists, moreover, argued that the decision was also made in reliance on the developer's representation that it would proceed under PUD zoning control. This representation, argued the preservationists, amounted to an implied covenant to proceed as a PUD, and the developer's decision to withdraw from the PUD process subsequent to receiving the deed to the Eighth Street property resulted in a violation of that implied covenant.

The court rejected this argument. It noted that the City Office of Planning, in its recommendation to the City Council with respect to the Eighth Street closing and transfer, initially suggested that the closing should be conditioned on PUD approval. The court concluded that because the City Council imposed five other conditions on the closing and expressly rejected the PUD approval requirement after full consideration, it had not intended to condition its street closing and transfer approval on PUD status. Moreover, as a general rule, no developer is required to proceed with a project as a PUD. If the Council had intended to create an exception and require PUD approval for Techworld, the court concluded it would have clearly expressed this intent.

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236. See supra notes 114, 155-58 and accompanying text (detailing developer's fallback to matter-of-right zoning). By proceeding under matter-of-right zoning, the developer was freed from the costs and the building restrictions PUD related hearings would have produced. See Preservationists' Complaint, supra note 187, at 32, ¶ 115.

237. *Techworld*, 648 F. Supp. at 117. See also supra notes 159-60 and accompanying text.


239. *Id.*

240. *Id.* at 118.

241. *Id.* The court also noted that the Mayor and the Council argued that no such covenant was intended. *Id.* at 117. The court misconstrues the importance of the Council's intent at the time of the closing. An implied covenant is one that arises not from the intent of the parties, but to avoid an unjust enrichment. The parties need not intend to form a binding commitment in order for the implied covenant to arise. Thus, the intent of the parties is not dispositive. Rather, the question is one of unjust enrichment. The court did not consider whether the preservationists had standing to claim an unjust enrichment by the developer where the city claimed no loss or detriment. Yet, even if the court had decided that the preservationists had standing, there might not have been a change in the result.

242. See *id.* at 118; see also supra note 114 (discussing the PUD process).

D. The National Historic Preservation Act and the Role of the NCPC

Preservationists also argued that even if the District government had the authority to close and transfer the Eighth Street property, the exercise of that authority was void for failure to comply with the procedures of the National Historic Preservation Act. The NHPA244 requires that the Advisory Council on Historic Preservation (ACHP) be allowed to recommend to any Federal agency involved in an “undertaking” that affects historic areas.245 The National Capital Planning Commission was the only Federal agency involved in the Eighth Street closing.246 Although the NCPC’s only role in the Techworld planning process was to provide the City Council with a nonbinding recommendation regarding the street closing, the ACHP was not given an opportunity to comment to the NCPC. Thus, if the Eighth Street closing was a “federal undertaking” within the meaning of the statute, the closing procedures were flawed.

The court looked to the NHPA itself and found that the role of the NCPC did not rise to the level of an “undertaking.”249 An undertaking exists “where a federal agency has direct or indirect control of a project involving the expenditure of federal funds, or the issuance of a federal license.”250 The court cited examples of Federal involvement that amounted to “undertakings” as “projects directly undertaken by the agency, projects supported by federal loans or contracts, projects licensed by the agency, or projects proposed by the federal agency for congressional funding or authorization.”251 Here, the only Federal involvement was the provision of a non-binding recommendation. The NCPC itself did not believe that its limited role created an “undertaking.”252 Thus, the court concluded that the Eighth Street closing was not a “federal undertaking,” and, therefore, the relevant provisions of the NHPA were not triggered by the NCPC’s involvement in Techworld.253

244. Id. at 119.
246. Id. § 470f.
247. See supra text accompanying note 90.
251. Id. at 120; see also 36 C.F.R. § 800.2(o).
253. Id. at 120.
E. The Building Height Limitation Act

The Height of Buildings Act of 1910 (HBA)\textsuperscript{254} regulates the height of buildings in the District of Columbia. The HBA provides that buildings may have a maximum height equal to the width of the street on which they front, plus an additional twenty feet.\textsuperscript{255} Where a building fronts on a public space at the intersection of two or more streets, the height of the building is limited to the sum of twenty feet plus the width of the widest street.\textsuperscript{256} Both preservationists and developers sought a court declaration of the maximum permissible height for Techworld.\textsuperscript{257}

