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The Taking of the Gettysburg Tower

A little after 5:00 PM on July 3, 2000, at a signal from Secretary of the Interior Bruce Babbitt, explosive charges were ignited at the base of the National Gettysburg Battlefield Tower. As thousands of cheering observers watched, in less than ten seconds the tower shivered, leaned slightly, and then collapsed into a pile of ignobly twisted steel and rubble. Suddenly, what had dominated the skyline of Gettysburg National Military Park for over 26 years, was gone. As Barbara Finfrock, president of the Friends of the National Parks at Gettysburg, aptly summed it up: “Now, when we look at the battlefield, we will see nothing ... which means we will be able to see everything.” Thus ended the relatively short but undeniably controversial life of the infamous tower, which *USA Today* labeled “the ugliest commercial structure to ever intrude on the sanctity of a national park.”

Construction of the Tower: 1970-1974

In February 1970, Thomas R. Ottenstein, of Silver Spring, Maryland, became an investor in (and soon president of) Gettysburg Battlefield Tower, Inc. Plans were announced to build a 300-foot observation tower on a site immediately adjacent to the park boundary, on the edge of the field of Pickett's Charge. As soon as the plans became public, controversy erupted. Opposition was immediately announced by the Pennsylvania Historical and Museum Commission, Gettysburg Battlefield Preservation Association, Gettysburg Battlefield Guides Association, and many other individuals and groups. George Hartzog, director of the National Park Service (NPS), called the tower proposal “monstrous,” and “an environmental insult.” *The New York Times* labeled it “a new low in historical tasteless-

ness” and historian Bruce Catton stated that the tower would be another “step in the process of cheapening and commercializing the battlefield area.”

By March of 1971, permits had been secured, and construction started on the foundations for the tower. Construction operations galvanized opposition to the tower. On June 14, 1971, Secretary of the Interior Rogers C. B. Morton wrote Pennsylvania Governor Milton Shapp stating his intention to prevent completion of the tower, which he described as “the most damaging single intrusion ever visited upon a comparable site of American history.” Thus encouraged, on July 8 the Pennsylvania General Assembly passed a resolution stating that the necessary steps should be taken to stop the tower.

In the meantime, however, what one historian has called “an astounding bureaucratic blunder” was taking place. On June 4, apparently without Morton’s knowledge, Assistant Secretary of the Interior Nathaniel Reed gave a 29-year-old political assistant the mission of negotiating with Ottenstein to find a more desirable location for the tower. On July 2, 1971, less than two weeks after Secretary Morton assured Governor Shapp that he intended to prevent the completion of the tower, the acting director of NPS signed an agreement with Ottenstein whereby the site for the tower was moved away from the field of Pickett’s Charge to a location east of Taneytown Road. In order to provide access to the new site, Ottenstein was provided a 22-foot right-of-way across NPS land. In turn, Ottenstein agreed to donate five percent of the tower’s net taxable income to a non-profit corporation or foundation for the benefit of the park (in a 1973 amendment to this agreement, the National Park Foundation was named as the recipient of funds).

The sudden announcement by the Department of the Interior on July 11 that it had bargained secretly with the developer whom it had bitterly opposed in public astounded, confused, and bewildered both supporters and opponents of the tower. No one at the park, including the superintendent, was even aware that negotiations had been taking place. Worse, Secretary Rogers later told Governor Shapp that he was not

aware of the negotiations or the agreement until after it was announced. To this day, who made the decision to negotiate with Ottenstein, and where the authority to conduct and conclude such negotiations came from (since it apparently did not come from Secretary Morton) remains a mystery.

Opponents of the tower were highly critical of the deal. Many pointed out (correctly) that the agreement violated the provisions of both the National Environmental Policy Act and the National Historic Preservation Act, since the Department had neither prepared an environmental assessment nor consulted with the Advisory Council on Historic Preservation before providing Ottenstein with a right-of-way across NPS-owned land. Surprised by the backlash of outrage after the announcement of the deal, Interior spokesmen tried to point out that the agreement itself did not constitute departmental or NPS approval of the tower, but that it was negotiated in order to minimize the tower’s adverse impacts upon historical viewscapes. Nobody was fooled.

