# Training Manual

## Introduction

Whether you are a new or seasoned member of a Historic Preservation Commission, staff for a Commission, elected official, city attorney, downtown manager or interested citizen, this manual will serve as a handy reference guide for historic district regulation at the local government level. Compiled from over twenty years worth of assistance to local historic preservation commissions across the country by some of its leading authorities, this manual provides fundamental articles, studies, and information to help commissions make defensible decisions, plan for the 21st century, improve design review skills, and work with the community.

## How to Use This USB Drive

Information has been organized into Sections according to topic. Each document is saved as its own PDF (Portable Document Format) to ensure formatting consistency on your computer. *You must have Adobe Acrobat Reader installed on your computer in order to view these files.* The software is free and available on the Internet for downloading from www.adobe.com. On the USB drive, simply double-click on each Section to access each PDF file outlined in the Table of Contents.

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For questions regarding the contents of this training manual, or for technical difficulties with the USB drive, please do not hesitate to contact NAPC at 706-369-5881 or napc@uga.edu.

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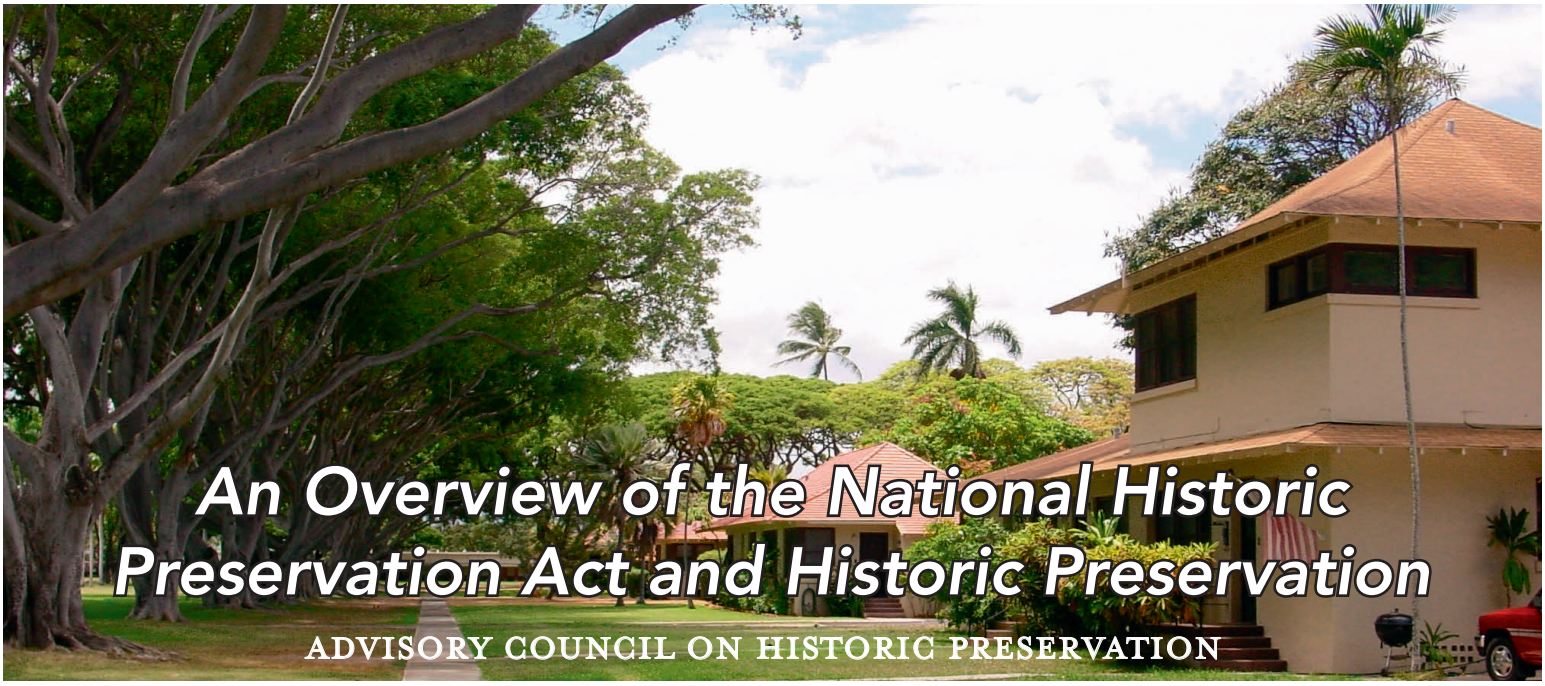
# PRESERVING AMERICA'S HERITAGE



## *An Overview of the National Historic Preservation Act and Historic Preservation*

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Preserving America's Heritage

Explore and Enjoy Our Heritage

An independent federal agency, the ACHP promotes the preservation, enhancement, and productive use of our nation's historic resources and advises the President and Congress on national historic preservation policy. It also provides a forum for influencing federal activities, programs, and policies that affect historic properties. In addition, the ACHP has a key role in carrying out the Preserve America initiative.

Milford Wayne Donaldson of Sacramento, California, is chairman of the 23-member council, which is served by a professional staff with offices in Washington, D.C. For more information about the ACHP, contact:

Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 803
Washington, D.C. 20004
Phone: 202-606-8503
Web sites: www.achp.gov and www.preserveamerica.gov

Cover, clockwise from top left: Bussman Farm on the Mark Twain National Forest, Missouri; Tomb of the Unknowns, Arlington National Cemetery, Virginia; Dulles International Airport, Virginia; Hickam Air Force Base, Hawaii; Grand Canyon National Park, Arizona

**TOWARD PRESERVATION**

# The National Preservation Movement and Origin of the National Historic Preservation Act of 1966

In the 1950s, a frenzy of modernization and a growing post-World War II population and economy were leading to the wholesale destruction of historic places in the United States. Places like Savannah, Georgia, with a unique city plan dating to the 18th century containing hundreds of historic structures, were at risk from efforts to revitalize older communities or a disregard for how new construction would affect existing places.

Modernization threatened to destroy what was best and most worth keeping of the past. The federal government's sponsorship of highway projects through city centers and removal of decaying urban areas in the name of progress did not adequately consider the full spectrum of local concerns and interests.

While the United States has long enjoyed a preservation ethic (for example, creating Yellowstone National Park, the world's first national park, in the 1870s), cities nationwide began realizing in the 1960s that perhaps more was being sacrificed to progress than their communities and the nation could afford to lose.

It was in this atmosphere that local people began to band together to retain the special character that made their homes and their environment special and unique. This grassroots effort was championed by the United States Conference of Mayors with significant assistance from the National Trust for Historic Preservation. These groups urged federal and state governments to consider the importance of historic places before they were destroyed. Indeed, in many cases federal construction and renewal projects had resulted in the destruction of places greatly valued by local citizens.

A major result was the report "With Heritage So Rich," created by the Special Committee on Historic Preservation of the United States Conference of Mayors. Lady Bird Johnson, then First Lady of the United States, provided the foreword to that report. She described how the relentless pressure of growth had led to the destruction of almost half of the 12,000 structures listed on the national Historic American Buildings Survey, and she urged action for change.

Ellis Island, New York Harbor

As a result of this concern, the U.S. Congress passed the National Historic Preservation Act (NHPA), signed into law by President Lyndon Baines Johnson on October 15, 1966. NHPA created the national preservation structure that has saved untold thousands of places that make our communities richer economically, culturally, and aesthetically. Clearly, sustainable historic preservation, more than a cost to society for maintaining the past, is instead a wise investment in its future.

On March 3, 2003, President George W. Bush issued Executive Order 13287, Preserve America, which aims to make the NHPA even more effective in the future than over the past 40 years. Mrs. Laura Bush, First Lady of the United States, is the Honorary Chair of Preserve America.

In this publication, following the motto of Preserve America, "Explore and Enjoy Our Heritage," you will learn why historic preservation is so important to your community and your country.

## NATIONAL REGISTER OF HISTORIC PLACES

# Register is Official List of Preservation Sites

The National Register of Historic Places encourages citizens, public agencies, and private organizations to recognize and use the places of our past to create livable and viable communities for the future. Authorized under the National Historic Preservation Act, the National Register of Historic Places (National Register) has become the official list of the nation's historic places worthy of preservation. Part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect historic and archaeological resources, the National Register is administered by the National Park Service under the Secretary of the Interior. Properties listed include districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture including the following:

Vanderbilt Mansion National Historic Site, New York

- All historic areas in the National Park System;
- National Historic Landmarks that have been designated by the Secretary of the Interior for their significance to all Americans; and
- Properties significant to the nation, state, or community, nominated by State Historic Preservation Offices, federal agencies, and tribal preservation offices.

America's historic places embody our unique spirit, character, and identity. Representing important historical trends and events; reflecting the lives of significant persons; illustrating distinctive architectural, engineering, and artistic design; and imparting information about America's past, historic places tell compelling stories of the nation, as well as states and communities throughout the country. The National Register of Historic Places helps preserve these significant historic places by recognizing this irreplaceable heritage, fostering a national preservation ethic, promoting a greater appreciation of America's heritage, and increasing and broadening the public's understanding of historic places.

Listing properties in the National Register often changes the way communities perceive their historic places and strengthens the efforts by private citizens and public officials to preserve these resources. The National Register recognizes properties as diverse as a dugout shelter of an Oklahoma pioneer settler, the Vanderbilt Mansion in New York, and a 12,000-year-old prehistoric site, helping many to appreciate the richness and variety of the nation's heritage.

One common question property owners have about the National Register is, "Will there be restrictions on my property after listing?" Owners of private property listed in the National Register have no obligation to open their properties to the public, to restore them, or even to maintain them. Owners can do anything they wish with their property provided no federal license, permit, or funding is involved. However, local historical commissions, design review committees, or special zoning ordinances established by state legislation or local ordinances, may link National Register listing to separate standards or restrictions. A State Historic Preservation Officer or local government official can provide additional information about how National Register listing may relate to state or local requirements.

For private owners, federal funding for historic buildings usually comes as tax credits for rehabilitation of historic properties for income-generating projects. Owners of National Register properties who choose to participate in the preservation tax incentive program must follow the Secretary of the Interior's Standards for Rehabilitation and receive approval by the National Park Service of the rehabilitation project in order to receive the federal tax credit.

## National Historic Preservation Act Creates Framework for Local and National Efforts

In response to the destruction of older buildings and neighborhoods in the immediate post-World War II years, the National Historic Preservation Act of 1966 (NHPA) signaled America's commitment to preserving its heritage. The NHPA established the framework that focused local, state, and national efforts on a common goal of preserving the historic fabric of our nation.

The Act has many components, but the major features are that the NHPA:

- Conceived the national historic preservation partnership involving federal, tribal, state, and local governments along with the private sector. This structure today includes State Historic Preservation Officers (one in every state and U.S. territory), Indian tribal and Native Hawaiian organizations, and Tribal Historic Preservation Officers.
- Fostered the system by which federal agencies survey and identify districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture, and use this information to plan projects so that, where possible, historic places are protected.
- Established the National Register of Historic Places that provides federal recognition to properties of local and state, as well as national, significance.
- Created the Advisory Council on Historic Preservation – that advises the President and Congress on historic preservation matters and works with federal agencies to address historic resources in the fulfillment of their missions.
- Authorized matching grants to states, Certified Local Governments, and Indian tribes for historic preservation surveys, plans, and projects.

## Major Organizations in Historic Preservation

**Advisory Council on Historic Preservation**
An independent federal agency, the ACHP promotes the preservation, enhancement, and productive use of our nation's historic resources and advises the President and Congress on national historic preservation policy. It provides a forum for influencing federal activities, programs, and policies that affect historic properties. In addition, the ACHP has a key role in carrying out the Administration's Preserve America initiative.
*www.achp.gov*

**National Park Service**
The NPS is a bureau within the Department of the Interior. The NPS preserves the natural and cultural resources and values of the National Park System for the enjoyment, education, and inspiration of this and future generations. The NPS cooperates with partners to extend the benefits of natural and cultural resources conservation and outdoor recreation throughout this country and the world. *www.nps.gov*

**State Historic Preservation Officers**
Each state and territory has a State Historic Preservation Officer (SHPO) who administers the national historic preservation program at the state level. They locate and record historic resources; nominate significant historic resources to the National Register; foster historic preservation programs at the local government level; assist in creating preservation ordinances; provide funds for preservation activities; review federal historic preservation tax incentive projects; provide technical assistance; and review federal projects for their impact on historic properties. *www.ncshpo.org*

**Tribal Historic Preservation Officers**
Federally recognized Indian tribes may assume responsibilities for the preservation of significant historic properties on tribal lands and have generally parallel responsibilities to the SHPOs.
*www.nathpo.org*

**National Trust for Historic Preservation**
Created by Congress in 1949, the National Trust is a private, non-profit organization that provides leadership, education, advocacy, and resources to save America's diverse historic places and revitalize our communities. Its 270,000 members are part of a movement saving historic properties nationally. *www.preservationnation.org*

**BENEFITS OF HISTORIC PRESERVATION**

# The National Historic Preservation Act of 1966

The National Historic Preservation Act and the national preservation structure it created are not designed to prevent change. They were created to ensure the benefits of historic preservation are available to local communities, states, and the nation. Congress created them in response to a grassroots aversion to the unreasonable destruction of important places.

The preamble to the National Historic Preservation Act of 1966 explains its purpose as follows:

## The Congress finds and declares that:

- The spirit and direction of the nation are founded upon and reflected in its historic heritage.
- The historical and cultural foundations of the nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people.
- Historic properties significant to the nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;
- The preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans.
- In the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and non-governmental historic preservation programs and activities are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our nation.
- The increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of federal and federally assisted projects and will assist economic growth and development.
- Although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the federal government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist state and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Independence Hall, Philadelphia

How remarkably different, and how much culturally poorer, the United States of America would be if it lost such iconic places as Mount Vernon, Independence Park in Philadelphia, and Vicksburg National Battlefield in Mississippi. Such places hold obvious significance where America's legacies are held in trust for present and future generations. But less famous sites also are of vast importance to local communities and tell wonderful human stories of our nation's history. Preservation does not mean locking away or preventing use of heritage resources; rather it encourages the sustainable appropriate use of cultural and heritage assets.

**BENEFITS OF HISTORIC PRESERVATION**

# Capitalizing on Historic Preservation

### *Heritage tourism boosts local economies*

Many people, fascinated by the sites where American history occurred, are eager to experience these places themselves. International visitors or American citizens who travel to experience authentic historic places and learn directly from them are called "heritage tourists." Spending billions of dollars every year, they are among the fastest-growing variety of traveler. Their travels provide hundreds of millions of tax dollars, regenerating interest in historic districts and areas by locals as well.

### *It's often cheaper and better to rehabilitate rather than to raze and replace*

Historic preservation can be less expensive than new construction. It can be cost-effective to rehabilitate structures for new or contemporary uses than to tear them down and build new structures. Further, investing in rehabilitation of older urban areas tends to revitalize these areas, making them popular for residences and businesses while keeping existing jobs and creating new ones.

When population declines in urban areas, tax revenues fall and businesses relocate outside the cities. Areas become blighted, falling into disuse and disrepair. People use more energy building new houses and businesses and commuting to their workplaces when they relocate outside established communities. Hundreds of cities across the nation have encouraged revitalization through actions such as converting old factories or manufacturing facilities into apartments and condominiums, restaurants and other businesses, creating vibrant, interesting, and beautiful areas for people to live and work.

### *Historic structures tell local and national story*

Of course, there are less tangible but perhaps even more important reasons to preserve unique old structures and historic spaces. They often offer a more human scale than many contemporary structures. The way they were designed and how they were constructed tell us much about the cultures that created them, and the traditions and events from which our nation grew. Places of heritage provide a link to our history and make a community more aesthetically and intellectually interesting.

Historic preservation allows people today to understand their origins and connects them with the continuum of history. By standing on or in the places where history took place, one can forge a personal connection with a community's heritage.

Downtown St. Louis, Missouri, has experienced a successful revitalization effort.

**BENEFITS OF HISTORIC PRESERVATION**

## Dollars and Sense: The Economic Side of Preservation

The National Historic Preservation Act (NHPA) has revitalized more than historic neighborhoods in its 40-plus years of existence. By encouraging a multitude of partnerships between state and federal agencies, private business and citizens, the NHPA has resulted in a far-reaching bang for its buck:

- More than $19 billion from the private sector invested in neglected historic properties through federal tax credits
- More than $8.6 billion from the private sector invested in 1,400 urban and village neighborhoods through the National Main Street Program (a program of the National Trust for Historic Preservation)
- 161,000 new jobs through the National Main Street Program
- 43,800 new businesses through the National Main Street Program
- 48,800 rehabilitated historic structures
- The establishment of more than 2,500 historic districts
- Increase in heritage tourism
- Increase in property values
- Lessening of crime due to revitalization of previously decaying neighborhoods

*Source: Witness Statement to the Congressional Committee on Resources, Patricia H. Gay, Executive Director of the Preservation Resource Center of New Orleans*

**CASE STUDY**

## General Grant Makes Key Civil War Decision at Dillon's Plantation

On May 12, 1863, Generals Ulysses S. Grant and William T. Sherman were headquartered at Dillon's Plantation near Raymond, Mississippi. They were maneuvering their Union military forces to capture Vicksburg, seeking to secure the vital Mississippi River corridor, cut the Confederate States of America in two, and deny it the economic and military use of the river. A sharp skirmish was fought in the area of Dillon's Plantation that day while the Battle of Raymond raged nearby, as Confederate forces fought desperately to blunt the Union drive.

That evening, receiving news of the favorable outcome of the Battle of Raymond, the two generals conferred on how the campaign was unfolding. Grant decided to change the route of the Union troops' advance, electing to move decisively against Jackson, the capital of Mississippi, before turning on Vicksburg as he had originally planned. This brilliant and daring decision resulted in the destruction of railroads and war materials in Jackson, forcing the retreat of a sizeable Confederate army, thereby preventing it from joining ranks with the defenders of Vicksburg. These actions assured Union success in the Vicksburg campaign, contributing directly to the outcome of the Civil War and reunification of the nation.

The story of this decision was largely unknown but recently has been resurrected, largely because Dillon's Plantation suddenly became available to the public through actions taken by the U.S. Department of Agriculture's Farm Service Agency (FSA). This is a historic preservation story that shows how the process works to save special places of American heritage.

Under Section 106 of the National Historic Preservation Act, federal agencies and offices are required to review historic resources when considering the

## CASE STUDY

effects of their actions. On December 26, 2000, the FSA foreclosed on a 470-acre farm in Hinds County, Mississippi. Fulfilling the required review of the property before placing it on the market to sell, the FSA contacted the Mississippi State Historic Preservation Office (SHPO). The SHPO notified the FSA that the property was associated with an important Civil War action and was eligible for listing on the National Register of Historic Places.

This coincided with a congressional authorization to the National Park Service in November 2000 of a study on how to better preserve Civil War battlefields along the Vicksburg Campaign Trail, considered of national significance to the history of the United States. The Vicksburg National Military Park investigated the site of Dillon's Plantation and reported that since the area today appears much as it did in 1863, "preservation of the site is crucial to the establishment of the Vicksburg Campaign Trail."

As a result, on January 9, 2003, the FSA transferred the property to the Natchez Trace Parkway, part of the National Park Service. The property will now be surveyed and researched by archaeologists and other experts. Educational exhibits and markers will be prepared to interpret the events surrounding the decision that played a part in ending the Civil War – and preserving the United States of America.

Vicksburg — *www.nps.gov/vick/index.htm*

Members of the Advisory Council on Historic Preservation learn about the Civil War battles at Vicksburg National Military Park, Mississippi, with guidance from National Park Service personnel.

**CASE STUDY**

# African Burial Ground Changes Historical Perspective

In May 1991, the U.S. General Services Administration (GSA), a federal agency that among other essential activities provides office space and buildings for federal agencies to occupy, made a startling discovery.

GSA was planning to build a new federal building on lower Broadway in New York City. Because the site was located in an older part of Manhattan considered historic, GSA was required to do an archaeological investigation on the site before constructing the new building. (Federal agencies are required by law to do so to be sure their construction work does not destroy historic artifacts or resources below the ground.) Just as the archaeological investigation was about to be completed, the archaeologists discovered skeletons and other remains from human burials. The building site was located on a graveyard! The graveyard was buried deep beneath layers of earth and later development, and had been hidden from view for centuries.

The present is often literally built on the past, so finding human remains in an urban area was not especially shocking. But this particular cemetery would turn up not only the forgotten resting places of perhaps 20,000 people, but also uproot some popular contemporary misconceptions of American history.

With the discovery, work stopped temporarily on the new federal building, because under the National Historic Preservation Act (NHPA) federal agencies have to consider the impact their activities may have on historic resources, even if they were unknown when work began. Other laws and regulations deal with the importance of proper, respectful treatment of human remains. It is also essential to inform and include other people, groups, levels of government and organizations that might have a legitimate interest in the historic resources involved in such cases.

Once that process began, the story began to emerge. During the Colonial period in New York, first under the Dutch and later under the English and finally extending into the era of the early years of the United States of America, slavery was widespread there and throughout the Americas. Many people mistakenly believe that this practice was largely confined to a specific region of the United States. In fact, the practice was prevalent from the time of the first Spanish settlers. Including all of the Western Hemisphere during the centuries before the practice was outlawed, it is believed that close to 10 million people were forcibly removed from Africa, and those who survived the voyage to the New World were made to work for others and live in bondage without what today would be considered the most basic of human rights. For purposes of comparison, consider that in 2006, only eight of the 50 states had total populations that exceeded 10 million people.

As the Revolutionary War era began, New York contained the second-largest population of enslaved Africans in the North American colonies. Only South Carolina had more. And there was a growing population of free Africans. A New York census of 1746 recorded 2,444 persons as black – or about 20 percent of the population.

The African Burial Ground, which it came to be known, reclaimed historic facts that were largely forgotten or unknown because there had been little physical evidence reminding current generations about past practices.

While work on the federal building prompted the discovery of the resting place of more than 400 men, women, and children, it was quickly clear that the cemetery once covered a far greater area that was largely built over by earlier development. Evidence suggests as many as 20,000 persons had been interred by 1794 in what was then known as the "Negros Buriel Ground."

Study of the bones yielded information on health and nutrition, diet, gender, and age at death. The study demonstrated that many of those interred in the African Burial Ground had lived harsh and often

African Burial Ground reinterment, New York City

short lives.

Nine percent of the burials were children under the age of two, while another 32 percent were below the age of puberty. This indicates the death rate among African children in Colonial New York was high. Developmental defects in teeth and bones indicated a high rate of malnutrition and recurrent illness.

Some teeth were found to have been filed, which was a practice among adolescent children in many parts of West and Central Africa. Arm, leg, and shoulder bones of the adult men showed evidence of muscles that had been torn from the bones in life, indicating they had endured labor beyond the limits of physical endurance.

The caskets, coffins, and articles buried with these more than 400 people also told a lot of stories to today's researchers. Interestingly, one decorative item found was an Ashanti symbol called the "Sankofa," which carries the meaning "Return to the Past to Build the Future," which is exactly why historic preservation and the study of history matter. This symbol links the person buried with it to the Ghana-Ivory Coast region of Africa.

Because of the importance of the site, on February 27, 2006, President George W. Bush signed a proclamation establishing the African Burial Ground National Monument in Lower Manhattan, at the corners of Duane and Elk streets. In May 2008, one of four Preserve America Presidential Awards went to the African Burial Ground project. This is the highest federal award for historic preservation that can be bestowed.

*www.africanburialground.gov*
*www.schomburgcenter.org*

*Preserving America's Heritage*

ADVISORY COUNCIL ON HISTORIC PRESERVATION
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# THE PRESERVE AMERICA PROGRAM

KETCHIKAN, AK (ALASKA STOCK LLC / ALAMY)

## THE PRESERVE AMERICA PROGRAM

Preserve America is a federal program that encourages and supports community efforts to preserve and enjoy our priceless cultural and natural heritage. Goals of the program include a greater shared knowledge about the nation's past, strengthened regional identities and local pride, increased local participation in preserving our heritage assets, and support for the economic vitality of our communities. Since the program's inception in 2003, the First Lady of the United States has been involved in supporting and promoting Preserve America. Permanent authorizing legislation for the program was passed by Congress and signed by President Obama in March 2009. The program includes community and volunteer recognition, grants, and awards, as well as policy direction to federal agencies.

## PRESERVE AMERICA COMMUNITIES

This program recognizes and designates communities, including municipalities, counties, neighborhoods in large cities, and tribal communities, which protect and celebrate their heritage. These communities use their historic assets for economic development and community revitalization, and encourage people to experience and appreciate local historic resources through education and heritage tourism programs.

More than 760 communities, including Indian tribes and urban neighborhoods, have been designated in 50 states and one U.S. territory. Along with promotional benefits and technical assistance, communities are eligible to apply for Preserve America matching grants. Preserve America Communities are featured in National Register Travel Itineraries and in "Teaching with Historic Places" curricular material created by the National Park Service. They are also given priority attention for some other related federal assistance programs and inter-governmental partnerships.

## PRESERVE AMERICA GRANTS

More than $17 million in matching grants has been awarded to more than 225 projects in 47 states since 2006 to support community efforts to demonstrate sustainable uses of historic and cultural sites. These grants focus on economic and educational opportunities related to heritage tourism. Grant amounts range from $20,000 to $250,000, and must be matched 1:1. A 2009 report to Congress assessed the effectiveness of the grants program in meeting national heritage tourism needs.

The Preserve America Grants program complements other federal funding, such as Save America's Treasures, by helping local communities develop resource management strategies

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PRESERVE AMERICA
*Explore and Enjoy Our Heritage*

"The Preserve America initiative is an inspiring and proactive approach to preserving our nation's history. It would be a privilege for any city in this nation to achieve the title "Preserve America Community."

—Santa Monica, California

BUFFALO SOLDIERS, WICHITA, KS

ADVISORY COUNCIL ON HISTORIC PRESERVATION
PRESERVING AMERICA'S HERITAGE

"Preserve America funding was incredibly helpful for moving forward heritage tourism projects. The scope of the funding allows small communities to think big—big partnerships, big leverage, big (complex) projects. There was no other funding available to our community aimed at this type of development for the wonderful sustainable industry of heritage tourism."

—Natchitoches, Louisiana

and sound business practices for the continued preservation and use of heritage assets. Funding is available in five activity categories: research and documentation; planning; interpretation and education; promotion; and training. In addition to designated Preserve America Communities, eligible grant applicants include State Historic Preservation Offices, Tribal Historic Preservation Offices, and Certified Local Governments that have applied for Preserve America Community designation.

CHIMNEY ROCK INTERPRETIVE ASSOCIATION, CO

## PRESERVE AMERICA PRESIDENTIAL AWARDS

Awards have been given annually to organizations, businesses, and government entities for exemplary accomplishments in the preservation of cultural or natural heritage assets; demonstrated commitment to the protection and interpretation of America's heritage assets; and integration of these assets into contemporary community life, combining innovative, creative, and responsible approaches to showcasing historic local resources. Awards have gone to two national initiatives as well as regional, statewide, and local programs in 19 states.

## PRESERVE AMERICA STEWARDS

The Preserve America Stewards honor exemplary volunteer efforts at historic resources around the country. Honorees are recognized for stewardship programs that have demonstrated successful use of volunteer time and commitment in order to help care for our cultural heritage. The resources cared for include publicly and privately owned and managed resources. Stewards care for such diverse resources as individual archaeological sites to entire complexes of structures, as well as outstanding examples of the historic built environment. Government entities (federal, tribal, state, or local), non-profit organizations, and businesses are eligible to apply to have their programs recognized.

## PRESERVE AMERICA HISTORY TEACHER OF THE YEAR AWARD

Since 2004, outstanding history teachers at the K-12 level have been recognized in each state, the District of Columbia, and U.S. territories, followed by selection of the Preserve America History Teacher of the Year from among the state winners. State winners each receive $1,000 and a core archive of history materials for their school libraries. The Gilder Lehrman Institute of American History facilitates this award program and hosts its national recognition event each fall.

MIDLOTHIAN MINES, CHESTERFIELD, VA

## EXECUTIVE ORDER 13287: "PRESERVE AMERICA"

The Preserve America Executive Order (2003) emphasizes federal policy for the protection, enhancement, and contemporary use of historic properties owned by the federal government. The order encourages agencies to seek partnerships with state, tribal, and local governments and the private sector to make more informed use of these resources for local economic development and other recognized public benefits. It also directs agencies to support state, tribal, and local heritage tourism with existing authorities and resources. As required by the order, the Advisory Council on Historic Preservation reviews agency stewardship and partnership efforts and provides a status report to the President every three years. The first two reports were compiled and issued in 2006 and 2009, based on reporting from individual federal agencies with land- and property-management responsibilities.

## EDUCATIONAL OUTREACH

Preserve America has worked with The History Channel's "Save Our History" initiative, which has created a teacher's manual with lesson plans and volunteer ideas that involve students in preserving historic sites in their communities. Save Our History annual grants of $10,000 are available to help local non-profit organizations and school districts work together on educational projects focusing on cultural heritage. The History Channel is also working on related educational programs, such as service-learning models, with the ACHP and other partners.

TASTE OF NEWTON, NEWTON, NJ

CHINATOWN, LOS ANGELES, CA
(STEPHEN BAY / BAYIMAGES)

EXPLORE AND ENJOY OUR HERITAGE

FOR MORE INFORMATION
ABOUT PRESERVE AMERICA:

WWW.PRESERVEAMERICA.GOV

WWW.ACHP.GOV

## PRESERVE AMERICA SUMMIT AND THE FUTURE OF PRESERVATION

In recognition of the 40th anniversary of the National Historic Preservation Act, a Preserve America Summit was convened in 2006 with 450 participants to consider the future of the national preservation program. A Youth Summit met in conjunction with the larger conference and has provided a model for subsequent youth projects, including promotion of historic preservation service-learning as an educational tool. Key recommendations emerging from the Summit to improve the effectiveness of historic preservation efforts nationally through better resource identification, stewardship, community support, education, and leadership were adopted by the Advisory Council on Historic Preservation and are now being implemented by federal agencies and non-federal partners.

## PROGRAM OPERATION

A Web site (www.preserveamerica.gov) provides details and updates on Preserve America, including information on how to get involved and other resources, with links to many other related programs. The program is administered jointly by the Advisory Council on Historic Preservation and the Department of the Interior, in cooperation with an interagency steering committee that also includes representatives from the White House and the Executive Office of the President; the Departments of Agriculture, Commerce, Defense, Education, Housing and Urban Development, and Transportation; the General Services Administration; the Institute of Museum and Library Services; the National Endowment for the Humanities; and the President's Committee on the Arts and the Humanities.

The Advisory Council on Historic Preservation, an independent federal agency, promotes the preservation, enhancement, and productive use of the nation's historic resources and advises the President and Congress on national historic preservation policy.

ADVISORY COUNCIL ON HISTORIC PRESERVATION
1100 Pennsylvania Avenue NW, Suite 803 Washington DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

# OFFICE OF FEDERAL AGENCY PROGRAMS

NORTH HEAD LIGHTHOUSE AT FORT CANBY STATE PARK NEAR LONG BEACH, WA (WST / PORT OF SEATTLE)

The Advisory Council on Historic Preservation (ACHP) is an independent federal agency established by the National Historic Preservation Act of 1966 (NHPA) that promotes the preservation, enhancement, and productive use of our nation's historic resources.

The ACHP advises the President and Congress on national historic preservation policy. A key responsibility of the ACHP is to administer the requirements of Section 106 of the NHPA, a review process that ensures historic properties are considered during the development of any federal project. The ACHP's Office of Federal Agency Programs (OFAP) handles this responsibility.

## INFORMATION ABOUT SECTION 106 REVIEW AND CONSULTATION

Section 106 plays a central role in the federal historic preservation program. Section 106 requires federal agencies to consider the effects of projects, carried out by them or subject to their assistance or approval, on historic properties and provide the ACHP an opportunity to comment on these projects prior to a final decision on them. Projects range from construction or rehabilitation to demolition. Properties listed on or eligible for listing on the National Register of Historic Places are considered historic. The National Register is a listing of historic properties maintained by the National Park Service. It includes buildings; structures; objects; districts; and sites of national, state, or local importance.

Section 106 encourages, but does not mandate, preservation. The process provides for the consideration of alternatives that promote preservation and offers the public and stakeholders the opportunity to influence federal decisions. The ACHP developed and maintains the regulations that implement Section 106. The regulations are published in the Code of Federal Regulations at 36 CFR Part 800, "Protecting Historic Properties," and can be found on the ACHP's Web site, www.achp.gov.

The federal agency providing assistance or approvals for a proposed project is responsible for completing Section 106 prior to making a final decision. Agencies initiate Section 106 reviews in consultation with state and tribal officials. Appointed by each state governor, the State Historic Preservation Officer (SHPO) coordinates the state's historic preservation program and consults with agencies during Section 106 review. Agencies also consult with officials of federally recognized Indian tribes and Native Hawaiian organizations when historic properties of significance to tribes or Native Hawaiian organizations are involved. Consultation is the cornerstone of the Section 106 process. Federal agencies are required to also include local governments and applicants for federal assistance, permits, licenses, and other approvals in the process. Other consulting parties may include individuals or groups interested in historic preservation. To successfully complete a Section 106 review, federal agencies must follow these four steps:

- INITIATE Section 106 and determine if it applies to a given project;
- IDENTIFY historic properties in the project area;
- ASSESS the effect of the project on identified historic properties; and
- RESOLVE adverse effects by exploring alternatives to avoid, minimize, or mitigate the effects.

Most Section 106 reviews are completed successfully by the federal agency, the SHPO, Indian tribes or Native Hawaiian

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SECTION 106 CONSULTATION MEETING

BUFFALO KILL AREA AT THE WARDELL BUFFALO TRAP SITE, WY (BLM)

organizations, and other consulting parties. When the project may have substantial effects, if important policy or procedural questions are raised, or if there are issues of concern to Indian tribes or Native Hawaiian organizations, the ACHP may elect to participate. The ACHP also provides additional guidance, advice, and technical assistance to federal agencies and all participants in the Section 106 process.

When historic properties will be adversely affected by a federal undertaking, the review usually ends with a negotiated and legally binding agreement that outlines how the federal agency will resolve those effects. If agreement cannot be reached, the ACHP issues advisory comments, which the head of the federal agency must consider before making a final decision on the project.

## FEDERAL PRESERVATION PROGRAMS

The successful completion of Section 106 reviews depends heavily on strong federal participation. OFAP works closely with federal agencies to identify opportunities for improving their preservation programs. These improvements are identified through the ACHP's involvement on individual Section 106 reviews, direct partnerships with federal agencies, and the ACHP's review of triennial progress reports required under Executive Order 13287, "Preserve America" regarding federal agency efforts to identify, protect, and use historic properties.

## SECTION 106 TRAINING AND OUTREACH

For 30 years, the ACHP has provided training to federal, state, and local agencies; Indian tribes and Native Hawaiian organizations; and the public on the requirements of Section 106. Current course offerings are posted on the ACHP's Web site at www.achp.gov/106select.html. The ACHP also works with federal agencies and others to develop Section 106 training tailored to specific programs or issues.

FOR MORE INFORMATION ON THE ACHP AND THE OFFICE OF FEDERAL AGENCY PROGRAMS, PLEASE VISIT:

WWW.ACHP.GOV

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# NATIVE AMERICAN PROGRAM

CANYONS OF THE ANCIENTS NATIONAL MONUMENT, CO (© ALLEN LIVINGSTON / SHUTTERPOINT)

## OVERVIEW

The Native American Program (NAP) of the Advisory Council on Historic Preservation (ACHP) was established in 1998 to:

- Advise the ACHP chairman, members, and executive director on policy matters and historic preservation issues affecting Indian tribes and Native Hawaiian organizations (NHOs)
- Provide technical assistance and outreach to Section 106 participants regarding the role of Indian tribes and Native Hawaiian organizations in the Section 106 review process and the national historic preservation program
- Participate in interagency initiatives focused on Native American issues.

ACHP staff works closely with the ACHP's tribal/NHO member to address critical issues brought to the ACHP by Indian tribes, NHOs, and intertribal organizations.

## WHAT DOES THE NATIVE AMERICAN PROGRAM DO?

**The NAP supports policy development:**

- 2008: Policy Statement on the ACHP's Interaction with Native Hawaiian organizations
- 2004: ACHP statement regarding its trust responsibility to Indian tribes
- 2004: Establishment of the Native American Advisory Group (NAAG) to provide advice and to coordinate with the ACHP on matters of concern to Indian tribes and Native Hawaiian organizations
- 2003: Action Plan on ACHP Native American Initiatives
- 2000: Policy Statement Regarding the ACHP's Relationships with Indian tribes

**The NAP advocates relationship building:**

There were several significant advances in 2005. The ACHP hosted a listening session in Hawaii to gain a better understanding of Native Hawaiian historic preservation issues. In response to a recommendation from NAAG, the NAP began work on a new policy regarding its relationship with Native Hawaiian organizations. That led to the Policy Statement on the ACHP's Interaction with Native Hawaiian Organizations — the first of its kind — being adopted in the spring of 2008.

In 2005, the White House Office of Intergovernmental Affairs hosted a federal agency briefing for NAAG, which focused on seven agencies. Based on the success of this first meeting, the White House hosted a second federal agency briefing in 2006 and set up meetings for NAAG with each of the seven agencies.

It is the ACHP's belief that these meetings will result in better communication and ongoing policy and program deliberations with these agencies.

The NAP staff chairs the Interagency Working Group on Indian Affairs, an interagency initiative to address how best to improve collaboration with tribal governments.

**The NAP provides training and outreach:**

Since 1998, the NAP has hosted Section 106 training sessions for dozens of Native Hawaiian organizations and approximately 200 Indian tribes, including Alaska Native Villages.

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CAVE HILLS, SD

BIGHORN MEDICINE WHEEL, WY

FOR MORE INFORMATION ON THE ACHP AND THE NATIVE AMERICAN PROGRAM, PLEASE VISIT:

WWW.ACHP.GOV

The ACHP offers training for federal agencies regarding their responsibilities to consult with Indian tribes and Native Hawaiian organizations in the Section 106 process.

Since 2004, under an interagency agreement with the Federal Highway Administration, the NAP has offered tribal consultation training to more than 200 federal and state transportation personnel.

SECTION 106 TRAINING CLASS IN HAWAII

In 2008, the NAP published updated guidance entitled, "Tribal Consultation in the Section 106 Process: A Handbook." This step-by-step guide is intended to assist federal agencies in consulting with Indian tribes but will be useful to all Section 106 participants. It is available at www.achp.gov/regs-tribes2008.pdf.

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NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

NCSHPO

The National Conference of State Historic Preservation Officers (NCSHPO) is the professional association of the State government officials who carry out the national historic preservation program as delegates of the Secretary of the Interior pursuant to the National Historic Preservation Act of 1966, as amended (NHPA) (16 USC 470). The NHPA provides for the designation of a State Historic Preservation Officer (SHPO) in each state.

The NCSHPO is a 501(c)(3) corporation registered in the District of Columbia. The NCSHPO acts as a communications vehicle among the SHPOs and their staffs and represents the SHPOs with federal agencies and national preservation organizations. Questions about historic preservation in individual states (i.e. a federal project, listing in the National Register of Historic Places, tax incentives) should be directed to the respective state.

**About SHPOs**

Every State and U.S. Territory has a State Historic Preservation Officer who, with the support of qualified staff, is charged with:

- Conducting a comprehensive survey of historic properties
- Maintaining an inventory of historic properties
- Administering state programs of Federal assistance
- Identifying and nominating eligible properties to the National Historic Register
- Advising and assisting Federal, State and local governments in matters of historic preservation
- Preparing and implementing a statewide historic preservation plan
- Providing public information, education, training and technical assistance
- Working with local governments in the development of local historic preservation programs and help them become "certified local governments"
- Provide consultation for Federal undertakings under the Section 106 provision of the National Historic Preservation Act

In addition to their roles within the Federal historic preservation program, SHPOs also function within their own state governments. In this capacity, their duties include (but are not limited to):

- Promoting historic preservation efforts within state government
- Coordinating with tribal governments on historic preservation matters
- Maintaining and managing historic house museums and historic sites
- Coordinating state heritage tourism efforts
- Holding and enforcing historic preservation easements
- Managing State Rehabilitation Tax Credit programs
- Maintaining state granting programs
- Supporting Main Street communities and revitalization efforts
- Providing consultation for State undertakings, similar to the Section 106 provision of the National Historic Preservation Act

# CERTIFIED LOCAL GOVERNMENT PROGRAM

The Certified Local Government Program is a preservation partnership between local, state and national governments focused on promoting historic preservation at the grass roots level. The program is jointly administered by the National Park Service (NPS) and the State Historic Preservation Offices (SHPOs) in each state, with each local community working through a certification process to become recognized as a Certified Local Government (CLG). CLGs then become an active partner in the Federal Historic Preservation Program and the opportunities it provides.

Why become a CLG? There are many reasons that are described in depth in the links provided, but the key reason is the access certification provides to the expert technical advice of the State Offices as well as the NPS. Partnerships with the National Alliance of Preservation Commissions, Preserve America, the National Trust for Historic Preservation, and the National Main Street Center are also networks that CLGs have an opportunity to tap into. Of course, access to Federal funding is another benefit, making certified communities able to access the portion of Federal funds set aside by each SHPO for just CLGs annually. Being a CLG also shows your community's commitment to keeping what is significant from the past for future generations. As a certified town, city, or county seeking other opportunities, it becomes easy to demonstrate a readiness to take on a preservation project and be successful.

**How to Become a Certified Local Government**

Is your community ready to enhance their commitment to historic preservation? Then now is the time to become a Certified Local Government (CLG) and an active partner in the National Preservation Program.

First step is to contact the State Historic Preservation Office (SHPO) in your state and ask for the CLG Coordinator, each state has one. The SHPO facilitates this Federal program for the National Park Service (NPS) and will assist your community with the certification process. The completed application is then sent to NPS for final review and official certification.

**What is a CLG required to do?**

A community must address the following minimum goals to demonstrate to the State and NPS that they are committed to historic preservation.

• Establish a qualified historic preservation commission.

• Enforce appropriate State or local legislation for the designation and protection of historic properties. In most cases this is done in the form of a local ordinance.

• Maintain a system for the survey and inventory of local historic resources.

• Provide for public participation in the local historic preservation program, including participation in the National Register process.

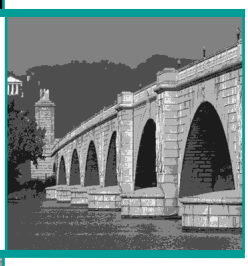
• Follow any addition requirements as outline in the State's Procedures for Certification.

Each state has Procedures for Certification that are approved by NPS, and often establish additional requirements for becoming a CLG in that state. Contact your State CLG Coordinator to learn more about any additional requirements.

For more information, visit the National Park Service's website: www.nps.gov/history/hps/clg or contact Megan Brown: Megan_Brown@nps.gov, 202-354-2062.

Cultural Resources
PARTNERSHIP NOTES

*Technical assistance in historic preservation planning, related planning/land use topics, and preservation strategies for Federal agencies, Indian tribes, States, and local governments*



# LAW AND THE HISTORIC PRESERVATION COMMISSION: WHAT EVERY MEMBER NEEDS TO KNOW

*James K. Reap and Melvin B. Hill, Jr.*

A VIBRANT REPRESENTATIVE DEMOCRACY DEPENDS UPON THE active involvement of its citizens in a variety of ways, from simply voting to running for elective office. One important type of governmental involvement is that of service on boards and commissions established by state or local law to provide input and direction regarding state or local public policy. The historic preservation board or commission is one of these important service opportunities for citizens at the local level. Those appointed to serve on preservation commissions want and need to know what is expected of them and what legal issues they may encounter. Serving can be a rewarding experience and commissioners should not fear the law—or lawyers!

No commission member wants to have his or her actions challenged. But it happens. When it comes to protecting what they perceive to be their "property rights," Americans can be very territorial! A 1998 survey by the National Alliance of Preservation Commissions, for example, found that 15% of responding commissions had been sued. However, many of those challenges were unsuccessful.

The primary purpose of this primer is to provide readers with an introduction to basic legal concepts and issues they may encounter as preservation commissioners. The authors hope this brief publication will help answer basic questions and point readers to other useful sources. Our overall goal is to demystify the law governing historic preservation and give commissioners the information they need to make sound and legally defensible decisions.

## BASIC CONCEPTS

### Commission Authority

The first issue facing any local historic preservation commission is whether it has the legal authority to act. If it doesn't, its actions will be determined to be null and void when challenged, and every commission member will have wasted his or her time. So where does a historic preservation commission get its authority to make decisions affecting the property of other individuals and organizations in the community?

The Tenth Amendment of the United States Constitution provides that, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." One of those powers **not** held by the Federal government, but reserved to the states is known as the *police power*. Based on the Latin maxim *sic utere tuo ut alienum non laedas* (so use your own property as not to injure another's), the concept is of Anglo-Saxon origin and was adopted by the American colonies from British common law. Basically, it can be described as the power of a government to provide for the public health, safety, morals, and general welfare of its citizens. As Justice Douglas stated in the famous Supreme Court decision of *Berman v. Parker*, 348 U.S. 26 (1954), in probably the most eloquent defense of the police power ever written:

> *The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.*[1]

States exercise the police power by passing laws and adopting regulations affecting such matters as public health, environmental protection, building safety, and zoning. Historic preservation, too, falls within the scope of the police power.

Every state has enacted some form of historic preservation legislation, and many state courts have upheld the regulation of individual properties and areas having special historic, architectural, or cultural significance.

The U.S. Supreme Court explicitly recognized preservation as a legitimate government purpose within the scope of the police power in *Penn Central Transportation Company v. City of New York*, 438 U.S. 104 (1978). In that case the Court upheld the constitutionality of

**What Does That Mean?**

In reading this publication or cases cited here, you may encounter unfamiliar legal terminology. Legal dictionaries are available in your public library and there are several searchable Internet sources for legal definitions. Two sites that are simple to use are:

**Lawyers.com** — based on Merriam-Webster's Dictionary of Law 2001: www.lawyers.com/legal_topics/glossary/index.php

**Law.com** — with three different search methods for finding words: http://dictionary.law.com

References to cases and statutes mentioned in the text are in the technical language of legal citation. Professor Peter W. Martin of Cornell University has produced a useful online guide to help you decipher these strange "hieroglyphics:" www.law.cornell.edu/citation/

the New York City landmarks ordinance and the city's denial of the railroad's request to build a 55-story office tower above historic Grand Central Terminal. The Court's majority observed that it is "not in dispute" that "States and cities may enact land-use restrictions or controls to enhance the quality of life by preserving the character and desirable aesthetic features of a city." [2]

But how does local government get into the business of exercising the police power? It comes as a surprise to many people to learn that the United States Constitution makes no mention of cities, counties, school districts, or any other forms of local government. Rather, the form, number, powers, and other matters pertaining to local government structure and administration are left up the individual states themselves. As so-called "creatures" of the states, local governments owe their very existence to the state governments of which they are a part (whether they like it or not!).

In interpreting the powers that have been given to local governments by the states, the courts initially adopted a very restrictive view. This bias against local government power was essentially codified in an 1868 Iowa case, *Merriam v. Moody's Executors*, 25 Iowa 163 (1868). Written by Judge John Dillon, a recognized expert on local government law, his pronouncement came to be known as *Dillon's Rule*:

> *[A] municipal corporation [i.e., city] possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable; fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation—against the existence of the power.*[3]

Although Dillon's Rule is couched in terms of "municipal corporations," the concept—and bias—has applied historically to counties and other forms of local governments (townships, boroughs, etc.) as well.

This restrictive view toward local government power was the prevailing sentiment in most state legislatures for generations, but, as the needs of urban residents grew more extensive and complex over time, the idea took hold and grew that matters of "local concern" could and should be delegated down to the local governments themselves.

The course of this path differed from state to state, but the overall trend throughout the twentieth century was toward more local control. In many cases, this new approach involved changes in the state's constitution. Some states adopted very broad and generous provisions delegating significant powers to local governments over revenue-raising, form of government, and other key factors, while others took modest or even confused steps.

Many state legislatures were willing to entertain seriously the notion of a true partnership with local governments, one in which the powers and responsibilities of governance were shared in a significant and meaningful way. Others continued to apply a strict standard of limited local government powers.

In terms of historic preservation commissions, what this legal backdrop means is that not only local law but also state law must be consulted to determine the extent to which commissions have been empowered to regulate historic property. If there is doubt about the existence of this power, the courts may rule against the commission. Commission members should

be certain of the scope of their authority and that all systems are "go" for a vigorous pursuit of historic preservation objectives. As commissions move forward in designating and regulating historic properties and districts they should be certain their actions are consistent with state law. The local government's legal office should be able to provide this documentation; commission members are not expected to be legal researchers!

### *Individual Rights*

While government clearly has the constitutional authority to protect historic resources as part of its inherent police power, both law and tradition circumscribe that power. The motto of the State of New Hampshire provides an apt starting point for a discussion of the limitations of historic preservation law– "Live Free or Die!" This statement reflects the attitude most Americans share. We begin with a presumption of freedom on the part of the American citizen.

This foundational premise is bolstered by several provisions of the Bill of Rights of the United States Constitution, as well as by similar provisions in the respective state constitutions.

- **The First Amendment** of the United States Constitution proclaims, *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.* This most esteemed provision of the Bill of Rights drops a protective cloak around United States citizens and keeps the federal government at bay concerning these most basic human rights.
- **The Fifth Amendment** of the Constitution provides that *No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.* This provision protects the citizens of the United States from encroachment by the federal government upon their property, and ensures them that the property will be paid for if the encroachment goes beyond a certain point. If the encroachment goes too far, it becomes an unconstitutional taking.
- **The Fourteenth Amendment** of the Constitution provides, that *No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws.* This provision assures Americans that their rights are protected against state encroachment as well as that of the federal government, so that nothing the state does can deprive them of the right to use their property, nor may it treat them in an arbitrary or capricious manner. And this protection extends to local government action as well, since all local governments are creations of the states.

While these rights guaranteed in the United States Constitution and in the respective state constitutions must be honored, the government may establish reasonable laws, rules, and regulations to promote the *common weal* or general welfare.

Litigation involving preservation commissions often involves situations where the governmental interest in promoting the general welfare clashes with the desires of the individual citizens. The good news for preservationists is that the citizens espousing private property rights do not often win these legal battles, nor should they. In the United States, property rights

have never been unlimited. If we want to live in a society that respects both the built and the natural environments that were passed down to us, then there must be reasonable restrictions on private property. The stewardship of the cultural and historic, as well as the natural, resources of the planet demand as much.

So what can historic preservation commissions do to minimize their chances of being brought into court, without relinquishing their rightful role as the guardian of historic and prehistoric resources? In order to better answer this question, let us look at the kinds of problems that have arisen in the past, and see how they have been resolved. We will begin our examination of individual rights with three key phrases found in the Fifth and Fourteenth Amendments to the Constitution, quoted above: *takings*, *due process*, and *equal protection*.

### Takings

> *...nor shall private property be taken for public use without just compensation.*

This sounds straightforward enough, but in the context of private land use control and historic preservation, how does a taking occur?

There are two primary ways—*physical takings* and *regulatory takings*.

The first way is the most obvious—the government *condemns* the land and buys it outright. This is known as the power of *eminent domain*, and it is part of state government's inherent power as a sovereign entity. When a road is widened or a new government building is needed, the government pays the owner(s) of the land to be acquired for this improvement an amount equal to its value, termed *just compensation*. Usually this compensation represents *fair market value*, or what a willing seller and willing buyer agree is a fair price. What constitutes just compensation is not always clear, however, so the resolution of this issue sometimes leads to litigation by the parties.

For preservationists, eminent domain is a two-edged sword. Local governments have used it to protect historic properties by acquiring them for museums or other public functions, or, as a last resort, by preventing their demolition through the action or inaction of their owners. On the other hand, the power also has been used to acquire land for redevelopment, even if the area contained structures that were still usable. In many of these situations, land acquired from one private owner by eminent domain was transferred to another private owner for future economic development. This raised the question whether the resulting development was a *public use*, as required by the Fifth Amendment.

A challenge from citizens of New London, Connecticut who lost their properties in a redevelopment project reached the United States Supreme Court in *Kelo v. City of New London*, 545 U.S. 469 (2005). The court broadly interpreted public use as *public purpose* and confirmed its longstanding policy of deferring to the judgment of legislative bodies as to what public needs justify using the takings power. It held that the requirements of the Constitution could be met by the general benefits a community would receive from increased jobs and other economic opportunities created by redevelopment.