The court initially noted that the interpretation and application of the HBA was within the province of the District of Columbia Corporation Counsel. Because the Corporation Counsel had already issued an opinion letter approving a 130 foot height for Techworld, the court concluded that it was appropriate to show substantial deference to that finding. The court would overturn the Corporation Counsel's approval only if the preservationists could show that the Corporation Counsel's decision was "plainly unreasonable or contrary to legislative intent."\textsuperscript{258}

The Corporation Counsel based its opinion letter finding that K Street was no less than 110 feet wide on the conclusion of the District of Columbia surveyor.\textsuperscript{259} The surveyor, in turn, based its conclusion on an examination of the King Plats, drafted by Nicholas King, the first surveyor of the District, in 1803.\textsuperscript{260} The surveyor's finding also reflected an administrative practice of including in the width of a street, the width of any public space (for example, a traffic circle or square) adjoining it.\textsuperscript{261} Thus, the width of K

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\textsuperscript{254} See D.C. Code Ann. § 5-405(a) (Replacement Volume 1988).
\textsuperscript{255} See id.; see also Techworld, 648 F. Supp. at 120; supra note 69.
\textsuperscript{256} See D.C. Code Ann. § 5-405(a).
\textsuperscript{257} Techworld, 648 F. Supp. at 120. The Corporation Counsel for the District of Columbia also argued that the preservationists had no standing to contest the approved height of the project because the Corporation Counsel had sole authority to prosecute this claim. Id. The court agreed that there was no private right of action under the HBA and that the preservationists had no standing. However, because the Federal Government owned property adjoining the Techworld site that the height of the project would adversely affect (Mt. Vernon Square), it had proper standing to sue. Id. at 120-21.
\textsuperscript{258} Id. at 121 (citing Chevron, USA v. Natural Resources Defense Council, 467 U.S. 837, 844 (1983); Williams v. Washington Metro. Transit Co., 472 F.2d 1258, 1264 (D.C. Cir. 1972)).
\textsuperscript{259} Id. at 122.
\textsuperscript{260} The court also rejected a government challenge to the accuracy of the plats. Id. Although jurisdiction over certain public areas has changed since their drafting, the court held that the plats still represented the "definitive survey of the District of Columbia", that the dimensions they reflected were accurate, and that the Corporation Counsel and the D.C. Surveyor could reasonably rely on them in drafting opinions. Id.
\textsuperscript{261} Id. at 121.
Street, for the purposes of determining the maximum permissible height for Techworld, included the width of the abutting Mount Vernon Square.\textsuperscript{262} The government did not challenge this administrative practice. Instead, it unsuccessfully attacked the underlying validity of the opinion as well as the underlying accuracy of the King Plats.\textsuperscript{263}

The Corporation Counsel determined that a 130 foot height was also permissible under the special maximum height formulation of section 5-405(a), which applies in situations where a building fronts on a public space formed at the intersection of two streets, provided that the public space did not "interrupt the course" of the streets.\textsuperscript{264} The maximum height of buildings meeting these requirements is calculated from the width of the widest street.\textsuperscript{265} The D.C. Surveyor's opinion recited that Mount Vernon Square did not interrupt the respective courses\textsuperscript{266} of K Street, New York Avenue, and Massachusetts Avenue, because each street had the same compass heading both entering and leaving the Square.\textsuperscript{267}

The government argued that the project interrupted the course of each of these streets because their respective directions changed in that the streets circumnavigated the square and did not pass through it. For this reason, the special "widest street" rule did not apply.\textsuperscript{268} Reiterating the substantial deference standard, the court rejected the government's argument, characterizing it as a mere "alternative interpretation" of the statute, insufficient to overturn the Corporation Counsel's otherwise reasonable interpretation.\textsuperscript{269}