Even though abandoned by the Department of Interior, in late July the Commonwealth of Pennsylvania filed suit in Adams County Court to block construction of the tower, citing its aesthetic impacts upon the historic scene. In October 1971, however, the case was dismissed. Citing the extensive and uncontrolled commercial development already surrounding the park, the

judge wryly noted that “the historical Gettysburg area has already been raped.” The judge also specifically referred to the July agreement. “For whatever reason,” he wrote, “the National Park system [sic] has implied by this agreement that the historical values of Gettysburg will not be damaged by the erection of this tower at this site.”

The governor appealed this verdict to Commonwealth Court, but the case was referred back to the County Court, which reaffirmed its original position on July 27, 1972. With court victory confirmed, construction on the tower (at the new site) started that November. Pennsylvania wasn't done yet, however, and appealed again to Commonwealth Court. That appeal was rejected in April 1973, and the commonwealth appealed again to the Pennsylvania Supreme Court, which ruled in October 1973 to permit completion of the tower.

Finally, in December 1973 the commonwealth filed suit in U.S. District Court in Washington, D.C., against the Department of the Interior, the National Park Service, and Ottenstein, charging that the right-of-way agreement was granted illegally and obtained through “coercive political influence.” The federal court dismissed the complaint in October 1974. While Pennsylvania's final lawsuit was still in court, construction on the tower was completed, and it opened for operation on July 29, 1974.

Setting the Stage: 1974-1997

For many years following the opening of the tower, not much happened. Although none of the groups that had opposed the tower were happy with its looming presence over the battlefield, not much could be done. Pennsylvania had exhausted its legal appeals, and since the tower was outside the park's boundary there was nothing NPS could do. In 1982, NPS completed a general management plan for the park (which had been in progress since 1969). The new plan was completely silent on the issue of the tower.

Not until 1987, thirteen years after the tower had opened, did circumstances begin to change. That year, President Reagan signed Public Law 100-132, directing NPS to conduct a boundary study of the park, and to submit a report to Congress with recommendations for expansion of the boundary. Following considerable public involvement, NPS submitted the boundary study to Congress in August 1988. Among the areas recommended for addition to the park's boundary was 55 acres along Baltimore Pike, including the tower property. The study reported that “the 300 foot high, private observation tower sited here visually intrudes upon both this area and the entire park. Removal of the tower is the only option for restoring this part of the battlefield's integrity.”

In August 1990, President Bush signed Public Law 101-377, “An Act to Revise the Boundary of Gettysburg National Military Park.” The

tower property was included within the new park boundary. NPS then prepared a land protection plan for implementation of the boundary expansion. After extensive public involvement and review, NPS published the land protection plan in November 1993. The plan listed the tower as a high priority for fee-simple acquisition, with the objective being to “remove modern development (National Gettysburg Battlefield Tower) and restore site.”

Following the completion of the land protection plan, there was a short-lived interest in the acquisition of the tower. Anticipating this, NPS initiated an appraisal in order to determine the value of the tower property. Unfortunately, the tower owner would not allow the NPS appraiser to review financial documents, thereby eliminating the benefit of the “income approach” for the appraisal. This made it necessary to rely upon either the market (comparable sales) approach or the cost approach. It goes without saying that comparable sales for the tower would have been very difficult to find. Consequently, the cost approach, which attempts to determine the value on a replacement basis, was used even though it is generally recognized as the least reliable method of valuation. The appraisal report, completed in September 1993 and released in November 1994, utilized the cost basis and estimated the (replacement) value of the property at \$6.6 million.

Ottenstein, naturally, liked this appraisal very much, and indicated

to NPS (primarily through the media) that for \$6.6 million he was a very willing seller. But both the Administration and Congress quickly lost all interest in acquisition of the tower at that price. As one congressional appropriations staffer remarked: “There’s no way Mr. Ottenstein is going to get that kind of ‘wind-fall’ profit from that damned tower.”