This decision outraged many people who felt that state and local governments should not use the power of eminent domain in this way. As a result, many state legislatures have amended their general laws or constitutions to restrict eminent domain in situations involving transfer of property from one private owner to another or for economic development purposes. In many cases local

governments retain the power to acquire *blighted* properties, though the new legislation has tightened the definition of blight. As a result of these developments, preservation commissions should review their state legislation and consult with legal counsel when potential eminent domain situations arise.

The second type of taking is less obvious. In fact, it was not until the early twentieth century that this type was even recognized legally. This type is known as a *regulatory taking* or *inverse condemnation*. Courts have found this kind of taking in situations where a general governmental regulation has the unintended effect of denying the owner a reasonable economic use of a property. The effect on the owner, then, is much the same as in the first kind of taking, except the owner retains physical possession of the property. In this situation, one of two things happens—either the regulation is nullified, or the property owner is compensated for his or her loss.

One of the first and most important regulatory takings cases is *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922). In this seminal case, the United States Supreme Court overturned a Pennsylvania law that had prohibited the mining of coal in cities to prevent the subsidence of nearby structures caused by a myriad of honeycomb mining shafts beneath populated areas. This law offered no compensation to the mining companies who had retained the mining rights at the time they sold the surface, and as a result of the new law, could no longer mine all the coal. The mining companies sued, alleging a taking of their sub-surface property without compensation in violation of the takings clause of the Fifth Amendment of the U.S. Constitution.

In *Pennsylvania Coal*, Justice Oliver Wendell Holmes made the following oft-quoted pronouncement

> *The general rule at least is, that while property may be regulated to a certain extent,* ***if regulation goes too far it will be recognized as a taking****.... We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.* [4]

Nevertheless, the Court also recognized that, "Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law."[5] Government regulation can be constitutional even if it reduces property value.

So when does regulation go too far and become a taking? The U.S. Supreme Court has indicated that decisions on takings should be made on a case-by-case basis, and established criteria for lower courts to use in making this determination. These criteria provide useful guidance to local governments and commissions.

There has been no more important case for modern takings jurisprudence—particularly for preservation commissions—than the *Penn Central* case, cited above. The decision set out a *three-part inquiry* for analyzing a broad range of regulatory takings claims.[6] Under this inquiry, courts must examine:

- the economic impact of the regulation on the property owner,
- the effect of the regulation on the owner's distinct investment-backed expectations, and
- the character of the governmental action.

The opinion also established a rule requiring that reviewing courts look at the effect on the *entire* property interest (*parcel as a whole*), not just the part affected by the regulation

in question.[7] Owners were not entitled, according to the court, to the so-called *highest and best* use, but rather to a reasonable and beneficial use of the property. The idea that a property owner could "establish a 'taking' simply by showing that they have been denied the ability to exploit a property interest that they heretofore had believed was available for development is quite simply untenable."[8]

Fifteen years after *Penn Central*, the Supreme Court gave a partial answer to the question of when does a regulation go too far, declaring in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), that a categorical taking occurs if *all* economically beneficial use of property is denied.[9] If some viable use remains, then the three-part inquiry of *Penn Central* must be applied. Although a number of years have elapsed since the decision, as recently as 2001, Justice O'Connor of the U.S. Supreme Court referred to *Penn Central* as the "polestar" for analyzing takings claims in a land use case, *Palazzolo v. Rhode Island*, 533 U.S. 606, 633 (2001) (O'Connor, J., concurring).[10]

Many state courts have also addressed the takings issue. These decisions are binding on the respective states, and perhaps are persuasive on court decisions in some states, but may have no effect on cases in other states. Two relatively recent cases are included in the Appendix. On the legislative front, in 2004, Oregon voters approved a regulatory takings initiative known as Measure 37 (ORS 197.352). This legislation allows landowners to claim compensation for any decrease in property value resulting from land use, environmental, or other government regulations. Local governments must either pay the property owners for this loss or waive the regulation.

Property rights organizations seized the opportunity presented by Proposition 37 to introduce legislation or ballot initiatives in a number of other states and capitalized on citizen anger over the *Kelo* decision to add takings measures to unrelated eminent domain legislation. Although only one takings initiative modeled on Proposition 37 was successful in the 2006 elections, proponents continue to advocate legislative or constitutional changes.

This development could effectively undermine historic preservation ordinances and other land use regulations throughout the country that have been upheld in court challenges such as *Mahon* and *Penn Central*. Preservation commissions should review the situation in their state with counsel and closely monitor proposed regulatory takings legislation or initiatives that might invalidate protection for historic resources.

### *Due Process and Equal Protection*

> *...nor shall any state deprive any person of life, liberty, or property, without due process of law.*

If constitutional protections had to be prioritized, due process and equal protection might well be at the top. Nothing in our system of government is more important in terms of protecting the citizens from arbitrary and capricious government behavior. Supreme Court Justice Felix Frankfurter captured this reverence for fundamental fairness in his opinion in *McNabb v. United States*, 318 U.S. 332 (1943): "The history of liberty has largely been the history of observance of procedural safeguards."[11]

Due process has two distinct dimensions—*procedural* and *substantive*. These dual doctrines often appear together and are related to one another.

**Procedural due process** relates to the manner in which actions are taken, and is intended to protect citizens against unfair governmental action. If a property interest is involved,

then that interest cannot be adversely affected without proper notice and an opportunity to be heard by a competent tribunal. Proper procedures must be followed. These procedures are set by law and are usually very specific. For example, notice may require publication once per week for three consecutive weeks in the official organ of the county, etc.

What this means in practical terms is that commissioners should know the procedural requirements in their enabling legislation, local ordinance, bylaws, rules, and regulations and follow those procedures to the letter. It does not mean that the commission must reach a result based on the information provided by an applicant. One court put it this way: "[T]he procedural requirements we have identified serve not to protect the public from unwise decisions but from uninformed decisions. …Although the board was not bound to listen to plaintiff's concerns, it was bound to hear them before making its decision."[12] If the procedures are not working, don't ignore them; change them or request a change from your legislative body. Some tips for putting due process to work are found in the accompanying box, but ask your local government legal department for further guidance on proper procedure.

### Putting Due Process Principles to Work

If your commission wants to avoid running afoul of due process and equal protections problems, you should ask whether every action the commission takes passes legal muster—is it orderly, fundamentally fair, and impartial?

**Adequate Notice**

- Have you followed the notice requirements of state law (including sunshine laws) and the local ordinance in all details, including specified methods and deadlines?
- Have you given appropriate notice to affected applicants, property owners, neighbors, and the general public?

**Opportunity to Be Heard**

- Have you given all parties a reasonable opportunity to present their arguments and evidence?
- Are time restrictions reasonable and equitable?

**Impartiality**

- Are all commissioners free from conflict of interest and bias on every issue in which they participate—both financial and personal? If you are not sure, talk to your local government attorney or ethics officer for guidance.
- Have you avoided ex parte contacts—having discussions with interested parties outside the official process and the public eye—and revealed any inadvertent contacts for the record?

**Informed Decision Making**

- Are you prepared for each decision on which you vote, having read the application, visited the site, and been present for all of the proceedings?
- Do you understand all the issues; have you listened carefully and asked questions?
- Have you treated all similarly situated properties or projects similarly or given reasons for any different treatment?
- Is your decision supported by reasons and findings of fact and based on the criteria in your ordinance and any applicable design guidelines?

**Prompt Decision Making**

- Have you made decisions within the time limits allowed by law and within a reasonable time given the circumstances of the case?

**Preparing for Challenges**

- Have you prepared an adequate record—written, audio, video—of each case and the proceedings that can support your decisions if challenged?
- Does the record document and make clear that you have passed all of the "smell tests" above?

**Substantive due process** is not as clear-cut as procedural due process in that the substantive aspect of due process relates to the basic fairness or *equity* of a decision. If the court believes that some fundamental principle of fairness has been violated, then it can take action to correct it. Of course, fairness, like beauty, is very much in the eye of the beholder, so courts are less likely to overturn a decision on these grounds than they are on procedural due process grounds.

For example, an Illinois court overturned a zoning decision of a local government board because the board failed to provide for cross-examination—a procedural defect. Plaintiffs had also challenged the action on substantive due process grounds. On those grounds, the court refused to substitute its judgment for that of the board in an area where the board had been given discretion by the legislature. The court put it this way: "If the board's decision is unwise but does not violate substantive due process [that is, basic fairness], the plaintiff's remedy lies in the political arena; simply put, if unhappy, the plaintiffs may campaign to throw the rascals out."[13]

**Equal protection** under the Fourteenth Amendment states:

> *...nor shall any state deny to any person within its jurisdiction equal protection of the laws.*

The constitutional protection provided by the equal protection clause of both the Fifth and Fourteenth Amendments is a fundamental aspect of due process; that is why the two terms appear together so often. Equal protection in practice means freedom from improperly differential treatment and from arbitrary and capricious treatment by the government. In other words, everyone is entitled to fair treatment under the law; treatment is not based on bias, prejudice, or cronyism. Similar situations should produce similar outcomes, no matter who the parties might be.

What equal protection does not mean is that the government can never treat any person or property differently than anyone else. The government does have the right to make classifications of people, and it does so all the time. People who make higher incomes pay a higher percentage of their salaries in taxes, for example. People who own property in residential areas are not permitted to erect a gas station on their lot if a zoning ordinance prohibiting this use is in effect. These are perfectly valid distinctions.

What the government must be able to show is that any classification that it makes has a rational basis. If it can show a rational basis, then the classification will be upheld. In the case of classifications which the courts consider suspect (such as race or national origin), the government will have to meet a higher standard of proof. In those types of cases, the government will have to show that the classification was necessary to promote a *compelling* state interest. This is a high standard to meet.

Because every situation is different, and because every landowner thinks that his or her property or case is special, the courts are full of equal protection challenges. Several cases relating to historic preservation issues are discussed in the Appendix. One general principle to keep in mind is to treat similarly situated properties similarly. If you have a legitimate reason for treating them differently, make sure your basis for doing so is clearly entered into the record.

### *Religious Freedom*

During the past two decades there has been a vigorous debate on the role of religion in American society and an increasing number of challenges by churches and other religious organizations to laws and regulations. Land-use regulations affecting religious institutions have come under particular scrutiny. Prior to this time, the

relatively few cases involving religious organizations that reached the courts were often decided as taking claims under the Fifth and Fourteenth Amendments rather than as religious freedom claims. Instead of applying an economic return test used for commercial properties, the courts examined whether the regulations either "physically or financially prevented or seriously interfered with" carrying out an organization's charitable or religious purpose. Cases taking this approach include *Trustees of Sailors' Snug Harbor v. Platt*, 288 N.Y.S.2d 314 (App. Div. 1968) and *Lafayette Park Baptist Church v. Board of Adjustment*, 599 S.W.2d 61 (Mo. Ct. App. 1980).

More recently, challenges and decisions have focused squarely on First Amendment protections. The First Amendment's *establishment clause* requires that government be neutral toward religion. Laws must have a secular purpose. They must not advance or inhibit religion, give preference to one religion over another, or foster "an excessive entanglement" with religion.[14] The *free exercise clause*, on the other hand, prohibits government from interfering with the free exercise of religion or coercing individuals into violating their religion.

In applying these guarantees, Federal courts have held that government may not "substantially burden" the free exercise of religion unless there is a "compelling governmental interest" and the government employs the "least restrictive means" of furthering that interest.

In 1990, the U.S. Supreme Court recognized an exception to that rule in *Employment Division v. Smith*, 494 U.S. 872, 879 (1990). The Court held that "neutral laws of general applicability" do not require a showing of compelling state interest, even though they might substantially burden the exercise of religion. Preservation ordinances may generally be considered as neutral laws of general applicability where they seek to preserve all historic properties without regard their secular or religious nature or the owner's religious orientation.

Religious groups reacted strongly against the "neutral law" exception, and Congress sought to nullify it by passing the Religious Freedom Restoration Act (RFRA) in 1993, 42 U.S.C. §2000bb, *et. seq.*

Four years later, the Supreme Court struck down RFRA in *City of Boerne v. Flores*, 521 U.S. 507 (1997), a case involving the application of a local preservation ordinance to a Roman Catholic church in Texas. The church, which was located in a local historic district, had applied for a permit to enlarge its building. When the permit was denied, the church brought suit under RFRA. The Court held that there was no showing of a widespread pattern of religious discrimination in the country that would justify such a sweeping approach by Congress and that the act contradicted the principles necessary to maintain separation of powers and the federal-state balance. Incidentally, the church ended up using a "compromise" plan that was initially negotiated with preservationists before the years of court battles.

In the decade after *Boerne*, at least 13 states passed their own religious protection laws: Alabama, Arizona, Connecticut, Florida, Idaho, Illinois, New Mexico, Oklahoma, Rhode Island, South Carolina, and Texas.

The U.S. Supreme Court has yet to rule directly on these state laws. These "little RFRA's" are based on the widely recognized principle that states may afford a higher degree of protection of individual rights under their own constitutions than that guaranteed by the U.S. Constitution. Therefore, states are free to apply the higher "compelling state interest" test when deciding religious freedom cases within their own jurisdiction.

The Washington State Supreme Court took this

approach in *First Covenant Church of Seattle v. City of Seattle*, 840 P.2d 174 (1992), based on interpretation of the state constitution, and not a "little RFRA." There, the landmark designation of a church building in Seattle was held a violation of both federal and state constitutional free exercise protections. On appeal, the U.S. Supreme Court sent the decision back to the Washington Court to reconsider in light of *Smith*. In its subsequent opinion, the Washington Court based its decision in favor of the church solely on the "greater protection for individual rights" contained in the Washington Constitution.

Congress also responded to the *Boerne* decision by enacting in 2000 the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §2000cc, *et seq*. Crafted to overcome the constitutional problems of the earlier law, RLUIPA focused narrowly on laws regulating land use and institutionalized persons, which were laws alleged to pose specific threats to religious practices. RLUIPA provides that a land use regulation may not substantially burden the religious exercise of a person or institution unless the government can demonstrate a compelling interest for doing so, and the regulation is the least restrictive means of furthering that governmental interest.

Whether the new law passes Constitutional muster has yet to be decided by the U.S. Supreme Court, but a number of challenges are working their way up through the federal courts. Regarding institutionalized persons, RLUIPA, section 3 has been held valid by a unanimous court in *Cutter v. Wilkinson* 544 U.S. 709 (2005).[15]

While most cases to reach the courts focus on discriminatory zoning and land use issues other than historic preservation, many religious organizations have used RLUIPA's existence to argue for exemptions before preservation commissions and local governing bodies. To avoid intimidation and misunderstanding, it is important for commissions to know what the law does and does not do. Some clarity of purpose may be found in a joint statement issued at the time of the law's passage by the sponsors in the United States Senate. The main points of the statement are included in the Appendix.

A key to proving a RLUIPA violation is a showing that the preservation ordinance is considered a "substantial burden on religious exercise". This may be difficult to prove. The U. S. Court of Appeals in *Rector of St. Bartholomew's Church v. City of New York*, 914 F.2d 348 (2d Cir. 1990), cert denied, 499 U.S. 905 (1991), has held that financial burdens alone do not rise to a constitutionally significant level. In that case the church had been denied a permit to demolish its historic community house in order to build a new office tower to generate revenue for its charitable and religious activities.

The Seventh Circuit Court of Appeals in *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003), a case involving Chicago's zoning ordinance, has also held that, "in the context of RLUIPA's broad definition of religious exercise, a land-use regulation that imposes a substantial burden on religious exercise is one that necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise—including the use of real property for the purpose thereof within the regulated jurisdiction generally—effectively impracticable." The court went on to say that to hold otherwise would render the word "substantial" meaningless.

Preservation ordinances are designed to protect the appearance of designated religious buildings and surrounding historic districts, and such protections would generally not render impractical their use for religious exercise.

Once a substantial burden is established, however, commis-

sions may find it difficult to argue that historic preservation is a *compelling* government interest. While *Penn Central* held preservation to be a legitimate government interest, no court has yet found it to be compelling. In fact, the Washington State Supreme Court held specifically in *First Covenant Church v. Seattle*, 840 P.2d 174 (Wash. 1992), that the city's interest in preserving historic structures was not compelling.

This area of the law is developing rapidly and commissions facing religious freedom challenges should seek legal advice as soon as the issue arises. It is important, however, to remember that churches are not exempt from local land-use laws, as many argue. They must follow the same certificate of appropriateness and variance processes as secular property owners.

### Freedom of Speech

While few cases address freedom of speech directly in a preservation context, there is a substantial body of state and federal law on sign regulation. Many local preservation ordinances regulate signs on landmark properties and within historic districts.

The seminal case of *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981), set down the parameters for local government control of signs and billboards. First, the U.S. Supreme Court recognized aesthetic reasons alone as sufficient support for this exercise of the police power. Secondly, the opinion would permit reasonable "time, place, and manner" restrictions such as the regulation of sign color, size, shape, height, number, placement, and lighting as long as the ordinance does not control content. The court also agreed that off-premises signs (such as billboards) could be banned entirely.

In the case of signs, the law distinguishes between *commercial speech* (as in advertisements for goods and services) and *non-commercial speech* (such as political or religious signs). Non-commercial speech is generally accorded a higher degree of protection. *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980), contains a four-part test on constitutionality of controls on advertising. A similar test for non-commercial signs can be found in *United States v. O'Brien*, 391 U.S. 367 (1968).

In the case of *City of Ladue v. Gilleo*, 512 U.S. 43 (1994), the U.S. Supreme Court struck down a city ban on most non-commercial signs enacted in response to a resident's yard sign reading "Say No to War in the Persian Gulf, Call Congress Now."

Commissions should be careful to establish how the regulation of signs directly advances preservation goals and go no further than necessary. Communities should never try to prohibit whole categories of speech such as controversial political statements.

In three Eleventh Circuit cases, the Federal Appeals Court withstood challenges to restrictions on expression in historic districts. Ordinances restricting the use of tables to sell message-bearing t-shirts (*One World One Family Now v. City of Miami Beach*, 175 F.3d 1282 (11th Cir. 1999)), limiting restaurant advertising by "off premises canvassers" (*Sciarrino v. City of Key West*, 83 F.3d 364 (11th Cir. 1996)), and prohibiting street performances in an historic district (*Horton v. City of St. Augustine*, 272 F.3d 1318 (11th Cir. 2001)) were upheld as appropriate "time, place, and manner" restrictions on speech that did not discriminate based on content, and were considered narrowly-drawn means of addressing congestion and unruly conduct in historic districts.

Like signs, a proliferation of newsboxes can negatively impact the appearance of historic districts. Since these boxes are the means of distributing speech, they enjoy the same

First Amendment protection as signs; nevertheless they are subject to regulation. Guidelines for their appearance and location would be appropriate.

The First Circuit Court of Appeals even approved an effective ban on all sidewalk newsboxes in Boston's Beacon Hill historic district. The opinion in *Globe Newspaper Co. v. Beacon Hill Architectural Commission*, 100 F. 3d 175 (1st Cir. 1996), found the regulation was content neutral, the aesthetic concern was a significant government interest, and alternative means existed in the district for distributing newspapers; therefore, there was no violation of the freedom of speech.

## *ISSUES THAT CAN TAKE A COMMISSION TO COURT*

### Enforcement and Liability

While Americans believe strongly in the due process and equal protection guarantees of the 5th and 14th Amendments, they also believe strongly in justice. And justice sometimes calls for sanctions and punishment for actions that violate the law. The following case discusses one of these kinds of situations.

*City of Toledo v. Finn*, No. L-92-168, 1993 WL 18809 (Ohio Ct. App. Jan. 29, 1993), demonstrates the scope of historic preservation commissions' authority to bring about criminal sanctions that punish the noncompliance of those under their jurisdiction. In this case, a property owner of a building located within a historic district sought a certificate of appropriateness for planned changes to a building. The local historic commission objected to the owner's plans to enclose five windows and ordered him to keep the windows' original configuration. The property owner disregarded the commission's instructions and enclosed the entire wall where the five windows had been positioned.

The city issued three stop work orders, which the owner also disregarded. The property owner appealed his misdemeanor conviction for failure to comply with the stop work orders, claiming alternatively no viola-

**Seeking Legal Advice**

The watchwords for members of historic preservation commissions when dealing with legal issues should be vigilance, caution, and education. It is easy to get into trouble in this field, especially for the layperson. However, don't let yourself be intimidated by bogus claims of takings, RLUIPA violations, etc. Do not hesitate to ask your local government attorney or some other person with legal knowledge and understanding to explain or clarify a point. If you think there's going to be trouble at a preservation commission meeting, definitely ask your attorney to attend. It could save time, money, and reputation for all concerned. Other possible sources of help and advice include the following:

- National Alliance of Preservation Commissions: www.uga.edu/napc
- Law Department of the National Trust for Historic Preservation: www.nationaltrust.org/law/index.html
- Your state's Certified Local Government (CLG) contact http://grants.cr.nps.gov/CLGs/CLG_Search.cfm
- National Park Service Certified Local Government Program: www.nps.gov/history/hps/clg/index.htm

tion of the orders, no intention to violate the orders, and most significantly, that the stop work orders were unconstitutional and unreasonable exercises of the city's police power.

The court affirmed the validity of aesthetic regulation as an exercise of police power, including historic district regulations such as certificates of appropriateness. The commission, as an entity of the city government, had the right to enjoin the owner from altering the original window configuration of his building as an application of the city's police power. The owner's failure to comply with the commission's orders regarding his plans was "'illegal' and/or 'contrary to the public welfare'" and properly countered with a stop work order.[16]

## Demolition by Neglect

*Demolition by neglect* describes a situation in which an owner intentionally allows a property to deteriorate, sometimes beyond the point of repair. In some cases, the owner passively defers maintenance beyond a reasonable point or abandons the property. More often it is an active strategy to redevelop the property in the face of preservation and zoning laws that would preserve historic character and/or current use. Communities need an affirmative maintenance provision in their local code to prevent owners from neglecting their properties and then arguing that restoration or repair is an economic hardship.

Also to be effective, preservation commissions must coordinate with their code inspection and enforcement office. There can be conflict when a code enforcement officer orders a designated building be demolished as a fire or safety hazard without coordinating with the preservation commission or staff. Good working relationships with other local government officials and resolution of ordinance conflicts are keys to success.

Courts generally have been supportive of ordinances prohibiting demolition by neglect. Several cases are described in more detail in the Appendix.

## Economic Hardship

It is important for communities to address economic hardship for several reasons.

First, it helps make preservation ordinances more acceptable to the community by assuring property owners of relief where strict application of the ordinance or guidelines would have an unusually harsh result.

Second, it allows communities to develop and implement a range of approaches to relieve the burden on all property owners, including tax relief, loans, grants, public acquisition, or zoning variances.

Third, hardship provisions can head off litigation by providing an administrative process for resolving differences that is less formal and costly than going to court, and communities can strengthen their positions if they do go to court.

Courts generally defer to preservation commissions where there is a reasonable basis in the record for their decision. Further, by lightening the economic burden on the property owner, the commission can help defeat a takings argument. Several cases on economic hardship are discussed in the Appendix.

## Open Meetings and Open Records

Most states have strict requirements regarding open meetings and open records, including the requirements for notice of meetings. These must be followed closely and carefully, or the commission runs the risk of having its decisions nullified later. In some states, courts can award court costs and attorney fees to those improperly denied access.

The open meetings laws, often referred to as *sunshine laws*, typically provide a definition of what constitutes a public meeting, specify the actions

## TIPS FROM THE EXPERTS # 1

### Effectively Addressing DEMOLITION BY NEGLECT in Local Ordinances and Procedures

- Require compliance with all codes, laws, and regulations regarding the maintenance of property.
- Require that all structures be preserved from decay and deterioration and be free from structural defects.
- Identify specific problems that will constitute demolition by neglect, such as
  - Deteriorated or inadequate foundations, walls, floors, ceilings, rafters and other supports;
  - Ineffective waterproofing of roofs, walls, and foundation including deteriorated paint, brick, mortar, and stucco, along with broken doors and windows;
  - Holes and other signs of rot and decay; the deterioration of any feature so as to create a hazardous condition;
  - Lack of maintenance of the surrounding environment (such as accessory structures, fences walls, sidewalks, and other landscape features).
- Specify how the provisions of the ordinance will be enforced. Identify how stop work orders and citations are to be made, the time frame for problem correction, and an appeals procedure.
- Mandate coordination between the preservation commission and staff, and the local government's inspection and code enforcement office. A good working relationship with code officials is critical to ensuring effective problem identification and correction.
- Specify the penalties for failure to comply with citations. While fines and equitable remedies are typical, an additional and more effective alternative (if allowed by state law) may be to authorize the government to make the repairs directly and charge the owner by putting a lien on the property.
- Authorize acquisition of the property by local government, by eminent domain if necessary.
- Provide economic incentives to encourage the maintenance and rehabilitation of historic properties. Encourage volunteer programs to assist lower income residents.
- Specify that demolition by neglect will bar a property owner form raising an economic hardship claim in a certificate of appropriateness process. Only circumstances beyond an owner's control should entitle him or her to economic relief.

For a more detailed analysis, see Becker 1999 in the Sources of Information.

## TIPS FROM THE EXPERTS # 2

### Effectively Addressing ECONOMIC HARDSHIP in Local Ordinances and Procedures

- Do not consider economic hardship arguments during the designation process. Economic impact is only speculative until a property owner makes a specific proposal. Further, it clouds the issue of significance, the primary concern for designation.
- In considering economic hardship, it is crucial that the preservation commission focus on the property and not the particular economic circumstances of the owner. While the impact on a "poor widow" may appear unreasonable, the inquiry should be whether the restrictions prevent the owner from putting the property to a reasonable economic use or realizing a reasonable profit.
- Put the burden of proof on the property owner, not the commission.
- Evidence of cost or expenditures alone, is not enough. The commission should require information that will assist it to determine whether application of the ordinance will deny reasonable use of the property or prevent reasonable economic return. The evidence should address the property "as is" and if rehabilitated (which may mean just bringing it up to code). Some other factors to consider include: purchase price, assessed value and taxes, revenue, vacancy rates, operating expenses, financing, current level of return, efforts to find alternative use of the property, recent efforts to rent or sell the property, availability of economic incentives or special financing ( such as tax benefits, low-interest loans, grants, or transferable development rights).
- Additional consideration may be appropriate in assessing the impact on non-profit organizations such as the ability to carry out their charitable or religious purposes (although a non-profit is not entitled to relief simply because it could otherwise earn more money).
- Determine who caused the hardship. If the owner has neglected the building, paid too much for the property, or is just gambling on getting a permit in spite of knowing the ordinance provisions, he may have created his own hardship. Government isn't required to bail an owner out of a bad business decision or speculative investment.
- Commissions should consider bringing in their own expert witnesses where necessary. If the matter goes to court, the decision will be based on evidence in the record. Local government housing, engineering, and building inspection staff may provide useful testimony.

For a more detailed analysis of economic hardship provisions see Julia Miller 1996 and 1999 in the Sources of Information.

that can be taken and who may attend, address required public notice—adopting a schedule of regular meetings, giving notice of special and emergency meetings, and identifying very limited instances where meetings can be closed, such as for discussion of personnel actions or property acquisition. In addition to invalidation of commission action, Georgia law, for example, provides that "any person knowingly and willfully conducting or participating in a meeting in violation of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $500.00." [17]

Open records laws require governments to provide prompt access to public records when requested by a citizen. This would include the materials submitted as part of a commission's decision-making process. It is important that commissions create accurate records and maintain them in an accessible location.

All commissioners should review these open meetings/open records laws and refer any questions to their attorney. The chairman in particular needs to understand clearly the do's and don'ts of these laws. Commissions may have somewhat different rules when archeological sites are being considered, and may need to maintain a certain level of confidentiality in order to reduce the possibility that the sites may be looted or vandalized.

### *Off-the-Record Communications*

Another important aspect of the need to conduct business in public relates to contacts and conversations about a case that are *off-the-record*, or outside of the normal proceedings. These are known as *ex parte communications*. The process of issuing a certificate of appropriateness, for example, is considered in many jurisdictions as a *quasi-judicial* proceeding. The commission is acting as judge and jury by applying the law to the facts in a particular case. The same analogy applies to a local governing body hearing appeals from a preservation commission decision.

Just as it would be improper for an interested party to communicate with the judge or a juror outside official channels while a case is going on, a similar communication with a preservation commissioner is also improper. When a commission member receives a telephone call or is approached in church or at the grocery store by someone who wants to discuss a pending issue before the commission, warning flags should go up. These contacts can affect individuals' rights to due process and equal protection and could result in the invalidation of commission action. While such a communication may cause a serious problem, it is not always fatal to a commission decision. One thing a commissioner who has such a contact can do is to reveal the content of the conversation in the course of a public hearing on the matter. In that case, the information becomes a part of the record and other interested parties can respond to or rebut the information.

### *Regulating Non-historic Properties and Vacant Land in Historic Districts*

In order to protect the character of historic districts, it is important that preservation commissions have the power to regulate non-historic properties and undeveloped land within the districts. Courts have consistently ruled that these types of properties are not exempt from control.

In *A-S-P Associates v. City of Raleigh*, 258 S.E.2d 444 (N.C. 1979), for example, the North Carolina Supreme Court rejected such a claim, stating that "preservation of the historic aspects of a district requires more than simply the preservation of those buildings of historical and architectural significance within the district."[18] The court also noted

that, as opposed to banning new structures, the ordinance simply required the plaintiff "to construct them in a manner that will not result in a structure incongruous with the historic aspects of the Historic District."[19]

Another relevant case is *Coscan Washington, Inc. v. Maryland-National Capital Park & Planning Commission*, 590 A.2d 1080 (Md. Ct. Spec. App. 1991), which upheld restrictions on building materials in new subdivision near an historic area because of the public interest in protecting the historic district.

### *Protection of Properties Pending Designation and Anticipatory Demolition*

In order to keep the bulldozers at bay while a preservation designation is under consideration, a number of communities establish a temporary time-out called a moratorium while the community decides whether to provide permanent protection. Courts have generally been supportive of this approach.

In a case involving the Swiss Avenue Historic District in Dallas (*City of Dallas v. Crownrich*, 506 S.W.2d 654 (Tex. Civ. App. 1974)), the court declared that, "it would be inconsistent to allow a city...the power to make zoning regulations, and then deny it the power to keep those impending regulations from being destroyed by an individual or group seeking to circumvent the ultimate result of the rezoning."[20] However, several courts, including *Southern National Bank of Houston v. City of Austin*, 582 S.W.2d 229 (Tex. Civ. App. 1979) and *Weinberg v. Barry*, 604 F.Supp. 390 (D.D.C. 1985), have noted that moratoria should have reasonable time limits.

In 2002, the U.S. Supreme Court upheld the constitutionality of a 32-month moratorium on development of property in the Lake Tahoe Basin pending the completion of a comprehensive land use plan in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002). Rejecting a claim that any total moratorium on development was a temporary taking, the court held that restrictions on development must be considered on a case-by-case basis under the test set out in the Penn Central case. To hold otherwise, the court said, "would render routine government processes prohibitively expensive or encourage hasty decision making."[21]

An alternative to a total development ban pending designation is an approach to interim protection employed by some cities, such as Chicago in its Landmark Ordinance §21-67. After a preliminary determination of a property's eligibility, the owner must follow the same procedure for development as if the property were already landmarked until the city council acts on designation. Whatever approach is employed, the commission should be certain its process follows the mandates of state and local law.

Another approach is the *demolition review law*, which may be separate from the historic preservation ordinance. Such an ordinance would apply to the proposed demolition of any building over a certain age, or a significant portion of a building, or otherwise meeting the criteria spelled out in the ordinance. During a specific period of time, a determination would be made as to whether the property was eligible for protection. Following the review, the property might or might not be designated under the historic preservation ordinance or otherwise receive protection. This can be an effective tool to address buildings that may have been "missed" by the community's survey and designation program or buildings that do not meet the standards or designation but otherwise have characteristics that enhance the community. It can certainly buy time for preservationists to try and negotiate an alternative to their destruction.

## LITIGATION ISSUES

There are several issues that will be relevant to a preservation commission facing litigation, or considering the possibility of instituting litigation. The local government's legal department will usually handle the commission's interests in litigation. Nevertheless, it is important for commission members to understand what is going on in order to assist the attorney, who may not be familiar with historic preservation issues.

### Liability

Few issues cause greater concern among local government officials than that of liability, both for the government itself and for public officials individually. In most jurisdictions, this problem has been addressed through the purchase of liability insurance policies or by tort claims acts. As long as a government official acts within the scope of his or her authority and without malice, qualified immunity will normally attach to the actions taken, and no liability will be found. If an error is made, however, the official will be protected by the insurance policies that are in place, since he or she was performing a public function or duty.

One major exception to this is in the area of civil rights violations. The Civil Rights Act of 1871, which has been codified in the United States Code as section 1983 of Title 42, provides, in pertinent part, as follows:

> *§ 1983. Civil action for deprivation of rights*
>
> *Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.*[22]

What this means in lay language is this: if a public official's action deprives someone of his or her civil rights, that official can be sued for redress, and that includes money damages. In such a case, the official will be responsible for the payment, not the government (and not the government's insurance policies).

Members of historic preservation commissions are considered public officials, because they are acting *under color of law* (under the authority of the historic preservation ordinance). So it behooves all members of historic preservation commissions, as well as all public officials generally, to be cautious in how they exercise the powers of their positions. If they are found to have violated someone's civil rights, they will pay for it, and out of their own pockets. However, by carefully following the provisions of the local ordinance and established procedures and treating everyone fairly and equally, commissioners should be able to avoid individual liability.[23]

### Jurisdiction

One of the most important issues in American jurisprudence is that of *jurisdiction*. This concept relates to the authority of the court to act. The court system (both federal and state) exists to resolve disputes between opposing parties. But in order for the courts to be able to do that and impose any penalties or sanctions on anyone, they must have jurisdiction over both the subject matter of the lawsuit and over the parties themselves. Strict rules have been developed to guide this process, and they must be carefully followed if a plaintiff (or claimant) hopes to prevail. When considering or facing a lawsuit, a commission

should be sure the action is filed in a court with jurisdiction over the matter.

Preservation commissions have issues of jurisdiction, too. State enabling legislation and local ordinances specify the parameters within which the commission may act. A commission may have authority to prevent demolition of designated properties, for example, but not of properties that might be eligible but not designated. In such a case, the commission would lack jurisdiction and be unable to prevent the issuance of a demolition permit. Commissioners should make themselves aware of their jurisdiction—the subject matters and parties over which they have authority.

### Standing

*Standing to sue* refers to the legal right of an individual to bring a lawsuit. Not everyone has that right. What is required is that the plaintiff be able to show an actual stake in the outcome of the proceeding. The U.S. Supreme Court set out the test for standing to sue in federal courts in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61(1992). The *Lujan* test requires

- that the plaintiff personally has suffered actual or threatened injury that is concrete and particularized, not conjectural or hypothetical;
- that the injury fairly can be traced to the challenged action; and
- that the injury is likely to be redressed by a favorable decision from the court.

Federal courts have generally recognized that aesthetic or environmental "injuries" can meet these tests.

One of the most striking aspects of the American intergovernmental system is the relative independence of the states, especially in matters of land use law. "Standing denied" in the court of one state can well be "standing approved" in another.

While many preservation ordinances allow appeals by *persons aggrieved* by the decision of the preservation commission, state courts differ widely on the meaning of that term.

A plaintiff's participation in the administrative process or ownership of property adjacent or close to the property in question can be significant factors in conferring standing in some cases. Other courts impose a very narrow interpretation. In *Allen v. Old King's Highway Regional Historic District*, 2000 Mass. App. Div. 330 (Mass. Dist. Ct.), for example, the court held that *person aggrieved* applied only to those who have demonstrated "special harm that would occur to him if the Certificate of Appropriateness awarded by the regional commission is allowed to stand."[24]

### Ripeness/Exhaustion of Administrative Remedies

*Ripeness* is a concept that refers to the timetable of a legal dispute. Courts are reluctant to step in and make a decision before the established administrative process has been followed to its conclusion. The courts want to avoid making a decision unless they have to. Thus, they will often require that all administrative remedies provided by state law be *exhausted* before they proceed to address the merits or demerits of a particular fact situation.

Likewise, federal courts are reluctant to consider Constitutional claims until plaintiffs have exhausted their state remedies. A federal court in the District of Columbia[25] found that a case was ripe for federal review where the historic preservation commission denied requested permits, that decision was adopted by the major's agent, and District of Columbia law did not provide for compensation for denied building permits.

Where issues have been resolved outside the judicial process by an administrative agency

or even an act of God, a court will generally dismiss a case as *moot*. For example, when a building that is subject of litigation is demolished, a court will generally dismiss the case.

However, in situations otherwise moot, courts have discretion to resolve an issue of continuing public interest likely to reoccur in other cases and affect the future rights of the parties before them.[26]

With both ripeness and mootness, timing is everything. Courts are generally not eager to take up a controversy when other remedies exist or the issue has been otherwise resolved unless there is a compelling public policy reason to do so.

### Laches

*Laches* also relates to the timetable of a case, but at the other end of the proceeding. If a party waits too long to bring a lawsuit, the court may well dismiss it because of excessive delay.

Laches is similar to a *statute of limitations*, except it is judicial rather than statutory. In general, the party attempting to use laches to bar a lawsuit must prove that the plaintiff's delay in bringing suit was unreasonable or inexcusable and that the delay has been prejudicial.

Most courts are reluctant to uphold a laches defense in environmental cases, particularly when it is shown that the plaintiffs have be actively engaged in the administrative process and have not "sat on their hands" after it became clear that there were no further administrative remedies available to them.

### Doctrine of Judicial Restraint and Deference to Other Branches of Government

Judges are not shy by nature, but generally they do not like to preempt the role of other branches of the government. They believe in, and practice, the separation of powers doctrine, and are generally reluctant to invade the decision-making sphere that has been carved out for the legislature and the executive branch. Many cases can be found in which the doctrine of judicial restraint is front and center.

In the famous *Berman v. Parker* decision cited earlier, Justice Douglas not only defended the police power, he also defended the right of the legislative branch to determine what that concept means. He said this:

> *We do not sit to determine whether a particular housing project is or is not desirable... [T]he Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them. If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.*[27]

Modern courts have continued to apply the doctrine of judicial restraint and deference to other governmental branches in reviewing the decisions of local historic preservation commissions.

In *Collins v. Fuller*, No. 912479B, 1993 WL 818633 (Mass. Dist. Ct. Aug. 6, 1993), owners of a lot located in a historic district sought a certificate of appropriateness for new construction; the local historic preservation commission denied their request. The owners appealed to the local superior court to annul the decision and to issue the certificate.

Deferring to the commission's determination "unless it is legally untenable, arbitrary, or capricious," the state district court held that the commission had the statutory authority to base its decision on consideration of "exterior architectural features subject to public view that might impact on the historic and architectural integrity of the surrounding district,"[28] including the preservation of a historic

Massachusetts landscape. The commission had the right to conclude that any structure prominently visible from a historically significant wooded parkway would "spoil the very aspect of [the district] that caused its designation as an historic place,"[29] and to deny any applications for certificate of appropriateness that would have this effect.

This deference to legislative decisions can even extend to administrative agencies. *Farash Corp. v. City of Rochester*, 713 N.Y.S.2d 423 (N.Y. App. Div. 2000), was a New York case in which the appellate division reversed the holding of the lower court, because it had not deferred to the local commission's "administrative determination" to deny a demolition permit. The court found the commission's decision had support in the record, had a reasonable basis in the law, and was not arbitrary or capricious. In other words, the decision of the administrative agency appeared sound on the record, and should not have been overturned by the lower court, barring evidence of some abuse of discretion by the agency.

Therefore, in reaching its decisions, the commission should:

- identify the relevant facts of the case based on the evidence presented in the application and any public testimony;
- make a determination whether those facts warrant the approval or denial of the owner's application;
- identify the sections of the ordinance, guidelines or standards that support that determination; and
- make certain that these actions are entered into the official record.

## CONCLUSION

Protecting historic resources can be challenging, especially in an increasingly litigious environment. The situation, however, is neither impossible nor hopeless. It does require a careful reading of the U.S and State Constitutions and laws, as well as local ordinances, and an understanding of the ways that the courts have interpreted these documents.

A person appointed to serve on a local historic preservation ordinance should not be frightened or worried, but he or she must be prepared to act in a legal manner. Commission members do not need to be lawyers in order to act legally. Commission members do need to know what kind of rules and behavior legally protects them and their decisions and when to consult their local legal experts.

This primer on the legal aspects of historic preservation in America is intended to provide commission members with enough legal armor to keep them out of trouble and out of the courts. Forewarned is forearmed!

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## MORE LESSONS LEARNED
## For Keeping Your Commission Out Of Court

- Ensure your ordinance is written in clear, simple language and is in accord with state legislation. Some of the key elements to consider are:
    - Statement of purpose
    - Definitions
    - Establishment of preservation commission; powers and duties
    - Criteria and procedures for designating and removing designation of historic properties and districts
    - Identification of actions reviewable by commission (e.g., new construction, alterations, demolition, moving, landscape features)
    - Criteria and procedures for review
    - Legal effect of commission decisions (e.g., advisory, binding)
    - Economic hardships provisions
    - Affirmative maintenance or demolition by neglect provisions
    - Appeals procedures
    - Enforcement provisions
- Be familiar with your laws, rules, and procedures:
    - Basic Federal and State constitutional principles,
    - State laws
    - Local ordinances
    - Commission bylaws
    - Rules of procedure
    - Design guidelines
- Give your procedures and guidelines careful consideration, adopt them formally and follow them carefully; revise them if they are not working or not being followed.
- Be sure you comply with all open meetings and open records laws.
- Maintain the highest ethical standards and comply with all relevant state and local ethics legislation.
- Decide issues on their merits, not on public opinion. Courts generally defer to the preservation commission where there is a reasonable basis in the record for their decision.
- Be aware of commission precedent and follow it or explain any dissimilar treatment.
- Ensure decisions are fairly and consistently enforced.
- Seek legal advice on difficult or controversial issues.
- Document, document, document. The written record will be the basis for understanding and upholding you commission's decisions.
- Regularly evaluate your own performance and make necessary changes.
- Take advantage of training opportunities; stay informed and polish your skills.

# APPENDIX

## Case Examples

### Commission Authority

The importance of carefully following state statutory requirements is illustrated in the case of ***Russell v. Town of Amite City*, 99-1721 (La. App. 1 Cir. 11/08/00); 771 So. 2d 289**. There, the Louisiana Court of Appeals affirmed the trial court's holding that an ordinance creating a local historic district and preservation commission was null and void because the city failed to comply with state enabling legislation that required creation of a study committee, an investigation, and a report prior to designating the district. As a consequence, preservation commissioners should particularly beware of national models—what works in one state might not work in a neighboring state.

### State Takings Cases

***City of Pittsburgh v. Weinberg*, 676 A.2d 207 (Pa. 1996)**. Property owners sought a certificate of appropriateness from the City of Pittsburgh Historic Review Commission to demolish a house, locally designated as a historic structure. Testimony at the commission hearing for the property owners' certificate of appropriateness application dealt with the economic feasibility of renovation versus new construction on the site, and the marketability of the house in its current state. The commission denied the property owners' request for demolition, finding that the house was architecturally and historically significant, was structurally sound, and that renovation costs were comparable to those of new construction. The property owners appealed the commission's decision to the local trial court, which found in the property owners' favor.

The Supreme Court of Pennsylvania reversed. It applied the standard of *United Artists' Theater Circuit v. City of Philadelphia*, 635 A.2d 612 (Pa. 1993): "[T]he mere fact that the regulation deprives the property owner of the most profitable use of his property is not necessarily enough to establish the owner's right to compensation."[30]

In addition, the court used the test of *Maher v. City of New Orleans*, 516 F.2d 1051 (5th Cir. 1975), cert. denied, 426 U.S. 905 (1976), requiring "the property owner to show 'that the sale of the property was impracticable, that commercial rental could not provide a reasonable rate of return, or that other potential use of the property was foreclosed.'"[31] Using these standards, the court found that the evidence presented by the homeowners before the commission did not prove economic hardship. The property owners did not demonstrate that "they could not make any economic use of their property;"[27] selling the house in its current condition could conceivably turn a profit for the owners, thereby allowing some economically viable use of the property, so as not to be a taking.

***Historic Albany Foundation, Inc. v. Coyne*, 558 N.Y.S.2d 986 (N.Y. App. Div. 1990)**. A non-profit historic preservation organization sued the County of Albany, New York over its decision to demolish a county-owned block of houses located within the City of Albany without first complying with provisions of the city's Historic Resources Commission Ordinance. The county argued that the buildings were structurally unsound and posed a risk to the public. Under the city's ordinance, however, demolition without a showing of either economic hardship or that a building was a non-contributing structure was forbidden.

Under the city's ordinance, a hardship determination had to be based on three factors: ability to earn a reasonable return, adaptability to another use that would make for a reasonable return, and whether an attempt has been made to sell the property to a party interested in its

preservation. The county also challenged the constitutionality of the ordinance on a takings claim since even publicly owned property cannot be taken by another governmental entity without just compensation being paid.

The appellate division court found that the ordinance's provisions for demolition met the tests of the Penn Central case, by tying "demolition in effect to a showing either that the building is not of historical, archeological or aesthetic value, or that the owner will suffer hardship by being required to repair or maintain property incapable of yielding a reasonable return."[33] The county failed to demonstrate that the prerequisite of preparing, presenting, and having approved a new development plan for the post-demolition site would "deprive[] the county of all economically viable use of the subject property."[34]

The county's arguments for taking without just compensation, based only on its being "subjected to some as yet unknown expense of new development before it can demolish the property if [the historic preservation ordinance] is enforced," were rejected as well.[35] The ordinance stood, and the order for demolition (and the takings claim) did not.

### *Procedural Due Process*

Sometimes a case will be won or lost simply because procedural requirements were not followed. A pair of recent procedural due process cases that originated in Deadwood, South Dakota illustrates the impact of the failure of historic preservation commissions to follow statutory procedures for decision making.

***Achtien v. City of Deadwood*, 814 F. Supp. 808 (D.S.D. 1993)**, involved the permit process for new construction within a historic district. A developer sought a certificate of appropriateness for new construction from the local historic preservation commission as a prerequisite to a building permit from the city commission. At a joint meeting of the city commission and the historic preservation commission, only three members of the five-member historic preservation commission were present. Two members voted to issue the certificate of appropriateness, one voted against. Then the city commission approved the building permit.

The state historic preservation officer challenged this decision, citing the legal requirement that a majority (three members of the five-member commission) concur. The city then rescinded its issuance of the building permit, in part because the developer had not filed an application or paid a permit fee prior to the city commission's vote, and in part because the certificate of appropriateness was not properly approved. The developer sued, claiming a violation of his procedural due process rights.

The district court found for the city, arguing that the certificate of appropriateness was not properly issued, because "an affirmative vote by only two members of the five-member commission in favor of…the certificate is insufficient to constitute a valid action by the commission."[36] Since a validly approved certificate of appropriateness was a prerequisite to the issuance of a building permit, the issuance of the building permit was void.

The court held that, because the permit process was procedurally flawed, both as to the certificate of appropriateness and as to the building permit, the developer did not "possess a property right in the [building] permit,"[37] failing to trigger the right to procedural due process.

Decided two years after the *Achtien* decision, ***Donovan v. City of Deadwood*, 538 N.W.2d 790 (S.D. 1995)**, dealt with local designation of a historic property and demolition permit decisions. A property owner sought a building demolition permit for

a "historic" icehouse, which was neither listed on the National Register of Historic Places nor locally designated as a historic resource. A city ordinance purported to empower the local historic preservation commission to issue or deny building and demolition permits.

The Deadwood Historic Preservation Commission denied the permit, basing its decision, among other things, on eligibility of the building for listing on the National Register of Historic Places, on its status as the only historic commercial property in the Pluma neighborhood, and on the lack of a proposal for a replacement building for the site. The owner won in the trial court, with the court holding that the Commission's denial went beyond its constitutional and statutory powers and was therefore invalid, and a violation of due process.

The South Dakota Supreme Court affirmed, holding that the Commission violated the property owner's procedural due process rights. The state historic preservation enabling statute set out a series of procedural steps for the designation of historic properties, triggering the local preservation ordinance. Under the statute, a local historic preservation commission must investigate and report on the significance of the property, hold a public hearing on the proposal for designation, and give written notice to the affected property owner. Furthermore, a 180-day waiting period from the time of notice to the property owner "had to be observed prior to its [the designated historic property's] demolition, material alteration, remodeling, or removal."[38] The City of Deadwood did not follow the procedural steps mandated by the South Dakota enabling legislation dealing with the designation of historic properties, and its decision was therefore nullified.

### *Substantive Due Process*

The case of ***Bellevue Shopping Center v. Chase*, 574 A.2d 760 (R.I. 1990)** originated in Newport, Rhode Island, where a developer sought a certificate of appropriateness for a new shopping center within the town's historic district. The local historic district commission as well as zoning board of review denied his request after conducting hearings, on the basis that the center would "seriously impair the historic and/or architectural value of the surrounding area," the materials and design would be incompatible with those of neighboring structures, and increased traffic from the center would pose a threat to the structure of a neighboring historic site.[39]

The developer challenged the city's decisions as based on, among other issues, "impermissibly vague and indefinite" "historic-zoning legislation."[40] Vagueness can be a violation of due process because citizens are not put on clear notice about what is or is not permissible. The court in this case, however, disagreed, holding that the enabling legislation was not "unconstitutionally vague," citing the statute's outlined purposes, and its factors for review of applications, which together "sufficiently alert the public of the statute's scope and meaning."[41] Therefore, the enabling legislation did not violate due process.

***Tourkow v. City of Fort Wayne*, 563 N.E.2d 151 (Ind. App. 1990)**, echoed the ruling of the Bellevue Shopping Center court, upholding the decision of a local historic preservation commission as valid and not a violation of substantive due process. In this case, the owner of a home located within a historic district sought certificate of appropriateness for installation of vinyl siding for her home. The local historic preservation review board denied her application, and the homeowner appealed to the local trial court, which affirmed the review board's decision.

The homeowner claimed that the denial of the certificate by

the review board "substantially prejudiced her," and argued that the review board's decision was "arbitrary and capricious because public opinion influenced it."[42] The court found that the board had a "long-standing practice of denying applications to install artificial siding" because of the material's lack of historic authenticity and tendency to damage original materials, and so did not treat the applicant homeowner any differently than it had treated similarly situated applicants.[43] The court found therefore that the board's denial was not "arbitrary and capricious."

The homeowner also claimed that the standards in the local architectural review ordinance were "vague and unascertainable."[44] The ordinance stipulated "before 'a conspicuous change in the exterior appearance' of an historical building takes place, the board must issue a certificate of appropriateness."[45] The court found that the proposed installation of vinyl siding was "clearly a 'conspicuous change' in appearance," and that the homeowner applicant failed to demonstrate the board's denial to be "either contrary to constitutional right or arbitrary and capricious" and to meet her burden of proof on these issues.[46]

The homeowner further objected to the "absence of written findings of fact in the Review Board's notice of denial."[47] The state code required the board to "state its reasons for the denial…in writing and…advise the applicant."[48] The court found that although the board did not state its rationale for its denial in its notice to the homeowner, the inclusion of the board's findings of fact in the minutes of the meeting (during which the homeowner's application was discussed) was sufficient to meet the statutory requirement of "written findings."[49]

### *Equal Protection*

In ***Nevel v. Village of Schaumburg*, 297 F.3d 673 (7th Cir. 2002)**, the owner of a locally designated landmark home informed the village planner that he intended to cover the exterior of his home to eliminate a lead paint hazard. Initially, the village planner advised against a stucco-like treatment and, according to the homeowner, suggested use of aluminum or vinyl siding, and directed the owner to obtain building permits for the planned work. The homeowner filed an application for the commission's approval of the project, and meanwhile the building contractor applied for and obtained a building permit to install vinyl siding without being informed of the need to obtain a certificate. Meanwhile, the homeowner received a letter advising him that his application for vinyl siding would probably be denied, and the village planning staff prepared a report to the same effect, citing the state preservation agency's guidance against vinyl siding as not meeting the Secretary of the Interior's Treatment Standards for facades visible to the public.

The homeowner in *Nevel* filed a federal suit, claiming denial of equal protection. The homeowner alleged that he had been "intentionally treated differently from others similarly situated" and that there was no "rational basis for the difference in treatment," a two-part test established in *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000). Under this test, the claimant must show that (1) "he was singled out for differential treatment," and (2) "the differential treatment was irrational or arbitrary."[50]

Here, the homeowner's evidence of differential treatment—the village's approval of siding for a non-historic home and for a historic non-residential city building—was not persuasive, and failed to show that any differential treatment was either "irrational or arbitrary," or promoted by ill-will. Because the homeowner could not establish that he was in fact singled out

for differential treatment, the circuit court affirmed the district court, ruling for the village.