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\item \textsuperscript{262} \textit{Id.}
\item \textsuperscript{263} The United States also attacked the opinion itself. \textit{Id.} at 122. It argued that a law firm retained by the developer actually drafted the opinion issued by the Corporation Counsel. It presented exhibits showing a draft opinion addressed to the District of Columbia surveyor from the Corporation Counsel. The draft opinion appeared on the stationary of the developer's retained law firm and was obtained from its files. \textit{See United States Motion for Summary Judgment, at 15, Techworld Dev. Corp. v. D.C. Preservation League, 648 F. Supp. 106 (D.D.C. 1986) (C.A. No. 86-0252).} The government argued that there was an obvious conflict of interest in the preparation of the opinion and that the opinion was "not entitled to any weight as an administrative interpretation of the [HBA]." \textit{Id.} at 15-16. The court rejected the attack, stating that who initially prepared the opinion was irrelevant. Once the Corporation Counsel adopted the opinion, "it became the official position of the City." \textit{Techworld, 648 F. Supp. at} 122.
\item \textsuperscript{264} \textbf{D.C. CODE ANN. §} 5-405(a) (Replacement Volume 1988). A building fronting onto a public space "[f]ormed at the intersection of 2 or more streets . . . , the course of which is not interrupted by said public space . . . , the limit of height of the building shall be determined from the width of the widest street . . . ." \textit{Id.}
\item \textsuperscript{265} \textit{Id.}
\item \textsuperscript{266} "Course" in this context refers to the direction or compass heading of the street. \textit{Techworld, 648 F. Supp. at} 122.
\item \textsuperscript{267} \textit{Id.} at 122-23.
\item \textsuperscript{268} \textit{Id.} at 123.
\item \textsuperscript{269} \textit{Id.} The outcome on this issue, and perhaps its true basis, was foreshadowed when the
F. The Historic Landmark and Historic District Protection Act Challenge

The preservationists' final argument alleged that the procedures used by the Mayor in issuing the excavation permit for Techworld were flawed because the Mayor failed to allow the District of Columbia Historic Preservation Review Board (DCHPRB) to comment on the permit applications as required by the Historic Landmark and Historical District Protection Act (HLHDPA). Like the National Historic Preservation Act, the HLHDPA requires a comment period by an independent historical preservation committee before the city may take action altering an historic landmark. The landmarks to which the HLHDPA applies are listed in the District of Columbia Inventory of Historic Sites. Among the landmarks listed therein is the "Eighth Street Vista from Mt. Vernon Square to National Archives." Conceding that the excavation already completed would not alter this vista, the preservationists sought a declaration that all future building permit applications would be entitled to and would receive this comment. The court summarily rejected the preservationists' argument because, although listed in the Inventory, the vista described in the Inventory did not in fact exist. Interrupting the view between Mount Vernon Square and the National Archives is the Old Patent Office Building. Noting that the creators of the Inventory "were not always able to exercise a constant degree of care," and without even trying to resolve the ambiguity created by the inaccurate listing, the court concluded that there was no vista. Therefore, the HLHDPA comment provisions did not apply to Techworld.

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270. Id.; see D.C. Law 2-144, § 2, 25 D.C. Reg. 6939 (1979) (codified at D.C. CODE ANN. §§ 5-1001 to 5-1015 (Replacement Volume 1988)).
272. See D.C. CODE ANN. § 5-1005(b).
274. Techworld, 648 F. Supp. at 123.
275. Id.
276. The Old Patent Office Building has been converted into the National Portrait Gallery and the Museum of American Art.
278. The preservationists argued unsuccessfully that, inasmuch as the Inventory was created by a group of capable historical experts, the listing in the Inventory must refer to something. See id.
279. Id.
G. The Decision and Threat of Appeal

The court delivered its opinion on August 5, 1986. It rejected all arguments made by the opponents of Techworld and confirmed the propriety of the Eighth Street closing and transfer. Reacting to the decision, the developer complained of substantial financial losses incurred during the months of delay. He was, however, pleased that the court cleared the way for construction to begin on the project. In contrast, some of the representatives of the preservationists and the government expected to lose at the district court level, but were prepared to appeal the decision and were optimistic about their chances of winning the next round. The immediate question they faced was whether to try to negotiate concessions from the developer or to move forward immediately with the appeal. The developer and the District government did not have long to savor their victory as the likelihood of appeal became increasingly clear.

IV. Making the Run to the Hill

The future of the Techworld project remained in limbo for approximately two months. Further negotiations on concessions and the threat of appeal persisted. After consultations with District officials within the offices of the Mayor, Council Chairman, and Corporation Counsel, the developer looked to Capitol Hill for insurance against further legal action by opponents of the project. Congressional action would bring permanent closure to the matter.