The park also considered the feasibility of a fund-raising effort. However, all of the major non-profit land conservation entities had attitudes similar to that of the Congress: they didn’t feel that it was feasible to approach either their members or their major supporters to seek funds for the acquisition of the tower at what they considered to be a wind-fall profit price. A private citizen volunteered to lead a fund-raising campaign to acquire the tower. However, he quickly proved unwilling to follow NPS procedures, or even to coordinate his quickly-changing plans with NPS before he announced them to the media, so he was quietly asked to desist.

Renewed interest in the tower, however, did cause a few people to wonder why Ottenstein had never provided the National Park Foundation with payments of 5% of the tower’s taxable income in accordance with the 1971 agreement. In 1996, the National Park Foundation and NPS asked Ottenstein for an accounting “to explain the absence of donations” as required by the agreement. After several exchanges

of letters, accountants for the National Tower provided the National Park Foundation with summary sheets of income and expenses for the years of 1974 through 1995. According to their summary, the tower had experienced a net loss of \$224,000 (after amortization and depreciation) over its twenty-one years of operation.

If the accounting was correct, it can only be concluded that the tower was a complete failure as a business venture. It is certain that paid visitation to the tower had never come close to Ottenstein's original projections. In his 1971 "National Gettysburg Battlefield Tower" promotional brochure, Ottenstein had predicted that he would capture 18% to 20% of the park's visitors during the first year of operation, and 30% by 1980. Similarly, he predicted that by 1980, tower operations would result in local tax revenues of \$500,000 per year. He never came close to either projection. Visitation to the tower barely rose above 10% of park visitors, gross revenues for tower operations were less than \$400,000 in 1980, and were only \$559,000 in 1995. In 1995, the accountants reported that the tower paid a mere \$65,000 in local taxes, a far cry from the \$500,000 predicted.

Although there were a few questions concerning the completeness of the accounting, the National Park Foundation attorneys advised that there didn't seem to be enough taxable profits from the first twenty-one years of the tower's operation to

make it worth the legal fees involved in pursuing the matter any further.

The Beginning of the End: 1998-1999

In the summer of 1998, NPS provided a briefing for the Office of Management and Budget (OMB) on Gettysburg's draft general management plan. At the end of the briefing, OMB staff commented that it looked like the proposed plan would solve all the long-term issues confronting the park except for the tower, and that "perhaps we should do something about that." They did. In the fall of 1998, as part of OMB's "pass-back" of the proposed Fiscal Year 2000 budget for NPS, OMB directed the secretary of the interior to include funds in his final budget request for the acquisition of the tower. Consequently, the president's proposed budget request for 2000 for NPS included \$5.7 million for the acquisition of three tracts of land, "including the six-acre tract containing the Gettysburg tower." The budget justification for the funding request was to "eliminate adverse development" from the battlefield and to restore the "historic integrity" of the park.

Excited by the new initiative, the National Trust for Historic Preservation, National Parks and Conservation Association, the Civil War Trust, and the Friends of the National Parks at Gettysburg all contacted the House and Senate appropriations committees, asking for their support in approving the funds for

acquisition of the tower. In the meantime, given new Administration interest, NPS once again started the appraisal process for the tower property in August 1998. Negotiations were also reopened with the property owners, to see if they would be willing sellers.

By the spring of 1999, events at Gettysburg were attracting departmental attention, particularly the park's draft general management plan and proposal for a partnership for a new visitor center and museum complex. Primarily for that purpose, Secretary of the Interior Babbitt scheduled an Earth Day visit to Gettysburg that April. In a short speech to assembled park staff, guests, and media, Babbitt stood next to the statue of General Meade on Cemetery Ridge and announced his support for the general management plan. Then, dramatically, he turned around, pointed at the tower looming over himself and General Meade, and announced that he intended to "take that tower down, on my watch."

In October 1999, Congress passed the FY2000 budget for NPS. Included was \$1.6 million in new land acquisition money for Gettysburg, appropriated with the note that "this amount together with the \$4,500,000 unobligated balances from prior fiscal years will ... provide for the acquisition of the Tower" as well as another parcel of land. The appropriations report also noted that Congress understood that "the Tower was appraised at \$3,000,000." The report was cor-

rect, for the appraisal started in the fall of 1998 was now complete.

