A week before the Minnesota Supreme Court announced its decision restricting Hennepin County from razing the Minneapolis Armory, Minneapolis HPC Staff Planner Martha Frey predicted the upcoming court decision would significantly change preservation law in Minnesota. She was right.

Mark Anfinson, a Minneapolis attorney knowledgeable in preservation law called the Court's ruling “the most important Minnesota preservation decision since Powderly vs. Erickson in 1979.” According to Anfinson, the State Court re-affirmed the strongest language of the Powderly vs. Red Wing decision which stated that a state historic property could not be demolished if “feasible and prudent” alternatives exist for owners of the historic property to meet their objectives. The Armory ruling provided a key test for the definition of what should properly constitute “feasible and prudent.”

John Herman, a Minneapolis attorney with wide experience in preservation issues, noted the importance of this case establishes there is no cause to balance economic compensatory factors with environmental non-compensatory resource. "There is no doubt," 

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Herman commented, "the court said in effect the Armory is such a resource."

The Appellate Court considered the central issue to be whether the County can legally destroy a resource otherwise protected under the Minnesota Environmental Rights Act (MERA) because there are no feasible and prudent alternatives to its destruction. The Minnesota State Legislature enacted MERA to:

"create and maintain within the state conditions under which human beings and nature can exist in productive harmony in order that present and future generations may enjoy clean air and water, productive land, and other natural resources with which this state has been endowed."

MERA includes historic resources within this definition.

In previous court suits involving threatened historic properties, pleas of insufficient economic capability alone by affected owners have not been sufficient to demonstrate lack of a feasible alternative. Nonetheless, affected property owners were able to claim their need to demolish the historic structure was the only prudent measure available to them.

In lower court action involving the Minneapolis Armory, District Court Judge Steven Lange applied a narrow definition to "prudent". Acknowledging that feasible alternatives were available to the County, Lange accommodated himself to the County's argument requiring close proximity provided by the Armory site to court chambers. Lange decided the projected logistics of prisoner movement was a greater burden on the County than was the value of the historic resource. If Judge Lange's interpretation would have not been challenged or if it had been upheld in appeal, the law's protections would have been seriously weakened.

In the written text of the Armory Decision, the Appellate Court noted a City-County Task Force set up to investigate alternate sites had realized that "projecting jail populations is an inexact science" and most jails are at or above capacity when they open. Also taken into account was the fact that hi-rise jails are more expensive to build than mid-rise facilities. Consequently, the text says, "it seems prudent to build on a site where there is room for horizontal expansion." With the County's expressed need for tunnel-accessed close proximity, the Appellate Court noted, "These two issues become mutually exclusive: convenience for the criminal justice system vs. easy expansion."

During the Appeal proceedings, the court noted conflicting evidence was presented with regard to the cost and public safety risk associated with moving prisoners from a distant site to the courtrooms. Hennepin County could not substantiate its assertion that risk of escape mandated tunnel movement versus vehicle transport. The appellants also proved to the Court that vehicle transport in other cities is a common procedure.

Anfinson noted the Armory ruling signifies a much more enlightened viewpoint by the Court towards preservation. After the Powderly decision, he noted, since preservationists had not "mixed it up" with their adversaries; the effect was a lowering of visibility, thus importance of preservation, to the makers of law.

The Powderly vs. Erickson case involved a historic structure known as the Irish Rowhouses formerly located off Red Wing's main street near the edge of a parking lot of an Ericksons' Holiday convenience store. The company purchased the rowhouses and wanted them demolished for a parking lot (later it was learned that Ericksons' felt the Irish Rowhouses blocking of visibility of their store from the main street was more the pressing issue than was their stated need for parking.) Red Wing preservationists, led by then-Mayor Ed Powderly, found initial success in the Powderly decision, which set an important precedent for Minnesota preservation law. Later, Erickson Holiday came back into court, claiming they had no economic re-use for the rowhouses, and the historic structure was demolished. Herman said this action occurred because the court determined for this issue that protection to a historic resource cannot be held indefinitely if private or public ownership cannot maintain the resource. Herman also noted that this "indefinite protection" aspect has no bearing on the body of the Powderly ruling.

Since then, several legal observers thought a certain measure of uncertainty surrounded the law, and needed the right test to strengthen it. Language in the Armory Ruling text should provide the certainty and the strength preservationists have been seeking:

"...the potency of this rule of law, as enunciated in MERA and in our previous cases, is vital to the protection of our natural resources. To diminish its reach could only cause confusion and uncertainty in later cases. Moreover, to fashion an exception for historic buildings such as this one is not within the province of the court."
MINNEAPOLIS
MAYOR'S OFFICE
GRATIFIED
BY ARMORY RULING

Deputy Mayor Rip Rapson, whose leadership with
Mayor Don Fraser brought critical focus to the Armory
issue, expressed relief with the outcome, gratitude for
its favorable basis, and a measure of conciliation to-
wards County officials with whom the eventual re-use
must be determined. "The court suit is less of a loss for
the county than an opportunity for the entire com-
community to protect this irreplaceable historic resource,"
Rapson said.

The Minneapolis Armory issue began over three years
ago when Hennepin County announced its intentions
to demolish the vacant Art Moderne structure to build
a $110 million jail on the site, claiming that the block
was crucial to protecting property tax loss and to
providing tunnel access for transporting defendants
from jail to courtroom.