The developer's overtures toward Capitol Hill met with resistance from District officials, especially Council Chairman David Clarke, who saw the move as undermining home rule. Chairman Clarke was concerned that a precedent would be set requiring affirmative action by Congress where a particular power delegated to the District of Columbia pursuant to the Home Rule Act was challenged. Clarke and other officials did not share the developer's apprehension over the preservationists and Federal Government's decision to appeal. The provisions of the Home Rule Act concerning the power of the District government to close streets and alleys could stand on their own merit. There was no need to avoid appellate review.

Furthermore, District officials were wary of any congressional language that referred specifically to the closing of Eighth Street. They preferred gen-

283. Id.
eral language that would reaffirm or restate the District's authority to close streets and alleys under the Home Rule Act. But when preservationists filed their appeal on September 25, 1986, and Congress prepared to adjourn, the developer perceived an urgent need for action, lest the Techworld project be lost altogether. According to the developer, the cost of the delays involved in waiting out the appeal process would be prohibitive. Beyond registering their concerns, District officials took no affirmative steps to forestall congressional action.

Tapping his political contacts on Capitol Hill, and faced with at least acquiescence from the local government officials, the developer sought a joint resolution from Congress to reaffirm the city's action to close Eighth Street and the alleys. Working mainly through members of the Virginia delegation in Congress (Senators John Warner (R) and Paul Trible (R), Representative Stan Parris (R)), and Delegate Walter Fauntroy (D-D.C.), the developer intensified his efforts to obtain passage of this special legislation. Congressman Parris introduced House Joint Resolution 738 in the House of Representatives co-sponsored by Delegate Fauntroy. This represented one of the few times these members of Congress agreed on a District of Columbia issue. The District's fiscal year 1987 appropriations bill included a rider concerning Techworld that was attached during the final hours of the appropriations debate.

District officials acquiesced to the use of terminology specifying the Eighth Street closing after the congressional sponsors of the resolution promised that legislation reaffirming the general authority of the District government to close streets and alleys under the Home Rule Act would be introduced in the next (100th) Congress. With a flip-flop of position by Senator Warner, who initially appeared to be an obstacle to congressional action, Congress passed the following resolution:

The Congress of the United States reaffirms the authority of the Council of the District of Columbia, as authorized by the Street and Alley Closing and Acquisition Procedures Act of 1982 (D.C. Code, sec. 7-421), to enact the Closing of a Portion of 8th Street, Northwest, and Public Alleys in Square 403 Act of 1984 (D.C.

284. Id.
285. Interview with Emily Durso, Vice President of Marketing, Techworld Corporation, in Washington, D.C. (Sept. 11, 1987).
289. Id. § 101(d).
Law 5-148), and the Closing of a Portion of 8th Street, Northwest, and Public Alleys and Square 403 Emergency Act of 1984 (D.C. Act 5-206).291

The promised legislation reaffirming the District's authority to close streets, however, was not introduced in the 100th Congress.

The Techworld controversy came to an end with the passage of House Joint Resolution 738. It was clear to all parties involved that the action by the District government authorizing construction of Techworld would stand in spite of an appeal. The final chapter in this protracted conflict consisted simply of wrap-up negotiations between the opponents in the litigation.

An agreement between the developer, the Department of the Interior, and the preservationists to allow the stalled project to go forward resulted in the dismissal of the appeal of the district court ruling in the United States Court of Appeals.292 In return, the developer agreed to reduce further the size of the project.293 The parties agreed that the bridge over Eighth Street would connect the top four stories of the complex instead of the top five floors (originally six) as planned.294 This adjustment allowed a broader vista of the National Portrait Gallery down Eighth Street from the Carnegie Library at Mt. Vernon Square. In addition, the agreement specified that the building must be set back from K Street five feet more than originally planned.295 The developer also agreed to spend $100,000 to install sidewalks and trees on Eighth Street.296 Finally, Mayor Barry agreed to write a letter to the preservationists stating that the city's earlier decision to allow the bridge over Eighth Street was considered an extraordinary action and was not "precedent-setting."297