The End: 1999-2000

Being the beneficiary of a secretarial initiative can make life rather interesting. As of the turn of the fiscal year in October 1999, NPS had the legal authority to acquire the tower property (the 1990 boundary expansion legislation), a plan was in place (the 1993 land protection plan), and appropriations were in hand. All that was left were acquisition and demolition of the tower. Unfortunately, there was only one year left on Secretary Babbitt's "watch," considerably less than a normal acquisition process would take, and considerably less than the normal cycle for obtaining funds from Congress for the tower's demolition.

The NPS lands staff, in conjunction with the Department of the Interior solicitor's office and the Department of Justice, were already working on the first task. After a year of negotiation with the tower owners, it was clear that acquisition on a willing-seller basis was a rather dim prospect. Ottenstein was willing to sell, but for no less than \$6 million. Consequently, a "complaint in condemnation" package was put together. On December 9, 1999, the secretary's office approved the condemnation of the tower, and the U.S. Attorney for the Middle District of Pennsylvania filed the complaint in condemnation in U.S. District Court in Harrisburg, Pennsylvania.

In the meantime, NPS prepared

and submitted to the secretary's office an estimate of the funds required to demolish the tower, for potential insertion into NPS's FY2001 budget request. Based upon the normal demolition procedures (i.e., cranes and men working on a piece-by-piece dismantling of the tower), with normal markups for design services, preparation of construction drawings and specifications, construction bidding and award, and construction administration and supervision, the NPS estimate for the dismantling package was \$1,030,473.

Those funds, however, would not be available until FY2001 (if approved by Congress). In the meantime, no one familiar with a normal condemnation process was willing to assure Secretary Babbitt that NPS would gain title to the tower property before the end of his tenure in December 2000. Consequently, NPS was directed on December 9, 1999—the same day that condemnation was approved—to prepare a report describing what it would take to allow the secretary to demolish the tower—not only “on his watch,” but preferably on July 3, 2000 (in just seven months!).

The report was submitted on January 10, 2000. The answer to the first question was obvious. In order to guarantee that NPS obtained title to the tower during the secretary's tenure, the complaint in condemnation would have to be amended into a declaration of taking. Although not unprecedented, a declaration of taking posed a financial risk to NPS.

Under a complaint in condemnation, property owners retain ownership and control of their property until the court determines the amount of compensation. Although this sometimes takes a year or more, if the number is too high (for example, \$6.6 million), NPS has the opportunity to withdraw the complaint action and not acquire the property. In a declaration of taking scenario, however, NPS would be asking for immediate possession of the property before the court established the amount of compensation due. Having already taken the property, NPS would have no choice but to pay whatever amount the court determined as just compensation. For this reason, longstanding agreements required that NPS notify Congress before filing a declaration of taking.

The second part of the report was more promising. NPS had contacted a private firm, Controlled Demolition, Inc., which specialized in the “implosion” of buildings and structures. Controlled Demolition offered to donate their services for the “implosion” of the tower, as well as the cleanup of the tower debris, at no cost to NPS. With this offer in hand, the \$1 million for demolition of the tower was removed from the FY2001 budget request, and on February 24, 2000, NPS formally accepted Controlled Demolition's offer of donated services. The donation agreement required NPS to make the tower property available to Controlled Demolition no later than June 2, in order to give them sufficient time to

prepare the tower for demolition on July 3.

On March 15, the Department of the Interior notified the four House and Senate appropriations and authorizing committees of its intent to file a declaration of taking of the tower property, and asked for their concurrence. Two precious months slipped away before written concurrence was received from the last of the four committees on May 17. The NPS lands staff and the departmental solicitor's office had been working closely with the U.S. attorney's office in the meantime, preparing the necessary legal paperwork, so the declaration of taking was filed in court on the afternoon of May 17. Simultaneously, a motion for possession was filed, asking that possession of the property be given to the United States on or before June 2, 2000.

Strangely enough, Ottenstein's attorneys did not file any objections in court either to the complaint in condemnation, the declaration of taking, or the motion for possession. Perhaps this was because the tower continued to fail to make much profit; perhaps because Ottenstein's health was relatively poor. However, attorneys representing two cellular phone companies that had antennas on the tower filed motions opposing possession, citing disruption of service to the public.