### *Religious Freedom*

In a joint statement issued at the time the Religious Land Use and Institutionalized Persons Act (RLUIPA) was passed in 2000, the Senate sponsors specifically noted (as reported in the Congressional Record, 146 Cong. Rec. S7774-01) that:

- the act does not provide religious institutions with immunity from land use regulation, nor relieve religious institutions from applying for variances, special permits or exceptions, hardship approval, or other relief provisions;
- not every activity carried out by a religious organization constitutes "religious exercise" (such as situations where a church owns a commercial building and uses the revenues to support its religious activities);
- the act does not change the "substantial burden" standard articulated by the Supreme Court;
- the religious claimant challenging a regulation bears the burden of proof on the issue of substantial burden on religious exercise; and
- where the government demonstrates a specific accommodation to relieve a substantial burden, the burden of persuasion that the accommodation is unreasonable or ineffective is on the religious claimant.

The last point may be particularly important for local governments that, for example, try to accommodate the needs of a religious institution through flexible application of design standards to its historic property while substantially accomplishing the purpose of the preservation ordinance.

In ***Mintz v. Roman Catholic Bishop*, 424 F.Supp.2d 309 (D. Mass. 2006)**, the District Court of Massachusetts decided a RLUIPA claim by finding that the city's regulations regarding building coverage, setbacks, parking, and permitting did not apply to a church that wanted to build a parish center because the activities to occur in the parish center encompassed those protected by the term religious exercise and the bylaws put a substantial burden on this religious exercise

Likewise, in ***Living Water Church of God v. Charter Twp. Of Meridian,* 384 F.Supp.2d 1123 (W.D. Mich2005)**, the District Court for the Western District of Michigan held that denial of a church's building permit was in violation of RLUIPA because it did not further a compelling government interest and was not the least restrictive means to achieve the government's end. The proposed 25,000 square foot building was denied by the city because the footprint was deemed too large given the size of the property and the scale of the neighborhood.

However, in ***The Episcopal Student Foundation v. City of Ann Arbor,* 341 F.Supp.2d 691 (E.D. Mich. 2004)**, a city's denial of a demolition permit did not violate RLUIPA because the city did not impose a substantial burden on the exercise of religion.

Obviously the differing approaches of the various lower courts could be resolved by the Supreme Court should it choose to take a RLUIPA case as it did with RFRA in the *Boerne* case.

### *Freedom of Speech*

Freedom of speech issues can also become enmeshed with other aspects of cultural heritage preservation. In ***Mellen v. City of New Orleans,* 1998 WL 614187 (E.D. La. 1998)** the court struck down New Orleans' noise ordinance as "overbroad." The court found that music is a form of speech and it is appropriate to impose reasonable time, place, and manner

restrictions on speech. However, the ordinance in question was a blanket restriction placed across the city. The court decided that it had to look at the particular neighborhood to determine the validity of the ordinance. Here, music was found to be an important part of the culture of the French Quarter where the club that violated the ordinance was located.

### Demolition by Neglect

In ***Maher v. City of New Orleans*, 516 F.2d 1051 (5th Cir. 1975)**, the U.S. Court of Appeals upheld provisions in a local ordinance requiring reasonable maintenance and repair of buildings in New Orleans's French Quarter. Where the overall purpose of the preservation ordinance is a proper one, the court reasoned that required upkeep of buildings was reasonably necessary to accomplish the law's goals.

Rejecting the takings claim, the court stated: "The fact that an owner may incidentally be required to make out-of-pocket expenditures in order to remain in compliance with an ordinance does not *per se* render that ordinance a taking."[51] The court cited other examples of acceptable affirmative requirements placed on a property owner including provision of fire sprinklers, emergency facilities, exits, and lights.

In ***Buttnick v. City of Seattle*, 719 P.2d 93 (Wash. 1986)**, the Washington State Supreme Court upheld the city's requirement that a property owner remove and replace a deteriorated and unsafe parapet. The court referenced a city council finding that "a reasonable effort was not made by the property owner to correct the public safety hazard presented by deteriorated parapet and pediment when the hazard was first cited" in spite of numerous contacts and hearings.[52]

The opinion found sufficient evidence that the council applied the appropriate standard required by *Penn Central* and *Maher* when it concluded that the estimated cost of replacement of the parapet did not impose an unnecessary or undue hardship on the plaintiff, considering the property's market value and income producing potential.

In ***District of Columbia Preservation League v. Department of Consumer and Regulatory Affairs*, 646 A.2d 984 (D.C. 1994)**, the Court of Appeals reversed an approval by the mayor's agent to demolish a dilapidated historic building because the demolition permit was unauthorized under District law. The court's opinion noted that the law authorized the city to require reconstruction where demolition was done in violation of the law. The court found that would be an appropriate option since the record indicated that the corporate owner was largely responsible for the building's rapid decline and for the destruction of its most important features, and that the building was not beyond repair.

### Economic Hardship

The Pennsylvania Supreme Court was presented a combined takings and economic hardship claim in ***City of Pittsburgh v. Weinberg*, 676 A.2d 207 (Pa. 1996)** and held in favor of the preservation commission. The owners had known when purchasing the dilapidated house that it was a landmark needing substantial repairs. Nevertheless, they failed to hire an architect or contractor to give them an estimate of the feasibility and cost of renovation.

The court held that the owners did not meet their burden of proof because they failed to establish the house could not be resold "as is" for the amount they paid or that the combined purchase price and rehabilitation costs exceeded market value. Thus, no significant economic hardship had been established.

Similarly, in ***Zaruba v. Village of Oak Park*, 695 N.E.2d 510 (Ill. App. Ct. 1998)**, the Illinois Supreme Court upheld the denial

of an economic hardship variance to demolish an historic house, rejecting the owner's claim that he was unaware of the specifics of the preservation ordinance. Factors cited by the court included the owner's overpayment for the property and his failure to either try selling it "as is" or exploring alternatives that might have received commission approval. Interestingly, the preservation alternative was more favorable financially to the owner than the proposed plans for the property.

Courts are generally unwilling to allow owners to use economic hardship claims to get themselves out of bad business decisions. In ***Kalorama Heights Ltd. Partnership v. District of Columbia*, 655 A.2d. 865 (D.C. 1995)**, the D.C. Court of Appeals found that the applicant's purchase of the contributing property in a historic district with the hope of developing a twelve-story luxury condominium was "a 'speculative investment' tantamount to a 'gamble'."[53]

This case also demonstrates how important it is for the preservation commission to build a solid record and place the burden of proving economic hardship on the applicant. The Kalorama court upheld the District's denial of a demolition permit citing substantial evidence in the record, including the applicant's failure to prove it was not economically feasible to renovate or sell the property as a single-family dwelling.

### *Ex-parte Communication*

In ***Idaho Historic Preservation Council, Inc. v. City Council of Boise*, 8 P.3d 646 (Idaho 2000)**, a property owner sought a permit for demolition of a warehouse. The local historic preservation commission denied the application; the property owner appealed to the city council, which approved the certificate.

A local historic preservation organization filed petition for review of the council's decision in the local trial court, which ruled that the city council violated due process "because it received and considered information outside of the appellate record in granting the certificate of appropriateness [for demolition]."[54]

The historic preservation organization had appealed the council decision, seeking review of among other issues the question of "[w]hether the City Council's receipt of phone calls from interested parties and the general public violated the due process standards of a quasi-judicial proceeding."[55]

The city claimed no due process violation "because the subsequent hearing [on the application] cured any improper influence from the ex parte communications."[56] The court established that "when a governing body sits in a quasi-judicial capacity, it must confine its decision to the record produced at the public hearing, and that failing to do so violates procedural due process of law."[57]

Deviation from this standard means in actual fact that "a second fact-gathering session [has occurred] without proper notice, a clear violation of due process."[58] Members of the city council who received calls prior to the public meeting failed to record or disclose the substance of the calls, and the commission therefore had no chance to rebut any evidence or arguments of the callers.

The court discussed the situations which would be exceptions to the general prohibition on ex parte communications:

- the ex parte contacts were not with the proponents of change or their agents, but, rather, with relatively disinterested persons;
- the contacts only amounted to an investigation of the merits or demerits of a proposed change; and, most importantly,
- the occurrence and nature of the contacts were made a matter of record during

a quasi-judicial hearing so that the parties to the hearing then had an opportunity to respond.[59]

The court, however, declined to apply these exceptions in this situation, finding that the non-disclosure of the identities of the callers or the nature of the conversations between the callers and council members made it "impossible for the Commission to effectively respond to the arguments that the callers may have advanced."[60] The court held here that "the receipt of phone calls in this case, without more specific disclosure, violated procedural due process."[61]

The ***Rutherford v. Fairfield Historic District*, No. 25 58 74, 1990 WL 271008 (Conn. Super. Ct. May 18, 1990)** decision from Connecticut demonstrates the sort of situation in which a historic preservation commission can find itself—and prevail against an ex parte communications challenge.

In this case, the owner of a home in a historic district sought a certificate of appropriateness from the Fairfield Historic District Commission for window replacements for his home, located in a historic district. The commission denied the homeowner's application, and the homeowner challenged the commission's decision, claiming, among other issues, that their decision was invalid and violated due process because of ex parte communications between commission members and an expert witness.

The *Rutherford* court held that the ex parte communications referred to by the homeowner did not violate the homeowner's due process. The commission, composed of laypersons, has the right to "receive technical advice to carry out its responsibilities, as long as the [applicant] was provided with the opportunity to examine [the expert witness] and to rebut his testimony."[62] Furthermore, there is no evidence that the commission received evidence after the public hearing; the expert testimony took place in public, and the homeowner-applicant had the right to question and rebut the witness.

## Standing

A state case involving this principle arose in Massachusetts in 2000—***Allen v. Old King's Highway Regional Historic District*, 2000 Mass. App. Div. 330 (Mass. Dist. Ct.)**. Nearby owners to an affected property appealed the grant of a certificate of appropriateness by a regional historic preservation commission; the enabling statute for the commission allowed such appeals by any *person aggrieved* by its decisions. Faced with the question of whether or not these property owners were persons aggrieved with standing to appeal, the court held the statutory definition of *person aggrieved* applied only to those who have demonstrated "special harm that would occur to him if the Certificate of Appropriateness awarded by the regional commission is allowed to stand."[63]

In addition, the court concluded, "[g]eneral civic interest in the enforcement of historic zoning is not sufficient to confer standing."[64] For example, "[s]ubjective and unspecified fears about the possible impairment of aesthetics or neighborhood appearance, incompatible architectural styles, the diminishment of close neighborhood feeling, or the loss of open or natural space are all considered insufficient bases for aggrievement under Massachusetts law."[65]

Finally, the court held that a party's participation in the administrative appeal process or ownership of property close to the tract in question was not enough to confer standing.

***Burke v. City of Charleston*, 139 F.3d 401 (4th Cir. 1998)** is another case relating to the issue of standing. In this case, after a local artist painted a bright,

colorful mural depicting a fanciful "creature world" on the side of a building located within the Charleston historic district and sold it to the building's owner, the city board of architectural review ordered its removal. The artist sued the city, challenging the constitutionality of the ordinance on First Amendment grounds.

The artist appealed the adverse determination of the federal district court; the Fourth Circuit Federal Court of Appeals found that the artist lacked standing, because when the artist sold his mural to the owner of the building on which it was painted, the artist "relinquished his First Amendment rights."[66] Therefore, the owner alone had the right to display the mural, and thereby the "legally cognizable interest in the display" of the work.[67] The artist did not prove "injury-in-fact"—the court found that the one who had the right to display the mural (the owner, if anyone, but not the artist) suffered a potential injury from the city's order to remove it. Thus, the artist did not have legal standing to oppose the removal of the mural.

## Laches

A state court case that addressed this issue was ***City of Dalton v. Carroll*, 515 S.E.2d 144 (Ga. 1999)**. The prior owner of a home failed to obtain a building permit or certificate of appropriateness for construction of a metal carport located within the historic district.

The city received a complaint about the carport and notified the current owner within ten days. After the owner failed to remove the carport, the city sought a declaratory judgment and injunction. The trial court denied both claims, holding that laches barred the city's claim.

The state supreme court reversed, and considered the factors for applying laches—length of the delay, the reasons for it, the resulting loss of evidence, and the prejudice suffered. In this case, the court found that the city did not delay enforcement of its architectural review ordinances, but notified the property owner within ten days of receiving the complaint, and that it was the predecessor owner's failure to obtain the building permit that caused a six month delay between construction and discovery.

Furthermore, the property owner failed to comply with the city ordinances after notification. "Under these circumstances…it is not inequitable to permit the city to enforce its claim against [the property owner]."[68] While it is important to pursue out-of-court solutions and avoid frivolous lawsuits, it is equally important to take legal action without delay when it is necessary.

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## End Notes

[1] *Berman v. Parker*, 348 U.S. 26, 33 (1954).
[2] *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 129 (1978).
[3] *Merriam v. Moody's Ex'r*, 25 Iowa 163, 170 (1868) superceded by statute Iowa Code §§364.2(2) and 364.2(3) (1983), as recognized in *Council Bluffs v. Cain,* 342 N.W.2d 810 (Iowa 1983).
[4] *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415-16 (1922) (emphasis added).
[5] *Id*. at 413.
[6] *Penn Cent*., 438 U.S. at 124.
[7] *Id. at 131.*
[8] *Id*. at 130.
[9] *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015 (1992). Scalia does not use the exact term "categorical taking" in the opinion of the Court.
[10] *See also Lingle v. Chevron*, 544 U.S. 528, 539 (2005) (reaffirming Penn Central test).
[11] *McNabb v. United States*, 318 U.S. 332, 347 (1943)
[12] *The People ex rel. Klaeren v. The Village of Lisle*, 316 Ill. App. 3d 770, 786 (2000)
[13] *Id*.
[14] *Lemon v. Kurtzman*, 403 U.S. 602 (1971).
[15] *See* Autumn L. Rierson, RLUIPA: Four Years Later, 20 Preservation L. R. 1169 (2003).
[16] *City of Toledo v. Finn*, No. L-92-168, 1993 WL 18809 (Ohio Ct. App. Jan. 19, 1993).
[17] O.C.G.A. § 50-14-6 (2005).
[18] *A-S-P Associates v. City of Raleigh*, 258 S.E.2d 444, 451 (N.C. 1979).
[19] *Id.*
[20] *City of Dallas v. Crownrich*, 506 S.W.2d 654, 659-60 (Tex. Civ. App. 1974).
[21] *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 335 (2002).
[22] Civil Rights Act of 1871, 42 U.S.C. § 1983 (2007).
[23] A commissioner would be entitled to immunity unless his "act is so obviously wrong, in the light of preexisting law, that only a plainly incompetent officer or one who was knowingly violating the law would have done such a thing." *Lassiter v. Alabama A & M University Board of Trustees*, 28 F.3d 1146, 1149 (11th Cir. 1994); abrogated by *Hope v. Pelzer*, 536 U.S. 730, 739 (2002).
[24] *Allen v. Old King's Highway Reg'l Historic Dist.*, 2000 Mass. App. Div. 330, 331 (Mass. Dist. Ct.).
[25] *District Intown Properties Ltd. Partnership v. District of Columbia*, 23 F. Supp.2d 30 (D.D.C. 1998).
[26] *San Diego Trust & Savings Bank v. Friends of Gill*, 121 Cal.App. 3d 203 (1981).
[27] *Berman v. Parker*, 348 U.S. 26, 33 (1954).
[28] *Collins v. Fuller*, No. 912479B, 1993 WL 818633, at *1 (Mass. Dist. Ct. Aug. 6, 1993).
[29] *Id*.

[30] *United Artists' Theater Circuit v. City of Philadelphia*, 635 A.2d 612, 617 (Pa. 1993).
[31] *City of Pittsburgh v. Weinberg*, 676 A.2d 207, 211 (Pa. 1996) (quoting *Maher v. City of New Orleans*, 516 F.2d 1051, 1066 (5th Cir. 1975), *cert. denied*, 426 U.S. 905 (1976)).
[32] *Weinberg*, 544 Pa. at 287.
[33] *Historic Albany Found., Inc. v. Coyne*, 558 N.Y.S.2d 986, 988 (App. Div. 1990).
[34] *Id*. at 989-90.
[35] *Id*. at 990.
[36] *Achtien v. City of Deadwood*, 814 F. Supp. 808, 813 (D.S.D. 1993).
[37] *Id.*
[38] *Donovan v. City of Deadwood*, 538 N.W.2d 790, 793 (S.D.1995) (quoting S.D. Codified Laws § 1-19B-23 (1995)).
[39] *Id.*
[40] *Id.*
[41] *Id.* at 765.
[42] *Tourkow v. City of Fort Wayne*, 563 N.E.2d 151, 153 (Ind. app. 1990).
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.* at 153-154.
[50] *Nevel v. Village of Schaumburg*, 297 F.3d 673, 681 (7th Cir. 2002) (quoting *Albiero v. City of Kankakee*, 246 F.3d 927, 932 (7th Cir. 2001)).
[51] *Maher v. City of New Orleans*, 516 F.2d 1051, 1067 (5th Cir. 1975).
[52] *Buttnick v. City of Seattle*, 719 P.2d 93, 97 (Wash. 1986).
[53] *Kalorama Heights Ltd. Partnership v. District of Columbia*, 655 A.2d. 865, 872 (D.C. 1995).
[54] *Idaho Historic Pres. Council, Inc. v. City Council of Boise*, 8 P.3d 646, 648 (Idaho 2000).
[55] *Id*.
[56] *Id*. at 649.
[57] *Id*.
[58] *Id*.
[59] *Id*. at 650.
[60] *Id*. at 651.
[61] *Id*.
[62] *Rutherford v. Fairfield Historic Dist.*, No. 25 58 74, 1990 WL 271008, at *3 (Conn. Super. Ct. May 18, 1990).
[63] *Allen v. Old King's Highway Reg'l Historic Dist.*, 2000 Mass. App. Div. 330, 331 (Mass. Dist. Ct.).
[64] *Id*.
[65] *Id*. (quoting *Barvenik v. Bd. of Aldermen of Newton*, 597 N.E.2d 48, 51 (Mass. App. Ct. 1992)).
[66] *Burke v. City of Charleston*, 139 F.3d 401, 403 (4th Cir. 1998).
[67] *Id.*
[68] *City of Dalton v. Carroll*, 515 S.E.2d 144, 145 (Ga. 1999).

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**CULTURAL RESOURCES PARTNERSHIP NOTES**

**HERITAGE PRESERVATION SERVICES, NATIONAL PARK SERVICE**

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HERITAGE PRESERVATION SERVICES

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# BUILDING A DEFENSIBLE RECORD*

**by**

Stephen Neal Dennis

March 9, 1991

*Each September, the National Center for Preservation Law sends a short questionnaire to its mailing list of nearly 800 local historic preservation commissions across the country. Commissions are asked to indicate if they have been in court during the past year or eighteen months, and the brief responses help the Center pinpoint cases which should be monitored and to locate court decisions which need to be analyzed.*

*Every year since 1987, the Center's questionnaire has confirmed our growing conviction that there are a large number of court cases at the trial court level involving local historic preservation commissions. Unfortunately, indications are that far too many of these commissions have gotten to court without thinking through the implications of being there or constructing with adequate malice aforethought a useful (and defensible) record. And all too often, no one has a chance to help these commissions before it is too late and they have lost in court.*

*Let's explore together briefly this afternoon some of the factors which* should *go into the development of an adequate record of a local preservation commission's decision. I will not focus on Virginia law, because I believe the points I will be making are applicable to commissions regardless of the individual jurisdictions in which they find themselves.*

## — ONE —
## A preservation commission's decision should be clear and comprehensible.

It can be tempting for the chairman or secretary of a commission, or for staff to a commission, to cut corners and "abbreviate" the description of the issue which the commission decided, and to omit the reasons for the commission's decision. Minutes of a commission meeting, as well as a decision letter to an applicant, should ideally both contain findings of fact and certain, quite specific, decision.

Leaving out crucial details may make a decision hopelessly opaque to an individual not intimately familiar with the situation that was before the commission. Assume that this will be the posture of any city council member or judge before whom the commission's decision may need to be defended in the future. Above all, do not leave your applicant and his attorney wondering what happened.

## — TWO —
## A preservation commission's decision should indicate the significance of the structure or district involved.

You may be a brilliant architectural historian and possess a detailed and comprehensive knowledge of the defining characteristics of the building involved in an application to your commission, but unless you can convince a reviewing authority of the importance of the building, it will be more difficult than it should be to argue the propriety of your commission's decision. Occasionally I have suspected that a preservation organization has lost a case that might have been won simply because it could not generate any sympathy for the building involved from the presiding judge, often not a local historian.

There is no need here for elaborate and obfuscating detail, but the building should be put into a context which can be easily and convincingly explained, and appropriate visual materials should be included in the file for the application and the record of the commission's action.

## — THREE —
## Know at least as much about your commission's existing precedents as the other side does.

I remember attending nearly ten years ago a meeting of the Alexandria City Council at which the future of the Alfred Street Baptist Church was to be argued. Several preliminary appeals to the Council from the Alexandria Board of Architectural Review (BAR) were heard first, and two of these involved the issue of artificial siding. It was quickly apparent that individual members of the Council and members of the public were more familiar with previous BAR decisions involving artificial siding than was the individual attempting to justify the BAR decisions to the City Council.

Assume that "the other side" will make every effort to use your commission's previous decisions against you if this style of attack can become a persuasive argument. There may be unique reasons why a change you have previously approved for another applicant is totally inappropriate in the situation now before you. Explain these factors, and use them to justify your decision.

## — FOUR —
## Hope to have one member of the commission with a good working knowledge of parliamentary procedures.

Your commission's meetings should not become cumbersome with elaborate strategic thrusts and counterarguments, but having one member who can propose a good resolution will save a lot of time over the years. If this member can in addition summarize the arguments presented prior to a resolution and then explain why he wishes to propose a resolution for formal adoption, this approach should clarify issues for other commission members as well as the applicant and any members of the general public present.

The passage of a resolution containing your commission's decision is always a splendid opportunity to refer tellingly to criteria, standards or guidelines contained in your

preservation ordinance. It is especially crucial to leave members of the press with the sense that the commission is operating so methodically that its public hearings do not constitute news, though the fate of individual applications may be of some interest to a newspapers' readers.

**— FIVE —**

**If there is an interested neighborhood group or local preservation organization, hope that it will be able to supplement the commission's careful homework on individual applications.**

In Kensington, Maryland, a well organized neighborhood effort has now beaten back twice a developer's attempt to insert overscaled new houses into small original lots which functioned for many years simply as side yards for a lot with an original Victorian residence. Without this encouraging support from the public, the Montgomery County Historic Preservation Commission might have been somewhat cowed by a determined developer and his highly compensated architects, attorneys and preservation consultants. Without such a watchdog group, the county attorney's office might not have been willing to make defending a challenged commission's actions a priority.

**— SIX —**

**If you smell trouble, try to get your commission's attorney to review with you ahead of time issues that you anticipate needing to decide and arguments that you believe will be presented to the commission.**

A good attorney can often suggest to a commission chairman questions that the commission should seek to have answered as an applicant is making his or her case before the commission. This is particularly important when an applicant may intend to glide smoothly over an issue which will not bear close examination by the commission, such as claimed economic hardship.

If you think the "hardship" issue will be argued, the commission's attorney should review carefully the court cases in your state dealing with "takings" in land use regulation contexts. Learn in advance what an applicant must prove to establish a legitimate hardship claim, and be prepared for the possibility that your applicant cannot meet the tests.

**— SEVEN —**

**Don't decide all of the issues before your commission in one sentence.**

If an applicant says, in effect, "This is what I want to do, and if you don't let me life won't be fair and besides I stand to lose a lot of money," realize that you could be dealing with three important and quite separate issues:

A. A challenge to the commission's developed expertise to make an "aesthetic" decision;
B. A challenge to the adequacy of the commission's procedures and the willingness of the commission to follow these established requirements;
C. An economic hardship challenge to the commission's regulatory authority.

This is not the time for your commission to respond, “Gosh!” A careful commission chairman will try to see that these issues become separate for discussion and argument, and that an applicant is not allowed to confuse the issues as he presents his case. But this may mean that a chairman will need to “play through” an application in his mind before a meeting in order to decide how to ask that debate be structured.

**— EIGHT —**
**Establish and maintain adequate working files for your commission.**

This is the downfall of many commissions. Over a period of time, the commission is moved from one temporary location to another, and files have a way of becoming misplaced. In a recent case in New York City involving the designation of a group of Broadway theatres, the trial court judge became concerned that the commission could not produce a stenographic transcript of the hearings held by the commission on the package of designations. Eventually, the missing stenographic tapes were located and could be transcribed. But because the New York commission had moved briefly into one temporary location and then relocated into new permanent quarters, some materials which were infrequently used had gone into storage. If the commission had not finally located the missing stenographic tapes, arguments that the commission had not followed basic due process procedures would have been much more compelling.

I have known of commissions which cannot locate basic documents such as “official” maps of local historic districts and copies of publication notices or required letters to owners undermine their legitimacy. If an owner decides to challenge the city’s authority to regulate a building, you certainly don’t want to be responsible for helping the owner prove that the structure isn’t even properly designated. This is particularly likely to be a problem in a city with an older historic preservation program which has seen designations develop over several separate stages and which has had two or more different historic preservation ordinances.

**— NINE —**
**Remember that an applicant’s experts have been hired to produce a desired result and analyze or challenge their assertions accordingly.**

Too often, commission members listen politely to testimony from individuals appearing in support of an application the commission should probably deny. If the commission subsequently ignores this testimony, it could be difficult to explain on appeal why the testimony carried no weight with the commission. But if commission members question an “expert” vigorously and challenge assumptions or conclusions, the commission will set the stage for a decision which indicates that the commission did not find the testimony credible or found it outweighed by countervailing arguments presented by other witnesses. A “muscular” decision may be one achieved after some exercise by the commission.

## — TEN —
## Avoid any appearance of having been arbitrary or capricious.

A reviewing court will want to be convinced that the commission was not arbitrary or capricious, and that the commission's decision is supported by substantial evidence. This need not usually mean a preponderance of the evidence, rather that there is some evidence in the record supporting the outcome favored by the commission. If an application is too awful to be taken seriously, it should always be treated seriously. Don't let an applicant win on appeal because of your procedural errors.

Some commissions still lose in court, and some of these commissions probably deserve to lose. If an applicant comes before a commission with a strong economic hardship argument and the commission focuses entirely on the contribution of a building to a local historic district, this is a certain recipe for trouble. If a commission uses "guidelines" which are in no sense official, sooner or later someone may wake up to this fact and challenge the alleged guidelines.

Over time, most local historic preservation commissions develop a secure sense of their own powers. If the occasional commission betrays timidity and fears exercising the full range of its stated powers, one can hope that eventually this commission will gain new members with a surer understanding of the commission's potential as a regulatory agency. In Vermont, where municipalities are subject to the often criticized Dillon Rule which requires that local governments exercise only those powers expressly delegated to them, it is going to be necessary to amend the state enabling legislation for commissions to clarify the role that local historic preservation commissions can play. But this will take time, and meanwhile you need to be certain that your commissions have a fighting chance if they are challenged on appeal.

National Center for Preservation Law
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**This talk was given at the 1991 Annual Preservation Workshop sponsored by the Arlington County Historical Affairs and Landmark Review Board, Arlington, Virginia.*

# ALL THE WORLD'S A STAGE: HOW TO CONDUCT A PRESERVATION COMMISSION MEETING

*Editor's Note: Since first appearing in* The Alliance Review *in 1994, "How to Conduct a Preservation Commission Meeting" by preservation attorney and CAMP Counselor, James Reap, has become one of the most frequently requested articles. We are pleased to present it again by popular demand.*

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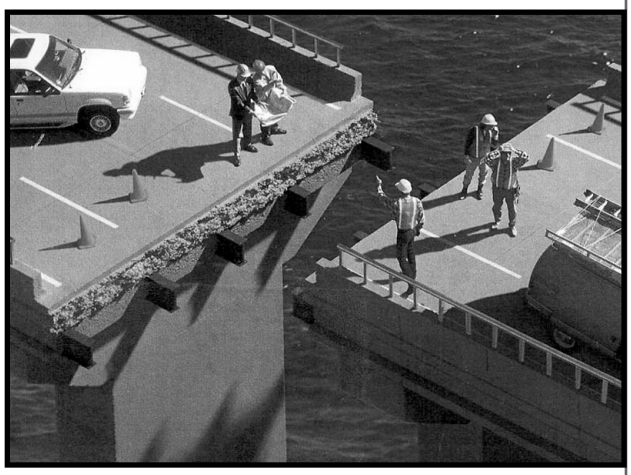
*THE DRAMA'S LAWS THE DRAMA'S PATRONS GIVE.*
*FOR WE THAT LIVE TO PLEASE, MUST PLEASE TO LIVE.*
*- Samuel Johnson*

If all meetings are theater, as George David Kieffer insists in his book, *The Strategy of Meetings,* then preservation commission members and their staffs must learn to be effective producers, directors, script writers, and actors to ensure their production is successful and their objectives are met. It is largely through the conduct of public meetings and hearings that a community's perception of the preservation commission is formed, and their public image will help determine their ultimate success of failure. It is also at these meetings that commissions may be most vulnerable to procedural missteps that may render their decisions, regardless of their merits, null and void when challenged in court.

Communication is essential in meetings and the "theater" can either enhance or undermine the verbal message. Everything we do communicates something—where we meet, how the room is arranged, what we wear, our tone of voice, body language, punctuality, attitude, what we give most attention to, and how we treat others. Since we can't eliminate these messages, we should turn them to our advantage. Think about the image you want to project and the impressions, such as disorganization and arbitrariness, you want to avoid. With proper preparation, active participation and attention to detail we can be effective communicators and accomplish our purposes within the requirements of the law.

**Preparation**

- Be familiar with your:
  - Laws, rules and procedures
  - State Constitution
  - Statutes
  - Local Ordinance
  - Commission's Bylaws
  - Rules of Procedure
  - Design Guidelines
- Take advantage of training opportunities
- Observe and critique meetings of other boards
- Evaluate your own performance in past meetings



Communication is essential to hold things together.
*Photo: Public Domain*

In preparing for your role you need to be familiar with the laws, rules and procedures under which you operate. Know the relevant provisions of the state constitution and its statutes, the local ordinance, and the commission's bylaws, rules of procedure and design guidelines. Commissioners can learn from others by taking advantage of conferences and workshops on historic preservation law and commission operation. Observe and critique meetings of other boards such as planning and zoning commissions as well as other preservation commissions in other towns and cities. Commissioners can even evaluate performance by viewing a videotape of meetings and by surveying the audiences.

**The Script: The Agenda**

- Common items:
  - name of the group
  - title of the meeting
  - date, place, starting and ending times

- name of the chair
- items to be considered and persons responsible
- references to background materials

- Identify action items and list them first
- Identify items for discussion only
- Distribute the agenda ahead of time
- Go "on location" to view included properties

Every production needs a script, and yours is the agenda. A good agenda helps members come to the meeting prepared and stay focused. Some common elements include: the name of the group, title of the meeting, date, place, starting and ending times, the chair, items to be considered and those responsible, and references to background materials. It's helpful to identify those items that require action and those which are for discussion only. Action items are generally listed first, followed by other issues in order of their urgency. Distributing the agenda and background materials ahead of time helps participants learn their parts. Whenever possible, members should prepare by going "on location" to get a firsthand view of the properties which will be discussed in the meeting.

It's crucial to develop rules of procedure and supplement them with standardized parliamentary procedures such as *Robert's Rules of Order*. Like the agenda, the rules help the group remain in control of its own processes and eliminate confusion. Operating a meeting without them would be like playing baseball without rules. There is a danger, however, that misused parliamentary procedure can block creative thought and the interchange of ideas. The chair must make the right decision on the degree of formality required at any given time.

The room you choose can enhance communication or become a barrier.
*Photo: Public Domain*

**Setting the Stage: Meeting Room**

- Size—neither too big nor too small
- Proper lighting and sound
- Tape recording equipment
- Seating arrangement that enhances interaction

Set the stage properly. The room you choose can enhance communication or become a barrier. The space should be neither too big nor too small for the group, and everyone should be able to see and hear what's going on. Pay attention to proper lighting and sound. If possible, arrange for equipment to tape record the proceedings to ensure an adequate permanent record. Among other appropriate configurations, a semicircular arrangement for commission members facing others in attendance is conventional and promotes interaction.

**The Leading Role: The Chair**

- Know the rules
- Remain impartial
- Seek contributions from everyone
- Make certain minority views are expressed
- Clarify and summarize issues
- Separate facts from opinions
- Look for and diffuse emotional build-ups
- Never permit personal attacks or derogatory comments

The lead role in meetings belongs to the chair. As the production's moderator, his/her main job is to facilitate communication. To do this, the chair must know the rules and remain impartial. He/she should seek contributions from all participants, make certain

minority views are expressed, clarify and summarize issues, help separate facts from opinions and keep on the lookout for and diffuse emotional buildups. He/She should never permit personal attacks or derogatory comments.

**The Curtain Rises: A Strong Opening**

- Begin on time
- Start with the right attitude
- Project a sense of confidence
- Make sure you can be heard and understood
- Avoid jargon and acronyms
- Introduce key participants
- Summarize the process
- Invite audience participation
- Cover your legal requirements

Set the stage by introducing the cast of characters.
*Photo: Public Domain*

When the curtain goes up, make sure you have a strong opening. Begin on time. This is the commission's first test of control and sends a message the meeting will be conducted in a businesslike manner. Start with the right attitude and project a sense of confidence. Your audience will be quick to pick up on nervousness or uncertainty. Make sure you can be heard and understood. Speak clearly and avoid using jargon and acronyms that require translation.

Set the stage by introducing the cast of characters. Summarize how the plot will unfold and invite audience participation. Be sure to cover your legal requirements for the record: note the presence of a quorum, determine if notice and advertisement requirements have been met, state the rules on conflict of interest, and approve the minutes of previous meetings. Now you're ready for the first act.

**The Feature Presentation:**
**Considering Applications**

- Allow applicants to:
  - present their case
  - rebut opposing case
- Allow others to express their views
- Hear staff presentations
- Listen carefully and ask questions
- Verify required documentation

Whether you're considering applications for designation or certificates of appropriateness, at a minimum, you must allow applicants to be heard, present their case, and rebut the opposing case. **Some states require witnesses to be sworn in and an opportunity to cross examine.** If so, these formalities must be observed. Allow others present to express their views and hear any staff presentations. Ask "experts" to describe their qualifications and take their testimony for what it is—just professional advice. Listen carefully and ask questions to make certain you understand the issues involved. Verify that all required documentation is in order.

- Discuss the application thoroughly
- Examine the facts and alternatives in terms of:
  - practicality
  - cost
  - effectiveness
  - enforceability
- Develop a consensus, then call for a vote
- Always try to achieve some consent

*Cont'd on page 16*

- Reserve formality for times when:
  - there would be confusion without it
  - when action is needed for the record

After all views are heard, members should discuss the application thoroughly, examining the facts and alternatives in terms of practicality, cost, effectiveness and enforceability. It's here that strictly following *Robert's Rules of Order*—where the motion comes first and the discussion follows—can discourage consensus and allow a motion to pass before all issues have been considered. A more informal approach encourages collaboration and is less threatening than debate. The negotiated solution acceptable to all members may not be the first choice of any, but it should be something everyone can live with. Conflicts can often be resolved by finding common ground. Develop a consensus first, if possible, and then call for a vote. Always try to achieve some consent even if there is not unanimity. Reserve formality for times when there would be confusion without it and when action is needed for the record.

**The Drama Builds**

- Give reasons for your decision
- Summarize the evidence
- Recite the standards applied
- Stay clearly within your area of responsibility
- When review of applications is completed, move through the rest of your agenda

It is important for the commission to give reasons for each of its decisions, even if state law doesn't require it. Courts find it difficult to evaluate actions where no reasons are given, and they will not tolerate findings and conclusions good for any occasion. Members framing motions for approval or denial of an application (for a designation or a certificate of appropriateness) should summarize the evidence, recite the standards applied—using the language of the ordinance—and state why the commission is taking the action. In reaching decisions, always stay clearly within the area of responsibility described by your ordinance.

Avoid emotional escalation as the drama builds.
*Photo: Public Domain*

When you have completed your action items, move through the remaining matters on the agenda.

**The Final Curtain: Concluding the Meeting**

- Summarize actions taken
- Inform participants what happens next in the process
- Thank all who have participated
- End on a positive note

As the final curtain approaches, members will have begun to turn off substantive discussion. Use the last few moments of a meeting to summarize actions taken and inform participants what happens next in the process and who must be involved. Thank all those who have participated. End like you began, on a positive note, leaving your audience with a favorable impression of the commission.

In the end, don't confuse theatre with showboating. If you watch the real meeting masters, they are smooth and subtle. It takes hard work and practice to run a good meeting, but the results in decisions sustained, good working relationships and a positive image in the community, are worth the effort.

***Break a Leg!***

# For the Record: The NAPC Short Guide to Parliamentary Procedure

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***"Helping local preservation commissions succeed through education, advocacy, and training"***

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# INTRODUCTION AND ACKNOWLEDGEMENTS

## Introduction

Whether or not a commission follows correct parliamentary procedure can make the difference between whether or not a decision stands if challenged: in short, whether or not historic resources are lost or architectural integrity is compromised. Unfortunately, many commissions unwittingly fail to follow correct procedures because, at first blush, they may seem intimidating, complex, and onerous. Upon closer examination, however, parliamentary procedures are really straight-forward and easy to comprehend. Following them not only helps ensure that decisions are defendable, it also helps ensure that meetings run smoothly and efficiently, and that accurate minutes can be produced in a timely manner. Remember, if an appeal goes to court, the judge won't care what the decision was; the judge will care *how it was made*.

How a commission fares in a court of law isn't the only reason to follow the rules. If a commission is fastidious in following correct parliamentary procedure and transparent in its actions, it is far more likely to win in the court of public opinion. For some reason people just seem reassured when they can see that a deliberative, quasi-judicial body established for the purpose of telling them what they can and can't do to their property isn't just making it up as it goes along.

Even though a commission's chair usually fills the role of parliamentarian, all commission members and staff should have a working knowledge of parliamentary procedure. When new commissioners are appointed, part of their orientation should be a review of parliamentary procedure and an explanation as to why the commission follows it. Periodically assessing how well you are following the rules can help prevent or correct deviating from them before problems occur. New commissioner orientation is an excellent opportunity to make the assessment.

The National Alliance of Preservation Commissions (NAPC) has compiled and written *For the Record: The NAPC Short Guide to Parliamentary Procedure* to help commission members and staff understand parliamentary procedure and to serve as a handy reference when questions arise. Like any tool, however, this guide won't help if it isn't used. So, read it, study it, make notes in the margins, and keep it within easy reach.

## Acknowledgements

*For the Record: The NAPC Short Guide to Parliamentary Procedure* was written, compiled, and edited in 2009 by Heather McDonald. NAPC is grateful for her expertise and attention to detail. Sources of information include jimslaughter.com, Susan West Montgomery of the Maryland Association of Historic District Commissions, and Professor James Reap, Esq. of the University of Georgia. NAPC also thanks the numerous commissioners and staff who not only called on it to produce the guide, but who also make local preservation work in their communities.

# INTRODUCTION TO PARLIAMENTARY PROCEDURE

## What is Parliamentary Procedure?

It is a set of rules for conduct at meetings that permits everyone to be heard and to make decisions without confusion.

## Why is Parliamentary Procedure Important?

Because it is an established method of conducting business at meetings and public gatherings. It can be adapted to fit the needs of any organization.

## What Guide Should Be Used for Parliamentary Procedure?

Today, *Robert's Rules of Order* newly revised is the most common handbook of operation for most preservation commissions, but there are other sources of parliamentary procedure that may be adopted by commissions. For those using *Robert's Rules*, the following is a simplified guide to what they include.

## What are Motions?

A motion is a proposal that members take action, or a stand, on an issue. Individual members can:

1. Make a motion.
2. Second motions.
3. Debate motions.
4. Vote on motions.

## There are Four Basic Types of Motions:

1. Main Motions: The purpose of a main motion is to introduce items to the membership for their consideration. They cannot be made when any other motion is on the floor, and yield to privileged, subsidiary, and incidental motions.
2. Subsidiary Motions: Their purpose is to change or affect how a main motion is handled, and is voted on before a main motion.
3. Privileged Motions: Their purpose is to introduce items that are urgent about special or important matters unrelated to pending business.
4. Incidental Motions: Their purpose is to provide a means of questioning procedure concerning other motions and must be considered before the other motion.

## How are Motions Presented?

1. Obtaining the floor:
    a. Wait until the previous speaker has finished.
    b. Raise your hand and/or address the Chair by saying, "Mr. Chair or Madam Chair."
    c. Wait until the Chair recognizes you.
2. Make your motion:
    a. Speak in a clear and concise manner.
    b. Always state a motion affirmatively. Say, "I move that we..." rather than, "I move that we do not...".
    c. Avoid personalities and stay on your subject.
3. Wait for someone to second your motion or the Chair to call for a second.
4. If there is no second to your motion, it is lost and may not move forward.
5. If there is a second, the Chair states your motion.
    a. The Chair will say, "it has been moved and seconded that we..." thus placing your motion before the membership for consideration and action.
    b. The members then either debate your motion, or may move directly to a vote.
    c. Once your motion is presented to the members by the Chair it becomes "commission property", and cannot be changed by you without the consent of the members.
6. Expanding on your motion:

    a. The time for you to speak in favor of your motion is at this point in time, rather than at the time you present it.
    b. The mover is always permitted to speak first.
    c. All comments and debate must be directed to the Chair.
    d. Keep to the time limit for speaking if one has been established.
    e. The mover may speak again only after other speakers are finished, unless called upon by the Chair.
7. Putting the question to the members:
    a. The Chair asks, "Are you ready to vote on the question?".
    b. If there is no more discussion, a vote is taken.

## Voting on a Motion

The method of vote on any motion depends on the situation and the by-laws of policy of your commission. There are five methods used to vote by most organizations, and they are:

1. By voice — The Chair asks those in favor to say, "aye", those opposed to say "no". Any member may move for an exact count.
2. By roll call — Each member answers "yes" or "no" as his name is called. This method is used when a record of each person's vote is required.
3. By general consent — When a motion is not likely to be opposed, the Chair says, "if there is no objection..." The membership shows agreement by their silence, however if one member says, "I object," the item must be put to a vote.
4. By division — This is a slight verification of a voice vote. It does not require a count unless the Chair so desires. Members raise their hands.
5. By ballot — Members write their vote on a slip of paper, this method is used when secrecy is desired.

There are two other motions that are commonly used that relate to voting.

1. Motion to table — This motion is often used in the attempt to "kill" a motion. The option is always present, however, to "take from the table", for reconsideration by the members.
2. Motion to postpone indefinitely — This is often used as a means of parliamentary strategy and allows opponents of motion to test their strength without an actual vote being taken. Also, debate is once again open on the main motion. This method is rarely used by historic preservation commissions.

## Making Parliamentary Procedure Work

Parliamentary Procedure is the best way to get things done at your meetings. But, it will only work if you use it properly.

1. Allow motions that are in order.
2. Have members obtain the floor properly.
3. Speak clearly and concisely.
4. Obey the rules of debate.

## Most importantly, *BE COURTEOUS*.

# PARLIAMENTARY PROCEDURE AT A GLANCE

| **To Do This:** (See Note 1) | **You Say This:** | **May You Interrupt the Speaker?** | **Must You Be Seconded?** | **Is the Motion Debatable?** | **Is The Motion Amendable?** | **What Vote is Required?** |
|---|---|---|---|---|---|---|
| Adjourn the meeting (before all business is complete) | "I move that we adjourn." | May not interrupt speaker | Must be seconded | Not debatable | Not amendable | Majority vote |
| Recess the meeting | "I move that we recess until..." | May interrupt speaker | Must be seconded | Not debatable | Amendable | Majority vote |
| Complain about noise, room temperature, etc. | "Point of privilege." | May interrupt speaker | No second needed | Not debatable ( See Note 2) | Not amendable | None (See Note 3) |
| Suspend further consideration of something | "I move we table it." | May not interrupt speaker | Must be seconded | Not debatable | Not amendable | Majority vote |
| End debate | "I move the previous question." | May not interrupt speaker | Must be seconded | Not debatable | Not amendable | Two-thirds vote |
| Postpone consideration of something | "I move we postpone this matter until..." | May not interrupt speaker | Must be seconded | Debatable | Amendable | Majority vote |
| Have something studied further | "I move we refer this matter to a committee." | May not interrupt speaker | Must be seconded | Debatable | Amendable | Majority vote |
| Amend a motion | "I move that this motion be amended by..." | May not interrupt speaker | Must be seconded | Debatable | Amendable | Majority vote |
| Introduce business (a primary motion) | "I move that..." | May not interrupt speaker | Must be seconded | Debatable | Amendable | Majority vote |

| | | | | | | |
|---|---|---|---|---|---|---|
| Object to procedure or to a personal affront (See Note 4) | "Point of order." | May interrupt speaker | No second needed | Not debatable | Not amendable | None (See Note 3) |
| Request information | "Point of information." | If urgent, may interrupt speaker | No second needed | Not debatable | Not amendable | None |
| Ask for a vote by actual count to verify a voice count | "I call for a division of the house." | May not interrupt speaker (Note 5) | No second needed | Not debatable | Not amendable | None unless someone objects (See Note 6) |
| Object to considering some undiplomatic or improper matter | "I object to consideration of this question." | May interrupt speaker | No second needed | Not debatable | Not amendable | Two-thirds vote required |
| Take up a matter previously tabled | "I move we take from the table..." | May not interrupt speaker | Must be seconded | Not debatable | Not amendable | Majority required |
| Reconsider something already disposed of | "I move we now (or later) reconsider our action relative to..." | May interrupt speaker | Must be seconded | Debatable if original motion is debatable | Not amendable | Majority required |
| Consider something out of its scheduled order | "I move we suspend the rules and consider..." | May not interrupt speaker | Must be seconded | Not debatable | Not amendable | Two-thirds vote required |
| Vote on a ruling by the Chair | "I appeal the Chair's decision." | May interrupt speaker | Must be seconded | Debatable | Not amendable | Majority in the negative required to reverse chair's decision |

*Notes:*

1. These motions or points are listed in established order of precedence. When anyone of them is pending, you may not introduce another that's listed below it. But you may introduce another that's listed above it.
2. In this case, any resulting motion is debatable.
3. Chair decides.
4. The remaining list of motions, points and proposals have no established order of precedence. Any of them may be introduced at any time except when the meeting is considering one of the top three matters listed in the chart (motion to adjourn, motion to recess, point of privilege).
5. But division must be called for before another motion is started.
6. Then majority vote is required.

# HOW TO FRAME A MOTION

First things first, a few definitions:

**Certificate of Appropriateness** — A document evidencing approval by the Historic Preservation Commission of an application to make a material change in the appearance of a designated historic property or of a property located within a designated historic district.

**Deliberative Assembly** — An organization comprised of members who use parliamentary procedure for making decisions. A local historic preservation commission is a deliberative assembly.

**Finding of Fact** — In parliamentary procedure, the findings of a deliberative assembly on issues of fact submitted to it for decision, usually used in formulating a judgment. "I find that the materials submitted are sufficient for the commission to render a judgment."

**Motion** — In parliamentary procedure, a formal proposal by a member of a deliberative assembly that the assembly take certain action

**Parliamentary Procedure** — Set of rules for conduct at meetings that allow everyone to be heard and to make decisions without confusion.

Parliamentary procedure, and specifically the use of motions, is essential in commission meetings to help them run smoothly. Additionally, through the use of motions commission members can ensure their actions and decisions are articulated and defensible.

By presenting a clear and concise motion based on your community's design guidelines, you are better able to inform the public as to why you are approving, approving with conditions or denying a Certificate of Appropriateness and avoid misunderstandings and ill-feelings towards the commission and your community's preservation agenda.

*A well-framed motion is clear and easy for all to understand.*

## Example Motion

Mr. Chair, I have studied the application and all other relevant documents and presentations related to this case and I am familiar with the property in question

***Motion stating he/she is proceeding from a position of knowledge***

and I find that if constructed in accordance with the plans submitted, the project will be compatible with the character of the historic district.

***Finding of Fact***

I move to approve the application No. 2009-01 for 123 John Doe Street as submitted because the application does meet the following criteria:

1. The proposed change does meet section 4.6 Fences and Walls of our design guidelines
2. as the materials, height, scale and design of the new rear fence specifically meet guidelines 4.6.5 and 4.6.7 and are in harmony with our design guidelines and the character of the overall district and adjoining properties.

***Concise description of features that contribute to the decision and reference to the design guidelines and architectural character as a basis for decision.***

## Sample Motion Worksheet

I have studied the application and all other relevant documents and presentations related to this case and I am familiar with the property in question.

**Finding of Fact:** _____

I find that _____

_____

**Motion to Grant/Deny COA:**

I move to ***Approve*** [or] ***Approve with the following conditions*** [or] ***Deny*** the application ***Case Number*** for ***Street Address/Property Name*** as ***submitted*** [or] ***as amended in plans/ correspondence dated*** _____ because the applications ***does*** [or] ***does not*** meet the following criteria:

1. The proposed change(s) ***does*** [or] ***does not*** meet section (s) _____

   _____

   _____

   of our design guidelines.

2. The proposed changes ***are*** [or] ***are not*** compatible with the character of the district for the reasons that the _____ (i.e. height, setback, materials, architectural detailing, roof, windows, general form and scale) ***are*** [or] ***are not*** in harmony with our design guidelines and the character of the overall district and adjoining properties.

3. List any other reasons why the application should be ***approved*** [or] ***disapproved.***

# ADDITIONAL RESOURCES

## Non-profit Organizations

**American Institute of Parliamentarians**
http://www.aipparl.org
*On-line bookstore with additional resources

**National Association of Parliamentarians**
http://parliamentarians.org/

## Internet Sources

**The Official Robert's Rules of Order**
http://www.robertsrules.com/

**Parliamentarian Jim Slaughter, Parliamentary Procedure Consultant**
http://www.jimslaughter.com/

**Rules On-line**
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**Robert's Rules of Order**
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***The Standard Code of Parliamentary Procedure, 4th Edition*** by Alice Sturgis, New York, New York: McGraw-Hill, 2001.

# ABOUT THE NATIONAL ALLIANCE OF PRESERVATION COMMISSIONS

***Our Mission: "To build strong local preservation programs through education, training, and advocacy."***

***NAPC** is the only organization devoted solely to representing the nation's local preservation commissions. Since 1983, NAPC has supported local preservation commissions through its three part mission of providing education training, and advocacy. Service to our membership is the core of NAPC's operation. Working together we can, through strength of numbers in a true alliance, "build strong local preservation programs."*

**Education:**

**Resource Library:** The NAPC office responds daily to requests for information and has a national network of experts that can be consulted.

**NAPC-L:** NAPC-L is a members-only Listserv connecting commission members, staff, and others across the United States in an online forum to facilitate the exchange of ideas and expertise.

**National Commission Forum** – The Forum is a NAPC's biennial conference. Forum is the *only* national conference dedicated to local preservation commissions and provides a unique interactive format where participants not only discuss the issues, but develop the solutions as well.

**National Preservation Conference** – NAPC assists the National Trust for Historic Preservation in the development of the Local Preservation Commission educational track and organizes such conference sessions as the Preservation Short Course, Advocacy 101 and others.

**The Alliance Review** – NAPC's newsletter, published six times per year, includes numerous articles and resources on current topics of interest to local commissions.

**Training:**

NAPC has provided training for thousands of commission members, staff, and elected officials. Our trainers are selected from NAPC's extensive network of experts throughout the country.

**Commission Assistance and Mentoring Program** – "CAMP" is NAPC's signature training program and is based upon a core curriculum of four elements: legal framework of preservation; identification and protection of historic resources; the local commission's role and responsibilities; and public support and outreach. CAMPs are tailored to meet local needs. In a fun yet effective "summer camp" format, training program help "campers" improve their preservation skills.

**Speaker services** – Drawing on our national network of experts and resources, NAPC frequently provides keynote speakers and trainers for conferences and workshops. We work closely with clients find the best person to address their particular topic or issue.

**Advocacy:**

Since 1983, NAPC has provided a voice for local preservation commissions.

**At the national level** – NAPC works with our national partners to provide information to decision-makers on current legislative issues involving local preservation programs.

**Locally –** NAPC provides community leaders with letters of support that cite solutions, successes, and precedents to aid them in presenting a stronger case on local preservation issues.