V. CONCLUSION

During the current home rule era, numerous conflicts of interest arose between the Federal Government and the government of the District of Columbia, covering a wide range of policy areas such as land use, public safety, revenue and finance, public works, and personnel. Of these areas, land use remains at the cutting edge of these unsettled relations. For example, one of only two District statutes officially vetoed by Congress, the Location of Chanceries Act of 1979, involved land use. This Article's case study of

292. Mintz, supra note 286.
293. Id.
294. Id.
295. Id.
296. Id.
297. Id.
Techworld manifests the continued collisions between federal and local interests with respect to land use control. While most of these conflicts between the two jurisdictions have involved interventions by the national government through the appropriations process, some of the land use policy cases, such as Techworld, have provided a judicial remedy as a means of settlement. In these types of conflicts, the local government has fared better when challenging the superior powers of the national government.

In effect, the Techworld controversy centered around a conflict between the national executive branch and local interests. Congress, the usual intervenor in District affairs, did not become involved officially in the legal conflict, and when it finally entered the case, it sided with the local government. Congress' policy action seemingly originated from the parochial interests of the congressional delegations of a state bordering the Nation's Capital. There is no evidence that the rank and file members cared much about the conflict or its outcome.

The Rowat thesis, which asserts that there is a natural conflict of interests between the national government and the people who live in a federal capital city, raises potent questions. However, the thesis, presently conceptualized, is too general to serve as a useful research guide. While the thesis assumes that conflicts of interest result from the assertion of legitimate national interests, many of the conflicts that our National Government has engaged in have non-national origins. Research suggests that a more complex set of underlying causes creates the conflicts regarding the District. Federal interventions have more often represented the assertion of parochial interests rather than an assertion of legitimate national interests. For example, two types of parochial interests are evident in the Techworld case: First, individual state or regional interests of those jurisdictions bordering on the Federal District, and second, interests of internal local groups such as the preservationists and local unions that use the Federal Government as an appeals board when their efforts prove unsuccessful with the District government.

The prime movers in the Techworld case were the internal local groups: the DCPL and the Committee of 100. Influential members of these groups placed a great deal of pressure on the Federal Government to respond to the closing of Eighth Street and the obstruction of a Pierre L'Enfant vista. The internal local groups eventually pursued legal action not only against the local officials and the developers, but also against the United States Department of the Interior and the NCPC, a federal agency.

With regard to the split between the executive branch and Congress in the Techworld case, the executive agencies apparently assigned little importance to this case. Agency interest appeared mainly at the middle level rather than
through top executives, such as Attorney General Edwin Meese and Secretary of the Interior Donald Hodel. Our analysis did not reveal strong Federal interest in this controversy. Had there been some interest, even by the executive branch alone, Congress probably would not have entered the case on the side of the local government and the developer. More accurately, Congress merely seemed willing to rubber-stamp parochial concerns. Congressmen who do not have a strong interest in most of the District's matters provide ample opportunities to legislators who do.

In Techworld, the local government was victorious in what resulted in a tepid collision between federal and local interests. However, as a result of being bifurcated, the case did not present a clear test of the conflict of interest thesis. Therefore, this analysis concludes that the Rowat thesis needs some refinement. Not surprisingly, local interests and desires for self-government conflict with federal goals. Some conflicts between governments with shared jurisdictions are inevitable, a fact demonstrated by the relationship between our National and State governments. Questions arise, however, over which issues intensify the federal capital conflict and the reasons why conflict occurs more in some sectors than others. Moreover, it is impossible to determine which interests will prevail when conflict occurs.

The basic problem rests upon the definitions of Federal and local interests in the nation's Capital. Federal and local interests have become so intertwined over the years, that clearly defining or separating them is virtually impossible. Borderline cases, such as Techworld, present the most serious problems. Both the Federal and local governments endorsed economic development and historical architectural preservation, but assigned the vistas significantly different degrees of priority. When controversies present clear Federal interests and clear, necessary solutions, the Federal Government has ample means to intervene swiftly and decisively.

Finally, the most disturbing aspect of this analysis is our finding that the Federal Government too often intervenes in District affairs for reasons other than protection of a national interest. As a result, the local government loses control over non-national matters. The fact that at least part of the District government supported the Techworld action is insufficient to justify Federal intrusion. The local government should settle local matters. Overall, Techworld makes a strong case for additional statutory protection of legitimate Federal interests and a reduction of intrusions into primarily local matters.