In order to justify immediate possession, the burden was upon the government to demonstrate the urgency of acquiring the property. The court was informed that Controlled

Demolition's offer to remove the tower at no cost was based upon the NPS commitment to provide access to the property in time for them to prepare for a July 3 demolition, which was the "only date CDI is available to undertake the felling of the National Tower." Since Controlled Demolition's donated services would save NPS (and taxpayers) over \$1 million, failure to obtain access to the property in time to take advantage of that offer would cost NPS and taxpayers the like amount.

After several telephone conferences, the court ruled on June 5, granting possession of the tower property to the United States on or before June 15. On June 14, the tower operators vacated the property, and physical possession passed quietly and without incident to NPS.

With possession of the property secured, attention turned towards both the physical demolition of the tower, and the accompanying public ceremony and celebrations befitting such an occasion. Even though NPS had not been able to provide Controlled Demolition with access to the property by June 2 in accordance with the original donation agreement, the company graciously overlooked that detail and went to work on the structural examination and preparation of the tower structure for demolition.

In the meantime, the park brought in NPS's type 1 incident management team, to plan and coordinate the public ceremonies surrounding the demolition of the tower. The

team worked closely with Controlled Demolition, which retained control of the actual demolition site, with the team in charge of site security, public access and safety. The team also coordinated with the secretary of interior's advance staff, as well as with the White House liaison staff (up until 48 hours prior to the demolition, there was a possibility that the president might attend the demolition ceremonies).

On July 3, the ceremonies went off without a hitch. After short speeches by Barbara Finfrock, president of the Friends of the National Parks at Gettysburg; Richard Moe, president of the National Trust for Historic Preservation; Robert

Stanton, director of NPS; and Secretary Babbitt, the secretary led the assembled crowd and dignitaries in a countdown leading up to the ceremonial firing of two Civil War cannons (one Union and one Confederate) at the tower. After a three-second pause, to simulate the flight of the shells from the cannons, Controlled Demolition fired 12 pounds of explosive charges fixed to the lower support structures of the 2-million pound structure. The tower shuddered slightly and slipped to the ground, accompanied by the cheers of the estimated 10,000 visitors scattered around the battlefield to view the sight (Figure 1).



Figure 1. The tower moments after the charges were exploded.

Lessons Learned?

When reviewing the short and lurid career of the National Tower at Gettysburg, at least two “lessons learned” seem to be worth noting. The first is rather simple: with the impetus and sanction of a secretarial initiative, and enough smart people willing to work hard enough, anything is possible. Although this “lesson” may seem patently obvious, it bears repeating for it should strengthen the hearts and heighten the resolve of everyone engaged in the never-ending struggle for the preservation of our nation’s precious resources. As Richard Moe remarked on that momentous day, “Sometimes we *can* correct the mistakes of the past.”

The second lesson, although equally obvious, may be more difficult to apply. Simply put, it’s worth the time and effort to do things right the first time—even though the cost or the effort “doing right” may often seem daunting. If NPS and the Department of the Interior had stood more strongly against the building of the tower in the early days, it might not have happened. However, instead of standing on our collective principles, we opted for “compromise,” with disastrous results. In trying to explain to Governor Shapp why NPS had abandoned the fight

against the tower, the agency explained that its agreement with Ottenstein was based upon the belief that it could do nothing to stop the tower. The Pennsylvania attorney general tried to sell this point of view to the court, stating that the agreement “can only be viewed as a decision on the part of the federal government to make the best of a bad situation, not as an explicit or even implicit sanction of the tower.” The judge, like most others following the case, was not persuaded. In his final ruling, he wrote that “the plain language of the [NPS-Ottenstein] agreement does sanction the erection of the tower proposed in these proceedings at the site specified....” Indeed, how could he have reasoned otherwise, since that agreement gave Ottenstein a right-of-way across NPS lands into the proposed tower site?

Of course, we’ll never know if the opponents of the construction of the tower would have prevailed, had NPS and the Department of the Interior remained steadfast in opposition instead of compromising. But in retrospect, it certainly seems like a battle worth fighting. At the very least, we would have been as proud of the role of our agency in opposition to the construction of the tower as we are in its ultimate destruction.

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