**To learn more about NAPC and how you can join, visit**
***www.napcommissions.org or call 757-802-4141***

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***"Helping local preservation commissions succeed through education, advocacy, and training"***

# LOCAL PRESERVATION ORDINANCES
## MAKING THEM WORK FOR YOUR COMMUNITY

*Lucinda M. Woodward, Supervisor, California Office of Historic Preservation*

**Introduction**

Early-day historic preservation programs were often informal, limited to honorific designations, and administered by community historical organizations. However, the passage of the National Historic Preservation Act in 1966 nudged preservation programs into local land use planning programs, making it essential that local governments provide consideration and protection of historic properties in a manner that is legally defensible. Specifically, it states

> The Congress finds and declares that the historical and cultural foundations of the nation should be preserved as a **living part of our community and development** [bold added] in order to give a sense of orientation to the American people. (Section 1(b) (16 U. S. C. 470))

The message is clear: preservation should relate to the here and now. The historic preservation ordinance provides the regulatory and legal framework for protecting historic properties and integrating preservation with other decision making at the local level of government.

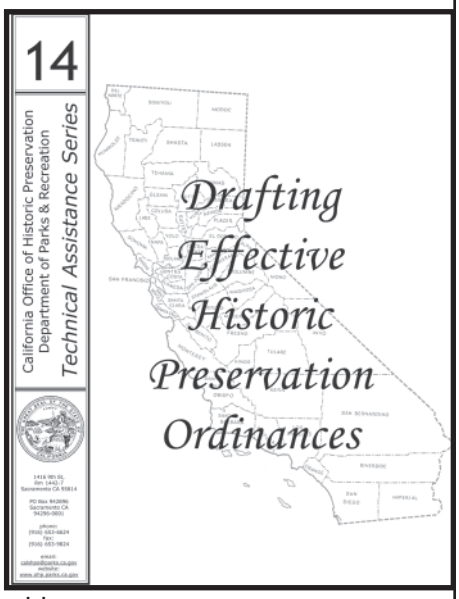
**"To presume that a one-size-fits-all ordinance exists would be a disservice to local governments."**

One of the questions frequently fielded by the California Office of Historic Preservation (OHP) is, Do you have a model historic preservation ordinance? Our response is a resounding No! California has nearly 500 incorporated cities and 58 counties, each with its own culture and personality. In addition, in California state law grants cities and counties very broad authority to regulate historic properties without requiring them to adhere to any specific provisions. To presume that a one-size-fits-all ordinance exists would be a disservice to local governments. The ordinance should be prepared to meet the needs of the community; the community should not be force-fit into a model that doesn't work for it. So finding an ordinance that fits the community is a bit like Goldilocks searching for the perfect bowl of porridge.

Keep in mind that adopting new ordinances and amending existing ones occur within a political arena; the final decision is made by the City Council or the County Board of Supervisors. Hot button issues continue to exist which at times are the subject for public debate. Whether owner consent is required to designate a property remains a topic of heated discussion in California. Other issues include demolition and whether the local government can deny such a request or merely delay it; staff level review versus review by the full commission; review of interiors; review of infill projects in historic areas; and how to approach archeological properties.

Several years ago the City of Pasadena, California used a Certified Local Government Grant to contract with Clarion Associates of Denver, Colorado to update their ordinance. Because the grant wasn't large enough for a complete revision, city staff came up with the idea that Clarion would diagnose their current ordinance and follow up with alternatives for the city to consider. The city planning staff drafted the final version of the ordinance with limited legal support using the alternatives approach provided by Clarion. Pasadena's creative solution to a limited budget was serendipitous. We were so impressed with the approach Pasadena had taken that OHP contracted with Clarion to prepare similar guidance that would be relevant to all of California's local governments. The result was one of OHP's most ambitious publications, *Drafting*

*Effective Historic Preservation Ordinances: a Manual for California's Local Governments*. The manual identifies significant issues that all communities need to address when preparing or revising an ordinance. The publication's table of contents effectively serves as an outline for the various sections that should appear in an ordinance. Each chapter is set up like a restaurant menu where the diner has choices: ham or pastrami; rice or potatoes? By working through a menu of choices presented in each chapter, the local government has the opportunity to craft an ordinance that is tailored-made to fit. One size does not fit all.




The manual above identifies significant issues that all communities need to address when preparing or revising an ordinance *Photo courtesy of www.parks.ca.gov*

Obviously, this guidance is of great use to communities who are already in the process of revising or amending their existing ordinance as well as those who are just at the beginning stages of setting up a local preservation program. However, it is a very good idea for all local governments to periodically run a diagnostic check-up to determine if their ordinance still meets the needs of the community or whether a tune-up is called for.

**Things to Consider in Creating, Amending, or Reviewing an Ordinance**

The following are the key elements that every local government should consider including in an ordinance and the questions that each community must ask of itself:

- **Purpose:** What are the local preservation goals? Are there particular issues that potentially affect historic properties, such as infill in historic areas? What resources should be protected? How should they be protected? How should the ordinance be administered and enforced?
- **Enabling Authority:** What is the local government authority available to adopt a preservation ordinance? In California, for example, local governments have broad authority to adopt preservation ordinances as part of their police power established in the state constitution and specific state statutes.
- **Establishment of the Preservation Commission**: What entity will administer and enforce the ordinance? What is its composition? What is its scope of powers? Is it advisory to another body or does it have final review authority? Are professional qualifications required?
- **Procedures and Criteria for Designation of Historical Resources:** Does the ordinance outline specific procedures for designating historic properties? Who can nominate? Is owner consent required? What are the noticing requirements? Does the commission have authority to designate properties or is the decision made by an elected body? Is there an appeals process? Is there a provision for establishing historic contexts and carrying out surveys? What are the criteria for designating historical resources? Criteria that are modeled on those of the National Register have the advantage of being time-tested and being familiar. What types of resources will be protected, and how? Will districts be considered as well as individual properties? Are archeological resources included in the ordinance or should a separate archeological ordinance be considered? What about cultural landscapes?
- **Procedures and Criteria for Actions Subject to Review:** What activities will be regulated that could affect historic resources and what is the appropriate level and amount of review? Typically, rehabilitation, demolition, and relocation are included. What about new construction and infill in historic areas? Can the local government say "no" to the demolition of a historic property, or just delay

the action? What review standards will be used to evaluate the appropriateness of a proposed change (not to be confused with design guidelines)? Does the commission have final authority or is it advisory to another body?

- **Consideration of Economic Effect of Designation or Review of Action:** To provide a "safety-valve" it is important to include a procedure that allows a property owner to demonstrate that in some cases enforcement of the ordinance would constitute an extreme economic hardship. Does the community offer economic incentives for preservation, such as property tax reduction, elimination or reduction of certain fees, or variances in zoning requirements?
- **Appeals:** How are decisions appealed and to whom? An appeals process provides an administrative resolution to claims that might otherwise end up in court. Some communities rely on a general citywide appeals board; others have an appeals process specific to the historic preservation ordinance.
- **Enforcement:** What enforcement provisions are actually feasible? It makes little sense to include provisions that the community is unable or unwilling to enforce. Remedies for nonconformance typically include fines, injunctive relief and compliance orders, receivership and entry on to land to correct violation, forced reconstruction, and loss of further entitlement. Sometimes it is tempting to want to disallow a property owner any further use of the property for some period of time after an egregious offence, such as an illegal demolition, has occurred. But, does anyone want to look at an empty lot for five years?
- **Definitions:** This is probably the most important part of the ordinance and this section should never be underestimated. We have reviewed ordinances where terms are not defined at all. For example, What exactly constitutes a demolition? Or, What is a major alteration? We also see ordinances where several terms seem to be used interchangeable such as historic property, cultural resource, and heritage landmark. Sound definitions are needed to sustain judicial challenge. It is a good idea to use terms shared by the National Register, the Secretary of the Interior, your state's historic register, and your state's own environmental laws. These have been time-tested.
- **Severability:** It is important that if for any reason a section of the ordinance is found to be invalid, that such a decision does not affect the validity of the remaining sections.

## Some Other Things to Consider

### Historic Preservation Overlay Zones

Because of the desire to strengthen the relationship between historic preservation and land use planning, some communities have adopted historic preservation overlay zones (HPOZs) as an alternative to the more traditional approach of designating individual properties or historic districts. HPOZs are established through the zoning ordinance, rather than the independent historic preservation ordinance. An HPOZ adds a layer of regulations over the underlying zoning regulations in a specific area. Another benefit that the zoning overlay has the potential to regulate use in addition to changes in design or fabric. In some jurisdictions HPOZs avoid the issue of a certain percentage of property owner approval. Other communities establish a historic district first through a historic preservation ordinance procedure, and then apply the historic overlay zoning.

### Staff review

In an era of reduced budgets and in a political and economic climate where permit streamlining is often desired, some communities are delegating more responsibilities

under the ordinance to staff rather than consideration by the commission. If this is the approach the community wants to take, it is important that it is codified in the ordinance and not simply a staff or commission decision or common practice. Thresholds need to be established and defined; what can be reviewed by staff and what must be placed on the commission agenda.

**Conservation Districts or Conservation Overlay Zones**
More communities are becoming concerned with the preservation of neighborhood or community character in addition to the preservation of historic fabric and design. Conservation districts often address broad issues such as set back, height, traditional scale and character, and serve as an alternative to the more stringent historic district regulations.

**Some Pitfalls**

In California there is a healthy property rights sentiment and also high property values, neither of which is particularly conducive to a robust historic preservation. As a result, in an effort to not let anything slip through the cracks, we have seen proposed ordinances are so detailed that they are ineffective, so ambitious that they cannot be supported by local staff, and so rigid that any change is difficult. Keep in mind that the goal is to produce an ordinance that is workable and enforceable in your community and that has community and political support.

*Since 1984, she has been with the California Office of Historic Preservation where she supervises the Local Government Unit. She works closely with both local governments and community organizations to integrate historic preservation with land use planning and to coordinate historic preservation planning efforts with environmental review processes.*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***Lisa Craig** is the Chief of Historic Preservation for the City of Annapolis, MD. The following article is based on her presentation of the same title at Forum 2012 in Norfolk, VA.*

SECRETS BY LISA

TOP SECRET

TOP SECRET?

TOP SECRET!

# Secrets of a Successful Application

By Lisa Craig

In actuality, the best thing about a successful application is that there are NO Secrets. This article reveals how a good application creates a transparent procedural process, supports the purpose of your historic district ordinance and leads to the ultimate goal for the historic property owner: project approval.

**The key questions to address in reviewing both your historic district commission's application and the application process are:**

1. How does a good **Certificate of Approval or Appropriateness** application process benefit the applicant, staff, commission, and public?
2. How can an applicant ensure their project is presented in a **concise, clear and consistent** manner?
3. How can the applicant/staff use the application to demonstrate the **project is compatible** with the historic district ordinance and design guidelines?
4. How does the applicant/staff respond to **public comments** that may or may not be relevant to the application?
5. How does the commission use the application to ensure a **clear and defensible decision**?
6. What is the process for **making changes** to your application and/or application process?

In addressing these key questions, the application process can be analyzed using what I refer to as the "Successful C's:"

- **Certificate of Approval/Appropriateness** – In many historic districts it's called an application for a *Certificate of APPROVAL*.

- **Concise, clear & consistent** – Work with the applicant to ensure that information presented to the commission meets these basic criteria:
  *Concise* means that when the application calls for product specification sheets, the essentials are provided, not 20 pages of irrelevant technical information.
  *Clear* means that if the intent is to replace siding, advise the owner to not use terms like "refurbish" or "renovate."
  *Consistent* means that if the scope of work describes window repair, but the submitted plans show window replacement, the applicant must clarify the proposed treatment.

- **Compatible** relates to the applicable guidelines or standards for review. It means that when replacement-in-kind, a new addition, or restoration is proposed, the product specs and drawings reflect that fact per the applicable guidelines (e.g., "The new units shall duplicate the historic sashes, glass, lintels, sills, frames and surrounds in design, dimensions, and materials.")
- **Comments** refer to the fact that any comments received from staff or the general public are shared with the applicant prior to the hearing to allow adequate time for applicant response.
- **Clear & defensible decision-making** is based on information provided in the application, which serves as the basis for the commission's decision. Staff should instruct the applicant to use terminology and illustrate designs that respond to the commission's design guidelines, the Secretary or the Interior's Standards and the ordinance.
- **Changes to the application process** are highly encouraged to ensure consistency with the ordinance.

So, how easy is it for your customer to find the forms, procedures and review criteria for submission of their project? Frankly, doing some research yourself may give you a greater appreciation for the need to improve your own community's commission web page. If it's a challenge for you to navigate yours or any municipality's website to locate an application, how do you think the applicant feels when searching for it? In Annapolis, there are at least three ways of locating the form on the City's website. But none of those are less than six clicks from the City's home page. So, who serves as a good model?

Searching a dozen municipal preservation programs in the country, I didn't come up with an easily navigable example, but then I switched to some of the non-profit preservation organizations. My first try was with the Preservation Society of Charleston's website. Within two clicks I had a direct link to the City of Charleston's web page for the Department of Design, Development and Preservation, and with two more clicks, I had a Design Review Board application. This exemplifies the importance of the relationship between the city's preservation regulatory body and the non-profit preservation advocacy organization. If your community is "challenged" by the limitations, policies or priorities established for your municipal government's website, you may be able to ensure that the historic property owner has quick access to your historic preservation commission's home page by partnering with your local preservation organization.

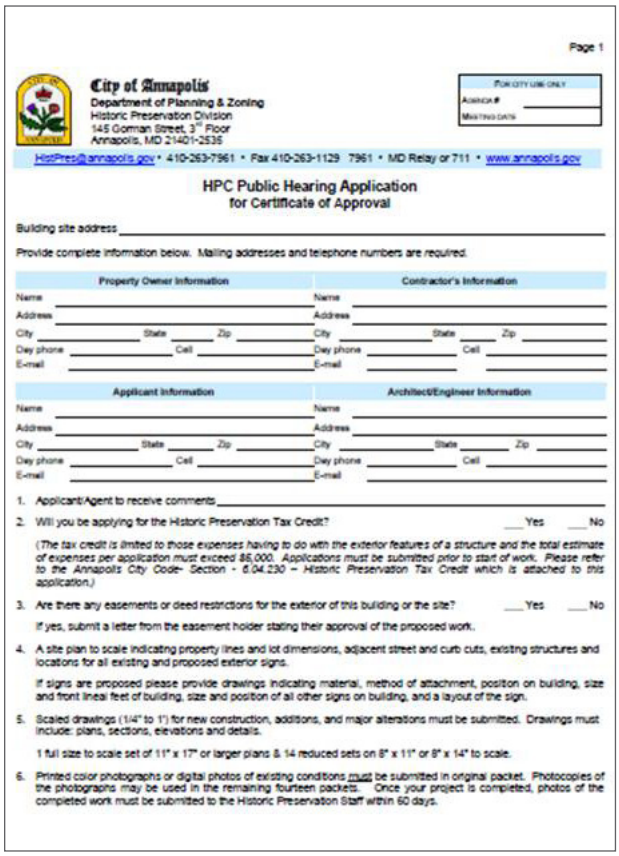
## CONTACTING THE COMMISSION

Some communities have established a 311 webpage to allow applicants to post a question, receive an answer online, or request a follow-up phone call. A good example of that exists in Montgomery County, Maryland. But no matter the means of contact – a phone call, an email or, yes, even a snail-mail letter – communicating directly with HPC staff is often the next step. *[Note: What cannot be encouraged is direct communication between a property owner and a member of the Commission. This can be termed ex-parte contact and while Commission member names*

*should be included on the government website, their contact information should not.]*

I find that email can work just fine for simple requests (I need to paint my house, do I need the HPC's approval?). Many times, though, when someone says they want to do some basic repair work on their home, it can mean anything from replacing a damaged corner board to replacing all the windows on the front façade. A conversation with the property owner is often necessary to clarify both the process and the forms that are needed, including required permits and the feasibility of staff approval based on the project specifications.

## Completing the CERTIFICATE OF APPROVAL



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**City of Annapolis**
Department of Planning & Zoning
Historic Preservation Division
145 Gorman Street, 3rd Floor
Annapolis, MD 21401-2535

FOR CITY USE ONLY
AGENDA #
MEETING DATE

HistPres@annapolis.gov • 410-263-7961 • Fax 410-263-1129 7961 • MD Relay or 711 • www.annapolis.gov

**HPC Public Hearing Application for Certificate of Approval**

Building site address _____

Provide complete information below. Mailing addresses and telephone numbers are required.

| Property Owner Information | Contractor's Information |
|---|---|
| Name | Name |
| Address | Address |
| City State Zip | City State Zip |
| Day phone Cell | Day phone Cell |
| E-mail | E-mail |

| Applicant Information | Architect/Engineer Information |
|---|---|
| Name | Name |
| Address | Address |
| City State Zip | City State Zip |
| Day phone Cell | Day phone Cell |
| E-mail | E-mail |

1. Applicant/Agent to receive comments _____
2. Will you be applying for the Historic Preservation Tax Credit? ___Yes ___No

   (*The tax credit is limited to those expenses having to do with the exterior features of a structure and the total estimate of expenses per application must exceed $6,000. Applications must be submitted prior to start of work. Please refer to the Annapolis City Code- Section - 6.04.230 – Historic Preservation Tax Credit which is attached to this application.*)
3. Are there any easements or deed restrictions for the exterior of this building or the site? ___Yes ___No

   If yes, submit a letter from the easement holder stating their approval of the proposed work.
4. A site plan to scale indicating property lines and lot dimensions, adjacent street and curb cuts, existing structures and locations for all existing and proposed exterior signs.

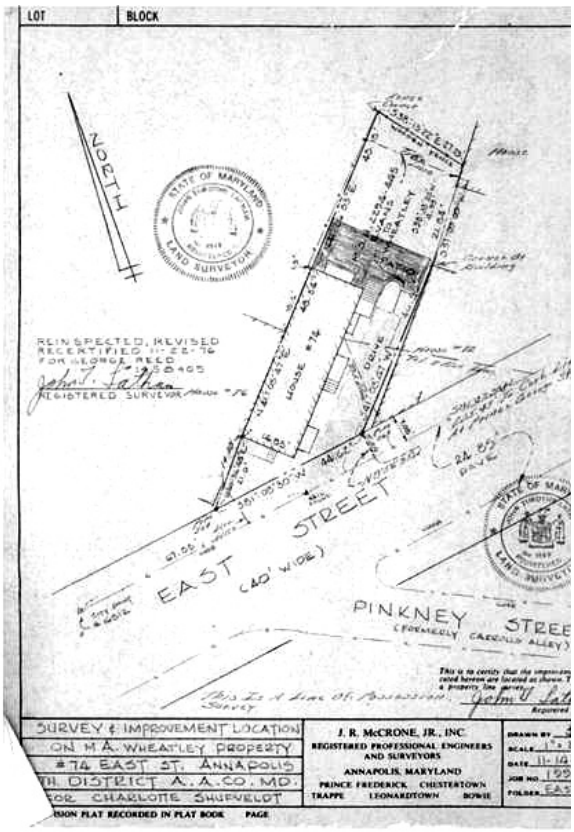
   If signs are proposed please provide drawings indicating material, method of attachment, position on building, size and front lineal feet of building, size and position of all other signs on building, and a layout of the sign.
5. Scaled drawings (1/4" to 1') for new construction, additions, and major alterations must be submitted. Drawings must include: plans, sections, elevations and details.

   1 full size to scale set of 11" x 17" or larger plans & 14 reduced sets on 8" x 11" or 8" x 14" to scale.
6. Printed color photographs or digital photos of existing conditions must be submitted in original packet. Photocopies of the photographs may be used in the remaining fourteen packets. Once your project is completed, photos of the completed work must be submitted to the Historic Preservation Staff within 60 days.

*The Annapolis COA application form.*
*(all photos credit: Lisa Craig)*

What information do you require from the applicant for your project review process? In Annapolis, the COA application requires the following basic information:

- Building site address
- Name and contact information (including email) for property owner and the applicant
- Intent to apply for the local historic property tax credit
- Disclosure of any preservation easement
- Description of the proposed scope of work
- Estimated cost of the project
- Signature of property owner or agent of property owner
- Applicant certification acknowledging accuracy of information presented and understanding that other permit requirements may apply
- Supplemental information including:
  - Site plan / boundary survey
  - Scaled drawings
  - Color digital photos
  - Cut sheets/product specifications
  - Other required permits




*Supplemental information, such as a site plan or boundary survey, is critical to a complete application.*

Having reviewed and/or completed the Certificate of Approval application, the applicant will contact the Historic Preservation office to review the procedure for submission. It is at that point where the staff has the first opportunity to work with the applicant to ensure a complete application submission. It's also the point at which the complexity of the project may require a meeting with Historic Preservation staff and/or other agency staff involved in the project review. This point of collaboration is often referred to as a "pre-application" process, which may also include building code officials, Planning & Zoning staff, the Fire Marshall, Public Works and Transportation Department Staff.

## WORKING TOWARD APPROVAL

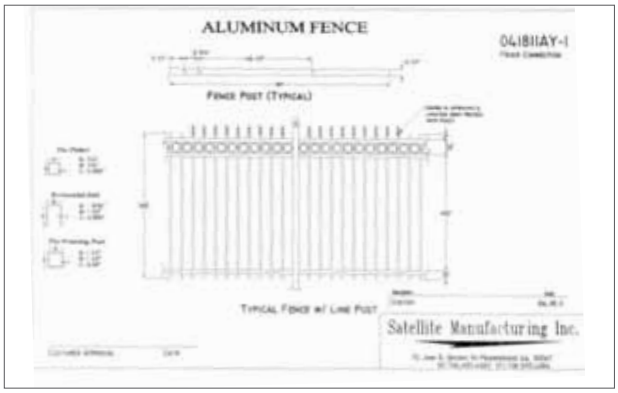
So, back to what the commission and the staff should consider to be the end goal: getting the applicant's project to approval. If staff has done an effective job of customer service – guiding the applicant to the appropriate forms, following up with a discussion on the particulars of the project, providing clarity on completing the application, connecting the applicant to other reviewing agencies, and issuing a supportive staff report based on compliance with the design review criteria – then the result should be a complete application.

*Staff availability for customer service will ensure a smother application process!*

While the details of the application are important to the COA process, for the application process to be truly successful, the building permit must be issued. In some cities, that may mean the staff needs to go a step beyond and help property owners or applicants navigate beyond pre-development into the development process – connecting them to (but not endorsing) professionals experienced in working in the historic district with an emphasis on checking references, directing them to other agencies or non-profit organizations that can help with financing or business development programs, and finally engaging the community in the final outcome – for example, a new business opening in the Main Street Historic District.

## How to Ensure Quality in the APPLICANT'S SUBMISSION

For the applicant's project to be presented in a clear, concise and consistent manner, drawings must be understandable. If the application clearly states scaled drawings are required for a public hearing, make sure the applicant understands what a scaled drawing is. For example, most fence companies can provide such a drawing, but if the applicant is working with a contractor who can't provide a drawing, it may put the applicant at a disadvantage either because staff feels the application is not complete or because the HPC is not clear as to the true dimensions and method of installation. It's critical that staff ensure there is consistency between one application and another as it relates to drawings, product specifications, site plans, etc., prior to submission to the HPC .




*Consistency in drawings and product specifications is key to a complete application.*

## PROJECT COMPATIBILITY

How does the application demonstrate the **project is compatible** with the historic district ordinance and design guidelines? Staff is in the best position to understand the process, past precedent for approvals, and the commission's approach to interpretation of the ordinance and guidelines. Therefore, staff should encourage the applicant to communicate with them through whatever means is convenient – email, phone, in-person meeting – well before the application deadline. It may also mean communicating not just with the applicant, who may be the architect, contractor or an owner's tenant, but the property owner. When communication with the property owner's agent becomes more frustrating than fruitful, contact the owner directly.

## SIX STEPS
## to a Better Application Process:

1) If the applicant is unclear as to the necessary information for the submission, then provide examples of other project applications similar that have met the standards.

2) Provide information about professionals experienced in working in the historic district.

3) Discuss the specific guidelines the commission will consider.

4) Provide examples of acceptable product specs/drawings or photographs.

5) Coordinate project approval with local zoning requirements.

6) Encourage early submittal of the application for your review and identification of items necessary to complete the application – e.g., product specifications that show material, method of installation, and dimensions.

## Encouraging and Responding to
## PUBLIC COMMENT

In Annapolis, the general public may submit comments on an application to the Commission both prior to and during the hearing. Additionally, all relevant City review staff provide comments which are available to the public 11 days prior to the hearing. The applicant is provided with those comments and may submit additional information or revisions up to five days prior to the hearing in response to the comments. Staff also discusses with the applicant which comments are relevant to the application and the design review criteria. In this way, the applicant and the Commission are equally aware of what the criteria are for consideration of the application, notwithstanding any comments received that are not substantive to the Design Guidelines being addressed or are not addressed in the Historic District Zoning ordinance.

## CHANGE IS INEVITABLE

Making changes to your application and clarifying procedures for review are sometimes necessary. In some cases the changes may be significant (creating a new form) while other times it may mean adding one question (e.g., easements on the property). Consider changing your application and/or review process when there are inconsistencies with the historic district zoning ordinance, changes to city permitting procedures and applications, or a need for legal wording or new preservation tools such as easements and historic tax credits.

Remember, a successful application is no secret. A good application process benefits the applicant, staff, commission, and public if it is presented in a concise, clear and consistent manner; demonstrates how the project is compatible with the Historic District Ordinance and Design Guidelines; ensures timely staff and public comments relevant to the application; provides the commission with the basis for clear and defensible decision-making; and can always be made better with changes initiated by staff or the commission that support consistency with the ordinance, procedures and other permit processes.■

# Assessing Economic Hardship Claims
## under historic preservation ordinances

By Julia Miller

Historic preservation ordinances in effect around the country often include a process for administrative relief from preservation restriction in situations of "economic hardship." Under typical economic hardship procedures, an applicant may apply for a "certificate of economic hardship" after a preservation commission has denied his or her request to alter or demolish a historic property protected under a preservation ordinance. In support of an application for relief on economic hardship grounds, the applicant must submit evidence sufficient to enable the decision making body to render a decision. The type of evidence required is generally spelled out in preservation ordinances or interpreting regulations. The burden of proof is on the applicant.

The exact meaning of the term "economic hardship" depends on how the standard is defined in the ordinance. Under many preservation ordinances economic hardship is defined as consistent with the legal standard for an unconstitutional regulatory taking, which requires a property owner to establish that he or she has been denied all reasonable beneficial use or return on the property as a result of the commission's denial of a permit for alteration or demolition.

Requests for relief on economic hardship grounds are usually decided by historic preservation commissions, although some preservation ordinances allow the commission's decision to be appealed to the city council. In some jurisdictions, the commission may be assisted by a hearing officer. A few localities have established a special economic review panel, comprised of members representing both the development and preservation community.

**Economic Impact**

In acting upon an application for a certificate of economic hardship, a commission is required to determine whether the economic impact of a historic preservation law, as applied to the property owner, has risen to the level of economic hardship. Thus, the first and most critical step in understanding economic hardship is to understand how to evaluate economic impact.

Commissions should look at a variety of factors in evaluating the economic impact of a proposed action on a particular property. Consideration of expenditures alone will not provide a complete or accurate picture of economic impact, whether income-producing property or owner-occupied residential property. Revenue, vacancy rates, operating expenses, financing, tax incentives, and other issues are all relevant considerations. With respect to income-producing property, economic impact is generally measured by looking at the effect of a particular course of action on a property's overall value or return. This approach allows a commission to focus on the 'bottom line' of the transaction rather than on individual expenditures.

In addition to economic impact, the Supreme Court has said that "reasonable" or "beneficial use" of the property is also an important factor. Thus, in evaluating an economic hardship claim based on the constitutional standard for a regulatory taking, commissions will need to consider an owner's ability to continue to carry out the traditional use of the property, or whether another viable use for the property remains. In Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978), the landmark decision upholding the use of preservation ordinances to regulate historic property, the Supreme Court found that a taking did not arise because the owner could continue to use its property as a railroad station.

The Supreme Court has also said that the applicant's "reasonable investment-backed expectations" should be taken into consideration. Although the meaning of this phrase has not been delineated with precision, it is clear that "reasonable" expectations do not include those that are contrary to law. Thus, an applicant's expectation of demolishing a historic property subject to a preservation ordinance at the time of purchase (or subject to the likelihood of designation and regulation) may not be considered "reasonable." Also pertinent is whether the owner's objectives were realistic given the condition of the property at the time of purchase, or whether the owner simply overpaid for the property. Under takings law, government is not required to compensate property owners for bad business decisions. Nor is the government required to guarantee a return on a speculative investment.

Commissions may also be able to take into account whether the alleged hardship is "self created." Clearly relevant is whether the value of the property declined or rehabilitation expenses increased because the owner allowed the building to deteriorate.

Application of the takings standard in the context of investment or income-producing property is usually fairly straightforward. The issue can be more complex, however, in situations involving hardship claims raised by homeowners. In the context of homeownership, it is extremely difficult for an applicant to meet the standard for a regulatory taking, that is, to establish that he or she has been denied all reasonable use of the property. When a commission insists that houses be painted rather than covered with vinyl siding, and windows be repaired rather than replaced, the applicant can still live in the house. The fact that these repairs may be more costly is not enough. Even if extensive rehabilitation is required, the applicant must show that the house cannot be sold "as is," or that the fair market value of the property in its current condition plus rehabilitation expenditures will exceed the fair market value of the house upon rehabilitation. See City of Pittsburgh v. Weinberg, 676 A.2d 207 (Pa.1996). It is also important to note that "investment-backed expectations" are different in the context of home ownership, owners often invest in home improvements or renovations without the expectation of recouping the full cost of the improvement in the form of increased property value.

In addressing hardship claims involving historic homes, commissions must be careful to be objective and consistent in their approach. Otherwise, a commission may undermine the integrity of its preservation program and raise due process concerns as well. Ideally, grant money, tax relief, and other programs should be made available to historic homeowners who need financial assistance.

Special standards for economic hardship may apply to nonprofit organizations. Because these entities serve charitable rather than commercial purposes, it is appropriate to focus on the beneficial use of their property, rather than rate of return, taking into account the particular circumstances of the owner (i.e., the obligation to serve a charitable purpose). In such situations, hardship analysis generally entails looking at a distinct set of questions, such as: the organization's charitable purpose, whether the regulation interferes with the organization's ability to carry out its charitable purpose, the condition of the building and the need and cost for repairs, and whether the organization can afford to pay for the repairs, if required. (Note, however, that while consideration of financial impact may be appropriate, a nonprofit organization is not entitled to relief simply on the basis that it could raise or retain more money without the restriction.)

**The Proceeding**

Under a typical hardship process, the applicant will be required to submit specific evidence in support of his or her claim. Once a completed application has been filed, a hearing will be scheduled, at which time the applicant generally presents expert testimony in support of the economic hardship claim on issues such as the structural integrity of the historic building, estimated costs of rehabilitation, and the projected market value of the property after rehabilitation. Once the applicant has presented its case, parties in opposition or others may then present their own evidence. The commission may also bring in its own expert witnesses to testify. As noted above, the burden of proof rests on the property owner.

In hearing economic hardship matters, commissions must be prepared to make a legally defensible decision based on all the evidence presented. In the event of conflicting expert testimony, which is often the case in economic hardship proceedings, the commission will need to weigh the evidence, making specific findings on the relative credibility or competency of expert witnesses.

In evaluating the evidence, the commission should ask itself five distinct questions:

*1. Is the evidence sufficient?* Does the commission have all the information it needs to understand the entire picture, or is something missing. The application is not complete unless all the required information has been submitted. If additional information is needed, ask for it.
*2. Is the evidence relevant?* Weed out any information that is not relevant to the issue of economic hardship in the case before you. Commissions may be given more information than they need or information that is not germane to the issues, such as how much money the project could make if the historic property were demolished. The property owner is not entitled to the highest and best use of the property.
*3. Is the evidence competent?* Make an assessment as to whether the evidence establishes what it purports to show.
*4. Is the evidence credible?* Consider whether the evidence is believable. For example, ask whether the figures make sense. A commission will need to take into consideration the source of the evidence and its reliability. (If the evidence is based on expert testimony, the commission should determine whether the expert is biased or qualified on the issue being addressed. For example, it may matter whether

a contractor testifying on rehabilitation expenditures actually has experience in doing historic rehabilitations.)
*5. Is the evidence consistent?* Look for inconsistencies in the testimony or the evidence submitted. Request that inconsistencies be explained. If there is contradictory evidence, the commission needs to determine which evidence is credible and why.

In many instances the applicant's own evidence will fail to establish economic hardship. However, in some situations, the question may be less clear. The participation of preservation organizations in economic hardship proceedings can be helpful in developing the record. Commissions should also be prepared to hire or obtain experts of their own. For example, if a property owner submits evidence from a structural engineer that the property is structurally unsound, the commission may need to make an independent determination, through the use of a governmental engineer or other qualified expert, as to the accuracy of that information. It may be impossible to evaluate the credibility or competency of information submitted without expert advice.

The record as a whole becomes exceedingly important if the case goes to court. Under most standards of judicial review, a decision will be upheld if it is supported by substantial evidence. Thus, in conducting administrative proceedings, it is important that evidence provides a true and accurate story of the facts and circumstances and that the commission's decision is based directly on that evidence.

**EVIDENTIARY CHECKLIST**

The following checklist may serve as a useful tool for local commissions and other regulatory agencies considering economic hardship claims:

1. Current level of economic return:
- Amount paid for the property, date of purchase, party from whom purchased, and relationship between the owner of record, the applicant, and person from whom property was purchased,
- Annual gross and net income from the property for the previous three years; itemized operating and maintenance expenses for the previous three years, and depreciation deduction and annual cash flow before and after debt service, if any, during the same period,
- Remaining balance on the mortgage or other financing secured by the property and annual debt-service, if any, during the prior three years,
- Real estate taxes for the previous four years and assessed value of the property according to the two most recent assessed valuations,
- All appraisals obtained within the last two years by the owner or applicant in connection with the purchase, financing, or ownership of the property,
- Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other,
- Any state or federal income tax returns relating to the property for the last two years.

2. Any listing of property for sale or rent, price asked, and offers received, if any within the previous two years, including testimony and relevant documents regarding:
- Any real estate broker or firm engaged to sell or lease the property,
- Reasonableness of price or rent sought by the applicant,
- Any advertisements placed for the sale or rent of the property.

3. Feasibility of alternative uses for the property that could earn a reasonable economic return:
- Report from a licensed engineer or architect with experi ence in rehabilitation as to the structural soundness of any buildings on the property and their suitability for rehabilitation.
- Cost estimates for the proposed construction, alteration, demolition, or removal, and an estimate of any additional cost that would be incurred to comply with the requirements for a certificate of appropriateness,
- Estimated market value of the property: (a) in its current condition, (b) after completion of the proposed alteration or demolition, and (c) after renovation of the existing property for continued use,

4. Any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property.

5. Knowledge of landmark designation or potential designation at time of acquisition.

6. Economic incentives and/or funding available to the applicant through federal, state, city, or private programs. ■

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# DEMOLITION BY NEGLECT

"Demolition by Neglect" is the term used to describe a situation in which a property owner intentionally allows a historic property to suffer severe deterioration, potentially beyond the point of repair. Property owners may use this kind of long-term neglect to circumvent historic preservation regulations.

### Contexts in Which Demolition by Neglect Arises

Sometimes demolition by neglect occurs when an owner essentially abandons a historic property. More often, neglect is an affirmative strategy used by an owner who wants to develop the property. The context in which the issue is raised depends on what action the city decides to take, if any.

At one end of the spectrum, some local governments have taken affirmative enforcement actions against the owners of such properties, ultimately going to court if necessary. At the other end of the spectrum, occasionally the owner of a neglected or deteriorating property will file a lawsuit against the local government, challenging the historic designation or some other feature of the preservation ordinance. The problem with both of these extremes is that courts are very unpredictable.

More commonly, demolition by neglect controversies end up somewhere in the middle of this spectrum, with the local government issuing citations to repair the building, and the owner ignoring the citations. The skirmishes involved in this process often result in a statement that leaves all sides frustrated.

### Relationship Between Demolition by Neglect and Economic Hardship

Property owners using demolition by neglect as a tactic to work around preservation laws will often argue that the prohibitive cost of repairs and deferred maintenance creates an economic hardship.

Ideally historic preservation ordinances need a safeguard provision to protect against this kind of argument, creating a loophole. Generally, the owner's own neglect should not be allowed to create an economic hardship. However, it is often difficult to sort out the extent to which an economic hardship is attributable to an owner's actions, or to things beyond the owner's control (i.e., circumstances that would have existed in any event). In looking at economic hardship and demolition by neglect, it is important for commissions to look beyond simply the relationship between the cost of repairs and the purchase price or the "as is" value.

### Tools for Controlling Demolition by Neglect

The most important tool for controlling demolition by neglect is a carefully drafted provision in the local preservation ordinance requiring affirmative maintenance and ensuring that the local commission is equipped with adequate remedies and enforcement authority. Even if a community already has some type of affirmative maintenance provision, it may want to review your ordinance and amend it in order to increase its effectiveness.

The first step is to look at the state's enabling legislation to determine the specific legal authority for affirmative maintenance provisions. Affirmative maintenance provisions have repeatedly been upheld and enforced by the courts. The leading case is *Maher v. City of New Orleans*, 516 F.2d 1051 (5th Cir. 1975), *cert. denied*, 426 U.S. 905 (1976), in which a federal appeals court upheld an affirmative maintenance provision for the French Quarter in New Orleans, ruling that the provision was constitutional as long as it did not have an unduly burdensome effect on the individual property owner. In *Harris v. Parker*, Chancery No. 3070 (Cir. Ct. Isle of Wight County, Va. Apr. 15, 1985), a case from Smithfield, Virginia, the court actually ordered repairs to be carried out in compliance with the affirmative maintenance requirements in the ordinance. And in *Buttnick v. City of Seattle*, 719 P.2d 93, 95 (Wash. 1986), the court ruled that requiring an owner to replace a defective parapet on a historic building did not result in unreasonable economic hardship. Finally, the D.C. Court of Appeals in *District of Columbia Preservation League v. Department of Consumer and Regulatory Affairs*, 646 A.2d 984 (D.C. App. 1994), reversed approval of the demolition of a historic landmark in dilapidated condition caused by the owner's own actions, because the demolition permit was unauthorized under the District's preservation act.

When drafting an affirmative maintenance provision, it is important to mandate coordination between the preservation commission and the building code enforcement office, to ensure that the commission is consulted before code citations and enforcement orders are issued. Be specific in defining what repairs will be required, and what remedies will be available under what circumstances. One important remedy to include in the ordinance is the authority for the local government to make the repairs directly and then charge back the owner by placing a lien on the property. Also make sure that the economic hardship provision is drafted so that it prevents owners from arguing that their own neglect has caused an economic hardship.

### Incentive Programs and Other Forms of Assistance

Another important tool for controlling demolition by neglect and increasing the effectiveness of affirmative maintenance programs is the use of incentives. Tax incentives, low cost loans, and grants are always encouraged as a way to help owners fund necessary maintenance. Maintenance expenses can also be defrayed through the use of volunteer maintenance crews.

### Enforcement

One reason why demolition by neglect is such as frustrating issue for preservationists and historic preservation commissions is that it often involves a branch of local government over which we have little influence or control—the code inspection and enforcement office. Most preservation groups have good relationships with their preservation commissions, but probably no relationship at all with the building inspection office.

There is often a conflict between these two governmental functions. Even under the best of circumstances, these two offices rarely coordinate their actions. At worst, an outright turf battle may erupt, in which the code enforcement office orders a building demolished as a safety hazard without consulting the preservation commission.

It is therefore very important for local preservation groups to get to know code enforcement officials. A good working relationship with these officials can be critical to helping to ensure that deferred maintenance problems are identified and corrected before they reach the point of demolition by neglect.

## Selected Examples of Demolition by Neglect Provisions

Cited below are:

- examples of provisions in state historic preservation enabling laws authorizing localities to prevent the destruction of historic buildings by "demolition by neglect;"

- sample local ordinance provisions dealing with demolition by neglect through maintenance requirements; and
- examples of the use of eminent domain to prevent demolition by neglect.

## 1. State Enabling Legislation

A number of states permit local governments to prevent the "demolition by neglect" of historic properties. Below are some examples of provisions in state enabling laws for historic preservation intended to address this problem:

> **North Carolina**: "The governing board of any municipality may enact an ordinance to prevent the demolition by neglect of any designated landmark or any building or structure within an established historic district. Such ordinance shall provide appropriate safeguards to protect property owners from undue economic hardship."
>
> **Rhode Island**: "Avoiding demolition through owner neglect. a city or town may by ordinance empower city councils or town councils in consultation with the historic district com-mission to identify structures of historical or architectural value whose deteriorated physical condition endangers the preservation of such structure or its appurtenances. The council shall publish standards for maintenance, of properties within historic districts. Upon the petition of the historic district commission that a historic structure is so deteriorated that its preservation is endangered, the council may establish a reasonable time not less than 30 days within which the owner must begin repairs. If the owner has not begun repairs within the allowed time, the council shall hold a hearing at which the owner may appear and state his or her reasons for not commencing repairs. If the owner does not appear at the hearing or does not comply with the council's orders, the council may cause the required repairs to be made at the expense of the city or town and cause a lien to be placed against the property for repayment."
>
> **Alabama**: "Demolition by neglect and the failure to maintain an historic property or a structure in an historic district shall constitute a change for which a certificate of appropriateness is necessary."
>
> **Wisconsin**: "[A] political subdivision may acquire by gift, purchase, or condemnation any property right in historic property, whether the property is real or personal."

## 2. Local Ordinance Provisions Concerning Demolition by Neglect

Many local ordinances include provisions for dealing with the problem of demolition by neglect. Some noteworthy examples are described below:

**San Francisco**: Language in the San Francisco ordinance is quite explicit and detailed with respect to the problem of demolition by neglect:

> "*Maintenance*: The owner, lessee, or other person in actual charge of a Significant or Contributory building shall comply with all applicable codes, laws and regulations governing the maintenance of property. It is the *intent of this section to preserve from deliberate or inadvertent neglect* the exterior features of buildings designated Significant or Contributory, and the interior portions thereof when such maintenance is necessary to prevent deterioration and decay of the exterior. All such buildings shall be preserved against such decay and deterioration and shall be free from structural defects through prompt corrections of any of the following defects:

1. Facades which may fall and injure members of the public or property.
2. Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports.
3. Members of ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split or buckle due to defective material or deterioration.
4. Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations or floors, including broken windows or doors.
5. Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering.
6. Any fault or defect in the building which renders it not properly watertight or structurally unsafe."

**Culpeper, Virginia**: A somewhat different approach has been taken by the town of Culpeper, which states in its ordinance:

"*Sec. 28-27.2. Demolition By Neglect.* No officially designated historic landmark or contributing structure within the historic district shall be allowed to deteriorate due to neglect by the owner which would result in violation of the intent of this Section. "Demolition by neglect" shall include any one or more of the following courses of inaction or action:

1. Deterioration of the exterior of the building to the extent that it creates or permits a hazardous or unsafe condition.
2. Deterioration of exterior walls or other vertical supports, horizontal members, roofs, chimneys, exterior wall elements such as siding, wooden walls, brick, plaster, or mortar to the extent that it adversely affects the character of the historic district or could reasonably lead to irreversible damage to the structure.

In the event the Culpeper County Building Official, or the agent officially recognized by the Town of Culpeper as serving that capacity, determines a structure in a historic district is being 'demolished by neglect', he shall so notify the Chairperson of the Historic and Cultural Conservation Board, stating the reasons therefor, and shall give the owner 30 days from the date of the notice to commence work rectifying the specifics provided in the notice; or to initiate proceedings as provided for in Section 28-27. If appropriate action is taken in this time, the Town may initiate appropriate legal action as provided therein."

**Charlottesville, Virginia**: The Charlottesville ordinance not only requires the maintenance of a landmark property but also requires the maintenance of the land on which the landmark sits. Note the following:

"*Section 31-141. Maintenance and repair required.*

Neither the owner of nor the person in charge of a structure or site in any of the categories set forth in section 31-127.2 of this Code shall permit such structure, landmark or property to fall into a state of disrepair which may result in the deterioration of any exterior appurtenance or architectural feature so as to produce or tend to produce, in the judgment of the appropriate board, a detrimental effect upon the character of the district as a whole or the life and character of the landmark, structure or property in question, including but not limited to:

1. The deterioration of exterior walls or other vertical supports;
2. The deterioration of roofs or other horizontal members;
3. The deterioration of exterior chimneys;
4. The deterioration of crumbling of exterior plasters or mortar;
5. The ineffective waterproofing of exterior walls, roofs and foundations, including broken windows or doors;
6. The peeling of paint, rotting, holes and other forms of decay;
7. *The lack of maintenance of surrounding environment, e.g., fences, gates, sidewalks, street signs, accessory structures and landscaping* (emphasis added);
8. The deterioration of any feature so as to create or permit the creation of *any* hazardous or unsafe condition or conditions.

The enforcing officer shall give notice by certified or registered mail of specific instances of failure to maintain or repair. The owner or person in charge of such structure shall have sixty days to remedy such violation; provided, that the appropriate board, upon request, may allow an extension of up to sixty days to remedy such violations. Thereafter, each day during which there exists any violation of this section shall constitute a separate violation and shall be punishable as provided in articles XXVIII of this chapter."

**Montgomery County, Maryland**: Montgomery County requires a public hearing when charges of demolition by neglect are raised. If a property owner has been requested to maintain his property but refuses to do so, the ordinance allows the director of the county's Department of Environmental Protection may arrange for necessary repairs and charge the expenses to the owner.

"Sec. 24A-9. *Demolition by Neglect.*

... In the event the corrective action specified in the final notice is not instituted within the time allotted, the Director may institute, perform and complete the necessary remedial work to prevent deterioration by neglect and *the expenses incurred by the Director for such work. Labor and materials shall be a lien against the property, and draw interest at the highest legal rate, the amount to be amortized over a period of 10 years subject to a public sale if there is a default in payment.*" (Emphasis added.)

**Portland, Maine**: Portland permits its Department of Planning and Urban Development to older property owners to make necessary repairs to deteriorating buildings within specified time periods. The city also spells out in its ordinance procedures for appealing such orders.

"*Section 14-690. Preservation of Protected Structures.*

(a) Minimum Maintenance Requirement.

All landmarks, and all contributing structures located in an historic district, shall be preserved against decay and deterioration by being kept free from the following structural defects by the owner and any other person or persons who may have legal custody and control thereof.

(1) Deteriorated or inadequate foundation which jeopardizes its structural integrity;

(2) Defective or deteriorated floor supports or any structural members of insufficient size to carry imposed loads with safety which jeopardize its structural integrity;

(3) Members of walls, partitions or other vertical supports that split, lean, list or buckle due to defective material or deterioration which jeopardize its structural integrity;

(4) Structural members of ceilings and roofs, or other horizontal structural members which sag, split or buckle due to defective materials or deterioration or are of insufficient size to carry imposed loads with safety which Jeopardize its structural integrity;

(5) Fireplaces or chimneys which list, bulge or settle due to defective material or deterioration or are of insufficient size or strength to carry imposed loads with safety which jeopardize its structural integrity;

(6) Lack of weather protection which jeopardizes the structural integrity of the walls, roofs, or foundation;

(b) The owner or such other person shall repair such building, object, or structure within a specified period of receipt of a written order to correct defects or repairs to any structure as provided by subsection (a) above, so that such structure shall be preserved and protected in accordance with the purposes of this article.

(c) Any such order shall be in writing, shall state the actions to be taken with reasonable particularity, and shall specify dates for compliance which may be extended by the Department (of Urban Planning and Development) for reasonable periods to allow the owner to secure financing, labor or materials. Any such order may be appealed to the Board of Appeals within 30 days. The Board shall reverse such an order only if it finds that the Department had no substantial justification for requiring action to be taken, that the measures required for time periods specified were not reasonable under all of the circumstances. The taking of an appeal to the Board or to Court shall not operate to stay any order requiring structures to be secured or requiring temporary support unless the Board or Court expressly stay such order. The City shall seek preliminary and permanent relief in any court of competent jurisdiction to enforce any order."

The Portland ordinance also deals firmly with people who violate these and other provisions. In addition to having to pay fines for "each day on which there is failure to perform a required act," the ordinance applies a sort of "scorched earth" policy: If a person violates the ordinance either willfully or through gross negligence, he may not obtain a building permit for any alteration or construction on the historic landmark site for five years. Moreover, for a period of 25 years, any alteration or construction on the property is subject to special design standards imposed in the ordinance, whether or not the property involved is historic.

### 3. Eminent Domain

Several cities authorize the use of eminent domain as a means of protecting historic buildings from deterioration or neglect. Specific examples include:

**San Antonio, Texas**: San Antonio permits the city to "condemn the [historic] property and take it by the power of eminent domain for rehabilitation or reuse by the city or other disposition with appropriate preservation restrictions in order to promote the historic preservation purposes of [the ordinance] to maintain the structure and protect it from demolition."

**Richmond, Virginia**: Chapter 10, Section 21, of the Code of Virginia states that the Department of Conservation shall have the power to acquire, by purchase, gift or *eminent domain*, properties of scenic and historical interest which in the judgement of the Director of the Department should be

acquired, preserved and maintained for the use and pleasure of the people of Virginia. (Emphasis added)

Richmond, Va., recently obtained a charter change that allows the city to condemn and acquire properties in historic districts suffering from demolition by neglect. The city is currently using this authority to save a Greek Revival house in the Church Hill Historic District.

**Baltimore, Maryland**: Though not a recent example, the City of Baltimore exercised its eminent domain authority to acquire the historic Betsy Ross House in order to preserve it. In *Flaccomio v. Mayor* and *Council of Baltimore* (71 A. 2d 12 1950), the Supreme Court of Maryland upheld the city's use of this power.

**Louisville, Kentucky**: In the late 1970s, the City of Louisville condemned two Victorian townhouses that Louisville the Louisville Women's Club planned to demolish for a parking lot. The city then resold the properties, with preservation covenants attached, to a developer. The Club took the city to court, but the court upheld the city's action.

*A National Trust preservation law publication . . .*

# Protecting Potential Landmarks Through Demolition Review

*by Julia H. Miller*

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Cover Photo: Redwood Street Historic District, Baltimore, MD (Historic American Buildings Survey, NPS)

# Protecting Potential Landmarks through Demolition Review

By Julia H. Miller*

Last year, the wrecking ball fell twice in downtown Baton Rouge—almost. Two historic buildings, the 1910 S.H. Kress Building, the site of a 1960 civil rights protest at the then all-white, lunch counter of the five and dime, and the adjacent Welsh & Levy Building, built in 1885, were spared only after the owner backed off his plans to demolish the buildings for a surface parking lot in response to public outcry. The fate of a third building, the Old Baton Rouge Ice Plant, proved less fortunate. This 1880s one-story brick building was demolished for a riverfront condominium project. Once used for ice production, the building had been located on the Mississippi River on one of the city's few remaining intact blocks dating from the Nineteenth Century.

Baton Rouge has since taken steps to protect its unprotected resources and other communities can too. Through the adoption of a "demolition review ordinance," older buildings (generally those over 50 years) cannot be demolished without review by a preservation commission or special committee to determine whether a building is historically significant. If the building qualifies as significant, then a commission may delay the issuance of a demolition permit to explore preservation alternatives, such as designating the building as a historic landmark or finding a purchaser who may be interested in rehabilitating the building.

## What is a Demolition Review?

Demolition review is a legal tool that provides communities with the means to ensure that potentially significant buildings and structures are not demolished without notice and some level of review by a preservation commission. This process creates a safety net for historic resources to ensure that buildings and structures worthy of preservation are not inadvertently demolished.

Demolition review does not always prevent the demolition of historically significant buildings or structures. Rather, as the name suggests, it allows for review of applications for demolition permits for a specific period of time to assess a building's historical significance. If the building is deemed significant, then issuance of the permit may be delayed for a specific period of time to pursue landmark designation, or alternatively, to explore preservation solutions such as selling the property to a purchaser interested in rehabilitating the structure or finding alternative sites for the proposed post-demolition project.

## What is the Difference between "Demolition Review Laws" and "Demolition Delay" or "Interim Protection" Provisions used in Preservation Ordinances?

**Demolition review laws** are typically, but not exclusively, separate and distinct from historic preservation ordinances. They preclude the demolition of *any* building or structure over a certain age, or any building or structure identified for protection—regardless of significance—for a specific period of time, to allow for a determination of historical or architectural merit. Historic properties may or may not be designated as a landmark at the culmination of this process, depending upon a law's specific terms, and such laws may or may not include a

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"demolition delay" or "waiting period" component.

The nomenclature can be confusing. Demolition review laws are sometimes called "demolition delay ordinances" or simply, "demolition ordinances."

**Demolition delay provisions** in historic preservation ordinances are used to prevent the demolition of buildings or structures that have already been designated as historic landmarks or as contributing structures in a historic district for a specific amount of time, usually ranging from 6 to 24 months. During that time, the preservation commission, preservation organizations, concerned citizens, and others may explore alternatives to demolition, such as finding a purchaser for the structure or raising money for its rehabilitation.