From the outset of the controversy, Mayor Don Fraser
and Deputy Mayor Rip Rapson backed the Minneapo-
lis Heritage Preservation Commission's efforts to resist
Hennepin County measures. Fraser and Rapson orga-
nized city staff analysis of the county's financial data,
arranged with the Minnesota Historical Society to
sponsor several re-use studies of the building, and set
up a joint city-county task force to analyze other sites
that could be suitable alternatives to the Armory.

The Court's issue of specific definition of alternatives
appears to have been influenced by the findings of the
city-county alternative site task force, which found not
only that reasonable sites were available, but that the
County's assertion that a high-rise jail was the only
solution was in fact less workable than a mid-rise
facility. For this, Rapson's efforts were certainly instru-
mental.

Now that the legal proceedings are done, Rapson is
leading various city and county staff in a plan to find
a re-use appropriate to public needs and resources.
And in related studies, Rapson is overseeing a deten-
tion facilities task group continuing to examine
development factors of certain alternative sites.

RR

ARMORY DECISION
BECOMES COMPONENT OF
COMPREHENSIVE
PRESERVATION LAW

The Armory Ruling by the State Supreme Court carries
another important aspect of Minnesota preservation
law—as a component of what can be seen as a system
of preservation law. This decision covers protection of
buildings having received designation, restricting
demolition if any alternative exists.

For buildings not yet designated but in the process of
designation study, the Hiltunen vs. City of Minneapo-
lis, also settled by the State Court, established that a
municipal authority can restrict demolition by means
of a moratorium while the designation is being con-
ducted.

This issue arose in 1987 when Thomas Hiltunen, owner
of several apartment buildings in the then-being-re-
searched Ninth Street Historic District, claimed the
Minneapolis Heritage Preservation Commission had
no legal authority to deny demolition to buildings he
owned, as HPC had no authority to act on issues of
buildings not designated. The City of Minneapolis
prevailed in a State Court decision that allowed the
buildings to remain while the study proceeded, event-
ually resulting in the buildings to be successfully
renovated into affordable housing in a historically
appropriate manner.

Another case law important to preservation has been
the Tillman case in Champlin, in which a permanent
injunction was obtained to prevent a historic farm-
stead from being removed for construction of a county
highway.

A NOT-TO-BE-MISSED EVENT:
THE PRESIDENT IS COMING!

President Richard Moe, new head of the National
Trust for Historic Preservation, will be in Minnesota in
March to promote his book, The Last Full Measure:
The Story of the First Minnesota Volunteers. He's
dedicated Sunday, March 28, to Preservation Alliance
of Minnesota — so mark your calendar for a unique,
fun event! Look for more details in next month's
newsletter. If you want to help with the event, contact
Charlene Roise at 612-338-1987 (daytime).
Saving historic buildings by hoisting brick up to a scaffold to repair a distressed parapet can be hard physical work, but to bring a legal case to the State Supreme Court keeping an important structure from demolition can require far more effort than heavy lifting. And when legal action to save the Armory was not forthcoming from City Council support, Nina Archabal, Director of the Minnesota Historical Society, became the "Leader at the Barricades." Considering the enormous legal work and the ensuing financial freight, Archabal realized the high architectural and social importance of the Art Moderne structure; she decided appeal at the state level of Judge Lange's district court decision to permit a jail to replace the Armory was an enormous but necessary step to make..

Tom Holman, Chairman of the Minneapolis Heritage Preservation Commission, praised Archabal for her courage and wisdom. Not only did her efforts result in saving an important building of state and national significance, he commented, but the Armory decision greatly strengthened preservation law that will be of wide benefit to public interest throughout Minnesota.

Much credit also must go to Dennis Gimmestad of MHS's Historic Preservation office, who monitored the Armory issues from the beginning, amassing a great amount of knowledge that benefited the legal proceedings. Also, the legal expertise of legal counsel provided to MHS by the State of Minnesota Attorney General's Office; Merwin Peterson, Assistant Attorney General; Catherine Haukdehl, Solicitor General, and Jack Tunheim, Deputy Attorney General deserve much praise for their well-crafted expertise.

Charlene Roise, State Advisor for the National Trust for Historic Preservation, congratulated Nina Archabal and the MHS staff for their strong role in supporting the network of preservationists advocating the preservation of the Minneapolis Armory.

The Minneapolis Heritage Preservation Commission should be recognized for their early role as catalyst for the issue. Bill Morrish and Catherine Brown of the University of Minnesota Center for Urban Design provided a masterful measure of urban design and an important critical analysis of jail design and alternative site study; eventually their work provided the Mayor's Office with a rational base for the political decision making that led to the outcome. RR

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In addition to my membership, I am enclosing an additional gift of $___________ to help the PA.
If you've ever taken the scenic route from Duluth to Two Harbors (Old Highway 61) you've passed by last month's feature, the Larsmont School. The Larsmont area attracted Norwegian fishermen in the 1880s, and Swedes emigrating from Finland in the early twentieth century. Since a train depot and general store have been demolished, the school building is one of the community's only public structures. Built in 1914, the building only served as a school until 1932. From 1938 to 1959, it was owned by the Larsmont Gospel Mission Society. It was subsequently purchased by the Larsmont Volunteer Fire Department. The building has been the center of community activities since its construction, and is well maintained by its current owners.

Guess what your eye lands on here:
WHERE IS IT?