These provisions are typically used by communities that lack the authority to deny demolition permits. For example, in North Carolina, local jurisdictions generally only have the authority to delay a demolition permit up to 365 days unless the structure at issue has been determined by the State Historic Preservation Officer to have "statewide significance." *See* N.C. Gen. Stat. § 160A.400.14.

**Interim protection provisions** are also found in preservation ordinances. They preclude the demolition or alteration of buildings or structures during the period in which the building is under consideration for historic designation. The objective is to preserve the status quo pending designation and to prevent anticipatory demolitions. For further information, see Edith M. Shine, "The Use of Development Moratoria in the Protection of Historic Resources," 18 PLR 3002 (1999).

## Why Do Communities Adopt Demolition Review Procedures?

Demolition review procedures help to prevent the demolition of historically significant buildings. Given the vast numbers of older buildings in cities and towns across the United States, it is virtually impossible for a community to identify all buildings that should be protected under a historic preservation ordinance in advance. By establishing a referral mechanism, communities can be assured that buildings meriting preservation will not fall through the cracks. The delay period provides an opportunity for the municipality or other interested parties to negotiate a preservation solution with the property owner, or to find persons who might be willing to purchase, preserve, rehabilitate, or restore such buildings rather than demolish them.

Demolition review procedures have also been adopted to protect buildings that may not meet the standards for designation but nonetheless embody distinguishing features that help to make a community an attractive place to live or work. For example, demolition review provisions are being used to address the proliferation of "teardowns" in many of our older neighborhoods. By delaying demolition for a period of time, concerned residents may be able to negotiate the preservation of character-defining houses on a case-by-case basis. *See, e.g.* Santa Monica, California, and Highland Park, Illinois.

## Which Properties are Subject to Demolition Review Procedures?

Demolition review ordinances typically set forth objective criteria for determining which properties are subject to review. For example, a demolition review ordinance may require some level of review for all buildings built before a specific date or all buildings that have attained a certain age on the date the permit application is filed. Many communities use "50 years" as the critical benchmark. *See, e.g.* Boston, Massachusetts, Boulder, Colorado, and New Castle, Delaware. A few jurisdictions have opted for a shorter time period, largely in recognition of their younger building stock, see, e.g. Santa Monica, California (which uses a 40-year benchmark), and Gainesville, Florida (all structures listed in the state's "master site

file" and/or 45 years of age). Still others utilize a specific date. See, e.g. Alameda, California, and Weston, Massachusetts, which protect all buildings constructed prior to 1945.

Alternatively, the demolition ordinance may only apply to properties identified on a historic survey or listed on a state historic register or the National Register of Historic Places. Chicago, for example, requires review for the roughly 6,200 buildings designated as "red" or "orange" on its 1996 Historic Resources Survey. Montgomery County, Maryland, stays the issuance of a demolition permit for properties included on its Locational Atlas and Index of Historic Sites.

Finally, some communities limit the scope of protection afforded to buildings located within a specific geographic area. Baton Rouge's newly-enacted demolition ordinance, for example, applies only to its downtown buildings. Boston's law governs any buildings located in its downtown area, Harborpark, and neighborhood design overlay districts, in addition to all those that are at least 50-years old.

Keep in mind that the viability of this system may depend upon an applicant's representation or a permit official's ability to verify or accurately determine a building's age. Boston addresses this issue by insisting that all demolition permit applications be referred to the city's landmark commission. Staff to the commission makes the determination as to whether the building is subject to review.

In Wilton, Connecticut, the burden of establishing the age of the building rests on the demolition permit applicant. Applications must include a statement regarding the size and age of the building or structure to be demolished with verification through independent records such as tax assessment records or the city's cultural resource survey. Santa Monica bases its age determination on the date the original permit for the building or structure was issued. Alameda, California's law provides that the age is to be determined by review of city records. Weston, Massachusetts, protects against the potential problem that the date of a building or structure cannot be determined by record by also requiring the review of all properties of "unknown age."

## What Actions Generally Trigger Demolition Review?

All demolition review procedures are triggered by the filing of an application for a demolition permit. The scope of demolition work requiring review, however, varies from jurisdiction to jurisdiction. In addition, requests for permits to move or substantially alter buildings may also require review.

In Boulder, demolition review is required for the demolition or removal of any building over fifty years old. Demolition includes the act of either demolishing or removing—

- Fifty percent or more of the roof area as measured in plan view (defined as the view of a building from directly above which reveals the outer perimeter of the building roof areas to be measured across a horizontal plane); or
- Fifty percent or more of the exterior walls of a building as measured contiguously around the "building coverage"; or
- Any exterior wall facing a public street, but not an act or process which removes an exterior wall facing an alley.

[Illustrations omitted.] To meet the exterior wall retention standard,

- The wall shall retain studs or other structural elements, the exterior wall finish, and the fully framed and sheathed roof above that portion of the remaining building to which such wall is attached;

- The wall shall not be covered or otherwise concealed by a wall that is proposed to be placed in front of the retained wall; and
- Each part of the retained exterior walls shall be connected contiguously and without interruption to every other part of the retained exterior walls.

In Davis, California, the city's demolition review procedures apply to "the destruction, removal, or relocation of a structure not classified as an `incidental structure,' or the permanent or temporary removal of more than twenty-five percent (25%) of the perimeter walls of a structure." Incidental structures are accessory buildings such as sheds, fences, play structures, and so forth.

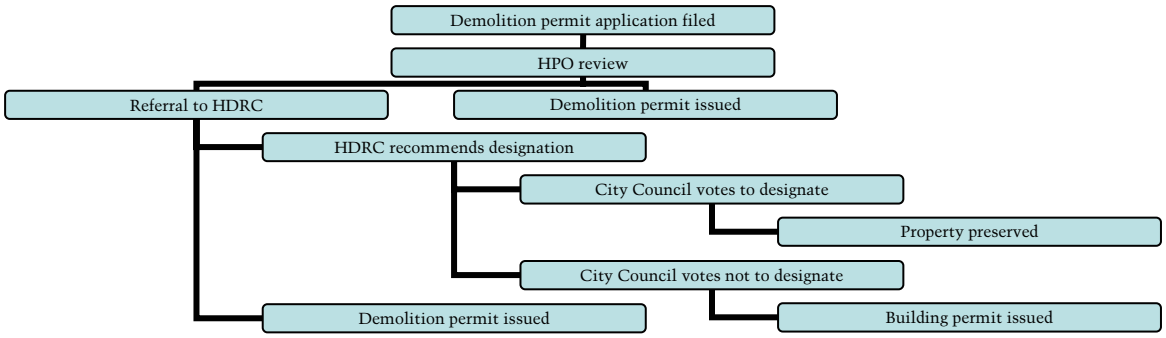
In Newton, Massachusetts, the demolition review requirement applies to any permit, without regard to whether it is called a demolition permit, alteration permit, or building permit, if it involves total and partial demolitions. A "total demolition" is "[t]he pulling down, razing or destruction of the entire portion or a building or structure which is above ground regardless of whether another building or structure is constructed within the footprint of the destroyed building or structure." A "partial demolition" is "[t]he pulling down, destruction or removal of a substantial portion of the building or structure or the removal of architectural elements which define or contribute to the character of the structure."

A few jurisdictions have narrowed the number of applications requiring review by limiting referrals to projects entailing the demolition of at least 500 square feet of gross floor area. *See, e.g.*, Concord, New Hampshire, and Monroe, Connecticut.

## How is Demolition Review Accomplished?

Under typical demolition review procedures, the permitting official is directed to refer a demolition permit application to a review body for an initial or preliminary determination of significance. In San Antonio, for example, all demolition permits are referred to the city's Historic Preservation Officer (HPO) to determine within 30 days whether or not a building or structure is historically significant. If the HPO finds the building significant, the HPO is required to forward the application to the Historic and Design Review Commission (HDRC) for review and recommendation as to significance. If the HDRC concurs in the HPO's finding of significance, then the Commission must recommend designation to the City Council. Buildings and structures not deemed significant at any time during these proceedings may be demolished.

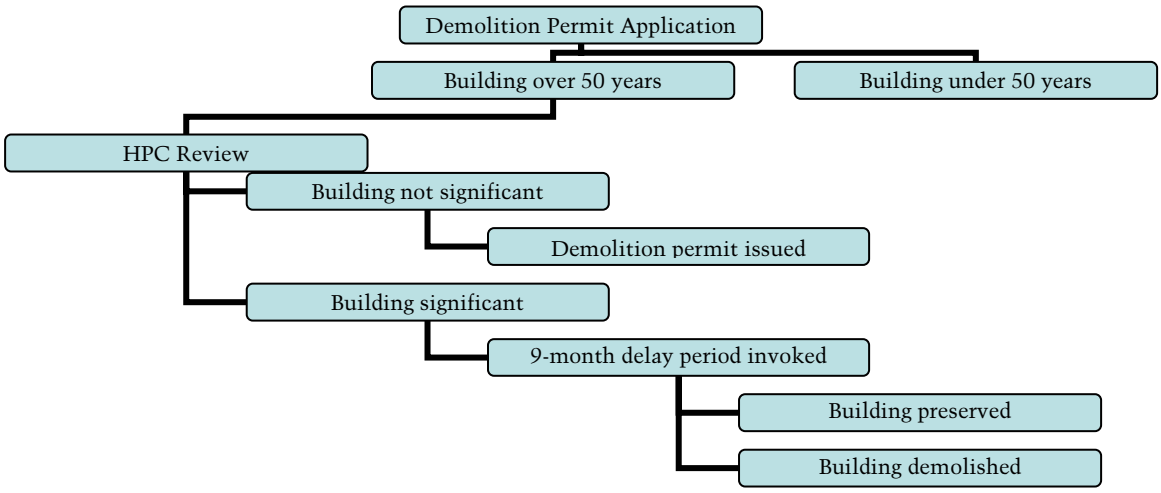
**San Antonio Demolition Review Process**



Santa Monica and Chicago also delay issuance of a demolition permit to allow for the landmark designation of the building, if warranted. In Santa Monica, the demolition permit may be issued if no application to designate is filed within 60 days. Chicago's demolition ordinance delays issuance of permit up to 90 days "in order to enable the department of planning and development to explore options to preserve the building or structure, including, but not limited to, possible designation of the building or structure as a Chicago Landmark in accordance with Article XVII of Chapter 2-120 of this code."

Some demolition review laws simply provide for a delay in the issuance of a permit to explore preservation-based solutions. New Castle County, Delaware utilizes this approach. The county may delay issuance of a demolition permit for any building "thought to be over 50 years old" for a period up to 10 days, during which time the Historic Review Board must make a determination whether the building is historically significant. If the building is deemed significant, then the board may order further delay up to 9 months from the date the application was initially filed to seek demolition alternatives.

**New Castle County Demolition Review Process**




In Boston, the Inspectional Services Department must transmit a copy of an application for a permit to demolish a building to the Boston Landmarks Commission within three days. The commission staff, in return, must make a determination within 10 days as to whether the building is (1) subject to review and (2) significant under specific criteria. If the property is determined not to be significant, then no further review is required. If the property is significant, the commission must hold a public hearing to determine whether the building should be subject to demolition delay. A decision on whether to delay the permit must be made within 40 days from the date the demolition permit application was initially filed.

To invoke the delay period, the commission must find that, in considering the public interest, it is preferable that the building be preserved or rehabilitated rather than demolished. Factors for consideration include: (a) the building's historic, architectural, and urban design significance; (b) whether the building is one of the last remaining examples of its kind in the neighborhood, the city, or the region; and (c) the building's condition. If the commission finds that the building is subject to demolition delay, issuance of the demolition permit may be delayed for up to 90 days from the close of the public hearing. A "Determination of No Feasible Alternative" may be issued during the public hearing or prior to the expiration of the 90-day period if the commission finds that there are no feasible alternatives to demolition.

## Who Makes the Determination of Significance?

In most cases, the historic preservation commission makes the determination of significance, with initial review by the staff to the commission. *See, e.g.*, Boston, Massachusetts, Davis, California, and San Antonio, Texas. Variations, however, do exist from community to community. In Santa Monica, for example, demolition permit applications are forwarded directly to each of the members of the landmarks commission. In Boulder, initial review is performed by the city manager and two designated members of the landmarks board. If the property is significant, then the matter is referred to the city's landmarks board. In the cities of Keene and Concord, New Hampshire, the demolition review committee, comprised of three members of each city's heritage commission, is responsible for conducting the initial review, making an official determination of significance, and holding a meeting to explore preservation alternatives.

## What Evidence Must be Submitted for Review?

Most jurisdictions require the submission of sufficient information to enable the decision maker to make an informed decision on a building's age and significance. In Santa Monica, for example, a completed application form must be submitted to the landmarks commission, along with a site plan, eight copies of a photograph of the building, and photo verification that the property has been posted with a notice of intent to demolish.

Boston requires the submission of photographs of both the subject property and any surrounding properties with a demolition permit application. In addition, the applicant must provide a map identifying the location of the property, a plot plan showing the building footprint and those in the immediate vicinity; plans for site improvements, including elevations if a new structure is planned, and the notarized signatures of all owner's-of-record along with proof of ownership. Additional materials may be required if a public hearing on the issue of whether the property is "preferably preserved" is held. Items such as a structural analysis report, adaptive reuse feasibility studies, the availability of alternative sites for the proposed project, effects of post-demolition plans on the community, and other materials the commission may need to make a feasibility determination may be requested.

Newton, Massachusetts has comparable requirements. In the case of partial demolitions involving alterations or additions, the town also requires the submission of proposed plans and elevation drawings for the affected portion of the building.

## What Standards are Used to Determine Historical Significance?

In Gainesville, Florida, the preservation planner is essentially charged with determining whether the structure would qualify as a landmark under the city's historic preservation ordinance. A demolition permit may be issued if the planner finds that the structure "is not designed in an architectural `high style' or a recognized vernacular building pattern, and it does not have historic events or persons associated with it."

In New Castle County, Delaware, the Historic Review Board makes a determination as to whether the building or structure is historically significant, based on the criteria for listing in the New Castle County Register of Historic and Architectural Heritage.

In Baton Rouge, Louisiana, the city's planning commission is charged with determining whether "[t]he structure is individually listed on the National Register of Historic Places or included in a National Register Historic District, or the structure is classified as National Register Eligible or Major Contributing in the historic building survey of the Central Business District."

In Westfield, Connecticut, individual findings of significance are not made. Rather, to invoke the 90-day, demolition delay period, the structure must be listed in or located within a historic district listed in the National Register of Historic Places, the State Register of Historic Places, the Westfield Historical Commission Register of Historic Places, or a local historic district created under the city's historic preservation ordinance. To be included on the city's historic register, the property must "contain or reflect distinctive and demonstrably important features of architectural, cultural, political, economic or social significance to the City of Westfield."

In Boulder, a preliminary finding on whether there is "probable cause" for designation as an individual landmark is made. If there is "probable cause," then the matter is required to be referred to the landmark commission for a public hearing on the eligibility of the building for designation as a landmark. In addition to determining whether the building meets the objectives and standards for landmark designation under its preservation ordinance, the Boulder commission must also take into account: (1) "[t]he relationship of the building to the character of the neighborhood as an established and definable area;" (2) "the reasonable condition of the building;" and (3) "the reasonable projected cost of restoration or repair." If the building is found to merit designation, then a delay period not to exceed 180 days from the date the demolition permit application was initially filed may be invoked.

Cities and towns enacting demolition review procedures in Massachusetts may not invoke a delay period until the building or structure at issue is found to be both "significant" and "preferably preserved." The term "preferably preserved" essentially means that it is in the public's interest to preserve the building. In some cases, a determination may be made to seek landmark status. Newton's "demolition delay ordinance" is illustrative. Under the city's law, a significant building is "any building or structure which is in whole or in part fifty years or more old" and which:

> (1) is in any federal or state historic district, or if in any local historic district, is not open to view from a public street, public park or public body of water; or
>
> (2) is listed on or is within an area listed on the National Register of Historic Places or eligible for such listing, or listed on or is within an area listed on the State Register of Historic Places, or eligible for such listing; or
>
> (3) has been determined by the commission or its designee to be a historically significant building after a finding that it is:
>
> > a) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America: or
> >
> > b) historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures; or
> >
> > c) located within one hundred fifty (150) feet of the boundary line of any federal or local historic district and contextually similar to the buildings or structures located in the adjacent federal or local historic district.

A building or structure is "preferably preserved" if issuance of the requested demolition permit "would result in the demolition of a historically significant building or structure whose loss would be detrimental to the historical or architectural heritage or resources of the City of Newton."

## What Procedures are Used to Evaluate Significance?

The notice and hearing requirements set forth in demolition review ordinances normally address two concerns. One is meeting the constitutional rights of the applicant to due process. The other is ensuring that the community knows about the pending demolition and has a meaningful opportunity to participate in the proceedings. Determinations of significance are generally held upon review by a city's historic preservation commission at a public hearing.

**Notice.** Individual notice is often required when specific findings are made affecting the applicant's request for a demolition permit. For example, in Boulder, notice must be provided to the applicant upon a finding by an initial review committee that probable cause exists that the building or structure may be eligible for designation as an individual landmark. The applicant is also entitled to notice of the public hearing before the full commission regarding the property's eligibility for landmark status and notice of the commission's final decision to stay the demolition permit for a period of 180-days to explore preservation alternatives.

Public notice requirements under demolition review ordinances can also be extensive. In situations where delay periods may be invoked for the purpose of exploring preservation alternatives, public awareness can be critical. In Monroe, Connecticut, for example, concerted efforts are made to inform the public. The city's ordinance requires publication of notice in newspaper of general circulation and individually-mailed notice to the city's historic district commission, the town historian, the Monroe Historical Society, and all abutting property owners. In addition, the city is required to post for at least 30 days a 36 by 48" sign visible from nearest public street with the words "DEMOLITION" printed on the sign with the letters being at least 3 inches in height. Among other requirements, Gainesville, Florida, requires that the historic preservation planner post a sign on the property "notifying the public of the owner's intent to demolish the structure in order to allow interested parties to come forward and move the structure upon consent of the owner."

**Hearings.** Public hearings are typically required under demolition delay provisions to determine whether the building or structure posed for demolition is historically significant. See, e.g. Baton Rouge, Louisiana, Boston, Massachusetts, Boulder, Colorado, Westfield, Connecticut, Gainesville, Florida, and Concord, New Hampshire. Some demolition delay laws also use the public hearing format to consider alternatives for demolition delay. The Westfield, Connecticut, ordinance, for example, specifically states that "[t]he purpose of said Hearing shall be to discuss, investigate and evaluate alternatives that will allow for the preservation of such buildings, structures, features/components or portions thereof." It provides, however, that [t]he applicant's intended use/reuse of the property is not a topic of the hearing."

## How Long Do Delay Periods Typically Run?

The delay periods invoked under demolition review ordinances run from 30 days to two-years, with most falling within the 90-day to six-month range. In some jurisdictions, the length of the delay period may be prescribed by state law. For example, in Connecticut, § 29-406(b) of the Connecticut General Statutes authorizes any town, city, or borough to impose a waiting period of not more than ninety days. Also note that the effective length of equivalent waiting periods can vary significantly, depending upon the date upon which the delay is measured. Boston, for examples, measures its 90-day delay period from the close of the public hearing. Chicago, in comparison, measures its 90-day delay period from the application filing date.

Communities with longer delay periods sometimes include specific provisions that enable the issuance of a demolition permit prior to the expiration of the waiting period if spe-

cific conditions are met. For example, in Lake Forest, Illinois, the city's 2-year waiting period for all demolition permits may be waived or shortened, upon a finding by the Building Review Board, after holding a public hearing, that—

> a. The structure itself, or in relation to its environs, has no significant historical, architectural, aesthetic or cultural value in its present restored condition; or
>
> b. Realistic alternatives (including adaptive uses) are not likely because of the nature or cost of work necessary to preserve such structure or realize any appreciable part of such value; or
>
> c. The structure in its present or restored condition is unsuitable for residential, or a residentially compatible use; or
>
> d. The demolition is consistent with, or materially furthers, the criteria and purpose of this section and Section 46-27 of the Zoning Code.

In Newton, Massachusetts a demolition permit may be issued before the expiration of the city's 12-month delay period if the Newton Historical Commission is satisfied that the permit applicant:

- has made a "bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure; or
- has agreed to accept a demolition permit on specified conditions approved by the commission.

*See, also*, Boston's Demolition Delay Ordinance, which provides for the issuance of a finding of "no feasible alternative to demolition" at the public hearing or any time prior to the expiration of the delay period.

Also note that some jurisdictions insist that the property be secured during the demolition delay period. In Boston, for example, the applicant is required to secure the building during the review period. If the building is lost during this period due to fire or other causes, then the action is treated as an unlawful demolition.

### How are Demolition Alternatives Explored?

The historic preservation commission usually sits at the center of the preservation effort. The commission will work with the owner and other interested organizations, public agencies, developers, and individuals who may be instrumental in developing a workable solution. Boston's demolition review ordinance specifically identifies who must be asked to participate in the city's investigation of alternatives. In addition to the owner, the Landmarks Commission must invite the Commissioner of Inspectional Services, the Director of the Boston Redevelopment Authority, and the Chairperson of the Boston Civic Design Commission, and any other individual or entity approved by the applicant. In Boulder, the Landmarks Board may "take any action that it deems necessary and consistent with this chapter to preserve the structure, including, without limitation, consulting with civic groups, public agencies, and interested citizens."

The range of alternatives that may be pursued may be specifically identified in the ordinance or left to the preservation commission's discretion. In addition to considering the possibility of landmark designation, the moving of a building to an alternative location, and the salvaging of building materials, the Boulder Landmarks Board is empowered to "take any action that it deems necessary . . . to preserve the structure." In Wilton, Connecticut, the Wilton Historic District Commission or the Connecticut Historical Commission is charged

with "attempting to find a purchaser who will retain or remove such building or who will present some other reasonable alternative to demolition" during the 90-day delay period.

Alternatives that are often considered include the possibility of rehabilitating the building with the assistance of tax incentives or other financial assistance; adapting the building to a new use; removing the building to another site; finding a new owner who is willing and able to preserve the building; incorporating the building into the owner/applicant's redevelopment plans; and using an alternative site for the owner/applicant's project.

The submission of specific information pertaining to the property is generally required. An applicant, for example, may be required to submit a structural engineer's report and information on the cost of stabilizing, repairing, rehabilitating, or re-using the building, plans for the property upon demolition, and the availability of other sites that would meet the applicant's objectives.

## What Exceptions May Apply to the Strict Application of Demolition Review Laws?

Many demolition review laws recognize exceptions upon a showing of economic hardship or where the public safety is at stake. In Gainesville, Florida, for example, the demolition delay period may be waived by the historic preservation board if the applicant can demonstrate "economic hardship." As is generally the case with the consideration of economic hardship claims under historic preservation ordinances, the burden of proof rests on the applicant to show that retention of the property is not economically viable and the applicant must set forth specific relevant information to make his or her case.

Virtually every demolition review law recognizes an exception on public safety grounds. Gainesville also provides that "any structure that has been substantially burned or damaged by an event not within the landowner's control with more than 50 percent of the structure affected" may also be demolished, regardless of the building's significance.

Weston, Massachusetts provides the following exception:

> Emergency Demolitions
>
> Notwithstanding the following provisions, the Building Inspector may issue a demolition permit at any time in the event of imminent and substantial danger to the health or safety of the public due to deteriorating conditions. Prior to doing so, the Building Inspector shall inspect the building and document, in writing, the findings and reasons requiring an emergency demolition, a copy of which shall be forwarded immediately to the Commission. Before allowing emergency demolition, the Building Inspector shall make every effort to inform the Chairperson of the Commission of his intention to allow demolition before he issues a permit for emergency demolition.
>
> No provision of this by-law is intended to conflict with or abridge any obligations or rights conferred by G.L.c.143 regarding removal or demolition of dangerous or abandoned structures. In the event of a conflict, the applicable provisions of Chapter 143 shall control.

## Once the Delay Period Expires, What Other Restrictions May Apply?

Some jurisdictions also require the submission of documentation of the property and/or the salvage of significant architectural features prior to the issuance of the demolition permit. Boulder, Colorado, expressly authorizes the city manager to require the submission of documentation about the building prior to the issuance of a demolition permit, such as a de-

scription of significant events, information on its occupants, photographs, plans, and maps. In Keene, New Hampshire, the demolition review committee is required to "photographically document the building" prior to demolition. In addition, the salvage of significant architectural features is encouraged.

### How are Demolition Review Ordinances Enforced?

Experience has shown that historic buildings will be demolished, without regard to protections against demolition, if the ramifications for non-compliance are minor or insignificant. Accordingly, communities generally seek to establish penalties that will, in fact, discourage violations from occurring. Commonly used penalties, for example, include the imposition of significant fines for each day of the offense, and the preclusion of a permit to develop or occupy the property for specific period of time.

In New Castle County, Delaware, the county attorney is authorized by ordinance "to take immediate action prosecute those responsible" for the demolition of structures determined to have historic significance prior to the issuance of a demolition permit. In addition, building permits for the parcel affected may be withheld for a period of one to three years. Violators of the demolition ordinance in Monroe, Connecticut, may be subject to a fine amounting to the greater of one thousand dollars or the assessed value of the property for each violation. In Highland Park, Illinois, a person who violates the demolition review ordinance may be assessed a fine equal to "90 percent of the fair market value of the cost of the replacement of such regulated structure."

Newton, Massachusetts, authorizes the imposition of a $300 fine and two year ban on the issuance of a building permit against anyone who demolishes a historically significant building or structure without first obtaining and fully complying with the provisions of a demolition permit issued in accordance with its demolition review ordinance. However, a waiver on the building permit ban may be obtained in instances where reuse of the property would "substantially benefit the neighborhood and provide compensation for the loss of the historic elements of the property" either through reconstruction of the lost elements or significant enhancement of the remaining elements. As a condition to obtaining the waiver, however, the owner must execute a binding agreement to ensure that the terms agreed to are met.

### Do Demolition Delay Ordinances Work?

On December 15, 2003, a Chicago Tribune article written by architectural critics, Blair Kamin and Patrick T. Reardon, made headline news. Kamin and Reardon reported that, in a year's time, only one of 17 buildings slated for demolition had been preserved under the city's much acclaimed "demolition delay ordinance." The critics asserted that the city's much-touted effort to preserve the buildings coded red or orange on Chicago's 1996 Historic Resources Survey through the imposition of a 90-day waiting period on demolition permits, wasn't working. They attributed the loss of the buildings to the city's failure to make preservation a priority and by not providing sufficient legal protections and financial incentives to get the job done.

In the same article, Kamin and Reardon also reported that the Chicago Landmarks Division had made a contrary assessment. Sixteen out of the 17 orange-rated buildings posed for demolition were not recommended for designation because they had failed to meet the criteria for landmark status and the one building that was saved would have been demolished but for the demolition delay ordinance.

It cannot be denied, as Kamin and Reardon noted, that demolition review laws seem to support an "ad hoc" approach to landmark designation. The buildings being designated are

those threatened by demolition rather than those most deserving. Also, the question of what is preserved often depends upon who cares about the matter, rather than the historical or architectural merit of the building at issue.

Keep in mind, however, that the need for such laws really stems from the fact that it is impossible to designate every building worthy of protection in advance, especially in cities like Chicago, where over 17,000 buildings have been listed on the city's historic survey. Historic preservation commissions are often understaffed, and often cities simply lack the resources or political will to protect all of their historic properties in advance.

Indeed, in Massachusetts, where over 100 demolition review laws have been adopted, demolition review laws are considered overwhelmingly successful. According to the Massachusetts Historical Society, demolition delay enabled the preservation of the Coolidge Corner Theater and a Lustron house in Brookline. Negotiations under Eastham's delay provision enabled a historic house to be moved rather than demolished. Demolition review requirements have also helped to stem the tide of teardowns in residential areas in Newton, and resulted in the rehabilitation of the circa-1710 Foster Emerson House in Reading. For more information, see Christopher Skelly, "Preservation through ByLaws and Ordinances" (Massachusetts Historical Commission 2003).

### What Else do I Need to Know About Demolition Review Laws?

By now you should be aware that demolition review laws can vary significantly. In developing your own program, it is important to understand not only how such laws work generally, but also to think about how such a law would work in your own community. Basic considerations include the types and number of buildings likely to require review, who should conduct that review, and how the law would relate to your city or town's historic preservation program. Communities should also seek to —

- **Establish an efficient process.** Provide a quick and efficient means for ensuring that permits on non-significant buildings are not held up unnecessarily. The number of demolition permit applications filed in a given year can sometimes be staggering. The San Antonio Historic Preservation Office, for example, reports that it reviews approximately 900 applications per year.
- **Have resources in place which help applicants and/or permitting officials determine the age and significance of their buildings.** In other words, take the guesswork out of the process.
- **Avoid making the safety net too small**. It is important to ensure that potential landmarks are, indeed, subject to the law's protections. In communities with resources from the recent past, for example, it may be necessary to establish a threshold date that is commensurate with those resources. Communities relying on specific dates rather than the age of the building may find the need to amend the ordinance over time. If demolition review is limited to a category of buildings or list of structures, comprehensive survey work must be done prior to the law's enactment to ensure that all buildings meriting protection are included.
- **Keep the community informed**. Effective notice provisions, such as the posting of a large sign, are critical. Members of the public cannot respond to a demolition threat unless they know about it.
- **Don't make the delay period too short**. Without a meaningful delay period, leverage is lacking. It takes time to find a new buyer or a new site, or to even make an assessment as to whether an adaptive reuse project would work.

- **Give the preservation commission the necessary tools to negotiate a solution**. Preservation solutions are more likely to be forthcoming with some level of financial assistance or tax savings. Enable the commission to draw on the expertise of other city officials when necessary and invite critical players to the table. Demolition review provides an invaluable opportunity to improve communication between a preservation commission and its staff, and other governmental officials and the development community.
- **Enable the property to be designated, if designation is warranted.** Negotiated preservation is no substitute for a strong preservation ordinance.
- **Enforce your ordinance**. Ensure that the penalties effectively deter non-compliance and be prepared to enforce your ordinance if violations occur.

## Where Can I Find Examples of Demolition Delay Ordinances?

Listed below are examples of demolition delay ordinances that have been adopted around the country.

### California

Alameda City Code § 13-21-7.
http://www.ci.alameda.ca.us/code/Chapter_13/21/7.html

Davis Building Ordinance § 8.18.020
http://www.city.davis.ca.us/pb/pdfs/planning/forms/
Demolition_Permit_Requirements.pdf

Santa Monica Municipal Code § 9.04.10.16.010 (as amended by Ordinance No. 2131 (July 27, 2004)).
http://www.codemanage.com/santamonica/

### Colorado

Boulder Revised Code § 10-13-23.
http://www3.ci.boulder.co.us/cao/brc/10-13.html#Demolition

### Connecticut

Monroe Demolition Delay Ordinance
http://www.cttrust.org/index.cgi/1049

Wilton Demolition Ordinance
http://www.cttrust.org/index.cgi/1049

### Delaware

New Castle County Code § 6.3.020(B).
http://www.municode.com/resources/online_codes.asp

### Florida

Gainesville Code of Ordinances § 6-19.
http://www.municode.com/resources/online_codes.asp

### Illinois

Chicago, Illinois. Municipal Code of Chicago § 13-320-230(a)-(c) and § 2-76-215.
http://egov.cityofchicago.org/webportal/COCWebPortal/COC_EDITORIAL/DemolitionPermits.txt

Highland Park Ordinances, Ch. 17 §§ 170.040.
http://www.cityhpil.com/govern/ordinances.html

Lake Forest, Illinois, Building Scale and Environmental Ordinance § 9-87.
http://www.cityoflakeforest.com/pdf/cd/bsord.pdf

### Louisiana

Baton Rouge and East Baton Rouge Parish Demolition and Relocation Ordinance
http://municode.com/resources/on-line_codes.asp

### Massachusetts

Boston Zoning Code, Art. 85, §§ 1-8.
http://www.cityofboston.gov/bra/pdf/ZoningCode/Article85.pdf

Cambridge Municipal Code Ch. 2.78, Art. II
http://bpc.iserver.net/codes/cbridge/index.htm

Newton Revised Ordinances, Ch. 22, Art. III, § 22-44.
http://www.ci.newton.ma.us/legal/ordinance/chapter_22.htm#art1

Town of Weston Bylaws, Art. XXX.
http://www.lmstrategies.com/whc/by-law1.htm

### Maryland

Montgomery County Code, Part II § 24A-10
http://www.amlegal.com/montgomery_county_md/

### New Hampshire

Concord Code of Ordinances, Art. 26-9 §§16-9-1 through 16-9-5.
http://municode.com/resources/on-line_codes.asp

Keene Code of Ordinances, Art. IV, §§ 18-331 through 18-335.
http://municode.com/resources/on-line_codes.asp

### Texas

San Antonio Unified Development Code. Art. 4, § 35-455(b)(2).
http://www.sanantonio.gov/dsd/pdf/udc_article4_04.pdf

The ALLIANCE REVIEW NAPC

NEWS *from the* NATIONAL ALLIANCE *of* PRESERVATION COMMISSIONS *February/March 1999*

# Establishing a Demolition by Neglect Ordinance

***by* Dan Becker**

Many historic resources are demolished each year due to a lack of maintenance that leads to deterioration. When deterioration reaches the extent that it creates health and safety violations, building officials are obligated to act in the public interest to abate the hazard; the frequent result is demolition that circumvents local historic preservation ordinances. Whether such lack of maintenance is intentional in order to avoid preservation ordinance controls on demolition, or unintentional due to a lack of awareness or financial resources, the result is the same: loss of a community asset.

While demolition by neglect is a serious problem for many communities, it is a challenge that can be met. Meeting the challenge requires understanding the fundamental legal principles required for a defensible demolition by neglect ordinance, including the key components required for a useful demolition by neglect ordinance, and selecting effective strategies for the adoption (or improvement) and implementation of a successful demolition by neglect program in your community.

**Fundamental Legal Principles**

The first step toward a demolition by neglect program is determining your community's authority to adopt an ordinance. In most cases, such authority is dependent upon state enabling legislation; however, some local governments have "home rule" powers that permit them to adopt ordinances without specific enabling legislation. This is a critical determination...home rule governments can directly adopt their own demolition by neglect ordinance. If your community does not have home rule, then you must establish whether your enabling legislation has provisions that authorize minimum maintenance provisions.

A number of states (including Alabama, North Carolina, Rhode Island, Virginia, and Wisconsin) have specific language in their enabling legislation regarding demolition by neglect of historic structures. This is the best case scenario. Lacking such specific language, in some cases authority can be inferred from statutes that allow governments to create preservation programs to protect historic resources, or from general enabling legislation that gives local authorities power to protect or promote the public health, safety, and welfare. In these cases, consult your local government's attorney for guidance, perhaps even seek an opinion from your state's attorney general.

Your ordinance must ensure due process. It must be clearly related to the governmental goal of preserving historic resources, and it must be designed to be reasonable, fair, and of general applicability to the community. The issue of regulatory taking also has great bearing upon demolition by neglect ordinances, especially as it relates to economic hardship. Further information on these principles can be found in the reading list at the end of this article.

**Key Components of an Ordinance**

An effective ordinance will contain specific elements: standards, petition and action procedures, economic hardship provisions, appeals, and enforcement. You must be able to define deterioration in order to abate it. Standards are required to provide a benchmark for evaluation. A general

statement requiring that a building be kept in good repair will prove to be difficult to enforce because judgments of "good repair" can be challenged as arbitrary. Precise language in your ordinance should clearly define what is considered to be deterioration. Petitions that allege demolition by neglect should list specific defects that reference these standards, so that a reasonable person viewing the deterioration can see what part of the ordinance is being violated.

Clear procedures are necessary to ensure that each case is handled in the same way and that property owners are assured of due process. Provisions should be included in the ordinance for the submittal of petitions alleging demolition by neglect, the process for notification of the property owner, procedures for conducting hearings, and time frames for actions. Also necessary are criteria for evaluating and making findings regarding economic hardship, the manner for filing of appeals, and modes of enforcement by remedy, abatement, and/or penalty. Again, state law provisions may dictate what kind of enforcement tools you have at your disposal.

Particular attention should be paid to criteria for evaluating economic hardship. This is a necessary safeguard that protects the local government and property owners from claims of regulatory takings. Your ordinance should spell out in detail the kind of financial information that the property owner must provide in order to demonstrate a claim of economic hardship, and ensure that findings are made with regard to the claim. In the event that the evidence proves that such a claim is valid, then the ordinance should also provide guidance in the preparation of a plan to relieve the hardship.

**Strategies for Adopting an Ordinance**

Each community has its own personality when it comes to the kinds of ordinances that are appropriate for its citizens, and no one strategy will fit all. It will not advance your preservation cause if such an ordinance becomes controversial, so it will pay dividends to carefully consider whether such an ordinance is right for your community, and how to establish support for its adoption.

Several lessons can be learned from our experience in Raleigh. Enabling legislation authorizing local demolition by neglect ordinances was adopted by the North Carolina legislature in 1989 as part of a general re-write of the statutes governing preservation in the state. In 1992, the city completely reorganized its preservation program as part of a successful preservation community effort to establish a county preservation program. The justification for the city's ordinance revisions was to ensure that the two programs were well coordinated, as well as to incorporate the state legislation changes. Demolition by neglect became part of a routine updating of the ordinance, rather than the sole focus of a "sales effort" that might attract undue attention and controversy.
Because the city's ordinance was the first in the state to take advantage of the new enabling authority, we modeled many of its procedures after state prescriptions for enforcement of minimum housing standards. Our plan, if challenged, was to avoid the view that it something entirely new to be defended. We would treat demolition by neglect as an extension of powers the state had already granted: we were taking advantage of a familiar process that had been on the books a long time, was a matter of general course, and was recognized as a process for affirmative enforcement of deficiencies. A case can be made for equal treatment under the law...property with deficiencies (minimum housing standards, demolition by neglect standards) are handled the same way. Happily, we were not required to make these arguments, and the ordinance was adopted after routine review.

**Using the Ordinance**

A demolition by neglect ordinance is not for the faint of heart. It is aggressive, pro-active preservation. Recognize that such a program is staff-resource intensive, and requires great precision in the application of due process. It is important to build cooperative partnerships both with neighborhoods and with local government agencies charged with enforcement. Initially, we have undertaken only one case at a time. We have requested that neighborhood groups prioritize properties they wish to have considered under the ordinance's provisions, and to keep the list short. Commission staff assist inspections department staff with monitoring and evaluating property compliance.
Knowing when to use the ordinance is important. Be sure that deterioration is substantial enough to warrant the application of such governmental power, but not so severe that the expense of repair exceeds the market value of the property which could lead to a finding of economic hardship.

The City of Raleigh's demolition by neglect ordinance can be accessed on-line by going to:
http://www.municode.com/database.html. Navigate to Raleigh, North Carolina, search for '10-6180' and you will call up the section of the code for demolition by neglect.

**For further guidance regarding demolition by neglect and related legal issues, the following resources are recommended:**

Duerksen, Christopher J. and Richard J. Roddewig. Takings Law in Plain English, 3rd ed. (Chicago and Denver: Clarion Associates, Inc., 1998)

Pollard, Oliver A, III. "Counteracting Demolition by Neglect: Effective Regulations for Historic District Ordinances," The Alliance Review, Winter 1990. National Allliance of Preservation Commissions, Athens, GA.

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Pollard, Oliver A, III. "Minimum Maintenance Provisions: Preventing Demolition by Neglect," Preservation Law Reporter, Volume 8, 1989 Annual. National Trust for Historic Preservation, Washington, DC.

Roddewig, Richard J. and Christopher J. Duerksen. "Responding to the Takings Challenge: A Guide for Officials and Planners," Planning Advisory Service Report #416, May 1989. American Planning Association, Chicago, IL.

White, Bradford J. and Paul W. Edmondson. Procedural Due Process in Plain English: A Guide for Preservation Commissions. (Washington DC: National Trust for Historic Preservation, 1994)

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*Continued from page 9*

What is the structural condition of the building? Don't just take the word of the owner if you have doubts. At a minimum, a report from the building commissioner is needed to establish the structural soundness. However, the Commission may want to consult with a structural engineer for an opinion on the structural soundness of a building. Just because a building is in poor condition doesn't mean it should be torn down.

Can the building be mothballed? Mothballing a building is less expensive than demolition and it preserves the building until economic conditions, a new owner or funds are available to restore the building. If the building is to be demolished because it is vacant, it need not be a blight on the neighborhood. The building and boarded up windows can be painted. The grounds can be maintained. The windows and doors can be properly secured from unwanted access.

A Commission should not be afraid to deny a request for demolition. Once the building has been demolished, it will never return. Furthermore, new construction can never replace the historic character and fabric of a building.

*Continued from page 11*

Communities' rights to appeal Postal Service decisions to the Postal Rate Commission would be expanded to include relocations and new construction along with closings.

H.R. 670 is currently in the Subcommittee on the Postal Service and enjoys the support of 69 co-sponsors. At least 100 co-sponsors are needed by late spring.

For further infomation contact Preservation Action at (202) 659-0915 or preservationaction@worldnet.att.net.


## Join the National Alliance of Preservation Commissions

Become part of the network of over two thousand landmark, historic district commission and boards of architectural review in the United States. The National Alliance of Preservation Commissions (NAPC) is organized to facilitate local commissions in providing information and education to each other. It is a forum for the exchange of ideas, a source of support, and a unifying body giving local commissions a national voice. As a member of the NAPC you can benefit from the ideas and experiences of local communities throughout the United States working to protect historic districts and landmarks through local legislation.

**Membership Benefits**

- *The Alliance Review*, a newsletter filled with practical information for staff and members of preservation commissions.
- A resource center of information, including educational materials, forms, guidelines and ordinances developed and used by commissions across the country.
- Technical seminars and conferences, special regional events, and an annual meeting and workshops for commissions held in conjunction with the National Trust's Annual Conference.
- A voice for your commission in Washington with the National Park Service, the National Trust, the Advisory Council, Preservation Action, and the National Conference of State Historic Preservation Officers.

**Membership Categories**

☐ $15 Subscription to *The Alliance Review*

☐ $25 Commissions with a budget under $500
Communities with a population under 5,000
or local nonprofit organizations

☐ $50 Commissions with a budget of $500-5,000
Communities with a population of 5,000-50,000
or regional or statewide nonprofit organizations

☐ $100 Commissions with a budget over $5,000
Communities with a population over 50,000
national nonprofit organizations, businesses,
state governments, or sponsoring associates

Commissions can also have *The Alliance Review* mailed to their members for an extra $10 per member (please enclose list of names & addresses)

Name of Organization

Contact Person

Address

City State Zip code

Phone Fax

E-mail

*Please return this form with payment to NAPC, PO Box 1605, Athens, GA 30603*

# DEMOLITION DELAY: A TOOL, NOT A SOLUTION

BY KURI GILL,
CERTIFIED LOCAL
GOVERNMENT
COORDINATOR
STATE OF OREGON

Oregon has a statute that requires that historic properties significant to the state must be protected. Every local jurisdiction does this a little differently. The most common protection we see is demolition delay. In most cases the protection stops there. For some communities, including our Certified Local Governments (CLGs), delay is only one part of a broader local preservation effort.

A brief, non-scientific survey of CLGs in Oregon revealed a bit about the effectiveness of demolition delay in saving historic properties in those CLG communities:

- Nearly all have demolition review.
- The majority have demolition delay.
- The delay ranges from 60-210 days. The typical delay is 90 days. In some cases a delay can be extended if action is happening to save the property.
- Most require time for documentation of the property, some require salvage and/or preservation of building elements, but even this is often not effectively gathered.
- A few require evidence that the owner attempted to sell or remove the building.
- Numbers indicate that demolition delay doesn't save buildings. In reporting CLGs, only one of 19 buildings submitted for demolition was saved in the last four years.
- Opinions are mixed about the effectiveness of demolition delay. This may be partly because many demolition requests are ultimately not submitted once the proponent learns about the review and delay processes and about the opportunities for preservation.

Even when demolition delay is enacted, the results vary. In some cases, the documentation and salvage occur; in very rare cases, the building is moved.

Credit: City of Portland, OR.

*This house in Portland was saved through demolition delay. A massive and expensive effort was successful in moving it to another location.*

Most codes do not specify who completes the documentation, to what standards the documentation will comply, or where the information will go. A few communities are prepared, with a historic preservation commission or local preservation nonprofit that completes the work and collects the information. They have the systems in place and are ready to act when needed. In most cases, it seems the documentation doesn't happen. The same is true for salvage. In most cases there is no way to ensure the salvage actually occurs. Moving the building is also not ideal, as the original setting is often part of its significance. In addition, moving the building can be expensive and challenging. Where does the building go? Who is in charge? Who notifies the public about the building's availability?

A few communities in Oregon that have recently suffered losses of significant historic properties have moved beyond demolition delay and added demolition denial as an action. In all cases, since the demolition denial has been in effect, the properties denied demolition are still standing - some in improved condition. Also, the denial tends to limit the number of applications requesting demolition.

Code that addresses demolition by neglect is another tool that has helped save local resources. The code

Credit: Historic Preservation League of Oregon

*This barn, on the Historic Preservation League of Oregon's Most Endangered Places list, was demolished after a long demolition delay. The action motivated the community of Cottage Grove to change the code to include demolition denial.*

allows for citations for actions that affect the structural integrity of the building (leaky roofs, broken windows, sagging porches, etc.) and fees if the conditions are not addressed. Arresting demolition by neglect and instituting demolition denial have proved to be a combined force for preservation.

The jury is still out on the effectiveness of demolition delay in saving historic properties, especially if documentation and salvage are not completed. It can be a great tool to support a broader preservation program. Here are four ways communities can deal with demolition and get the most out of demolition delay.

1. Think big picture: It always comes down public education. Even if the community has had districts in place since the 1970s, this part of the work can never stop. Don't let the community accept demolition as a first option. Also, public education about the process of demolition applications may stop folks going down that road before they reach the planning desk. Make sure that tools, resources, and options are made available.

2. Be proactive: This is a great way for commissioners to do something other than design review. Drive around and check out the condition of the designated historic properties. If they are looking the worse for wear, then send a packet to the property owner that includes historic information about the property, explains how important it is to the community, and describes resources to take care of the property.

3. Be prepared: Is your commission or community prepared for a demolition and the work that should take place during a delay?

   **a. Have a plan for documentation.**

   i. Who will do it? Commissioners, city staff, local museum, preservation organization, property owner?

   ii. How will it be completed? Are there standards in place? Interior photos, exterior photos, floor plan, structural information, history?

   iii. Where will it go? Is there a place to store the information so it is preserved and accessible? City hall, museum, preservation organization?

   **b. Have a plan for salvage.**

   i. Who will do it?

   ii. For what purpose will it be saved? Reuse, documentation, preservation, education?

   iii. What will be saved? Everything that is reusable, character-defining details, unique building techniques?

   iv. Where will it go? Is there a place to store the information so it is preserved and accessible? City hall, museum, preservation organization?

   **c. Have a plan for moving.**

   i. Develop a network for notification of available buildings and decide who completes the notification.

   ii. Work with organizations that need buildings (low income housing organizations, schools, etc.) to have people waiting for building donations.

   iii. Work with the city to make moving of historic properties as easy and low-cost as possible (permitting, etc.)

   iv. Create lists of contractors that move and set buildings.

   v. Grow a fund to help pay the costs of the move.

   **d. Have all of these tools at hand to give the property owner.**

4. Get tougher on neglect: Documentation, salvage, and moving the building are good options. Preserving the building in place is a better one. Once you have some public education and support, consider adding some teeth to the code to prevent demolition by neglect. This is often the real cause of, or at least excuse for, demolition. Some developers even purchase property with the intent of demolition. Demolition by neglect even outsmarts demolition denial when the structure becomes so dilapidated that it is dangerous and devalues the entire property.

Imagine a screwdriver, a pretty cool invention. Alone it does nothing. Demolition delay is very much like the screwdriver. It is handy, but only if someone uses it the right way.■

## Secretary of the Interior's Standards for Preservation Planning

*http://www.nps.gov/history/local-law/arch_stnds_1.htm*

Preservation planning is a process that organizes preservation activities (identification, evaluation, registration and treatment of historic properties) in a logical sequence. The Standards for Planning discuss the relationship among these activities while the remaining activity standards consider how each activity should be carried out. The Professional Qualifications Standards discuss the education and experience required to carry out various activities.

The Standards for Planning outline a process that determines when an area should be examined for historic properties, whether an identified property is significant, and how a significant property should be treated.

Preservation planning is based on the following principles:

- Important historic properties cannot be replaced if they are destroyed. Preservation planning provides for conservative use of these properties, preserving them in place and avoiding harm when possible and altering or destroying properties only when necessary.
- If planning for the preservation of historic properties is to have positive effects, it must begin before the identification of all significant properties has been completed. To make responsible decisions about historic properties, existing information must be used to the maximum extent and new information must be acquired as needed.
- Preservation planning includes public participation. The planning process should provided a forum for open discussion of preservation issues. Public involvement is most meaningful when it is used to assist in defining values of properties and preservation planning issues, rather than when it is limited to review of decisions already made. Early and continuing public participation is essential to the broad acceptance of preservation planning decisions.

Preservation planning can occur at several levels or scales: in a project area; in a community; in a State as a whole; or in the scattered or contiguous landholdings of a Federal agency. Depending on the scale, the planning process will involve different segments of the public and professional communities and the resulting plans will vary in detail. For example, a State preservation plan will likely have more general recommendations than a plan for a project area or a community. The planning process described in these Standards is flexible enough to be used at all levels while providing a common structure which promotes coordination and minimizes duplication of effort. The Guidelines for Preservation Planning contain additional information about how to integrate various levels of planning.

**Standard I. Preservation Planning Establishes Historic Contexts**

Decisions about the identification, evaluation, registration and treatment of historic properties are most reliably made when the relationship of individual properties to other similar properties is understood. Information about historic properties representing aspects of history, architecture, archeology, engineering and culture must be collected and organized to define these relationships. This organizational framework is called a "historic context." The historic context organizes information based on a cultural theme and its geographical and chronological limits. Contexts describe the significant broad patterns of development in an area that may be represented by historic properties. The development of

historic contexts is the foundation for decisions about identification, evaluation, registration and treatment of historic properties.

**Standard II. Preservation Planning Uses Historic Contexts To Develop Goals and Priorities for the Identification, Evaluation, Registration and Treatment of Historic Properties**

A series of preservation goals is systematically developed for each historic context to ensure that the range of properties representing the important aspects of each historic context is identified, evaluated and treated. Then priorities are set for all goals identified for each historic context. The goals with assigned priorities established for each historic context are integrated to produce a comprehensive and consistent set of goals and priorities for all historic contexts in the geographical area of a planning effort.

The goals for each historic context may change as new information becomes available. The overall set of goals and priorities are then altered in response to the changes in the goals and priorities for the individual historic contexts.

Activities undertaken to meet the goals must be designed to deliver a usable product within a reasonable period of time. The scope of the activity must be defined so the work can be completed with available budgeted program resources.

**Standard III. The Results of Preservation Planning Are Made Available for Integration Into Broader Planning Processes**

Preservation of historic properties is one element of larger planning processes. Planning results, including goals and priorities, information about historic properties, and any planning documents, must be transmitted in a usable form to those responsible for other planning activities. Federally mandated historic preservation planning is most successfully integrated into project management planning at an early stage. Elsewhere, this integration is achieved by making the results of preservation planning available to other governmental planning bodies and to private interests whose activities affect historic properties.

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## Secretary of the Interior's Guidelines for Preservation Planning

**Introduction**

These Guidelines link the Standards for Preservation Planning with more specific guidance and technical information. They describe one approach to meeting the Standards for Preservation Planning. Agencies, organizations or individuals proposing to approach planning differently may wish to review their approaches with the National Park Service.

**The Guidelines are organized as follows:**
Managing the Planning Process
Developing Historic Contexts
Developing Goals for a Historic Context
Integrating Individual Historic Contexts-Creating the Preservation Plan

Coordinating with Management Frameworks
Recommended Sources of Technical Information

**Managing the Planning Process**

The preservation planning process must include an explicit approach to implementation, a provision for review and revision of all elements, and a mechanism for resolving conflicts within the overall set of preservation goals and between this set of goals and other land use planning goals. It is recommended that the process and its products be described in public documents.

**Implementing the Process**
The planning process is a continuous cycle. To establish and maintain such a process, however, the process must be divided into manageable segments that can be performed, within a defined period, such as a fiscal year or budget cycle. One means of achieving this is to define a period of time during which all the preliminary steps in the planning process will be completed. These preliminary steps would include setting a schedule for subsequent activities.

**Review and Revision**
Planning is a dynamic process. It is expected that the content of the historic contexts described in Standard I and the goals and priorities described in Standard II will be altered based on new information obtained as planning proceeds. The incorporation of this information is essential to improve the content of the plan and to keep it up-to-date and useful. New information must be reviewed regularly and systematically, and the plan revised accordingly.

**Public Participation**
The success of the preservation planning process depends on how well it solicits and integrates the views of various groups. The planning process is directed first toward resolving conflicts in goals for historic preservation, and second toward resolving conflicts between historic preservation goals and other land use planning goals. Public participation is integral to this approach and includes at least the following actions:

1. Involving historians, architectural historians, archeologists, folklorists and persons from related disciplines to define, review and revise the historic contexts, goals and priorities;
2. Involving interested individuals, organizations and communities in the planning area in identifying the kinds of historic properties that may exist and suitable protective measures;
3. Involving prospective users of the preservation plan in defining issues, goals and priorities;
4. Providing for coordination with other planning efforts at local, State, regional and national levels, as appropriate; and
5. Creating mechanisms for identifying and resolving conflicts about historic preservation issues. The development of historic contexts, for example, should be based on the professional input of all disciplines involved in preservation and not be limited to a single discipline. For prehistoric archeology, for example, data from fields such as geology, geomorphology and geography may also be needed. The individuals and organizations to be involved will depend, in part, on those present or interested in the planning area.

**Documents Resulting from the Planning Process**
In most cases, the planning process produces documents that explain how the process works and that

discuss the historic contexts and related goals and priorities. While the process can operate in the absence of these documents, planning documents are important because they are the most effective means of communicating the process and its recommendations to others. Planning documents also record decisions about historic properties.

As various parts of the planning process are reviewed and revised to reflect current information, related documents must also be updated. Planning documents should be created in a form that can be easily revised. It is also recommended that the format language and organization of any documents or other materials (visual aids, etc.) containing preservation planning information meet the needs of prospective users.

**Developing Historic Contexts**

**General Approach**

Available information about historic properties must be divided into manageable units before it can be useful for planning purposes. Major decisions about identifying, evaluating, registering and treating historic properties are most reliably made in the context of other related properties. A historic context is an organizational format that groups information about related historic properties, based on a theme, geographic limits and chronological period. A single historic context describes one or more aspects of the historic development of an area, considering history, architecture, archeology, engineering and culture and identifies the significant patterns that individual historic properties represent, for example, Coal Mining in Northeastern Pennsylvania between 1860 and 1930. A set of historic contexts is a comprehensive summary of all aspects of the history of the area.

The historic context is the cornerstone of the planning process. The goal of preservation planning is to identify, evaluate, register and treat the full range of properties representing each historic context, rather than only one or two types of properties. Identification activities are organized to ensure that research and survey activities include properties representing all aspects of the historic context. Evaluation uses the historic context as the framework within which to apply the criteria for evaluation to specific properties or property types. Decisions about treatment of properties are made with the goal of treating the range of properties in the context. The use of historic contexts in organizing major preservation activities ensures that those activities result in the preservation of the wide variety of properties that represent our history, rather than only a small, biased sample of properties.

Historic contexts, as theoretical constructs, are linked to actual historic properties through the concept of property type. Property types permit the development of plans for identification, evaluation and treatment even in the absence of complete knowledge of individual properties. Like the historic context, property types are artificial constructs which may be revised as necessary. Historic contexts can be developed at a variety of scales appropriate for local, State and regional planning. Give the probability of historic contexts overlapping in an area, it is important to coordinate the development and use of contexts at all levels. Generally, the State Historic Preservation Office possesses the most complete body of information about historic properties and, in practice, is in the best position perform this function.

The development of historic contexts generally results in documents that describe the prehistoric processes or patterns that define the context. Each of the contexts selected should be developed to the point of identifying important property types to be useful in later preservation decision-making. The amount of detail included in these summaries will vary depending on the level (local, State, regional, or

national) at which the contexts are developed and on their intended uses. For most planning purposes, a synopsis of the written description of the historic context is sufficient.

**Creating a Historic Context**

Generally, historic contexts should not be constructed so broadly as to include all property types under a single historic context or so narrowly as to contain only one property type per historic context. The following procedures should be followed in creating a historic context.

**1. Identify the concept, time period and geographical limits for the historic context**

Existing information, concepts, theories, models and descriptions should be used as the basis for defining historic contexts. Biases in primary and secondary sources should be identified and accounted for when existing information is used in defining historic contexts.

The identification and description of historic contexts should incorporate contributions from all disciplines involved in historic preservation. The chronological period and geographical area of each historic context should be defined after the conceptual basis is established. However, there may be exceptions, especially in defining prehistoric contexts where drainage systems or physiographic regions often are outlined first. The geographical boundaries for historic contexts should not be based upon contemporary political, project or other contemporary boundaries if those boundaries do not coincide with historical boundaries. For example, boundaries for prehistoric contexts will have little relationship to contemporary city, county or State boundaries.

**2. Assemble the existing information about the historic context**

a. Collecting information: Several kinds of information are needed to construct a preservation plan. Information about the history of the area encompassed by the historic context must be collected, including any information about historic properties that have already been identified. Existing survey or inventory entries are an important source of information about historic properties. Other sources may include literature on prehistory, history, architecture and the environment; social and environmental impact assessments; county and State land use plans; architectural and folklife studies and oral histories; ethnographic research; State historic inventories and registers; technical reports prepared for Section 106 or other assessments of historic properties; and direct consultation with individuals and organized groups.

   In addition, organizations and groups that may have important roles in defining historic contexts and values should be identified. In most cases a range of knowledgeable professionals drawn from the preservation, planning and academic communities will be available to assist in defining contexts and in identifying sources of information. In other cases, however, development of historic contexts may occur in areas whose history or prehistory has not been extensively studied. In these situations, broad general historic contexts should be initially identified using available literature and expertise, with the expectation that the contexts will be revised and subdivided in the future as primary source research and field survey are conducted. It is also important to identify such sources of information as existing planning data, which is needed to establish goals for identification, evaluation and treatment, and to identify factors that will affect attainment of those goals.

The same approach for obtaining information is not necessarily desirable for all historic contexts. Information should not be gathered without first considering its relative importance to the historic context, the cost and time involved, and the expertise required to obtain it. In many cases, for example, published sources may be used in writing initial definitions of historic contexts; archival research or field work may be needed for subsequent activities.

b. Assessing information: All information should be reviewed to identify bias in historic perspective, methodological approach, or area of coverage. For example, field surveys for archeological sites may have ignored historic archeological sites, or county land use plans may have emphasized only development goals.

**3. Synthesize information**

The information collection and analysis results in a written narrative of the historic context. This narrative provides a detailed synthesis of the data that have been collected and analyzed. The narrative covers the history of the area from the chosen perspective and identifies important patterns, events, persons or cultural values. In the process of identifying the important patterns, one should consider:

- Trends in area settlement and development, if relevant;
- Aesthetic and artistic values embodied in architecture, construction technology or craftsmanship;
- Research values or problems relevant to the historic context; social and physical sciences and humanities; and cultural interests of local communities; and
- Intangible cultural values of ethnic groups and native American peoples.

**4. Define property types**

A property type is a grouping of individual properties based on shared physical or associative characteristics. Property types link the ideas incorporated in the theoretical historic context with actual historic properties that illustrate those ideas. Property types defined for each historic context should be directly related to the conceptual basis of the historic context. Property types defined for the historic context "Coal Mining in Northeastern Pennsylvania, 1860-1930" might include coal extraction and processing complexes; railroad and canal transportation systems; commercial districts; mine workers' housing; churches, social clubs and other community facilities reflecting the ethnic origins of workers; and residences and other properties associated with mine owners and other industrialists.

a. Identify property types: The narrative should discuss the kinds of properties expected within the geographical limits of the context and group them into those property types most useful in representing important historic trends.

   Generally, property types should be defined after the historic context has been defined. Property types in common usage ("Queen Anne House," "mill buildings" or "stratified sites") should not be adopted without first verifying their relevance to the historic contexts being used.

b. Characterize the locational patterns of property types: Generalizations about where particular types of properties are likely to be found can serve as a guide for identification and treatment. Generalizations about the distribution of archeological properties are frequently used. The

distribution of other historic properties often can be estimated based on recognizable historical, environmental or cultural factors that determined their location. Locational patterns of property types should be based upon models that have an explicit theoretical or historical basis and can be tested in the field. The model may be the product of historical research and analysis ("Prior to widespread use of steam power, mills were located on rivers and streams able to produce water power" or "plantation houses in the Mississippi Black Belt were located on sandy clay knolls"), or it may result from sampling techniques. Often the results of statistically valid sample surveys can be used to describe the locational patterns of a representative portion of properties belonging to a particular property type. Other surveys can also provide a basis for suggesting locational patterns if a diversity of historic properties was recorded and a variety of environmental zones was inspected. It is likely that the identification of locational patterns will come from a combination of these sources. Expected or predicted locational patterns of property types should be developed with a provision made for their verification.

c. Characterize the current condition of property types: The expected condition of property types should be evaluated to assist in the development of identification, evaluation and treatment strategies, and to help define physical integrity thresholds for various property types. The following should be assessed for each property type:
    1. Inherent characteristics of a property type that either contribute to or detract from its physical preservation. For example, a property type commonly constructed of fragile materials is more likely to be deteriorated than a property type constructed of durable materials; structures whose historic function or design limits the potential for alternative uses (water towers) are less likely to be reused than structures whose design allows a wider variety of other uses (commercial buildings or warehouses).
    2. Aspects of the social and natural environment that may affect the preservation or visibility of the property type. For example, community values placed on certain types of properties (churches, historic cemeteries) may result in their maintenance while the need to reuse valuable materials may stimulate the disappearance of properties like abandoned houses and barns.
    3. It may be most efficient to estimate the condition of property types based on professional knowledge of existing properties and field test these estimates using a small sample of properties representative of each type.

**5. Identify information needs**

Filling gaps in information is an important element of the preservation plan designed for each historic context. Statements of the information needed should be as specific as possible, focusing on the information needed, the historic context and property types it applies to, and why the information is needed to perform identification, evaluation, or treatment activities.

**Developing Goals for a Historic Context**

**Developing Goals**

A goal is a statement of preferred preservation activities, which is generally stated in terms of property types.

The purpose of establishing preservation goals is to set forth a "best case" version of how properties in the historic context should be identified, evaluated, registered and treated.

Preservation goals should be oriented toward the greatest possible protection of properties in the historic context and should be based on the principle that properties should be preserved in place if possible, through affirmative treatments like rehabilitation, stabilization or restoration. Generally, goals will be specific to the historic context and will often be phrased in terms of property types. Some of these goals will be related to information needs previously identified for the historic context. Collectively, the goals for a historic context should be a coherent statement of program direction covering all aspects of the context.

For each goal, a statement should be prepared identifying:

1. The goal, including the context and property types to which the goal applies and the geographical area in which they are located;
2. The activities required to achieve the goal;
3. The most appropriate methods or strategies for carrying out the activities;
4. A schedule within which the activities should be completed; and
5. The amount of effort required to accomplish the goal, as well as a way to evaluate progress toward its accomplishment.

**Setting priorities for goals**

Once goals have been developed they need to be ranked in importance. Ranking involves examining each goal in light of a number of factors.

1. General social, economic, political and environmental conditions and trends affecting (positively and negatively) the identification, evaluation, registration and treatment of property types in the historic context.

   Some property types in the historic context may be more directly threatened by deterioration, land development patterns, contemporary use patterns, or public perceptions of their value, and such property types should be given priority consideration.

2. Major cost or technical considerations affecting the identification, evaluation and treatment of property types in the historic context.

   The identification or treatment of some property types may be technically possible but the cost prohibitive; or techniques may not currently be perfected (for example, the identification of submerged sites or objects, or the evaluation of sites containing material for which dating techniques are still being developed).

3. Identification, evaluation, registration and treatment activities previously carried out for property types in the historic context.

   If a number of properties representing one aspect of a historic context have been recorded or preserved, treatment of additional members of that property type may receive lower priority than treatment of a property type for which no examples have yet been recorded or preserved. This approach ensures that the focus of recording or preserving all elements of the historic context is retained, rather than limiting activities to preserving properties representing only some aspects of the context.

The result of considering the goals in light of these concerns will be a list of refined goals ranked in order of priority.

**Integrating Individual Contexts-Creating the Preservation Plan**

When historic contexts overlap geographically, competing goals and priorities must be integrated for effective preservation planning. The ranking of goals for each historic context must be reconciled to ensure that recommendations for one context do not contradict those for another. This important step results in an overall set of priorities for several historic contexts and a list of the activities to be performed to achieve the ranked goals. When applied to a specific geographical area, this is the preservation plan for that area.

It is expected that in many instances historic contexts will overlap geographically. Overlapping contexts are likely to occur in two combinations-those that were defined at the same scale (i.e., textile development in Smithtown 1850-1910 and Civil War in Smithtown 1855-1870) and those defined at different scales (i.e., Civil War in Smithtown and Civil War in the Shenandoah Valley). The contexts may share the same property types, although the shared property types will probably have different levels of importance, or they may group the same properties into different property types, reflecting either a different scale of analysis or a different historical perspective. As previously noted, many of the goals that are formulated for a historic context will focus on the property types defined for that context. Thus it is critical that the integration of goals include the explicit consideration of the potential for shared property type membership by individual properties. For example, when the same property types are used by two contexts, reconciling the goals will require weighing the level of importance assigned to each property type. The degree to which integration of historic contexts must involve reconciling property types may be limited by the coordinated development of historic contexts used at various levels.

**Integration with Management Frameworks**

Preservation goals and priorities are adapted to land units through integration with other planning concerns. This integration must involve the resolution of conflicts that arise when competing resources occupy the same land base. Successful resolution of these conflicts can often be achieved through judicious combination of inventory, evaluation and treatment activities. Since historic properties are irreplaceable, these activities should be heavily weighted to discourage the destruction of significant properties and to be compatible with the primary land use.

# National Register Historic District / Local Historic District: There is a Difference

"A National Register District Identifies; A Local District Protects"

*State Historic Preservation Office, Division of Archives and History, North Carolina Department of Cultural Resources. 1999*

## National Register District

A **National Register** historic district is a historic district that is listed in the **National Register of Historic Places**. The National Register is our country's official list of historic places worthy of preservation. It includes individual buildings, structures, sites, and objects as well as historic districts that are historically, architecturally, or archaeologically significant.

National Register listing **recognizes** the significance of properties and districts. By doing so, it **identifies** significant historic resources in a community. Boundaries of National Register districts are tightly drawn to encompass only concentrated areas of historic buildings. Information compiled to nominate a historic district can be used in a variety planning and development activities. National Register listing also makes available specific preservation incentives and provides a limited degree of protection from the effects of federally funded, licensed, or permitted activities.

The National Register is maintained by the U.S. Department of the Interior. In Georgia, the National Register program is administered by the Historic Preservation Division of the Department of Natural Resources. Districts and other properties are listed in the National Register through a 17-step process that involves **identification, documentation,** and **evaluation**. National Register historic districts most commonly encompass central business districts, residential neighborhoods, industrial areas, rural areas, and occasionally, entire communities.

## Local Historic District

A **local** historic district is a district designated by local ordinance and falls under the jurisdiction of a **local preservation review commission**. A local historic district is generally "overlaid" on existing zoning classifications in a community; therefore, a local district commission deals only with the appearance of the district, not with the uses to which properties in the district are put.

According to the 1980 Georgia Historic Preservation Act which makes such local designations possible, a local historic district is a "geographically definable area, urban or rural, which contains structures, sites, and/or works of art which have special historical or aesthetic interest or value; represent one or more periods or styles of architecture typical of one or more eras in the history of the municipality, county, state, or region; and cause that area to constitute a visibly perceptible section of the community.

The designation of a local district **protects** the significant properties and historic character of the district. It provides communities with means to make sure that growth, development, and change takes place in ways that respect important architectural, historical and environmental characteristics. Local designation encourages sensitive development in the district and discourages unsympathetic changes from occurring. This happens through a process called **design review**, whereby the preservation commission approves major changes that are planned for the district and issues Certificates of Appropriateness which allow the proposed changes to take place.

| National Register District | Local Historic District |
| --- | --- |
| Identifies significant properties and districts for general planning purposes. | Protects a community's historic properties and areas through a design review process. |
| Analyzes and assesses the historic character and quality of the district. | Protects the historic character and quality of the district with specific design controls. |
| Designates historic areas based on uniform national criteria and procedures. | Designates historic areas on the basis of local criteria and local procedures. |
| Sets district boundaries tightly, based on the actual distribution pattern of intact historic properties in the area. | Sets district boundaries based on the distribution pattern of historic resources plus other preservation and community planning considerations. |
| Makes available specific federal tax incentives for preservation purposes. | Provides no tax incentives for preservation purposes unless such are provided by tax law. |
| Provides a limited degree of protection from the effects of federally assisted undertakings. | Provides no additional protection from the effects of federally assisted undertakings. |
| Qualifies property owners for federal and state grants for preservation purposes, when funds are available. | Does not qualify property owners for federal or state grants for preservation purposes. |
| Does not restrict the use of disposition of property or obligate private property owners in any way. | Does not restrict the use to which property is put in the district or require property owners to make improvements to their property. |
| Does not require conformance to design guidelines or preservation standards when property is rehabilitated unless specific preservation incentives (tax credits, grants) are involved. | Requires local commission review and approval, based on conformance to local design guidelines, before building permit is issued to any "material changes" in appearance to the district. |
| Does not affect state and local government activities. | Does not affect federal, state, or local government activities. |
| Does not prevent the demolition of historic buildings and structures within designated areas. | Provides for review of proposed demolitions within designated areas; may prevent or delay proposed demolitions for specific time periods to allow for preservation alternatives. |

## Districts in Context

National Register and locally designated historic districts can be used independently or together to help preserve a community's historic resources. For example, the National Register program might be used as a convenient and credible way to identify a community's historic resources, followed by a local district designation which would further protect and enhance those historic resources. Conversely, a local survey done to establish a local historic district might also be used as the basis for a National Register district, which would afford additional preservation incentives, including rehabilitation tax credits, to properties protected in the local district. Local district designation might be used to protect, selectively, portions of National Register districts considered especially significant to a community or subject to particularly strong development pressures. Local designation also might be afforded to an area larger than a National Register district to provide an even greater degree of protection to the historic resources within the National Register district.

Some community's preservation needs may be met entirely with either a locally designated district or a National Register district; there are many examples in Georgia of both situations. Other communities may believe that package deal involving both types of districts works best. The point to remember is that local districts and National Register districts are different, but complementary, and can work effectively by themselves or together in meeting a community's historic preservation needs.

# The Planner and the Preservationist

## An Uneasy Alliance

**Eugenie Ladner Birch and Douglass Roby**

**In many ways the planning and historic preservation movements have had similar but separate patterns of institutional development. Although the planning profession is older and more refined than the preservation effort, their shared concern for the quality of the built environment has made them natural allies in promoting conservation practices in American metropolitan areas. At times, differing objectives have marred their mutual cooperative endeavors; but on the whole, they have developed an important symbiotic relationship that has served to strengthen both professions.**

"Historic preservation as a distinct kind of urban planning is relatively recent in origin," asserted Wayne O. Attoe in *Introduction to Planning,* a definitive textbook published in 1979. In fact, he maintained, "Historic preservation . . . remains a troublesome aspect of urban planning." Nonetheless, he concluded, "historic preservation can be integrated into comprehensive urban planning practice."[1]

Not all contemporary accounts of planning practice agreed with Attoe's statements. Some did not consider preservation important at all. The latest version of the profession's familiar green handbook (also published in 1979), *The Practice of Local Government Planning,* barely mentioned the field. The third edition of *Urban Land Use Planning,* by F. Stuart Chapin, Jr., and Edward J. Kaiser, appearing in the same year, made no reference to it despite its analysis of other modern concerns.[2]

The stance of the American Planning Association—which grants professional credentials to planners—reflected that dichotomy. Only in October 1980 did the APA admit a historic preservation division into its ranks, allowing it to join transportation, environmental protection, and urban design as a legitimate planning function. In 1982, however, the association suspended the group for nonperformance.[3]

Several factors have produced modern planners' ambivalence to historic preservation. Historically, the planning and preservation movements have pursued distinct goals, served different populations, and experienced dissimilar patterns of organizational growth. In recent years, however, the two groups have moved closer together. Their growing cooperation has hinged on two interrelated items: each movement's evolving definition of its function in American society, and the changing nature of public-sector involvement in urban development.

In the first instance, planners and preservationists have moved closer to each other through the redefinition of their respective missions. In the past fifty years, many planners have slowly narrowed their focus from analysis of regional and citywide trends to concentration on neighborhood efforts. During the same period, the preservationists have broadened their agenda to include the conservation of urban districts and neighborhoods as well as isolated, individual structures. Although neither group has lost sight of its own origins, both have established grounds for mutual agreement and supportive ventures. The implications of their merging interests are best illustrated in their joint participation in selected government activities.

At the municipal level, increased attention to conservation efforts has provided a framework for their cooperation. By 1982, for example, 832 cities had enacted preservation laws incorporating provisions for zoning protection, districting, and transfer of development rights—areas of traditional planning interest.[4] Furthermore, a growing body of federal and local case

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law—culminating in the landmark Grand Central decision, *Penn Central Transportation v. New York City* (438 U.S. 1978)—strengthened the legal basis for this use of the police power, a factor not lost on the planners.

In reality, federal government initiatives have contributed most substantially to joint efforts by planners and preservationists. Direct funding, new administrative practices, and tax reforms have been the main features of national planning-preservation activities. For example, a 1980 study of funding practices under the Urban Development Action Grants administered by the U.S. Department of Housing and Urban Development revealed that HUD had spent about 43 percent of its funds on rehabilitation, much of which involved preservation. (Rehabilitation dated from 1954, when the Housing Act and succeeding urban legislation authorized such expenditures.) Funding for rehabilitation of historic properties dated from the 1966 Model Cities Act.[5] Additional impetus came from the passage of the National Historic Preservation Act (1966), which established important intergovernmental bureaucratic links; and insertion of key provisions in the Transportation Act (1966) and the National Environmental Protection Act (1969), both of which required federal administrators to take special care to protect historic sites. Finally, the Tax Reform Act of 1976 and its subsequent amendments made adaptive reuse (the recycling of older buildings formerly considered obsolete) economically viable and provided an alternative to clearance-and-demolition schemes often employed by planners in urban development.

Through these devices, historic preservation slowly became an important item in the urban agenda. By 1980, planners and preservationists united to promote common interests. Their merger was only partial, however, for each shared reservations about the others' actions. Nonetheless, they had forged a fragile, if uneasy, alliance. This paper documents the growth of that alliance, highlighting the steps leading to its achievement and outlining unresolved areas.

## The early years: Progressive era to the New Deal

At their inceptions, the planning and preservation movements had very little in common, despite their shared progressive roots. Although both were responses to late nineteenth-century urbanization and industrialization, they differed in thrust, in organizational style, and in their views of the relationship between the public and private sectors.

While the planners had reformist, rationalist origins, the preservationists had patriotic, romantic roots. Shortly after 1909, the year when the first National Conference on City Planning and the Congestion of Cities convened and the landmark Chicago Plan was issued, planners had a clear vision of their mission. They were to present prescriptions or master plans for improving city life. To that end they appraised urban systems, especially circulation and recreation facilities, and restructured metropolitan centers to create long-range schemes for civic order. Later they added important implementation devices. Their most successful efforts were the zoning ordinance and the capital budget. In the first three decades of the twentieth century, planners would refine and codify their movement, ultimately setting up professional qualifying criteria; create a solid base of citizen support; and mobilize sufficient political strength to make planning a legitimate municipal concern exercised through the permanent local planning commission and planning department. By 1927, four hundred American towns had incorporated some form of planning in their operations.[6]

Although essentially local in focus, the planning movement would be highly organized on the national level. By 1934, it had three representative organizations, the American Institute of Planners, the American Society of Planning Officials, and the American Planning and Civic Association. Membership in the former two groups was dominated by white, male professionals, while the latter had a larger female representation in its membership, which consisted largely of citizen volunteers.[7]

On the whole, the planning movement—with its amalgam of professionals, including architects, engineers, lawyers, and real estate agents, and its diverse base of citizen support, including politicians, businessmen, and volunteer civic activists—insinuated itself into American municipal life rapidly and efficiently.

In contrast, the preservation movement had a slower, narrower growth pattern. Motivated by desires to "Americanize" immigrants by showing them historical landmarks or to rescue important monuments from destruction in the wave of new construction that characterized the period, individuals, often women, organized local efforts to preserve significant structures. Occasionally those efforts attracted national attention, such as the successful mid-nineteenth-century battle led by the Mount Vernon Ladies Association to prevent George Washington's home from falling into the hands of real estate speculators; but more often, they remained parochial.[8]

Like planners, preservationists came from varied, usually upper-income backgrounds. They came from patriotically based national groups such as the Daughters of the American Revolution, interest associations such as the (Theodore) Roosevelt Memorial Association, local civic and municipal art supporters, and assorted professions, including architectural history, museum and antiquarian societies. Unlike planners, however, the preservationists did not have an immediately definable product. Their approach was to organize simple, reactive responses to rescue threatened individual structures or sites of historic importance. Anyone in-

terested could participate; no credentials were required. They had no specialized methods except to use rather broad criteria for determining the historic (and later the aesthetic) legitimacy of the buildings concerned. They did not articulate a generally applicable set of professional concerns, for in their early years they had no equivalent to the master plan, zoning ordinance, or capital budget. Although they welcomed public-sector involvement to finance the purchase and maintenance of specific sites—particularly after the 1906 passage of the Antiquities Act and its expansion in 1916 through the creation of the National Park Service—they did not have a clear-cut vision for continuous, comprehensive, or systematic procedures to enhance preservation. Furthermore, coming from elite backgrounds, they were inclined to consider their activities as primarily philanthropic, properly pertaining to the private sector.

Lacking the missionary zeal of their planning counterparts, the preservationists were less eager organizers. Although some activists had created a few associations, such as the American Scenic and Historic Society (incorporated in New York in 1895) and the Society for the Preservation of New England Antiquities (organized fifteen years later in Boston), their efforts emphasized communications, not professional development, and remained regional, not national, in focus. The only national professional involvement that occurred in the period took place in the American Institute of Architects' intermittent preservation committees, which unsystematically established acceptable style authentication and restoration techniques for historic buildings.[9]

In those early years, the planners and the preservationists had few formal links. Except for sharing occasional common concerns, such as joint sponsorship of the Federal City project in Washington, they had little to contribute to each other. After 1925 that mutual independence would change. At that time, two projects, the restoration of Williamsburg, Virginia (1924), and the establishment of the Old City District in Charleston, S.C. (1931), began a new era of planner-preservationist cooperation.

The relationship between planning and preservation in Williamsburg was subtle. The town had an elegant seventeenth-century plan based on Le Nôtre's Versailles and Wren's postfire London reconstruction project, and when local minister William Goodwin and financier John D. Rockefeller began to collaborate in 1924, they originally intended to restore individual buildings. As work progressed, however, they slowly shifted their focus to the whole of colonial Williamsburg. Ultimately, they authorized the reconstruction of its entire urban fabric, including streets and open spaces. Soon, twentieth-century problems began to demand their attention: where would the thousands of visitors stay; how would they circulate through the reconstruction; and most important, how would the restored district be protected? Although Rockefeller's 1928 suggestion to hire a city planner to answer these questions went unheeded, the professionals engaged did create a battery of legal devices to meet the modern needs of the museum-city, including the legal demarcation of the area as a historic district.[10]

As Williamsburg attracted nationwide attention, preservationists in other towns modeled their efforts on the Virginia experience. They also were faced with the problem of integrating historic zones into working municipalities, not museum towns. In the larger cities with a more resistant urban structure, this type of planning would be refined.

The case of Charleston, South Carolina, is illustrative and represents a significant step in the evolution of the planning-preservation alliance. In Charleston, three major tools of the planning-preservation effort—surveying, zoning, and financing—were developed. As with most evolutionary efforts, they were not created systematically but were invented to meet current needs.

In 1931, after a lengthy campaign by the privately organized Society for the Preservation of Old Dwellings, founded in 1920 by real estate agent Susan P. Frost, the city government designated eighty acres of downtown land as a special zoning district where exterior alteration and new construction were subject to restrictions. Advised by Pittsburgh planner and zoning expert Morris Knowles, who set the Old City District boundaries, the city established administrative procedures incorporating the city planning and zoning commissions and a newly appointed Board of Architectural Review. In a coordinated effort, the society financed restoration in the area using a revolving fund to purchase and renovate the district's dwellings, which then were sold or rented on the open market. Ten years later, in 1941, planning consultant Frederick Law Olmsted recommended an additional refinement to the program, a citywide architectural survey that was undertaken with Carnegie Foundation funding by the Carolina Art Association. That survey remained the community's basic reference through two enlargements of the district, only to be replaced by an updated version thirty years later.[11]

Although the Old City District designation represented a new level in cooperation between planners and preservationists, this pioneering effort had definite limitations. In a bid to secure the support of the area's commercial interests, for example, the professionals excluded businesses from the district's restrictions. In addition, in keeping with contemporary practice, they justified their work in terms of elimination of the slums that characterized the area (which, incidentally, was the setting of Dubose Heyward's regional classic *Porgy*, the inspiration for George Gershwin's *Porgy and Bess*). They simply did not include today's issues of displacement, relocation, and gentrification in their calculations.[12]

Over the years, the Charleston model would be replicated in only a few cities, notably New Orleans, Lou-

isiana, and Monterey, California, but the district designation and its protective devices would not be employed widely until several decades later. Instead the movements continued on the largely separate courses of development set years earlier. Planners, whose real interests lay in regulating new construction, resource allocation, transportation, and population dispersion, concentrated on the housing, slum clearance, and garden city programs embodied in the New Deal activities of the Public Works Administration, the Federal Housing Administration, the National Resources Board, and the Resettlement Administration. There they proudly created public housing developments, model subdivision standards, state land use plans, and greenbelt towns. Sharing in the federal largess, the preservationists promoted site-specific activities, namely the recording of the nation's representative architecture through the Historic American Buildings Survey and the designation, purchase, and maintenance of landmarks by an expanded National Park Service. That work contributed uniform evaluative criteria to conservation practices. Essentially, both groups neglected the local urban district focus.

Despite the neglect of larger urban preservation issues during the New Deal, the framework for a planning/preservation alliance was in place at the end of the period. At its base was the professional expertise preservationists had gained by adapting techniques from planners and architects. As can be seen from the Williamsburg and Charleston examples, preservationists were forced by the scope of urban projects to enlarge their vision and make their work systematic. They adopted a three-pronged approach to their work, incorporating methods for articulating and administering districts, standards for declaring sites worthy of conservation, and formulas for creative financing.

## Planning and preservation in the middle years: Postwar to the sixties

The federally sponsored New Deal initiatives would continue to influence the planning and preservation movements in the two decades after the Second World War. Consequently, they would continue in their separate stances. As both groups matured and regularly re-evaluated their activities, however, they began internal restructuring efforts that would lead to a merging of interests by the end of the period.

With the end of the war, planners were caught up in managing suburbanization and urban renewal. Slum clearance, new construction, highway planning, and the revitalization of central business districts became primary professional concerns. "Conservation" and "preservation" were rarely part of the practitioner's vocabulary. Fueled by $10 billion in federal funds appropriated by the Housing and Slum Clearance Act of 1949 and subsequent amending legislation, planners adopted the standard "write-down" formula. They designated urban renewal areas and condemned and cleared land to provide sites for entrepreneurs to develop according to municipal comprehensive plans.[13] They aimed to renew the economic lives of declining central cities.

The early course of urban renewal in New Haven, Connecticut, exemplifies this model. A small city of only about 130,000 inhabitants, endowed with a major university and a beautiful town green dating from the seventeenth century, New Haven had been dissatisfied with its situation for most of the twentieth century. Too close to New York to compete culturally, overshadowed economically and politically by Hartford, losing population and commerce to the wealthier suburbs, and alarmed by the concentration of poor minorities in decaying older neighborhoods, New Haven had all the problems of dozens of old cities of the northeast.[14] The only thing that made New Haven different was the aggressiveness with which it tried to apply diverse planning nostrums to those ills. As early as 1910 it had a park plan by Gilbert and Olmsted; in 1941 the new City Planning Commission hired Maurice Rotival to produce a comprehensive plan stressing highway improvements.

Although nothing much came of either of those plans, the city was clearly predisposed to accept self-improvement schemes. In 1953 the electorate confirmed that predisposition when it made Richard Lee mayor on the basis of his campaign platform to bring urban renewal to the city.[15] Vowing to rid the downtown of its Oak Street slum, to restore central business functions, and to improve access to the core from the suburbs, Lee hired young lawyer Edward Logue to spearhead the activity as the city's first development administrator. "Clear and rebuild" were Lee's orders to Logue, an adept fund-raiser who turned the trickle of federal funding into a torrent. (By 1967 New Haven would receive $790 per capita in urban renewal funds; New York City had received $42 per capita.)[16]

Under the Lee-Logue administration, renewalists transformed the downtown. They leveled the Oak Street slum and replaced it with a shopping mall and parking garage. They joined the city to the suburbs with a six-lane connector to the Connecticut Turnpike. Hailed in contemporary professional journals and the popular press, New Haven, for a few short years, seemed to provide a successful model for the nation's planners.[17]

City after city incorporated its method. By 1962, 588 communities had projects, and Federal Urban Renewal Administrator William Slayton predicted that by 1964, 750 cities would be engaged in more than fifteen hundred projects.[18] In efforts to achieve their ends, the urban renewalists—usually a coalition of planners, local politicians, journalists, and business and civic leaders—justified the wholesale destruction of large sites, re-

gardless of the viability of individual parcels, a rationale that would be upheld by the U.S. Supreme Court decision handed down in 1954 in *Berman v. Parker* (348 U.S. 26, 75 S. Ct. 98, 99). In that case, the plaintiff, an owner of a successful Washington, D.C., department store located in the Southwest Urban Renewal Area argued that his property was not blighted and therefore not eligible for condemnation under the "write-down" process. Using the widest possible interpretation of public purpose, the court rejected his plea. It argued that health and safety were not the only constitutional tests of public purpose and that the attractiveness of a whole area might be construed as serving the general public interest, thus upholding current clearance practices.[19] By that judgment, the court left the way open for renewers to seize and write down land almost anywhere.

Although most communities followed the standard urban renewal pattern as illustrated in New Haven, some exceptions did exist. In Boston, for example, the new government center plan, while focusing on new construction, did incorporate eighteenth- and nineteenth-century buildings into its design. Professional guidance from planners Frederick Adams, John Howard, and Roland Greeley and architects I. M. Pei and Walter Whitehall had led to a national competition for downtown reconstruction. The 250 entrants were required to consider two national shrines, the Old State House and Faneuil Hall–Quincy Market, and several adjacent streets as an "inseparable part of the design ensemble," although they were outside the project boundaries. Within the boundaries, the nineteenth-century Sears Crescent was not given such firm protection. Nonetheless, the winning entry submitted by Kallmann, McKinnell, and Knowles preserved the structure.[20] (Even in New Haven, plans would involve conservation, as in the case of the award-winning Wooster Square project, a 235-acre scheme to retain and rehabilitate a nineteenth-century working-class neighborhood.[21])

In Philadelphia, however, the planners of urban renewal created the most significant example of preservation of the period. Like New Haven, Philadelphia had a tradition of activity in civic improvement dating back to the early twentieth century. Its park system, its city-beautiful–inspired Fairmont (Benjamin Franklin) Parkway, and its militant housing association indicate the latent sympathy that would later be exhibited in a high degree of popular receptivity to city planning and redevelopment in the postwar era. Well aware of the dangers of central city deterioration that characterized so many cities of the period, Philadelphia's civic leaders had been among the earliest in the nation to attempt to reverse the situation. As early as 1943, an enlightened municipal reform effort had vested the city planning commission with a generous budget to undertake a long-range capital budgeting program; a few years later, the Citizens' Council on City Planning articulated the need for urban revitalization in its well-received Better Philadelphia Exhibition of 1947. Two other groups, the Independence Hall Association and the City Center Residents' Association, added a preservation dimension as they launched their own limited but successful campaigns to encourage conservation. When the Housing and Slum Clearance Act was passed in 1949, the city was well prepared to take advantage of it. Ultimately two agencies, the City Planning Commission, headed by Edmund Bacon, and the Redevelopment Agency, chaired by William F. Rafsky, worked closely to coordinate a short-term development strategy with the longer-range comprehensive plan. Their major thrusts were to conserve the central business district, to embark on a residential renewal program to upgrade the slums and prevent deterioration in good neighborhoods, to rationalize transportation, and to encourage industry.[22]

As in New Haven, a major portion of the plan focused on clearance and new construction, particularly for the Penn Center project, which combined office, recreation, commercial, and transportation functions. But an important secondary effort, restoration of Society Hill, the city's colonial, residential core, employed preservation and rehabilitation more widely than had been customary under standard renewal schemes. Endowed with hundreds of eighteenth-century residential structures that were in an advanced state of blight, as well as a picturesque but crowded and inefficient food market, the neighborhood was a perfect site for renewal. Designated as a "key residential belt," the hundred-acre site was a critical component of a citywide housing scheme. After moving the food market to a new distribution center, the city designated the district as an urban renewal area to include construction of three high-rise apartment towers—controversial but financially necessary—selective demolition, and public and private rehabilitation of historic townhouses. Its aim was not to achieve "restored replicas . . . but architectural harmony" in the rebuilding and remodeling of "an attractive residential community with modern convenient living accommodations in towering apartments and small houses."[23]

Although a highly visible and successful example of the melding of urban renewal and preservation, the project remained a minor part of the total project costs of the Philadelphia program. By the mid-1960s, it constituted only 12 percent of the city's net project costs and commanded only 13 percent of the federal grants to the city. In contrast, large-scale reconstruction efforts like Market Street East (a shopping mall) and Eastwick (new housing construction) were receiving much higher percentages of the total resources.[24] Thus while the Society Hill project received more than its share of national media attention, it did not represent the prevailing model for urban renewal.[25] Nonetheless, it did serve as a brilliant testimony to a new approach to preservation and planning.

Of course, as in the other examples of the planning-preservation alliance, Society Hill had its limitations. In the opinion of some planners, the displacement of the area's low-income residents and the homogeneity of the replacement population (primarily white, upper-income groups) was a perversion of urban renewal purposes.[26] For their part, the preservationists criticized the visual intrusion of the modern apartment towers and questioned the design of some new townhouses.[27] All in all, however, Society Hill, protected by traditional zoning devices, demonstrated that the two groups could cooperate and benefit from the use of renewal powers and funds to restore a neighborhood.

While the planners were engaged in urban renewal activities, the preservationists began to pump energy into their movement. They were driven to organize by a desire to concentrate the fragmentary elements of their own constituency. And after 1949 they would gain more momentum in the face of innumerable threats from urban renewal administrators whose heavy-handed clearance programs tended to be insensitive to preservation concerns. In 1948 a small group of architects, architectural historians, museum curators, landmarks conservators, and others formed the National Trust for Historic Preservation, modeled on similar European associations. Congressionally chartered and funded through private donations, dues, and large doses of foundation aid, the trust had multiple jobs: an acquisition function allowing for the purchase and maintenance of property; a communications role giving technical advice to local groups, publications, and special research; and a professional development capacity encompassing refining criteria for building evaluation and creating educational training programs.[28]

Except for its acquisition powers, the trust would function in a capacity for preservationists similar to the role the earlier American Institute of Planners and American Society of Planning Officials served for planners. Consequently, the postwar decades featured a significant restructuring of the preservation movement. Under the trust's pragmatic leadership, the very definition of preservation changed dramatically. In only a few years, the organization gained broad acceptance that preservable projects would include more than historic buildings or objects. Its expanded vision, built on the Charleston experience, added the conservation of districts embodying values of local and state as well as national importance. It extended acceptable time periods allowing for Victorian and twentieth-century contributions. And above all, it moved from a relaxed insistence on museum purity preservation toward acceptance of adaptive reuse techniques. For example, in 1951 the trust would endorse the activities of Historic Georgetown that saved that district's older buildings from demolition by renovation and economic exploitation. These views began to broaden the support base of the movement. Measured in trust membership, the rolls grew from a handful in 1947 to 640 in 1952, to 1,684 in 1956, to 4,000 in 1962. Its most significant growth occurred in the next decade, however, when the trust began to have a larger impact. By the end of the seventies, it had expanded to 42,000 members.[29]

Armed with a more broadly defined mission, the organization embarked on a course of proselytizing and professional development. Following a pattern used a generation earlier by planners, the trust wooed foundation support to finance those activities. (Where planners relied on money from the Sage and Rockefeller fortunes, the preservationists benefited from the Mellon wealth.) With this financial security, the trust used the same techniques as ASPO had employed years earlier. It sponsored "circuit-riding" experts to give advice to local groups. It offered short courses in preservation administration. It revised and simplified survey instruments in order to encourage data collection. It developed a literature through publication of *Historic Preservation*, a bimonthly journal, and later *Preservation News*, a tabloid newspaper. It organized movies and exhibits, such as the 1958 "Architecture Worth Saving" at New York City's Museum of Modern Art, and it published textbooks like *Historic Preservation Law* by Jacob H. Morrison.

As the movement expanded, model preservation projects proliferated. Encouraged by the trust, several cities used zoning techniques employed in Charleston and the urban renewal model from Philadelphia. Among them were Boston, Savannah, Richmond, Providence, Bethlehem (Pa.), and Pittsburgh.

Savannah stands out as an example of that work. Relatively undamaged by the Civil War and bypassed by the early twentieth-century economic development that transformed other Southern cities, this city of 118,000 possessed a large stock of exemplary but highly deteriorated antebellum architecture arranged in a unique eighteenth-century plan that was characterized by attractive, regularly placed residential squares. In the early 1950s, twin threats of downtown modernization and suburban expansion menaced this resource. While transportation planners proposed to drive a widened street through one of the city's most beautiful squares and actually replaced the Old City Market with a multilevel parking garage, private wreckers demolished eighteenth-century houses to scavenge used bricks to face out-of-town tract dwellings. Rising to meet the challenge, local preservationists, led mainly by women, responded in 1954 with the creation of the Historic Savannah Foundation to raise public support for municipal conservation. Although moderately successful in its early years, it was constantly strapped for funds and became a more substantial influence only after arousing the interest of local bankers led by a young investor, Leopold Adler II. Under his leadership, the group devised a three-pronged preservation strategy: an architectural survey; a campaign for a historic district

designation, protected by zoning; and the creation of a revolving rehabilitation fund. Ultimately the group achieved its aims. It completed the survey of a 2½-square-mile area in 1968. Five years later city legislation protected it with a historic zoning district designation, the largest in the nation. And the group raised $200,000 for its revolving fund, which, with sophisticated management, it used to establish lines of credit in the local banks, thereby multiplying its value. Besides those efforts, in 1962 the city government incorporated a sixteen-acre residential restoration project, the Troup Trust, into its urban renewal program. In succeeding years, the city sponsored two other urban renewal designations in the district, including one to restore the riverfront.[30]

While the preservation movement was beginning to grow, the planners were facing a crisis in their history. In the late 1940s, a number of younger practitioners, including Martin Meyerson, F. Stuart Chapin, Jr., and others, had begun to challenge the teachings of their predecessors. They attacked the profession's reliance on the comprehensive plan: they questioned the validity of planning decisions made without citizen participation; and they disputed current urban renewal techniques that were based on clearance and wholesale replanning of existing districts without reference to local culture and historic values. They were joined by other critics who objected to the cost and output of urban renewal programs.

The literature of the period would reflect those concerns. In 1956, Meyerson, at that time a University of Pennsylvania planning professor and vice president of the American Council to Improve Our Neighborhoods (a Ford Foundation–funded group fostering local environment improvement), startled his colleagues with his keynote address at the 1956 annual AIP convention, in which he challenged them to engage in pulse-taking and review activities. Aiming to bring "planning and policy closer together," he urged them to monitor shorter-range, narrowly gauged community concerns. This was a major link toward forging the planning-preservationist alliance because it called on planners to connect planning theory with project planning.[31] It would be a short conceptual step to neighborhood planning advocated in the following decade.

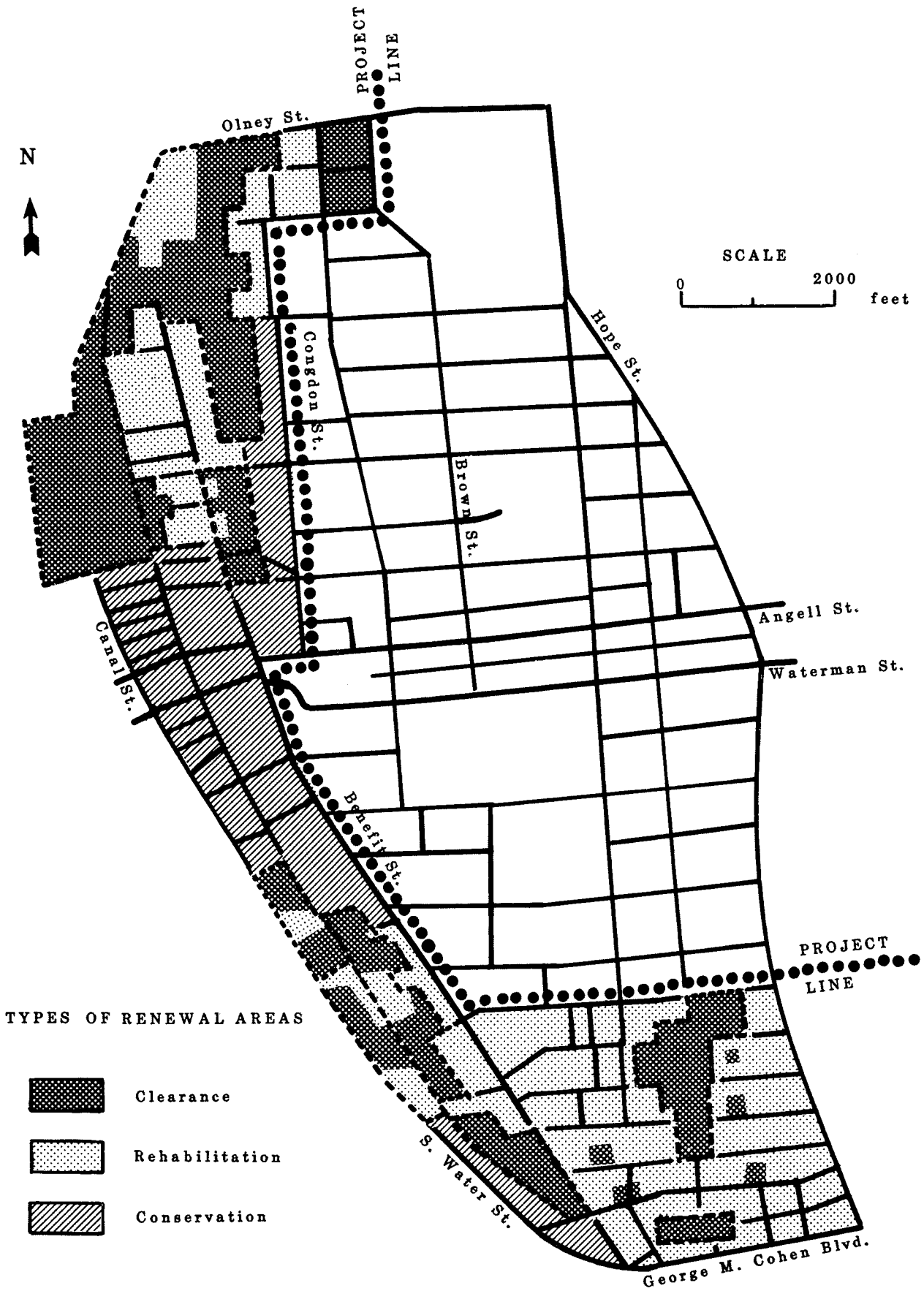
Others added to the Meyerson prescription and called for a re-evaluation of planning values. Jane Jacobs' *The Death and Life of Great American Cities* (1962), Herbert Gans' *The Urban Villagers* (1962), "A Choice Theory of Planning"(1962) by Paul Davidoff and Thomas A. Reiner, and Davidoff's later piece "Advocacy and Pluralism in Planning" (1965) all cautioned practitioners to be more aware of the diverse, smaller-scale building blocks of planning and more appreciative of the beauty and functionalism of existing neighborhood organization.[32] Finally, Martin Anderson, in the *Federal Bulldozer* (1964), provided planners with evidence of the failure of the clearance strategy. Documenting the high cost and slow progress of massive demolition, he called for scrapping the whole program.[33]

## Planning and preservation in the later years: The alliance meshes

Ultimately, the new wave of criticism accelerated changes in national legislation and planning practice, for federal administrators themselves constantly adjusted the priorities of the programs. For example, planning studies were appropriated more generously and allowed for more thorough investigation of neighborhood dynamics and potential rehabilitation strategies. Under this rubric, several studies were undertaken. The *Seaver Townsend Urban Renewal Area* (Boston), *Historic Preservation Plan for a Central Neighborhood Renewal Area* (Savannah), and *The Negro Housing Problem: A Program for Philadelphia* exemplify the technique. Those reports underscored the historic or residential values of the areas in question and led the way to conservation efforts. Charles Abrams, author of the Philadelphia study, reflected this sentiment:

> American neighborhoods include the good and the miserable. But housing conditions should not be the sole determinant of what deserves to stay or to be torn down. . . . Demolition of a functioning neighborhood . . . disrupts associations and institutions, destroys what people have added to the neighborhood and the attributes that drew them there in the first place.[34]

One of the best of these was written in Providence when the Urban Renewal Administration granted $50,000 for a joint City Planning Commission-Providence Preservation Society study of a 380-acre area on the site of that city's original seventeenth-century settlement. The resulting 200-page report, released after almost three years of investigation, demonstrated a careful blend of historic preservation and city planning procedures. Its authors divided it into three parts: an overview of American preservation; a collection of recommended survey and evaluation techniques; and a comprehensive development plan combining recommendations for urban renewal, historic district demarcation and protection, and long-range planning. Cited by the American Institute of Architects in 1960 "as a major contributor to American architecture, to community planning and to civic design," it was reissued in 1967 by HUD, which by that time was beginning to increase its support of conservation and rehabilitation activities. HUD was so motivated because in the five years since the report's publication, much had been accomplished to demonstrate the success of historic-area renewal undertaken as part of a total urban planning and development effort. A historic district protected by historic zoning covered about a third of the area, and the recommended 120-acre renewal area had been




gure 1. The award-winning College Hill plan in Providence, Rhode Island (1967), featured a major statement ı preservation and incorporated extensive conservation areas in the master plan.

incorporated (with its historic protection provisions intact) into the larger East Side Project, encompassing 343 contiguous acres in the city.[35] Other cities, particularly in New England, followed suit. Among the notable ones were Newburyport and New Bedford, Massachusetts.[36]

The planning studies were matched with new conservation-based programs, which, over time, would capture increasing amounts of federal funding. The Community Renewal Program, enacted in 1959 but not operational until the mid-sixties, called for local governments to study and schedule small-scale, non-demolition projects. Implementation for the program came from newly passed code enforcement and below-market rehabilitation loan programs.[37] San Francisco, for example, began its highly successful FACE (Federally Assisted Code Enforcement) program after passage of this legislation. As the City Planning Department selected target areas, it frequently included neighborhoods scheduled for massive redevelopment for the combined inspection and loan program. By 1976 it had spent about $23 million to rehabilitate about ten thousand housing units, a figure that contrasted favorably with the $12 million dollar price tag of a single slum clearance project that provided far fewer standard dwellings.[38]

The culmination of the new thrust came in the late 1960s with passage of two revolutionary programs: the Demonstration and Metropolitan Development Act of 1966 (Model Cities) and the Neighborhood Development Program of 1968. Both called for communities to focus their resources in carefully selected neighborhoods. While the first represented an important innovation in integrating social welfare activities with physical planning, the second provided new operating procedures, including annual funding and incremental planning. The effects of both would finalize planners' acceptance of an approach employing short-range, less-than-citywide solutions emphasizing rehabilitative measures.[39] This dramatic revision in planning methodology offered a sharp contrast to procedures reliant on long-term, comprehensive visions and massive neighborhood clearance and redevelopment schemes.

The new approach appealed to planners for a variety of reasons. To some it was philosophically attractive because it included an appreciation of neighborhood values. To others it was economically alluring because it offered a more cost-effective means of doing business. Its overriding value was that it allowed practitioners to deal with urban problems in smaller units and to reap immediate and visible results.

While planners were enmeshed in their internal restructuring, the preservationists continued to be active in expanding their influence. By the mid-1960s they assumed an aggressive lobbying posture, particularly in the federal arena. Amazingly alert to potential opportunities, they forged new alliances and successfully promoted their interests in transportation, environmental, housing, and tax legislation. Their most important achievement, however, was the passage of the National Historic Preservation Act in 1966.

Preceded by numerous supportive studies, such as the Ford Foundation–funded *With Heritage So Rich,* and endorsements from President Lyndon B. Johnson, the law made preservation a public concern and provided a means for integrating preservation activities into the government bureaucracy.[40]

Like the planners of a generation earlier who had gained public approval of the master plan, the preservationists invented their own device, the National Register of Historic Places. This federal list recognized structures and districts of local and state importance and provided minimal protection for them by requiring federal review of any government activity threatening them.

Supplementing the extant national historic landmark system, the contents of the National Register were drawn from an intricate recommendation system. With 50 percent matching funds from the federal government, states and localities were to undertake surveys to establish nominees according to standards developed by the U.S. Department of the Interior. States were responsible for making nominations. (Most created bureaucratic units headed by state preservation officers for that purpose.) The idea caught on quickly. In 1972, only six years after its institution, the register had 3,500 entries, and ten years later it would have fifteen thousand.[41] By 1980 all fifty states had established permanent preservation offices.[42]

One reason for the success of the program was the dramatic increase in federal funding for these activities. The Department of the Interior planning and survey allocations rose from $82,000 in 1969 to $2.2 million three years later—a twenty-five-fold increase.[43]

The 1966 act also contained another crucial provision, the so-called "Section 106" review power. It gave this mandate:

> . . . [F]ederal agencies shall prior to the approval of the expenditure of any federal funds or prior to the issuance of any license . . . take into account the effect of the undertaking on any district, site, building, structure or object that is included or eligible for inclusion in the National Register.[44]

The Advisory Council on Historic Preservation, a presidentially appointed board, was vested with a final review power. Although the provision included no way to prevent the execution of such projects, it, like its counterpart, the environmental impact statement mandate of the National Environmental Protection Act, had the power to delay or to open the questions to adjudication after Advisory Council comment.

While the preservationists were involved in those activities, the planners' emphasis on rehabilitation continued to gain momentum, reaching its logical conclusion in the multifaceted neighborhood movement of

the seventies. In the process, federal urban policy would be transformed from reliance on large-scale renewal projects heavily laced with new construction to locally based community stabilization programs premised on conservation and rehabilitation. Occurring in less than ten years, that transformation had several distinct steps. First, the 1968 passage of the Neighborhood Development Program, while designed to promote efficiency by allowing for annual funding of partially planned projects, had another, more important effect: favoring rehabilitation. Second, new development formulas such as the Federal Home Loan Bank Board's experimental residential rehabilitation program, Neighborhood Housing Services (later incorporated into HUD activities as the Neighborhood Preservation Program), provided impetus by designing coordinated local self-conservation efforts with government programs in code enforcement and capital facilities investment and private-sector, market-rate loans. Finally, the 1974 Housing and Community Development Act and its 1977 amendments bolstered the neighborhood approach through several new or expanded devices. Its required Housing Assistance Plan mandated citywide neighborhood quality evaluations and required the targeting of specific neighborhoods for improvement. Its funding of community development grants, Section 8 housing assistance and Section 312 rehabilitation loans aimed to accomplish those ends. The creation of the Urban Development Action Grant, which had neighborhood revitalization as one of its two objectives, in 1977, and the formulation of the Neighborhood Strategy Areas program a year later more definitively linked the housing rehabilitation and rental assistance programs to other concentrated local revitalization.[45]

HUD's emphasis on conservation was in keeping with changing tastes. Disparate events of the mid-seventies—the oil shortage, the Bicentennial celebrations, the environmental movement—had made Americans more appreciative than ever of the richness of their natural and man-made resources. The well-crafted, well-located housing units of yesteryear fell into that category. Furthermore, economic considerations—prices for used houses rose less than prices of new construction—also played an important part as some prospective buyers purchased homes in previously neglected territories, the bypassed older central city neighborhoods. This trend, which by the end of the decade affected more than half the nation's cities, was quickly named "urban gentrification" because of the nature of its participants: young, well-educated, relatively affluent professionals. While HUD supported neighborhood conservation, it also used UDAG funds to encourage downtown redevelopment incorporating historic properties. The highly publicized success of such projects, notably the Faneuil Hall–Quincy Market scheme of developer James Rouse, stimulated planners to employ federal funding and tax relief techniques to encourage private-sector interest in this area of economic development.[46]

In that environment the planners and the preservationists sealed their close, yet uneasy, alliance. Seemingly, the effort, labeled "neighborhood preservation" by the former and "neighborhood conservation" by the latter, united them. It was bolstered by more than two hundred federal programs offering direct financial aid and technical information. It was made legitimate by the creation in 1976 of the National Historic Preservation Fund, which authorized dramatically increased funding supported by Treasury income derived from the lease of mineral rights on public lands. And it was encouraged by influential indirect benefits contained in the Tax Reform Act of 1976, amended in 1978 and 1981, favoring rehabilitation of certified historic properties. As the movement exploded, terms like "adaptive reuse," "area preservation," and "neighborhood revitalization" became common currency to planner and preservationist alike. Article after article in the *Journal of Housing Architectural Record* and other publications testified to the success of their joint endeavors. The Victorian District (Savannah), Old Town (Baltimore), Hoboken, Georgetown, Alexandria, Pioneer Square (Seattle), Long Wharf (Boston), Galveston, Santa Fe, and South Street Seaport became representative and desirable models of urban redevelopment.[47]

In addition, educators of both fields began to seek ways of training their respective students in the joint methods. Planners whose first degree programs dated from the 1930s incorporated preservation materials into their curriculums. At the University of Illinois, for example, the Department of Urban and Regional Planning devoted its continuing professional education program in 1977 to historic preservation themes.[48] Preservationists, who had a much shorter educational history and far fewer degree programs than their planning counterparts, nonetheless instructed their students in many planning techniques. Arthur P. Ziegler's textbook *Historic Preservation in Inner City Areas* informed them about zoning, easements, and funding techniques, while Columbia University professor James Marston Fitch's manual *American Building* taught students how to distinguish worthy architecture.[49]

Finally, it was not unusual for planners to become deeply involved in preservation work, as did New Jersey practitioner Jack R. Stockvis. Before his 1981 appointment as deputy to HUD's assistant secretary for community planning and development, Stockvis was project manager of the Paterson (New Jersey) Great Falls Historic District, administered from the city's Department of Community Development. He had come to that position from Jersey City, where as executive director of the Jersey City Historic District he had helped initiate the city's back-to-the-city brownstone movement, an effort that received national publicity.[50]

Yet all was not perfect in the alliance. Torn by different values set within their professions, planners and preservationists questioned the results. While both groups agreed that the aesthetic and economic benefits

of their output could be dramatic, they also had major complaints. In some instances the planners decried the continued displacement of indigenous populations inevitably outpriced in many improved neighborhoods; in other cases, preservationists objected that emphasis on economic development destroyed the authenticity of restored sectors. Other areas of disagreement centered on costs, appropriate reuse, degree of preservation, allocation of federal funds, and selection of potential sites and clients.[51] A typical dispute occurred around the Pikes Place Market project in Seattle, Washington. The focus of a decade-long battle, it ultimately was restored, but not before the topic became an issue in a citywide election.[52]

Nonetheless, by the beginning of the eighties, an alliance had been forged. Each group had an effect on the other. The preservationists had a greatly expanded vision of their functions. They had moved from the single-minded pursuit of limited objectives centered on protection of specific monuments to conservation of whole neighborhoods—residential, commercial, and even industrial. They shaped a systematic approach to their work incorporating the surveying, evaluation, districting, and zoning tools of the planner. They had fought successfully for participation in major federal programs ranging from community development to open space. And finally, they had developed a substantial following, demonstrating their strong popular base of support. Likewise, the planners had drawn benefits from the alliance. They made adaptive reuse, narrower neighborhood projects, and conservation of existing community structures major goals of their work and carefully integrated them into their longer-range mission of creating comprehensive plans to direct urban growth and development. Thus as the 1980s opened the two groups worked together to promote common goals.

## Planning and preservation under the New Federalism: The alliance survives

With the advent of the Reagan administration and its limited vision of urban assistance, the alliance threatened to crumble. When funds became scarce the two groups devoted their time and energy to survival, not alliance-building. At this time, planners faced a debacle as federal aid to cities declined by 12 percent, much of which was subtracted from planning programs.[53] Allocations for community block grants and Section 8 housing were slashed. Areawide planning assistance, the "701" program, and Section 312 rehabilitation loans were eliminated. The Urban Development Block Grants, threatened with extinction, were saved only after a furious fight, and even then funds were reduced by one-third.[54] The preservationists faced more substantial cuts. As early as 1979 President Jimmy Carter, in a last-ditch effort to balance the budget, had begun to chip away at their $55 million budget while leaving HUD appropriations intact.[55] Under the Reagan administration they faced an even more difficult situation. After a presidential request in 1980 for zero funding, they successfully battled for $26 million for the Historic Preservation Fund. In the three succeeding years, that scenario reappeared; yet the preservationists' strenuous lobbying yielded a successful outcome and their funding stayed at the same level.[56]

As the two groups fought for survival, some of the underlying differences between them became more apparent. The stance of each on a key Reagan urban policy, the enterprise zone, exemplifies the rift. While both basically supported the effort, each also had reservations that, on examination, revealed disregard or deep-seated distrust of the other's goals. The planners believed that the enterprise zone proposals should be amended to enable their coordination with community block grant districts, to eliminate the limit on the number of zones, and to balance the amount of labor and capital-intensive businesses eligible for favorable tax treatment embodied in the legislation. They never addressed preservation issues in their comments.[57] In the preservationists' judgment, the laws needed substantial revision to prevent the loss of hard-fought conservation gains of the previous decade. While, like the planners, they pleaded for unlimited designation of the zones, their rationale was different. They feared that the small number of proposed area designations would foster such intermunicipal competition that cities would waive their preservation laws in their rush to prove to the federal government that they merited the award. Instead, the preservationists called for strict and specific measures of protection, including a requirement that the zones be surveyed to identify and register properties eligible for the National Register.[58]

Despite the downturn, the legacy of their shared accomplishments left an important mark on the American landscape. Whole cities, districts, neighborhoods, and individual buildings in hundreds of localities were protected and adapted for modern use through the efforts of these professionals. Furthermore, while the practice of planning has been enriched by the contributions of the preservationists, the planners have added their own techniques to conservation efforts.[59] As suggested by New York Metropolitan APA chapter President George Raymond, planners have the unique evaluative skills to aid in community preservation decisions.[60] That thesis was borne out in August 1983, when Dean Macris, director of the city planning department of San Francisco, unveiled a daring plan to direct the growth of the city's downtown. Central to the program were provisions for block-by-block protection of almost 500 historically significant buildings in five architectural conservation districts. Thus the alliance, uneasy as it is, has encouraged a new vision of the desirable urban

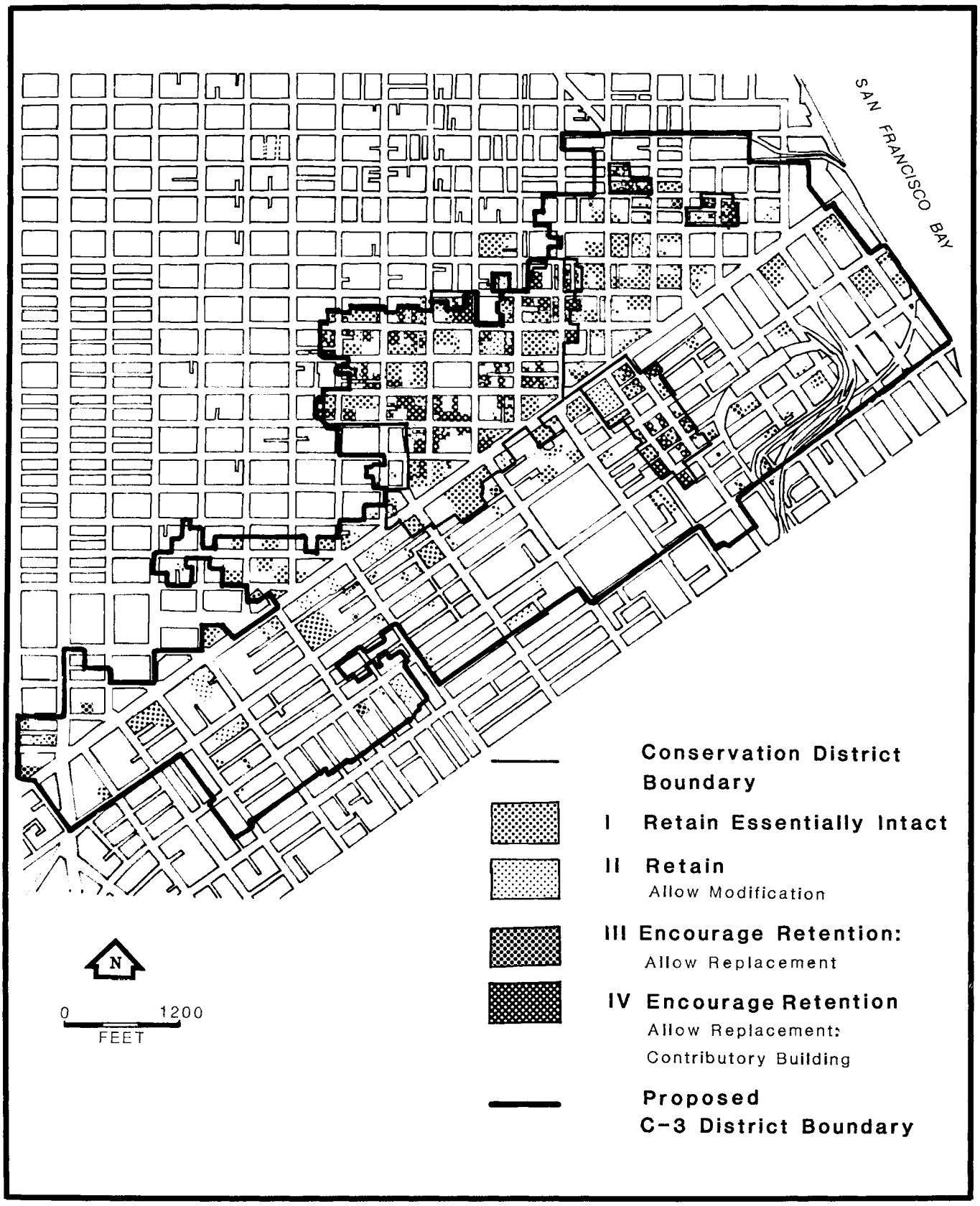



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**Figure 2. Sixteen years after the Providence plan, the Downtown Plan for San Francisco incorporated many acres of conservation district in the central area of the city, an action that merited the attention of the press throughout the country.**

scene and is forging a permanent heritage for the nation. Preservationists have played their part particularly in the aesthetic area by identifying and publicizing significant buildings, neighborhoods, and cities. Planners have contributed their skills in providing legal and administrative conservation techniques and integrating the programs into general schemes directing urban development. On the whole, their cooperative efforts have yielded positive results.

## Authors' note

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# PLANNING FOR SUCCESSFUL PRESERVATION

*Compiled by NAPC*

*Editors note: The following article was compiled in response to numerous requests from our members using materials collected by NAPC including training presentations and conference handouts. Many excellent books with more extensive information are available from the American Planning Association* (www.planning.org) *and the National Trust for Historic Preservation (*www.nationaltrust.org).

In order to be optimally successful, a local preservation program must plan for its future growth as well as its ongoing maintenance. The need for local preservation plans has become more obvious as historic preservation and local preservation commissions have become accepted as legitimate parts of local government, and as their work has become more complex. In some states, having a local preservation plan is a requirement of the Certified Local Government (CLG) program or may be mandated by state legislation. Many communities, however, do not have a local preservation plan or have allowed their plan to become out of date. Although developing and maintaining a preservation plan is not an endeavor to be taken lightly, it is not beyond the reach of most local preservation programs

***Although developing and maintaining a preservation plan is not an endeavor to be taken lightly, it is not beyond the reach of most local preservation programs.***

**What is a Preservation Plan?**
Simply put, a preservation plan is a roadmap for a government's future preservation activity. Ideally, a local preservation plan is an element of the city or county's comprehensive plan; but in cities and towns without comprehensive plans, it can be a stand-alone document. Whatever its form, a preservation plan *and the planning process* provide a proactive way to ensure the preservation and protection of a community's historic resources and character.

By informing property owners about the community's preservation goals, a preservation plan can be a public outreach tool for the preservation commission. Community buy-in is achieved by involving the public in the planning process, which lets property owners and residents help shape the community's future in a positive way. As the public becomes more aware of local history, enthusiasm and support for its preservation will grow. In many cities and towns, the preservation plan is also an economic development tool used to help attract businesses and individual property owners who value the characteristics usually found in communities with strong preservation programs.

Elements of a preservation plan may exist in a city or town's different policies and land use management tools and it is not uncommon for objectives that would be included in a preservation plan to be found in the local zoning or preservation ordinance. Since these ordinances do not provide the other elements of a preservation plan, they cannot take its place. Naturally, preservation plans vary from place to place depending on community size, stage of development, public awareness of historic resources, when the local preservation ordinance was passed, etc. In all cases, however, an effective preservation plan has certain characteristics.

**Common Characteristics**

Future oriented - An effective preservation plan establishes goals and objectives that will be achieved over time through survey activity, district designation, regulations, and ordinance administration.

Continuous - To be effective and remain relevant, a preservation plan requires periodic reevaluation and amendment to adjust to changes in local conditions as well as further development of other, related municipal policies and local ordinances.

Realistic - The preservation plan should be based on identified current and anticipated conditions as well as designed to help shape those conditions. It will not be effective if it only explores desired results and does not acknowledge real challenges and local conditions.

Comprehensive - Even if the preservation plan has to be a stand-alone document, it should contain all the elements it would have as a part of a comprehensive plan. Briefly, these elements include:

- ***Statement of goals and the purpose of the preservation plan***. This element provides direction by establishing the community's preservation work program and sets forth the philosophy underlying the other elements of the plan. The goals must accurately reflect the community's vision for its future as well as its preservation needs. The community's vision is identified through public participation in the planning process.

- ***Definition of historic character.*** By describing the community's unique character, this element provides context for other parts of the plan and continuity when the plan is updated or amended. It can be as simple as a summary of the community's history and significant periods, or a very detailed narrative citing individual character defining resources.

- ***Summary of past preservation efforts***. An overview of the local preservation movement helps people understand the evolution of the community's preservation program. It also informs future decisions about preservation priorities and planning activity.

- ***Historic resource surveys and plans for future surveys.*** A community's historic resources survey and a process for maintaining it are essential to successful local preservation. This element includes information about where and when surveys have been conducted, what areas will be surveyed in the future, and how the surveys will be maintained. The rationale behind prioritizing future survey areas should also be included. (See "Surveying for Success" on page 14 for more information about local historic resource survey programs)

- ***Explanation of legal basis for historic preservation***. An overview of the state and local preservation laws establishes the legitimacy of the local preservation program and plan. Reference should be made to all applicable state statutes such as the state enabling legislation and any comprehensive planning legislation. An explanation of the local preservation ordinance and how it is administered, including enforcement and appeals provisions, is essential.

- ***Discussion of relationship between historic preservation and other land use and growth management authority.*** How preservation will be coordinated with other governmental decisions concerning land use, transportation, public works, etc. should be addressed in the plan to avoid conflicting decisions. This element should also provide a process to reconcile potentially contradictory regulations. These provisions are easier to coordinate when the preservation plan is an element in a comprehensive plan.

- ***Explanation of public sector responsibilities.*** How the municipality will manage historic properties that it owns must be defined to guide its future treatment of them. In many states, city owned property is not subject to review by the local

preservation commission. A commitment by the local government to be a responsible steward can prevent inappropriate public sector actions. This section should also include a means for ensuring that public actions, such as infrastructure improvements, will not adversely affect privately owned historic resources.

***Discussion of preservation incentives.*** This section of the plan does not create incentive programs, but summarizes programs that are already in place and recommends programs that should be developed in the future. Local regulation is more readily accepted when accompanied by incentives such as tax credits, façade grants, and low income housing assistance to promote historic resource protection. (See *The Alliance Review*, May - June 2005 for more information)

***Discussion of preservation education activity.*** Public outreach to promote preservation is essential for successful local preservation. Programs to educate the public about the local historic preservation program, the importance of historic resources, and to raise awareness and appreciation of local history should be summarized and potential future programs outlined in the plan
.

***An agenda for future preservation activity.*** This section provides time frames for implementing the plan's goals and objectives and sets implementation priorities. Just as importantly, it establishes a system for periodic review to monitor progress, identify any necessary amendments, and to update the plan on a regular basis.

**The Process**

No single planning process fits every community in detail, but most include a steering committee comprised of representatives from the various stakeholders. Stakeholders include the local preservation commission, property owners, from various municipal agencies, elected officials, members of local preservation non-profit groups, business owners commission staff, and others. The steering committee typically works with commission staff (if available) or a consultant who provides expertise and experience and guides the process.

Through a series of community meetings and surveys, the committee learns what is important to the community and how the community wants to grow. *Photo: NAPC File Photo*

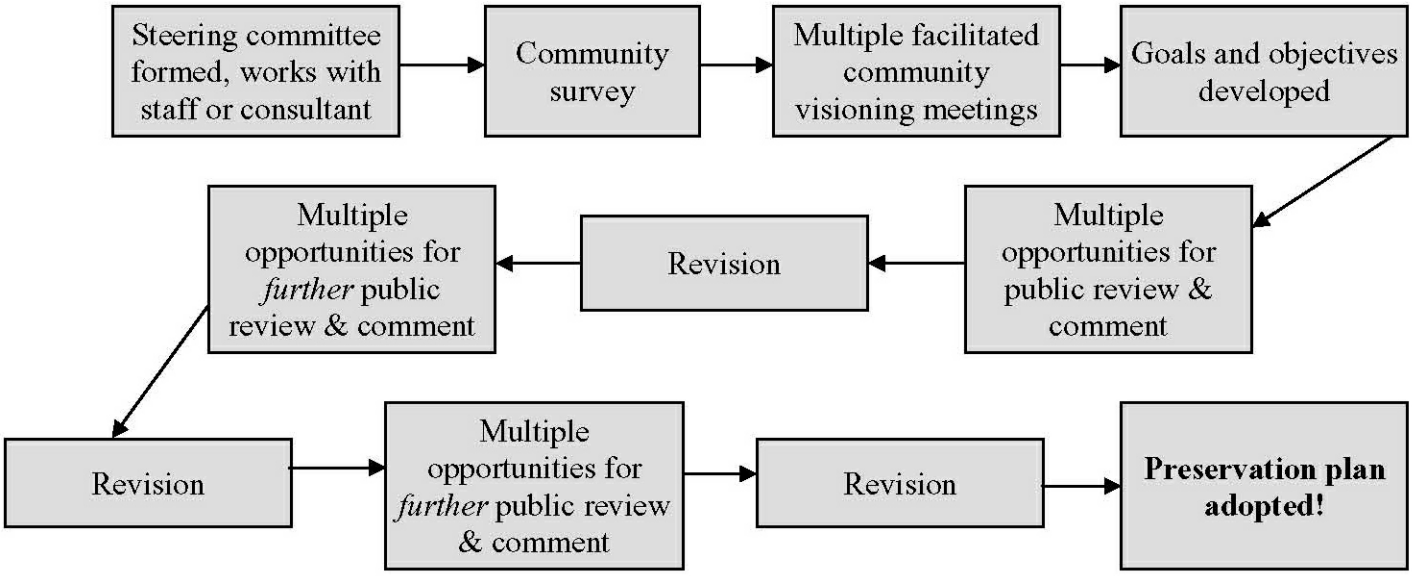
Through a series of community meetings and surveys, the committee learns what is important to the community and how the community wants to grow. A skilled facilitator is essential. These community values and vision are then compiled and presented to the community for review and comment. The steering committee, along with staff or a consultant, uses the information from the community to develop and refine the goals and objectives eventually set forth in the plan. Whatever process is followed, public participation is essential.

The committee can develop other parts of the plan like historical background, past preservation efforts, legal basis, public sector responsibilities, etc. with less public involvement; but nothing in the plan should be developed without giving the public an opportunity to comment. By involving as many stakeholders as possible and actively seeking public participation, you can help ensure that the plan will be readily adopted and its implementation supported.

**Challenges**

As with anything, there are challenges to developing and maintaining a preservation plan. Fortunately, they are not insurmountable. The most common challenges include:

**The Preservation Planning Process:**




Funding - Even if commission staff is available to guide the process, staff time usually isn't free and the additional work required may necessitate hiring additional personnel. Frequently, hiring an outside consultant is the most reasonable option. Potential sources of funding include CLG grants, local preservation organizations, and civic-minded businesses.

Scope - Avoid having so large a scope to the planning endeavor that the task becomes impossible to manage. A community may need to begin with small plans for distinct districts and then expand to include other areas.

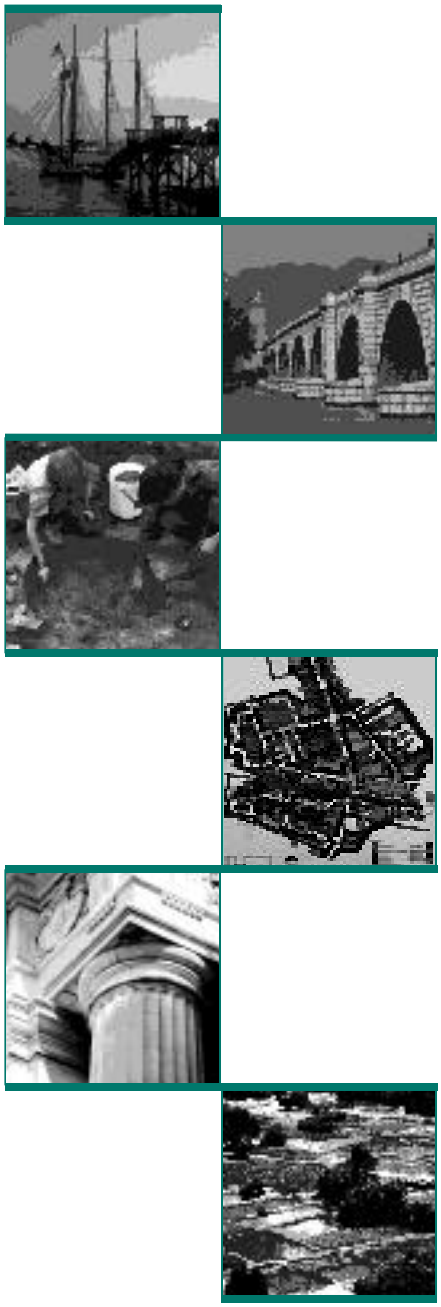
Public participation - Even though the strength of a plan depends on it, public participation can be difficult to get. Use multiple meetings scheduled for different times of the day and evening as well as on weekends. Hold them in a variety of safe, fully accessible places. If transportation is difficult for part of the population, consider asking local civic groups to help. Have translators available at meetings held in neighborhoods with large non-English speaking populations. Announce the meetings frequently and well ahead of time in multiple places including television, radio, and the alternative press.

Implementation - Once a plan is adopted, implementation can prove to be more difficult than anticipated. Revision to the agenda may be necessary, but should not be so severe as to negate its effectiveness.

Maintenance - The more the plan is used and referenced, the easier it will be to maintain. Make reviewing the plan part of the annual review of commission work and include it in the commission's annual report.

Cultural Resources
# PARTNERSHIP NOTES

*Technical assistance in historic preservation planning, related planning/land use topics, and preservation strategies for Federal agencies, Indian tribes, States, and local governments*



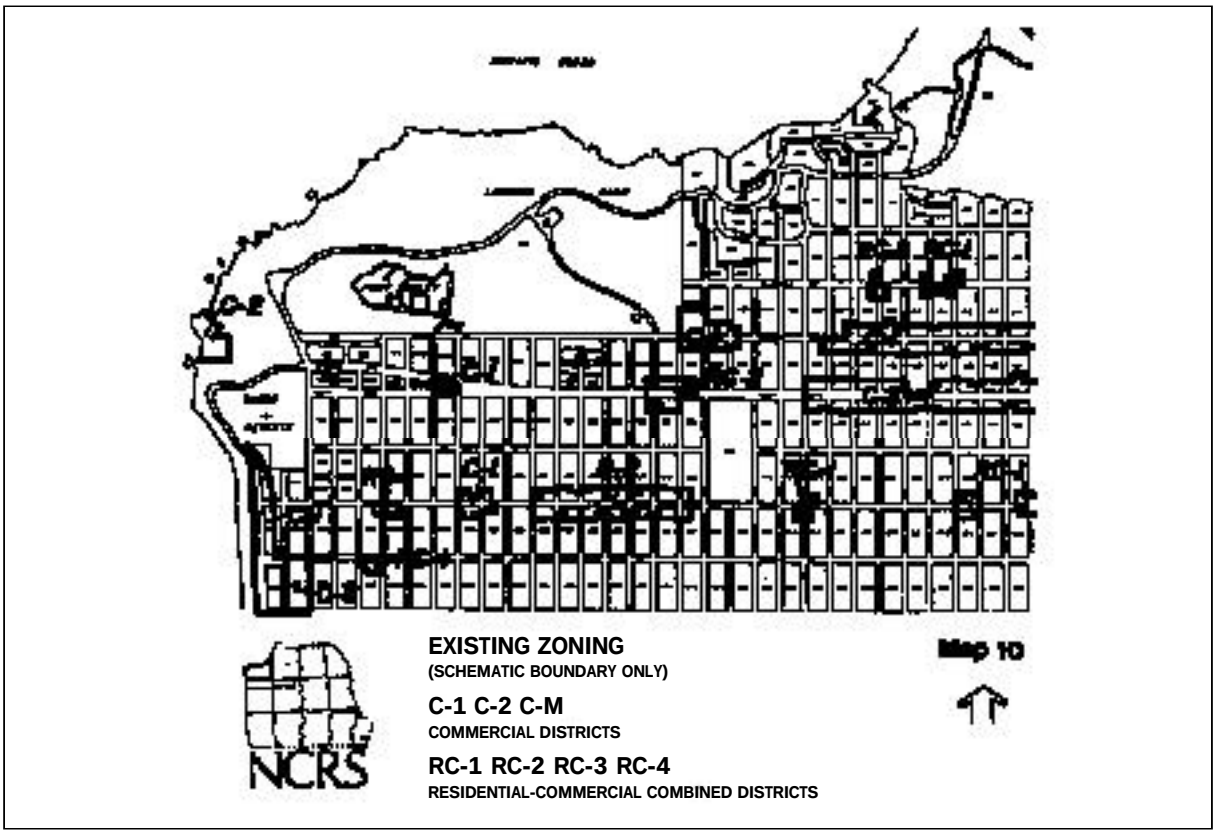
## ZONING AND HISTORIC PRESERVATION

*Stephen A. Morris*

ZONING IS ONE OF MANY ORDINANCES AFFECTING the use of land in a local community. Others include building and fire codes, environmental regulations, subdivision ordinances, and the land-use policies expressed in a comprehensive or master plan. Of all these, however, zoning is the most far reaching and, perhaps, the best established. Historic properties and archeological sites occupy land area and, like other land uses, are subject to zoning regulations. When properly applied, zoning can be a powerful tool in protecting historic properties. Although zoning may be more effective in protecting historic buildings and historic districts than other kinds of historic resources, it is important to become knowledgeable about zoning in your community and to understand how it affects historic resources and archeological sites and how it might better protect these historic properties.

### What is zoning?

Under state enabling legislation, a local government is authorized to divide the land area in its jurisdiction into districts, or *zones*, each with a set of regulations governing the development of private land. The districts are marked on a zoning map, which is an official government document. Generally, the text of the ordinance specifies the categories of uses allowed in each district (residential, commercial, industrial, agricultural, etc.), the density of development, the maximum size of the buildings, the size of the lot, the required spaces around the buildings, the number of off-street parking spaces, and other requirements for development, such as the building setback from the lot lines and the number of off-street parking spaces. Zoning districts are designated by classifications, such as "RS1" which might stand for Residential Single Family Low-Density, or "C2," which could be Commercial Medium-Density (generally letters




**Commercial zones in a section of San Francisco.** Source: Neighborhood Commercial Rezoning Study, San Francisco Department of City Planning, May 1984.

refer to uses while the numbers indicate density), as shown in the zoning map from San Francisco, above.

## What kinds of local governments can adopt zoning?

State zoning enabling legislation generally specifies which local jurisdictions are authorized to adopt a zoning ordinance. In some states, both municipalities (cities and towns) and counties can adopt zoning laws; in others, zoning is a function reserved for municipalities. The State of Texas, for example, restricts zoning to cities and towns of a certain size and requires counties to get special permission from the state legislature in order to adopt a zoning ordinance.

## How long has zoning been in practice?

New York City adopted the nation's first comprehensive zoning ordinance in 1916. The Standard State Zoning Enabling Act was drafted by the Department of Commerce in 1922 and had much to do with the widespread adoption of State enabling legislation and the acceptance of zoning by many of the larger cities and suburban communities around the country. The right of local governments to zone was affirmed by the Supreme Court's landmark decision in *Village of Euclid v. Ambler Realty Co.* in 1926, which upheld that, in prin-

ciple, zoning was a valid expression of the police power (i.e., the power of the government to regulate activity by private persons for the health, safety, morals, and general welfare of the public).

## What about pre-existing uses or buildings?

Buildings or uses in existence prior to the establishment or amendment of the zoning ordinance, which are inconsistent with the new or amended zoning requirements, are called *non-conformities.* A lot that does not meet minimum size requirements can also be non-conforming. Non-conformities are sometimes given a set period within which they must be brought into conformity with the zoning ordinance; in some cases they are allowed to remain in existence indefinitely under the condition that they will not be expanded or improved.

## How is a zoning ordinance adopted and administered?

The zoning ordinance and its supplemental map are adopted by the local governing body, such as the city or county council or town board, based on the recommendations of the planning commission, or a specially appointed zoning commission. The zoning commission makes its recommendations after studying existing patterns of development and particular land use issues in a community. After the ordinance and map are finalized and adopted, an appointed zoning board of appeals or board of adjustment is established to decide when exceptions to the ordinance can be granted to particular property owners. A zoning administrator or officer administers the zoning ordinance on a day-to-day basis, granting zoning permits for proposed developments that comply with the terms of the ordinance.

## How are changes made to a zoning ordinance?

Changes to the text of a zoning ordinance or a zoning map can be in the form of *zoning amendments* or *revisions.* A revision is considered to be more comprehensive than an amendment and usually results in a completely new ordinance. Both require following the legal process established by the state enabling legislation and must be approved by the local governing body. If state law requires that the zoning ordinance be consistent with the local comprehensive plan, policies in the plan must be considered. Often the planning commission reviews proposed amendments and makes recommendations to the town council. The term *rezoning* applies to both amendments and revisions and does not distinguish between changes that apply to a small area or to the entire community.

## What is a variance and under whose authority is it granted?

Given the unique characteristics of each parcel of land, zoning authorities recognized early on that although every property owner within a district would be bound to the same requirements, in certain cases exceptions would have to be made. One common type of exception is a *variance*, in which a property owner is exempted from all or a number of the provisions of the zoning ordinance. Variances require the property owner to prove to the zoning appeals board that, due to the particular physical surroundings, shape, or topographical condition of the property, compliance with the zoning regulations would result in undue hardship. Variances may cover any aspect of the zoning requirements, such as use, number of parking spaces, size of building, or setbacks (the required distance between buildings and lot lines).

## What about special exceptions?

*Special exceptions,* also known as *special permits* or *conditional uses,* apply to uses that, although they don't conform to the zoning reg-

ulations, are considered to be desirable in a particular district under certain circumstances, such as a school in a residential zone. Unlike variances, special exceptions are listed in the text of the zoning ordinance along with those uses permitted as *a matter of right* or *by right* under the ordinance. The conditions required for the zoning board to grant a special exception are also set forth in the ordinance, although sometimes the board negotiates particular conditions to be placed on a proposed development with a property owner.

## What is historic zoning or historic district overlay zoning?

Where historic district design review is established through the zoning ordinance, it is often referred to as *historic zoning* or *historic district overlay zoning*. An *overlay zone* is an additional layer of regulations for a particular area, which is laid atop the underlying or base zoning regulations. There are many different kinds of overlay zones including those that establish additional controls on development in areas subject to airport noise or those that promote downtown retail development. The base zoning provisions, which relate to use and density, continue to be administered by the zoning authorities. A design review board or historic preservation commission administers the regulations contained in the historic overlay zone.

## Should historic zoning or design review regulations and base zoning be coordinated?

Regardless of whether or not design review in historic districts is called historic zoning or is implemented through an independent process, it is essential that preservation regulations, such as historic district design review, and zoning be coordinated. Where there is no coordination, the preservation regulations that seek to preserve and protect the integrity of historic neighborhoods may be working at cross-purposes with the zoning ordinance, the goal of which could well be to attract high-density new development.

## How can preservation regulations and zoning be coordinated?

Coordination can take place in a variety of ways. One way is to arrange for regular meetings between members of the zoning board and the preservation commission or to have a member of the zoning board also serve on the preservation commission. Interaction between the staff of both groups is also important. A number of zoning ordinances provide a degree of coordination by allowing the historic district commission or design review board to review and make recommendations on all use permits, variances, rezoning requests, and zoning text amendment applications within the historic district.

Where preservation and zoning are separate, an ideal solution is to include a clause in each ordinance stating that where there are conflicts, the preservation ordinance takes precedence. Alternatively, the zoning ordinance might have a provision stating that there is a presumption against developments, rezonings, and variances that harm individual landmarks or historic districts. In addition, successful preservation commissions build in the opportunity to comment on any zoning issues that may affect historic properties and have the authority to recommend a suspension of certain zoning requirements that hamper preservation.

## What are the typical problems that result from a lack of coordination between preservation regulations and zoning rules?

**Zoning incompatible with current use.** The most typical problems arise because the cur-

rent and historical uses in an area do not match the current zoning designation. Often a historic residential neighborhood may be zoned for retail, office, or industrial uses. The pressure to convert to one of these uses can result in the demolition or inappropriate remodeling of historic residences. Additionally, but often not considered, the demolition or inappropriate remodeling of the buildings to more profitable uses could damage or destroy important archeological remains that may exist on the property.

**Density**. A related conflict between zoning and preservation is density. In many cases, the current and traditional uses in a historic district may conform with the uses permitted under the zoning regulations, but the density of the property's actual use may be lower than the zoning allows. This is frequently the case in older commercial districts where historic commercial buildings are an average of two or three stories in height but the zoning allows much taller buildings. This also happens when farm acreage is zoned, for example, at a density of three houses per acre. The greater economic return generated by larger commercial buildings or more intense residential development creates pressure to demolish the existing buildings, or to build incompatible additions to smaller historic buildings. Residential areas zoned for densities much higher than those represented by the existing buildings frequently suffer from disinvestment, since owners of the existing houses may be reluctant to maintain them without any assurance that a large apartment building will not be built on a neighboring property.

Allowable density may be the critical factor in archeological site protection. Higher density means greater square footage of floor space (either horizontally, vertically, or both) or a greater number of housing units permitted per acre. If in certain zoning categories, the zoning ordinance allows a density that essentially fills up the entire property, there will be no opportunity for protecting an archeological site in place. The site protection goal conflicts with the allowable density. On the other hand, the lower the permitted density in a particular zoning category, the greater the opportunity to find ways to protect archeological sites in place.

**Lot sizes.** Minimum lot sizes can also be a source of problems. For example, the 1950s zoning in one Virginia town encouraged redevelopment of older, so-called "obsolete," residential neighborhoods close to the downtown. The zoning enlarged the minimum lot size beyond the traditional size (small urban lots) in order to redevelop the district in a manner similar to a large lot suburban neighborhood. Redevelopment did not take place as planned, and years later the area became desirable as a historic residential neighborhood. Property owners, however, were prevented from building compatible in-fill houses on traditionally sized vacant lots by the 1950s zoning, which required large lots. The inability to develop the vacant lots hampered the revitalization of the neighborhood.

The converse situation can also work against preservation. In historic areas where houses were traditionally built on large lots, current zoning or subdivision regulations may allow new dwellings to be wedged between historic houses on newly subdivided lots much smaller than those of the surrounding houses.

**Off-street parking.** Finally, preservation regulations and zoning often appear to be working at cross-purposes in regard to off-street parking requirements. Typically, modern zoning requires a greater number of off-street spaces than can be easily accommodated on a small historic lot. As a result, the property owner rehabilitating a historic building

or constructing a compatible infill building in a historic district often faces the dilemma of either demolishing an adjacent historic building to provide enough space for the required parking or abandoning the project altogether. Neither of these results is a favorable preservation outcome.

Each of the problems discussed above can be resolved by changing the existing zoning. However, prior to considering solutions to individual problems, it is advisable to take a comprehensive look at zoning and preservation conflicts throughout a community.

### What steps should a community take to study the effect of zoning on the protection of historic properties in the area?

A logical place to begin studying the relationship between zoning and preservation in a community is to compile a single map showing both the boundaries of historic districts (or potential historic districts) and individual landmarks and the boundaries of the various zoning districts that affect the same area. This type of map clearly illustrates what zoning designations apply in areas of historic interest. At this point the text of the zoning ordinance should be analyzed to determine the requirements for each zoning district and whether or not they support or conflict with the preservation and revitalization of the historic properties or areas.

The following questions provide a starting point for an analysis of this sort:

- Are historic residential neighborhoods with single-family houses zoned for single-family residential or other compatible uses?
- Do lot sizes and the building setback requirements from the front lot line match historic patterns?
- Do separate zoning districts with widely divergent regulations (one for high-density commercial use, one for single-family residential use, for example) divide a single historic neighborhood?
- Does the zoning for areas immediately surrounding a historic district provide an adequate buffer against development that would have a negative impact on the historic area?
- Do commercial zones allow much taller and larger buildings than currently exist in the historic district?
- Do commercial zones permit automobile-oriented commercial uses, such as drive-through facilities, service facilities, or large parking lots, that conflict with the traditional street-front and pedestrian orientation of historic commercial buildings?
- Does the zoning require so many off-street parking spaces that it hampers the rehabilitation of historic buildings or the construction of new in-fill buildings?

If an analysis of zoning designations in historic districts reveals situations of the kind mentioned above, the next step is to examine the zoning ordinance to determine what, if any, existing zoning classifications might be more appropriate, or if it is necessary to amend the zoning in other ways.

### What kinds of amendments should be considered to make the zoning in historic districts more responsive to preservation concerns?

Amendments might involve shifting the boundaries between adjacent zones or substituting one classification for another, such as changing from an inappropriate low-density residential designation to a more appropriate medium-density residential one.

The existing zoning ordinance, however, may not include classifications that are entirely appropriate for historic districts. In such cases, a particular requirement may have to be changed. If, for instance, the required minimum lot size in a particular single-family residential zone is too large and discourages in-fill construction and rehabilitation, changing this regulation to allow smaller lot sizes may be required. Or, if parking requirements are such that it is difficult to rehabilitate buildings in historic areas, then the number of required parking spaces should be reduced.

Another option would be to draft an entirely new zoning classification with requirements tailored to the specific needs of a historic district. Zoning classifications that apply only to particular areas of a community are known as *special purpose districts* or *special use districts.* Cities have enacted these not only for historic districts but also for other areas of the city with specialized uses or needs such as ethnic neighborhoods or areas with large institutions (hospitals, universities, etc.). Seattle has two districts of this kind: the Pioneer Square Preservation District, which was established to protect the historical and architectural character of that commercial historic district; and the International Special Review District, which aims to maintain the International District core as an Asian cultural, retail, and residential center by encouraging such uses as small scale food processing and craft work with an Asian emphasis.

## What is downzoning?

If the current zoning permits development at densities far higher than existing buildings, rezoning might involve what is known as *downzoning,* or reducing the permitted height and bulk of buildings. Downzoning can be controversial since affected property owners may perceive it as diminishing the value of their property. If this issue can be resolved, downzoning may be the single most effective protection measure that can be achieved through zoning in historic commercial areas, particularly in downtown business districts, because it substantially removes the pressure for high density development from the district.

## What other measures are available to make zoning compatible with historic preservation?

A number of cities have amended their zoning ordinances to include special exceptions that allow historic properties to be used in ways not permitted as a matter of right in a particular zone. For example, in Denver, offices or art galleries are permitted by special exception in residential zones if they are housed in historic buildings. This measure has made the large mansions in the city's Capitol Hill district more economically competitive with new residential buildings. Similarly, the District of Columbia created a special exception to allow nonprofit organizations to use residential landmark buildings for certain nonresidential use under specified circumstances (the building must contain a gross floor area of 10,000 square feet or greater, for example). Some cities, such as Richmond, Virginia, provide for the waiver of certain zoning requirements, such as height and area regulations and off-street parking and loading requirements for buildings in historic districts, when it can be demonstrated that the waiver is necessary in order to achieve the purposes outlined in the city's preservation ordinance.

**Transfer of development rights or TDR** is another zoning technique that has been used to promote preservation in a few cities and counties. Basically, the TDR technique separates the rights to develop a parcel of land from other rights associated with the parcel. The development rights of agricultural land, low density historic buildings, or the air space above a historic building,

for example, are transferred to sold for use in another location where higher density development is permitted or encouraged. Subsequent development on the land from which these rights have been transferred can be limited to very low density or precluded altogether, depending upon the community's regulations. The cost and expertise required to administer a full-scale TDR program have presented difficulties, especially for smaller communities which lack full-time planning staff.

**Bonus or incentive zoning** has also been used to encourage historic preservation in communities around the country. The bonus refers to the additional density (beyond what would otherwise be permitted) granted to developers in exchange for providing specified public amenities, such as open space or affordable housing. Philadelphia's plan for Center City proposed that density bonuses be granted for the preservation of locally designated historic structures and that the city's zoning code be revised to include standards to define the requirements.

**Conditional zoning** is another technique that can benefit the preservation of historic resources and archeological sites. The local government may grant a landowner's request for rezoning only if certain conditions are met, such as the dedication of land for a community park, the provision of a playground, or street improvements to accommodate traffic associated with the new development. Sometimes called *proffers,* these conditions are negotiated and agreed upon by local government staff and the property owner. Once approved by the local governing body, these conditions become legally binding as part of the property's zoning.

This technique has been successfully used in Fairfax County, Virginia, where archeological sites have been surveyed, excavated, set aside in open space, and donated to the county park system, and historic buildings have been incorporated into development project designs as residences and community centers. This technique is also used effectively in Massachusetts. For example, in Sharon, Massachusetts proffers helped protect the Stoughtonham Furnace Site, listed on the National Register of Historic Places for its historically significant remains of an iron foundry where cannons were made during the Revolutionary War. The developer of a large residential development donated the site to the town for conservation land and donated a preservation restriction (or easement) to the Massachusetts Historical Commission.

Despite the potential benefits of this technique, there are some drawbacks. The success of such an approach depends upon local government staff and/or commissioners being knowledgeable about historic preservation and archeological protection issues, being able to participate in the rezoning review process, understanding the business objectives of development, and having skills in effective negotiation. Where knowledgeable and skilled staff are lacking, historic resource preservation may never receive consideration unless citizens raise the issue during public hearings.

## Some practical suggestions

Preservationists should demonstrate a sincere, constructive, and continuing interest in local zoning issues by attending scheduled meetings and public hearings of the zoning commission or board of zoning adjustment (whether or not a "preservation case" is on the agenda). It is not necessary (and sometimes counterproductive) to give formal testimony on every topic. However, thoughtful queries by the public at a hearing will often raise questions that board members themselves would not have considered, and ideas from the public can help the board develop the conditions

and requirements to be included in its decisions. Preservationists can also frame their questions and observations to make clear connections between historic preservation and zoning issues—connections board members might not otherwise see.

Secondly, having demonstrated their commitment, credibility, and interest in local zoning, preservationists should take the next step and offer historic preservation training or presentations for local zoning (and other land use) boards. The training has to be attractive, appealing, and user-friendly and should be promoted as a way to enhance the board members' ability to do their work more effectively and efficiently, not as a "favor" or as lobbying from a special-interest group. Arranging for co-sponsorship of the sessions by the state or regional planning agency, the State Historic Preservation Office, local non-profit or service clubs, and business organizations demonstrates that preservation concerns are varied and widely shared public policy issues and not special-interest concerns.

***Photography credits.*** *Page one top to bottom: photos 1,2,5 © Marcia Axtmann Smith Design/ Communication, Alexandria,Va., 1998; photo 3, Paul Giblin; photo 4, National Park Service; photo 6, Elizabeth Anderson.*

## Sources of Information

For those interested in learning more about zoning and pursuing the connections between zoning and historic preservation the following publications may be useful. Publications of the American Planning Association are available from APA's Planners Book Service, 122 S. Michigan Avenue, Suite 1600, Chicago, Illinois 60603; or check out a wider selection of planning, zoning, and related publications on APA's Web site at <www.planning.org>.

American Planning Association. *Preparing a Conventional Zoning Ordinance.* (Planning Advisory Service Report Number 460) Chicago: American Planning Association, 1995.

American Planning Association. *Zoning Bonuses in Central Cities.* (Planning Advisory Service Report Number 410) Chicago: American Planning Association, 1988.

Duerkson, Christopher J. "Local Preservation Law." Chapter 2 in *A Handbook on Historic Preservation Law.* Edited by Christopher J. Duerkson. Washington, D.C.: The Conservation Foundation and the National Center for Preservation Law, 1983.

Kelly, Eric Damian. "Zoning." Chapter 9 in *The Practice of Local Government Planning.* Edited by Frank S. So and Judith Getzels. 2nd Edition. Washington, D.C.: International City Management Association, 1988.

Morris, Marya. *Innovative Tools for Historic Preservation.* (Planning Advisory Service Report Number 438) Chicago: American Planning Association, 1992.

Smith, Herbert H. *The Citizen's Guide to Zoning.* Chicago: American Planning Association, 1983.

Stokes, Samuel N., A. Elizabeth Watson, and Shelley S. Mastran. *Saving America's Countryside: A Guide to Rural Conservation.* 2nd Edition. Baltimore, Maryland: Johns Hopkins University Press, 1997.

Yaro, Robert D., Randall G. Arendt, Harry L. Dodson, and Elizabeth A. Brabec. *Dealing with Change in the Connecticut River Valley: A Design Manual for Conservation and Development.* Cambridge, Massachusetts: Lincoln Institute of Land Policy and the Environmental Law Foundation, 1988.

*June 1998*

*Updated by Susan L. Henry Renaud*

*This publication appeared earlier in the former* Local Preservation *series. Stephen A. Morris, former Certified Local Government Coordinator, wrote and edited the original publication, which was issued in August 1989.*

**CULTURAL RESOURCES PARTNERSHIP NOTES**

**HERITAGE PRESERVATION SERVICES, NATIONAL PARK SERVICE**

Series editor: Susan L. Henry Renaud, Coordinator, Historic Preservation Planning Program
U.S. Department of the Interior, 1849 C Street, NW, Room NC330, Washington, DC 20240

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Heritage
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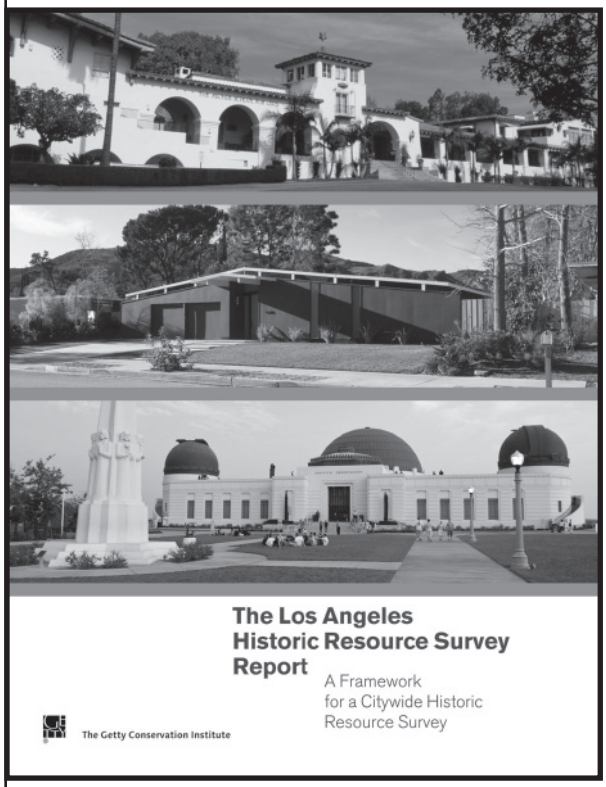
Cultural Resources

# PLANNING FOR THE 21ST CENTURY SURVEY

*Janet Hansen, Deputy Manager, Office of Historic Resources, City of Los Angeles*

The City of Los Angeles Office of Historic Resources (OHR) is getting ready to launch year one of SurveyLA, the multi-year citywide survey of historic resources. SurveyLA represents one of the largest and most ambitious surveys in the U.S. Imagine the challenge of planning for a survey in a city that comprises 466 square miles and 880,000 parcels—an area larger than eight of the nation's largest cities combined. Los Angeles has learned some valuable lessons in developing a methodology for a citywide survey that not only makes a project of this magnitude possible, but also utilizes cutting-edge approaches that have the potential to change the way we think about historic resources surveys. Sharing these lessons is particularly timely since many government agencies and preservation organizations are in the start-up phase of planning for first-time citywide surveys or updating previous ones.




Starting in 2006, the OHR used *the Los Angeles Historic Resource Survey Report* framework as a blueprint for developing SurveyLA methodology.

Although Los Angeles' cultural resources ordinance called for a citywide survey of historic resources almost 50 years ago, it was not until 2005, when the J. Paul Getty Foundation entered into a multi-year grant agreement with the City, that SurveyLA began. Prior to the start of SurveyLA, city surveys were generally single-purpose in nature—primarily limited to nominations for historic districts and those required for compliance with state and federal environmental review processes.

In preparation for the citywide survey, the Getty Conservation Institute completed a multi-year study, looking at best practices nationwide, which culminated in *The Los Angeles Historic Resource Survey Report.* Starting in 2006, the OHR used this framework as a blueprint for developing SurveyLA methodology. One of the greatest challenges has been developing tools and methods that both meet accepted federal and state survey guidelines and standards, and providing streamlined approaches to identifying and evaluating historic resources in a city as large, complex, and diverse as Los Angeles.

**Getting Started**

Since the 1970s and '80s, when many cities began completing historic resources surveys, survey methodologies have become increasingly more sophisticated. Today's surveys are typically marked by the use of survey information for planning purposes, greater reliance on historic context statements to identify and evaluate resources, advances in technology that make field surveys more efficient, and new strategies for public participation.

When planning a survey, research should be conducted to gain a perspective on up-to-date survey strategies to make informed decisions when developing survey methodologies. Sources of information may include a State Historic Preservation Office and municipalities, and agencies that have recently completed surveys, particularly those that may be using some innovative technologies. In addition, national, state, and local preservation organizations regularly offer sessions on new directions in historic resources surveys, often providing useful case studies.

One of the most important considerations when planning a survey is the proposed use of survey findings. Survey data provide the foundation for preservation planning and making sound decisions about historic resources. Understanding how survey data will be used not only helps to shape survey methodologies, but also provides a basis for more fully integrating preservation planning into the larger planning process. For SurveyLA, data will be used first and foremost as a planning tool. Survey methodology was specifically designed to gather data needed to help shape decisions by policy makers, developers, urban planners, community organizations, and property owners. Survey results will be used to inform community plans and other policy documents, facilitate project review and state and federal environmental review processes, and assist with disaster preparedness. Findings will also provide vast opportunities in areas relating to curriculum development, heritage tourism, economic development, and marketing historic neighborhoods and properties.

Survey strategies are also defined by what surveys, if any, have already been completed in a community and what areas or individual resources are designated. These factors may necessitate coordination with other agencies and organizations to consolidate information and provide a clear understanding of what needs to be surveyed. Other considerations in planning for surveys include the types of financial resources available; staffing and personnel needs, including the use of volunteers; and a time frame for completion. Understanding these issues will help with decision making regarding funding sources and the need to phase a survey over a period of time.

**Developing Historic Contexts**

*The Secretary of the Interior's Standards and Guidelines for Preservation Planning,* published almost 30 years ago, identify the historic context as the cornerstone of the preservation planning process. A context statement is a narrative technical document that provides a framework for completing surveys.

Planning for historic contexts generally requires reconnaissance-level surveys to identify important property types and research regarding significant development trends in the architectural, social, and cultural history of an area. In addition to working with consulting firms specializing in historic resources surveys and contexts, municipalities may enlist help from preservation commissioners, local history experts, historical societies, and colleges and universities offering preservation programs. For citywide surveys, organizing a committee and holding working meetings will help develop an organizational framework for a comprehensive context statement that covers the full range of resources represented. Updated surveys may require revisions to existing contexts and development of additional contexts not covered in previous surveys. Whether a new survey or an update, developing a plan will help set priorities for generating contexts and completing surveys based on preservation planning needs, allocated budget, and time constraints.

SurveyLA is grounded in the preparation of a citywide historic context statement using the Multiple Property Documentation (MPD) approach developed by the National Park Service. The narrative document identifies contexts and themes that represent the city's architectural, social, and cultural history, links those themes to extant representative property types, and provides a framework for property type evaluation through the development of eligibility standards. These standards provide specific physical and associative qualities and integrity thresholds a property must have to convey significance. While the MPD format was designed to evaluate thematically-

related properties for listing in the National Register; when applied to a local survey it may also incorporate state and local criteria for evaluation, thus making survey findings more broadly applicable when used for planning.

**Survey Technology**

Technological advances have resulted in great efficiencies in conducting field surveys and managing survey data. Exploring available technology options is an important part of the survey planning process. For SurveyLA, the citywide historic context statement has been used as the basis for developing a custom mobile application, or Field Guide Survey System (FiGSS), designed for use in the field on tablet PCs. The FiGSS uses Geographic Information System (GIS) mapping software and is preloaded with aerial photographs, tract maps, and information relating to designated, previously surveyed, and potentially significant resources. The FiGSS allows surveyors to identify individual properties and historic districts. Boundaries for potential districts can be drawn in the field based on historic tract maps or visual inspection of an area.

The FiGSS is unique in that it "translates" the components of the historic context into data fields so that surveyors can readily place a property within the appropriate context and theme by selecting from drop down lists. For example, when surveying a 1950s residential neighborhood a field surveyor would select the context "Residential Development and Suburbanization," the theme "Post-WWII Suburbanization," and sub-theme "Suburban Planning and Design." A set of eligibility standards associated with this context/theme combination are presented as a series of check boxes from which the field surveyor will select to determine if the neighborhood qualifies as a potential historic district.

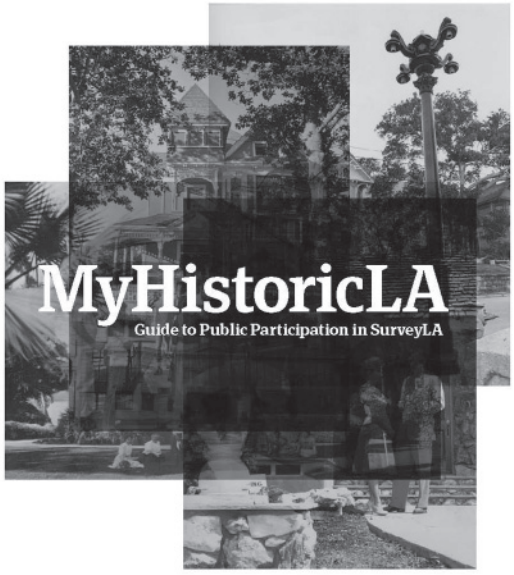
To make the overall survey process more efficient, SurveyLA methodology and the FiGSS are also designed to streamline information gathering and production of standardized California State historic resources inventory forms. The OHR, for example, worked with the survey coordinator at the California State Office of Historic Preservation (OHP) to develop a format for automating bullet-point descriptions of properties based on standardized lists of architectural features. This format eliminates the need for writing lengthy narrative descriptions, which are time consuming and expensive, and generally do not add value to using survey information as a planning tool. The OHR is also working with the California OHP to develop new survey forms to record information based on the identification and evaluation of resources using the MPD approach and an application to automate the electronic transfer of survey data to OHP.

**Public Participation**

A strategic public participation and community outreach program is a critical part of planning for a survey. Early outreach efforts may help gain support for a survey, dispel misconceptions about why surveys are conducted and how the results are used, and generate interest in participating in the project. An outreach program should provide early and ongoing information about a survey, offer clearly defined opportunities to volunteer, and encourage the public to contribute information on important resources in their neighborhood. Outreach activities may vary depending on the needs of the survey and available resources.

The sheer size and diversity of Los Angeles necessitated developing a SurveyLA public participation program that is broad-based and citywide. With the assistance of the Getty Conservation Institute, the OHR developed the SurveyLA website to provide general information on the project, volunteer sign-up opportunities, and reports on project progress.

The website also features an interactive "MyhistoricLA" form to solicit information on potential resources that should be included in the survey. In addition, the OHR has used two Certified Local Government grants and worked with consultant teams to recruit and train a SurveyLA Speakers Bureau and develop *MyHistoricLA: Guide to Public Participation in SurveyLA.* This booklet, available on the SurveyLA website, provides step-by-step instructions for individuals and groups to use in providing information about important historic resources in their neighborhoods. SurveyLA outreach efforts have resulted in a volunteer base of over 200 people who have assisted with tasks including research, photography, data entry, field surveying and writing historic contexts.




This booklet, available on the SurveyLA website, provides step-by-step instructions for individuals and groups to use in providing information about important historic resources in their neighborhoods.
*Photo courtesy of the author.*

**Conclusion**

SurveyLA has provided a unique opportunity for the City of Los Angeles to work together with consultants, volunteers and the State Office of Historic Preservation to develop a methodology that is providing a forward-thinking model for how surveys can be conducted. The lessons learned along the way have broad applicability for government agencies and organizations nationwide. The field surveys start in the coming months a new set of challenges will no doubt, be presented. The OHR will continue to share the "new lessons learned" as we move forward.

**For more information:**

*SurveyLA: www.surveyla.org.*

National Register Bulletin: *How to Complete the Multiple Property Documentation Form: www.nps.gov/history/nr/publications/bulletins/pdfs/nrb16b.pdf*

*The Secretary of the Interior's Standards and Guidelines for Preservation Planning: www.nps.gov/history/hps/pad/plngstds/index.htm*

The Getty Conservation Institute, *The Los Angeles Historic Resource Survey Project* and other publications:
*www.getty.edu/conservation/field_projects/lasurvey/lasurvey_publications.html.*

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| | | |
|---|---|---|
| Preservation Ordinance Workshop | Bastrop, LA | 15 May |
| Oklahoma State Preservation Conference | Okmulgee, OK | 9 June |
| Preservation Ordinance Workshop | Winfield, LA | 19 June |

# USING VOLUNTEERS IN THE LOCAL SURVEY PROCESS

## THREE CASE STUDIES EXAMINE THE BENEFITS

*Erin Gettis, City Historic Preservation Officer, City of Riverside, California*

As someone who works as a staff of one to a board and to a planning division, it is difficult to imagine life without the assistance of volunteers. As I write this article, my volunteer intern is working away on a thematic survey project in a capacity that formerly was performed by paid interns until recent jurisdictional budget cuts. Most of the time using volunteers is a "no-brainer." They fill the gaps for largely underfunded jurisdictional departments and perform duties for boards/non-profits that allow for the very existence of the non-profit. Preservation as we know it could not, and would not, exist without the devoted, dependable volunteer: that jack-of-all trades, that person who wears so many hats, that person that makes our organizations possible.

Volunteers for SurveyLA Speakers Bureau receive training
*Photo courtesy of the Los Angeles Office of Historic Resources.*

Utilizing volunteers for survey projects is somewhat more complicated because a certain level of skill, or ability to follow directions, is required. Before contemplating use of volunteers in your project, it is important to consider your project goals and how using volunteers support that agenda. There are certainly preconceptions by many as to whether the use of volunteers would be a positive benefit or a negative concern. Some might think using volunteers will help save money, perhaps the most common reason volunteers are considered to be a benefit. Others might think that using volunteers undercuts consultants who have to work for a fee to sustain a business. Some think that using a group of volunteers, in particular on a survey project, will save time. Others might have soured to use of volunteers after a bad volunteer experience. Lastly, others may think that when volunteers are used the final product suffers. There is likely some element of truth to all of these preconceptions, good or bad. Put those aside for a moment, though, while we examine three success stories of three jurisdictions of varying size where volunteers have been used to meet project goals. Volunteers have the ability to contribute to a project's success and in the following cases, you will see that the benefits outweigh the concerns and go far beyond cost savings to provide true community benefit.

**Three Case Studies of various sized jurisdictions**

*San Juan Bautista*

The city of San Juan Bautista is located in Northern California, and was named after Mission San Juan Bautista, which is located within the city. It is still primarily an agricultural town with a population of just over 1500. In 2005-2006 Galvin Preservation Associates did a reconnaissance level survey that included the entire city limits as well as the sphere of influence, inventorying more than 300 properties. The project included updating the existing citywide historic context statement by including contexts into the post-war era, working with volunteers to enter data into California Historic Resources Inventory Database (CHRID), and updating state level forms for the inventory. Andrea Galvin, president of Galvin Preservation Association was interviewed about this survey.

*Riverside*

In the City of Riverside, a city located half way between Los Angeles and Palm Springs California, Christopher Joseph and Associates prepared a Citywide Modernism context

statement and conducted the associated survey in 2008 and 2009. In 2006, Riverside had 293,761 residents. Extreme growth during the 1940s, 50s, and 60s necessitated such a survey, because these resources are now reaching 50 years of age. I managed the project, which included expanding upon the existing City-wide context statement to include the Modernism theme. As part of the survey portion of the project, the City of Riverside partnered with University of California, Riverside (UCR) to use student volunteers from a pair of classes. Students surveyed and produced state-level standard forms of a Modernism-themed business district for their final class project, and the resulting forms were reviewed by qualified City staff and the project consultant.

*Los Angeles*

SurveyLA, the Los Angeles Historic Resources Survey, is Los Angeles' first comprehensive program to identify significant historic resources throughout the city of 3,849,378 (in 2006) residents and is a ground-breaking effort. While Los Angeles has over 900 Historic-Cultural Monuments (local landmarks) and 24 Historic Preservation Overlay Zones (Historic Districts), to date only 15% of the city has been surveyed. The Office of Historic Resources (OHR) in Los Angeles was created in part to tackle this monumental task. Ken Bernstein, OHR's manager, was interviewed about this survey. There are numerous opportunities for volunteering at SurveyLA, a list of which can be seen in the links under Resources at the end of this article. *(The database and survey methodology can be read about in detail in this issue in an article by Janet Hansen, OHR's Deputy Manager.)*

**Best Survey Practices**

*Up-Front Planning*

When it comes to managing any project, if best practices are employed the project is more likely to succeed. Up-front planning can provide benefit in nearly any setting and the same is true when using volunteers for surveys. The typical nightmare volunteer story is a reality for most, where volunteers were used possibly to save money, perhaps last minute, and the volunteers were unreliable or disorganized and as a result the end product was not successful. Up-front planning is the key to meaningful volunteer input. All three of these success stories included a large amount of advanced planning. In Los Angeles, professionals prepared online templates that allowed members of the public to provide input on potentially significant properties. Once the data was entered online, the data fields of these templates populated survey forms that were later used by professionals conducting the survey. Additionally, volunteer members of the Speakers Bureau which is discussed further below, solicited input from the community at information meetings citywide. This information collected from volunteers by volunteers was then compiled and communicated to the professionals who were working in the field. This up front planning and compiling of data contributed to a greater understanding of the resources being surveyed in SurveyLA.

*Training in advance*

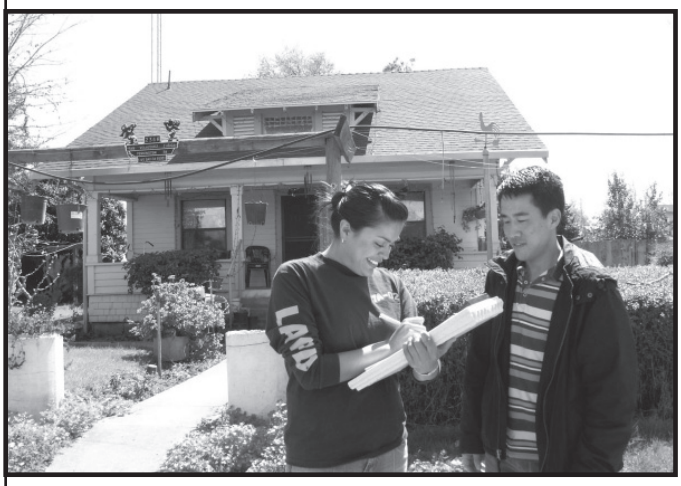
In all three case studies there was extensive advance training. In SurveyLA one of the volunteer opportunities, the Speakers Bureau, created a program that trained representatives to go out and be ambassadors for the survey. These volunteers would participate in an advanced training program that involved two sets of classes to train those involved in the Speakers Bureau to travel around the city to inform and solicit input from area residents, advocates, and enthusiasts.

In San Juan Bautista, the up-front effort was similarly focused by creating "fool proof" forms and an instruction booklet that was combined with training in the use of these

forms. By creating enough defined data fields on the forms, the volunteer input was put to its best use and the product did not suffer because of the constraints in place.

In Riverside, the students were trained for their volunteer work in [an academic] quarter long class. This type of training worked very well in that it allowed for 11 weeks of classes and field trips in preparation for the final assignment where each student chose a building to intensively survey as part of a larger district. This work became the basis for which a District form was later prepared by professionals and paid interns.

*Oversight of volunteer work & Volunteer management*
Providing oversight by a qualified professional who meets the Secretary of Interior's Professional Qualifications Standards for the volunteer work can ensure project standards are adhered to, as well as provide a level of consistency and credibility for the project. In SurveyLA, a volunteer coordinator helps coordinate the 200 volunteers for the project through a database of contact information to ensure that the appropriate volunteers are being used in the best way. More importantly, a professional provides needed administration, management, and uniformity for the final work product. The office of Historic Resources in LA state on the website that, "to ensure the overall credibility and consistency of a large citywide survey project, the actual survey field work and significance assessments will be made by historic preservation professionals, not by volunteers." In both San Juan Bautista and in Riverside, just as in Los Angeles, qualified professionals provided that professional oversight. This type of supervision, as well as the transparency of the process, provides necessary credibility and consistency.



GPA Staff conducting surveys.
*Photo courtesy of Galvin Preservation Associates.*

**Goals/Benefits**
*Community Investment*
Community buy-in and investment in your resources and the survey process may be more valuable than the money you save and a good goal of any survey project. In an article from the Pittsburgh Tribune-Review on the Mt. Lebanon neighborhood, survey volunteers were recognized for the benefit to the community: "Recording this data and having people recognize the value is of enormous importance to the community and the community's vitality and attractiveness." In San Juan Bautista, the residents who volunteered became invested citizens who better understood not only the process but the reason for the process and the resulting survey. In turn, they shared their volunteer experience and knowledge with others and there was a positive domino effect in the community to invest in the survey. In SurveyLA, because of the political nature of the project at times garnering community buy in, support, and participation, helped provide the needed exposure and support to continue the ongoing multi-million dollar effort. Without this kind of support, it is likely that both projects could have failed. With it, their success continues.

*Financial Savings*
Using volunteers may not provide financial savings due to the oversight required by a trained professional and the fee involved. Perhaps, if very well defined and front loaded with training, the project costs can be lowered and the volunteer management can be minimized; or better yet—the volunteers themselves are trained professionals. In truth, however, there really is no such thing as a free lunch and free help is no different. There are

costs associated with volunteers whether it be the cost of time, or the cost of up-front planning, or whatever else the case may be; but for many organizations and boards, volunteer time comes more easily where donations and funding are absent.

*Time Savings*
Using a group of volunteers, especially in instances where there has been adequate up-front planning and training, has the potential to save time. In Riverside, by training twelve UCR students in a classroom setting, each student was prepared to intensively survey a building. This training resulted in a total of twelve intensive level surveys that would become district contributors to a Modernism era historic business district. The final project took place over the course of several weeks, which is far beyond what could be accomplished by one volunteer (or many professionals), during the same time frame. In this instance, and in others where best survey and management practices are employed, use of a group of volunteers provided a substantial savings of time.

*Build Relationships*
Using volunteers in a local government survey process provides layers of benefit, as evidenced by the three success stories reviewed in this article. In San Juan Bautista, while volunteers provided cost savings, the benefit of their involvement became a commitment to the community and an investment by those who volunteered in the long range preservation goals of the City. In Los Angeles, use of volunteers in SurveyLA provided insight to local resources, more faces in the community representing the survey, and became an essential component of the organizational effort. In Riverside, using UCR student volunteers for survey work, through the process of creating the City-wide Historic Modernism Context Statement, helped redefine a relationship between UCR and the City of Riverside's Historic Preservation Office. The result helped create UCR student citizens that became invested in Riverside's future and Modernism.

In Both Survey LA and San Juan Bautista, the volunteer component provided a community investment in the survey process. In Riverside, the volunteer component redefined a relationship between the city's Historic Preservation Office and UCR which created a partnership that will be used in the next Historic Preservation practicum, also taught at UCR.

The benefits of these projects provides a true community benefit beyond the superficial ideas and helps meet project goals to create people invested in the history of their community, and, really, that's what doing survey work is all about.

**Resources:**
Survey LA:
*http://www.preservation.lacity.org/survey/*

How to volunteer for Survey LA:
*http://www.preservation.lacity.org/survey/volunteer*

City of San Juan Bautista: *http://www.san-juan-bautista.ca.us/*

San Juan Bautista Survey:
*http://www.san-juan-bautista.ca.us/PDFs/Planning/SJB_Historic_Context_Report_0906_FINAL.pdf*

City of Riverside Modernism Context Statement:
*http://www.riversideca.gov/historic/pdf/ModernismContextStatement_Part%201.pdf*
*http://www.riversideca.gov/historic/pdf/ModernismContextStatement_Part%202.pdf*

Secretary of Interior's Professional Qualifications Standards:
*http://www.nps.gov/history/local-law/arch_stnds_9.htm*

RES # **RESIDENTIAL RESOURCE SURVEY** PHOTO#

## 1. Name of resource

## 3. Location

## 5. Classification

Building Site Landscape Feature Structure Object
(Outbuilding )

## 6.Current & 7.Original Use

*Domestic/Residential*
Single dwelling
Multiple dwelling
Apt bldg
Rowhouse
Duplex
*Secondary structure*
Storage shed
Garage/Carriage house
Kitchen
Privy
Wellhouse
Springhouse/Ice house
Smokehouse
Dwelling (secondary)
Dairy
Greenhouse/Pool house
*Commercial*
Business/office
Professional/office
Bank/savings & loan
Retail store/shop
General store
Restaurant/bar/café
Hotel/inn/motel/b&b
Department store
Warehouse
Multiple coml/shop ctr
Professional assn/trade org
Market
*Religious*
Church/religious structure
Church school
Church-related housing
Campground/arbor/retreat
Ceremonial site
*Educational*
School
College/university
Library
College-related housing
Research facility
*Agriculture/food processing*
Agricultural outbuildings
Barn/shed (Mule/Cattle/
Horse/Dairy/wagon/machin
ery/implment)
Tobacco
Chicken coop
Silo/Windmill
Corn crib
*Agricultural storage*
Cotton/ Peanut warehouse
Grain elevator
Tobacco warehouse
*Agricultural processing*
Animal/Fishing facility
Agricultural fields
Tree farm
Irrigation facility
*Industrial/engineering*
Mill/processing/mfg
Mill/company housing
Waterworks/reservoir/
dam/water tower/canal
Extractive facility or site
Communications facility
Energy facility
*Transportation*
Rail/Road/H2O/Ped/Air
*Government/Public*
Fire station
Post office
City/town hall
Jail/prison/police station
Public works
Courthouse (co/fed)
Militia district
Govt office (type)
Public housing
*Entertainment/recreation/cultural*
Theater/opera hall/
cinema/playhouse
Museum/gallery
Sports facility
Outdoor rec/camp
ground/ picnic
Auditorium
Fair/amusement park
Music fac./bandstand
Zoo
*Commem. monument/ marker*
Resort
Work of art
Bot./horticultural garden
*Funerary*
Cemetery
Grave/mausoleum
Mortuary/funeral home
*Military*
Battle site
Fortification
Military facility (type)
Armory/arms storage
Military housing
*Health care*
Hospital/ClinicMedical
business/office
Spa/springs
Nursing home/sanator.
*Civic/social*
Fraternal/patriotic org
Club (common interest)
Social/civic org.
Philanthropic housing
Work in progress
Vacant/not in use
Unknown
Write-in

## 8. Date of construction

## 9. Altered (Date, Description)

## Addition (Date, Description)

## Moved/Destroyed

*(Details on #25)*

**12a.** High style
Elements

## 12b. Style(s)

No academic style
Craftsman
Colonial revival
Folk Victorian
English vernacular revival
Queen Anne
Greek revival
Italianate
Stripped Classical
Beaux Arts Classicism
Academic Gothic revival
Gothic revival
Neoclassical revival
Mediterranean revival
Italian Renaissance revival
Second Empire
Richardsonian Romanesque
Stick
Federal
High Victorian Gothic
Shingle
Prairie style
Romanesque revival
High Victorian eclectic
Dutch Colonial revival
Federal revival
Spanish Colonial revival
Chicago School
Early Classical revival
French Vernacular revl
Moderne
Exotic revival
Georgian
Art Deco
International
Unknown
Write-in

## 13. Building Type(s)

**1 to 1 ½ stories**
single pen
(rect./square)
double pen
hall-parlor
saddlebag
(2 doors/cent.door)
central hallway
dogtrot
Georgian cottage
Sand Hills cottage
Shotgun/Double shotgun
Gabled ell cottage
Queen Anne cottage
New South cottage
Pyramid cottage
Saltbox
English cottage
Extended hall parlor

**2 story**
Bungalow (Front gabl/
Side gab/Hip/Cross gab
Ranch
Side Gable Cottage
I-house (Central hall
way/Hall parlor/Double
pen/Saddlebag)
Plantation plain
Side hallway
Gabled ell house
Queen Anne house
New South house
American foursquare
Georgian house
Split level
N/A
Unknown
Write-in

## Contact Print

## 14. Floor plan (Original)

one room (square/rect)
two equal rooms
two unequal rooms
three or more rooms
central hallway
side hallway

## 14b. Depth

one room
two rooms
more than two rooms
unknown
write-in

## 15. Plan shape

rectangular
square
L / T / U / H / E
Greek cross
Latin cross
Circular
Octagonal
Triangular/flatiron
Irregular
Unknown
Write-in

## 16. Number of stories _____

## 17. Façade symmetrical asymmetrical

## 17b. Front door 1 2 3 or more

## 18. Roof types

gable (side-/ front- /
cross / multi-/ clipped/
stepped / parapet
hip
pyramidal
gambrel
mansard
shed/pent
flat
truncated hip/deck-on-hip
dome
conical
complex
write-in

## 18. Roof materials

composition/asphalt shingle
metal (standing seam/
pressed shingle/
pressed sheet/
corrugated sheet)
built-up tar and gravel
clay tile
slate
asphalt roll
wood shingle
concrete tile
unknown
write-in

## 19. Chimney location

gable-end, exterior
both gable ends
gable-end, interior
both gable ends
double gable end
both gable ends
center
off-center, ridgeline
off-ctr within roof surf
lateral interior
lateral exterior
multiple random
outside add-on
three or more chimneys
see item #25
no chimney observed
unknown
write-in

## 19b. Chimney material

brick
fieldstone
coursed stone
cobblestone/rustic
stuccoed masonry
concrete block

## 20. Type of Construction (max 3)

balloon frame/platform frame
brick bearing
stone bearing
log
mortise-and-tenon/brace frame
post-and-beam (wood)
metal/steel framing
concrete block
poured concrete (bearing wall
concrete frame
plankwall framing
tile block bearing
concrete slab
glass block
tabby
unknown
(write-in)

## 21. Exterior Material (max 6)

wood
- weatherboard/clapbrd
- board-and-batten
- vertical board
- novelty siding/ shiplap/
- drop siding
- shingles
- flush board siding
- beaded tongue&groove
- half-timbering

brick (note if handmade)
- common/American
- running bond/veneer
- Flemish bond
- English bond

stone
- fieldstone/rubble/
- regular coursed stone
- random coursed stone
- rock-faced stone
- rusticated stone
- cobblestone/rustic
- stone panels

log
- hewn
- V-notch/ square notch
- half dovetail/dovetail
- saddle notch

ceramic
- terra cotta
- glazed brick/enameled
- tile block/ tile mosaic

metal
- wrought iron
- cast iron/pressed tin
- sheet metal/corrugated
- porcelain enamel steel
- write in

concrete
- concrete block/cinder blk
- decorative concrete blk
- poured wall
- cast concrete detail
- textured concrete
- prefabricated panel
- tabby

stucco

glass
- glass block
- plate glass
- pigmented sheet glass
- carrara/prism glass
- prism synthetics
- vinyl/aluminum siding
- tarpaper/asphalt sheet/
- patterned asphalt
- asbestos siding
- permastone
- masonite siding
- plastic/fiberglass
- plywood/particle board
- insulbrick (composition)

unknown
(write-in)

## 22. Foundation Material (max 3)

**ALSO NOTE:** pier / pier w/ infill / continous

brick
stone
concrete
wood
metal
unknown

## 23. Porch Configurations (max 4 porch types)

| | location | # stories | width | material | roof type |
|---|---|---|---|---|---|
| verandah | | | | | |
| wrap-around | | | | | |
| recessed | | | | | |
| portico | | | | | |
| stoop | | | | | |
| balcony | | | | | |
| porte-cochere | | | | | |
| arcade | | | | | |

**Roof Types: (fill in above)**
hip /shed-pent /gable / hood / conical / complex

## 24. Window Types (max 3)

| | head(flat/round,etc) | pattern (6/6, etc.) | shape (rect, etc.) |
|---|---|---|---|
| double-hung sash | | | |
| single-hung sash | | | |
| casement | | | |
| fixed | | | |
| factory sash | | | |
| triple-hung sash | | | |
| jalousie | | | |
| pivotal sash | | | |
| unknown | | | |
| (write-in) | | | |

## 26. Outbuildings (max 10)

storage shed / garage
barn/shed (mule/cattle/wagon/ machinery/ horse tobacco/dairy)
corn crib / chicken coop
kitchen / privy
carriage house
wellhouse / springhouse
(write-in)
secondary dwelling
smokehouse /root cellar
windmill / ice house
slave/servant house
dairy / blacksmith shop
silo /dovecote
pool house / greenhouse
outbuilding of unknown use

## 29a. Landscape Features (max 10)

yard setting
- informal/picturesque
- casual/unplanned
- designed fencing/walls
- designed planting beds
- designed drives/walks
- formal/geometric
- terracing/retaining walls

streetscape
- street trees/landscaping
- town/cthouse square
- street furniture/fountain
- artwork/monument
- ornamental paving

rural landscape/agricultural fields
- field systems
- fence/hedgerows
- cemetery
- terracing/contouring
- pecan/other groves/orchards
- drainage/irrigation

forest/woods
- natural
- planted

(write-in)

## 29c. Description(s) of Environment

town (residential/commercial)
urban (residential/commercial)
rural (agricultural/ forested/ non-agricultural/crossroads comm./dispersed comm.)
(write-in)
suburban (residential/commercial)
vacant lots
industrial setting/park
strip development
designed landscape
mixed use

## Surrounding Resources

new old mixed old and new

## 34a. Historical Themes (max 5)

architecture / agriculture
commerce / industry
religion / education
social/cultural development
transportation
government/politics/law
recreation/entertainment
(write-in)
African American / Indian history
other minority and ethnic groups
engineering/landscape arch
planning / military
exploration/settlement
conservation /public works
arts/letters

architectural type (common/rare)
architectural style (common/rare)
architectural technique(com/rare)
(write-in)
architectural design
craftsmanship
history (development/activity/ person/event)

**Name:** **Date:**

## 40. SHPO Evaluation

appears to meet NR criteria
may meet NR criteria
more information needed
appears NOT to meet NR critera b/c of integrity/age/signif

Quad:

UTM:

## 25. Physical Description (write-in)

## Site Plan

# Mid-Century Modern Survey in St. Louis

By Besty Bradley, Director,
Cultural Resources Office
City of St. Louis, MO

St. Louis is known as an historic city constructed almost entirely of red brick. Nevertheless, it has a wonderful collection of mid-century modern (MCM) buildings. Recent threats of demolition to two distinctive buildings highlighted the fact that MCM occupy desirable locations that are considered prime redevelopment sites. However, the interest shown in the threatened buildings – particularly among the young adult residents of the city – was surprisingly high and indicated that it was time to get serious about MCM buildings in St. Louis.

This city of 66 square miles has not grown since its boundaries were set in 1876. Consequently, much of St. Louis was built out before World War II. In contrast to other cities where extensive housing was constructed during the post World War II building boom, in St. Louis single-family houses are not the dominant resource of the era. Instead, the non-residential buildings of the period — built in some concentrations as infill along arterial streets and in urban renewal areas — are noticeable markers of post-war building. This broad category of resources includes many of the most significant buildings and seems to be most at risk. (SEE PHOTO 1)

### A Tiered Thematic Survey

The City's Cultural Resources Office, a Certified Local Government, applied for a Historic Preservation Fund grant through the Missouri State Historic Preservation Office (SHPO) to perform a survey of non-residential buildings

Captions: **Photo1:** Examples of Mid-Century Modern buildings in St. Louis. Top: Lambert Terminal, Hellmuth, Yamaski & Leinweber, 1957. Lower left: James S. McDonnell Planetarium, Hellmut, Obata & Kassabaum, 1963. Lower right: Lashly Branch Library, William B. Ittner, Inc. 1967. Photo courtesy of the author. **Photo 2:** W.A. Sarmiento, while an architect at the Bank Building & Equipment Co. of St. Louis, designed the 1959 International Brotherhood of Electrical Workers Union Hall, one of the buildings included in the "Defining an Era" group of buildings the survey identified. Photo courtesy of the author. **Photo 3:** Public meeting attendees ponder their votes for buildings to be documented further. Photo courtesy of the author.

constructed between 1945 and 1975. As the City's demolition review criteria afford more protection to buildings that are eligible for listing in the National Register, we wanted to have a group of properties determined eligible by the SHPO as a project product. A tiered survey with varying levels of documentation, accompanied by the usual survey report and contexts, became the plan. The nearly 20 properties from the time period already listed in the National Register, and thereby already protected, were not included in the project. The City's Cultural Resources Office selected Peter Meijer Architect, of Portland, with Christine Madrid French on the team, as the consultant for the project.

The Cultural Resources Office began the reconnaissance level survey by using the City's land records database to provide locations and building construction dates. Over 2,280 properties were documented with photographs and classified by property type.

As Cultural Resources Office staff explored the city with camera and clipboard, the full extent of the construction that took place during the period under study became evident. Discovering a MCM church in a residential neighborhood, sharing "finds," puzzling over the function of what was finally determined to be a "drive-up" rather than "drive-thru" bank, and gradually understanding where building occurred lightened the work of the survey. The reconnaissance survey confirmed what we had supposed: there is a lot out there, a good portion of which is utilitarian in nature, and recording it all to the same level of detail would not be the best use of resources.

Peter Meijer Architect project staff then reviewed the recorded properties and, in conjunction with SHPO and the Cultural Resources Office, selected 200 properties to be recorded on the State's standard architectural survey form. The group includes schools, libraries, health care buildings and churches. Commercial buildings, mixed- use complexes, banks, and office buildings are also represented. The consultants took additional photographs, wrote descriptions of the buildings, and carefully examined the historic integrity and architectural merits of these properties.

### Putting the Public Meeting to Work: Defining an Era

From this list, 40 properties were selected, based on architectural excellence and National Register and City Landmark eligibility, for further scrutiny and consideration at the project's first public meeting. (SEE PHOTO 2)

About 30 people met to consider the progress of the St. Louis MCM Survey. A series of presentations set the scene for the "work" of the meeting. Posters presenting the buildings hung on the walls of the meeting room. Attendees were asked to place adhesive stars on the buildings that they felt were critical in defining the era of MCM St. Louis. As each person had 16 stars to place on the flyers, hard choices had to be made.
Why would we ask the public: "Which buildings do you think deserve additional documentation?" The counter question is, why not find out which buildings the interested public finds compelling? Historic Preservationist Kristin Hagar's assertion that a recent past resource is more likely to be valued as having historic significance over time if multiple sources and layers of significance can be found at the time of identification and evaluation prompted the public meeting format. Asking for more than the usual amount of public comment on this grant project seemed to be a constructive addition.

The placement of the stars revealed a fairly strong consensus on which buildings warranted further study. A group of 13 buildings were clearly considered to define the era and eight more received almost as many stars. With the public's help, it was much easier to settle on a group of buildings to be documented at the most intense level. After the public meeting, Peter Meijer and the Cultural Resources Office considered building type, geographic and architect distribution as well, and soon had a "short list" of properties that would have extended statements of significance included on their survey forms. (SEE PHOTO 3)

### Survey Results and Looking Ahead

The Survey Report includes analysis and recommendations that will carry this work forward. We now know more about the geographical distribution of the resources, the overall popularity of the various Modern Movement expressions, and the use of style by decade and by property type. The use of materials was also quantified and supports the observation that brick remained St. Louis' favorite building material.

The survey historic contexts and report support the plan that the next step will be the preparation of a Multiple Property Documentation Form. The survey highlights the presence of clusters of Modern Movement, some built in redevelopment areas and some as infill along a thoroughfare. Some are located in established historic districts with earlier periods of significance and have the potential to constitute a second period of significance for the historic district.

As for the properties on the "Defining the Era" list, the survey forms and information on how to seek listing or designation will be provided to property owners and the next step will be theirs. Given the interest in buildings of this time period, no doubt work will proceed on listing and designation and some MCM buildings will be recognized for architecture, community planning, and development, and as historically significant for other reasons.

This project is only a starting point. The term "Defining the Era" was selected to signal that while these properties are significant and define the "Gateway Years" in St. Louis, they are not the only ones that can be considered significant and are eligible to be important historic resources.

### Thinking about a similar project?

The historic context research has been instructive, both in finding sources and in the resulting narrative. There were few secondary resources to draw upon. Several editions of an AIA-sponsored book on significant architecture during the period and a local construction industry monthly have been invaluable. Clipping files in local libraries become less complete as the

period progresses. Sanborn maps for the period are scarce. Studies of St. Louis during the time frame are narrowly focused and do not provide an overview. Primary research will be necessary and time consuming. On the other hand, some of the architects whose work you are documenting may be available as oral-history resources. Imagine lunching with a group of retired architects and talking about their important projects.

A thematic survey, as opposed to a geographically based one, worked for St. Louis because of its development pattern. Focusing on two areas of significance – architecture and community planning and development – highlighted factors that are closely allied with broad patterns. Take some time to define the scope of a survey project. Look broadly enough to have a sense of the big picture even as you address the most important property types and areas of significance.

The 1950 to 1970 period turned out to be a distinct period in the community planning and development history of downtown St. Louis. But we didn't know that before establishing the parameters of the project. Again, take time to define a time period for a survey based on the history of your community. The broad patterns of the era – suburbanization, construction of interstate highways, use of urban renewal tools and growth of a metro region – have distinct histories in each urban area. Communities did not experience them in a constant manner. Also, be aware that some topics, such as the demolition associated with urban renewal and freeway construction and the dislocation of residents, were controversial at the time. What was problem solving during the 1960s may now look like the initiation of several unintended consequences. Actions require explanation through the lens of that era and with a minimum of judgment.

The St. Louis survey was intended to establish some credibility as historic resources for buildings from this time period. For most baby-boomers, this period challenges their sense of history. Although they know the Vietnam War and the 1960s are over, and even the Cold War is a historic period in the past, it is difficult to translate that understanding to buildings constructed during those times. People may have a personal relationship with a MCM building under discussion, one based on an experience at a young age and without understanding of the time beyond their own lives. Yet the fact that they have an association may keep them from understanding a resource as historic or historically significant. This aspect of resource recognition requires some interpretation and salesmanship.

Be aware of project significance creep: the way a current project seems to involve significant resources because you now know and understand them. The odds are that you will find a group of resources to be interested in and excited about. As we integrate MCM resources into the longer history of our communities, it will become clear that some will be architecturally and historically significant, but many will not be. Don't give up subject matter authority through over-enthusiasm.

Finally, look for the preservation stories as you read about the new construction of the period. I found a growing sense in the architectural community that some old buildings were worth preserving. A local group of architects stated in 1965 that, as the "cause of modernism" was largely won, they could assume the leadership of preservationist activities, as was their duty. The attitude toward the built environment during the post World War II period was complex and varied, and is certainly worth investigating in your community.

## A few additional questions for Betsy about St. Louis & Mid-Century Modern (MCM)

**How is it that properties in the National Register are "already protected" in St. Louis?**
St. Louis has a strong demolition-review section in its ordinance. All properties listed in the Register must be approved by the Preservation Board for demolition, and the demolition criteria address condition of the building, effect of the demolition, proposed subsequent construction, and other factors.
Recently, the Board denied demolition of a 1976 building designed by Peruvian-born modernist architect W. A. Sarmiento for replacement by a CVS pharmacy. The protection is in the City's historic-preservation ordinance, using listing in the Register as one of the protected categories.

**Was there a national outreach for consultants for the Mid-century Modern Project?**
We published our RFP widely, including on PreserveNet, to get experience in a broad survey project and MCM architecture. Two out-of-town firms submitted bids.

**Is there a greater awareness of mid-century architecture in St. Louis than other places because of the internationally celebrated monument, the Gateway Arch, and, even, the former Busch Stadium?**
Probably not. The Arch is of the city but not of the city as it is the National Park Service Arch that tourists visit. The historic context examines the relationship during the period and I ended up naming the period "The Gateway Years." The fact that the Arch was being built was a major boost to St. Louis during the 1960s – most likely, it's just that more people living in the city appreciate MCM and make that known. Washington University's class on MCM architecture, a couple of years old, is evidence of the interest in the architectural community and elsewhere.

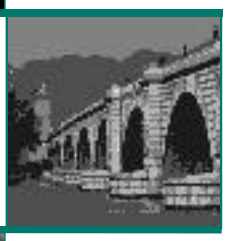
**Was there any reluctance at first from the local commission to apply for a CLG grant for this project?**
No – the link between young people and MCM appreciation is strong enough, coupled with the fact that this is the demographic group that is moving into the city, that there was no reluctance. The Mayor's office and Preservation Board are very aware of the interests of the Millennials and want to present a city government that "gets it." Plus, we presented it as the "thing to do": to be in the forefront of what communities are doing in historic preservation.

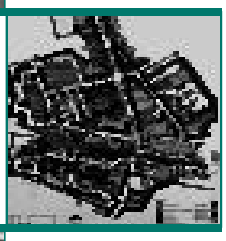
**Is there a second phase for MCM residential properties– and will the context report for the MCM survey be added to the city's preservation plan?**
The residential properties are a second phase being considered. We have some other smaller grant projects to take on first. The long contexts and survey forms will be presented in the survey report via our website and SHPO's. Shortened, more popular, and more like the earlier ones, versions of the contexts will be added to the preservation plan, which is also on the website.

***Information on the project is available at the Mid-Century Modern Survey page on the Cultural Resources Office website: http://stlouis-mo.gov/cultural-resources***

Cultural Resources
# PARTNERSHIP NOTES

*Technical assistance in historic preservation planning, related planning/land use topics, and preservation strategies for Federal agencies, Indian tribes, States, and local governments*





*Issues Paper:*

## CONSERVATION DISTRICTS

ALTHOUGH THE TERM HAS SEVERAL MEANINGS, *conservation areas* or *districts* suggest to many in preservation a method of achieving preservation ends at a neighborhood scale without some of the perceived burdens of the traditional historic district approach. The two articles included here broach a number of important issues, among them: definition of conservation districts, consequences of designation as a conservation district (especially with regard to the regulation of alterations and new construction), relationship to existing historic districts, and the administration of conservation districts by local governments.

The article by Robert E. Stipe entitled "Conservation Areas: A New Approach to An Old Problem" presents a somewhat idealized concept of the conservation area as a neighborhood, by virtue of its special qualities, slated to receive coordinated and enhanced attention and service from local government. Mr. Stipe makes the case against including regulatory controls in the conservation area designation by arguing that to do so would deprive preservation of an important "carrot" to be used when the "stick" of the traditional historic district may not be appropriate. Carole Zellie's article, "A Consideration of Conservation Districts and Preservation Planning: Notes from St. Paul, Minnesota," presents the results of her study of 20 conservation districts in place around the country. The analysis was conducted at the behest of the Minnesota State Historic Preservation Office and the St. Paul Heritage Preservation Commission. Ms. Zellie finds that the conservation district approach, as it is currently implemented, can be characterized in two ways: those having a neighborhood planning focus and those with architectural or historic preservation aims. The author concludes that, in certain circumstances, conservation districts can be a useful complement to traditional historic districts. However, she warns against dismissing the design review component entirely by making the case that

design review is critical in neighborhoods in which the housing stock has suffered from unsympathetic alteration.

The articles in this Issues Paper reflect the still evolving nature of the conservation district concept and its place in the preservation tool kit. This publication aims to assist preservationists in evaluating the usefulness of conservation districts by highlighting multiple perspectives on the issue.

## CONSERVATION AREAS: A NEW APPROACH TO AN OLD PROBLEM

*by Robert E. Stipe, Emeritus Professor of Design, School of Design, North Carolina State University*

Ever since the first Old and Historic District was established in Charleston, South Carolina in 1931, American communities have relied heavily on local historic district regulations for the protection of neighborhoods of distinguished architectural and historic character. Presently there are approximately 2,000 such districts in the United States, and their number has roughly doubled each decade since the 1930s.

That this approach has proved its worth time and time again is beyond dispute, notwithstanding occasional difficulties encountered in the processes of administration and enforcement. But times have changed. Good planning and modern preservation philosophy, as well as an increasingly conservative public mood that is increasingly anti-regulation, suggest that it is time to supplement this traditional regulatory stick with a pro-active carrot. For descriptive purposes, this might be called the "conservation area" technique.

Discussion of the overall concept of conservation areas, which is the subject of this essay, is complicated somewhat by the fact that several dozen cities across the county have already designated areas called conservation areas or districts, each slightly different from the others. Whatever called, and for reasons discussed later, these are for the most part more closely related to the traditional historic district than to the concept of a conservation area as defined here.

The need for a supplemental approach springs partly from new thinking about the inherent value of neighborhoods and their associative values to both residents and the larger community, and partly from strategic necessity.

Preserving neighborhoods, historic and near-historic, takes on special significance in today's changed political climate. The designation of a local historic district, whether through zoning or some other source of authority, is a vexing issue for elected officials in many cities and towns. Historic district ordinances require all property owners within a proposed district to comply with a police power regulation that carries with it both criminal and civil penalties for violation. They are also seen as regulating "taste" through the review of proposed additions or new construction. Mistakenly or not, the process is

often perceived as government interference with individual rights of free speech and the unfettered use of private property. Thus, the local political sieve through which additional regulations must be filtered is an increasingly difficult one.

The conservation area approach—and the term "area" is used here throughout to make clear that ideally it is not a special kind of zoning district—offers a number of distinct advantages. It fits well with contemporary thinking about what is worth preserving. It is more susceptible to local definition, more flexible in interpretation, and less threatening or restrictive to the average property owner. The conservation area approach melds easily with contemporary local planning processes and administrative structures; and, most important, admits to the evaluation process additional associative values, including human ones, without demeaning history or architecture.

## What is a conservation area?

In the best use of the term, the ideal conservation area is one that is crisply, if broadly, defined and easily distinguished from the traditional historic district. A working definition which originated in North Carolina more than a decade ago, defines a conservation area as one that "possesses form, character, and visual qualities derived from arrangements or combinations of topography, vegetation, space, scenic vistas, architecture, appurtenant features, or places of natural or cultural significance, that create an image of stability, comfort, local identity, and livable atmosphere."

This definition goes considerably beyond the defining element of a traditional historic district. The customary associative values, which focus on history and architecture and which stress the stylistic and material integrity of the place and its component parts, have broadened considerably. While architecture and its appurtenant features remain as explicitly enumerated values, history as such is expanded to take in the generically broader concept of culture. The form, character, and visual quality of the streetscape and landscape, as the staging area for architectural elements, predominates. Natural areas and landscapes are added to emphasize a special concern for a broader range of environmental considerations. Vernacular elements, now widely fashionable among preservationists, are also implicitly recognized as respectable associative values, as are aesthetics and spatial structure. Age, as such, is not a major consideration. Because the definition tends overall to place relatively greater importance on the preservation of a natural larger landscape, the word "conservation" seems a more apt descriptor than does "preservation."

Most important, it is the presence of any one of these values or several of them in combination leading to "an image of stability, comfort, local identity and livable atmosphere" that takes center stage. Thus, integrity is replaced by imagery, and the values and perceptions of local citizens are weighted equally with the academic and scholarly credentials of experts.

It is also useful to define this ideal conservation area in terms of what it is not. Unlike zoning historic districts, exemplary conservation areas are not regulatory in nature. While there are criteria by which they might be defined, they do not establish or even attempt to establish additional regulations above and beyond those that already exist. And the burden imposed by conservation area designation lies most heavily on the local government itself—the mayor, manager, council, planning staff, and several line and staff agencies of the city government—rather than upon individual property owners. In other words, the ideal conservation area becomes a device by which a city or county imposes

upon itself a special responsibility to undertake ambitious, specifically defined planning and design tasks targeted to the maintenance and improvement of the area so designated. From the standpoint of the property owner, conservation area designation thus becomes a carrot, rather than a stick.

### What kinds of areas might be designated?

In theory, there are three kinds of areas or neighborhoods to which the designation might appropriately be attached:

First, the designation would be appropriate for those areas surrounding or bordering on an existing local historic district. In this sense, conservation areas might be regarded in customary planning parlance as "buffers," or transitional areas designed to protect the edges of an existing district.

Second, the conservation area approach would be highly appropriate as a tool to protect what might be called "pre-natal" historic districts that don't yet meet the usual 50-year rule or which have not yet acquired the patina of age or character associated with the traditional district, but which skilled observers feel certain will qualify in perhaps 5 or 10 years. Conservation area designation would thus provide incentives to the private sector to protect and maintain a maturing but not-yet-ripe historic district of the traditional kind.

Third, the designation would be appropriate for areas or neighborhoods that while they might never qualify for "historic" status, are important to preserve and maintain solely for their social and economic value, or for their utility as affordable housing. It is important to stress that regardless of motivation, the limits on the utility of the concept are local imagination and creativity.

### How is a conservation area established?

Like a zoning historic district, the model conservation area is defined by precise boundaries shown on a map. Here the similarity to the traditional historic districts ends. Since the designation of conservation areas does not impose on property owners any regulatory burdens other than those already in effect, the mapping and designation of conservation areas would best be accomplished by a resolution of the governing board as a policy directive, rather than by an ordinance. Designation might, of course, be accomplished through an executive order of the mayor or city manager, but this would not normally carry the political clout of a mandate from an elected board.

### What would be the consequences of designation?

For the property owner, conservation area designation would have little impact insofar as restrictions or costly maintenance obligations are concerned. Although existing land use regulations would remain in effect, as would private deed restrictions of one kind and another, there would be no architectural review of additions or new construction, and there would be no restrictions on demolition. The impact of conservation area designation would fall primarily on public agencies and upon the city itself.

The designation resolution or order would simply state, as a finding of fact that the area was one of special interest deemed desirable and necessary to conserve for present and future owners, and to that end it would direct various local government agencies to undertake a number of activities:

- To prepare or update, as appropriate, land use, transportation, public utilities, public facilities, housing, open space, historic preservation, urban design, and other comprehensive plan elements for the area being designated.
- As part of such planning, to have special regard for and

to give special attention to the design, construction, and maintenance needs of public thoroughfares, pedestrian ways, open spaces, landscape elements (including street trees), recreation areas, and comparable amenities of the area, and to prepare detailed plans, designs, sketches, and models proposing public improvement of these facilities and areas;

- To prepare special and detailed recommendations with respect to improved housing, education, employment, health, protective, and other human resource requirements of the area designated;
- To establish appropriate means of communication between and among the public authorities involved, and provide for the active participation by residents of the area in the preparation of plan elements and program elements noted above;
- To designate a responsible local government official to coordinate these activities, both from an inter-governmental and an intra-governmental standpoint;
- To recommend to the manager and council, by a date certain, ways and means by which the local government should step up its maintenance and operating programs within conservation areas;
- To recommend to the governing board specific changes or additions to both the annual operating and capital budget programs of the local government for implementing the plans and programs suggested for the conservation area; and
- To ensure that no local government program of any kind resulted in adverse impacts on a designated conservation area.

The activities listed above are not an exclusive list of activities that should be included in a conservation area program. Such a list would vary according to the special problems and needs of each such area. The council should, of course, provide the necessary financial resources for the additional planning, design, and other studies to be carried out in designated conservation areas. Target dates for the completion of individual tasks might be specified.

The main burden of implementing the council's mandate would fall upon the local planning, historic preservation, housing, and renewal agencies. Other operating programs of the city, such as public works, parks and recreation, engineering, health and human services, etc., would also be involved. Depending on the organizational structure of the city, the city manager and/or mayor would be major players in the implementation process. In effect, designation as a conservation area would serve to force a variety of public officials and agencies, most of whom normally work in isolation from one another, to come together in a coordinated and energetic way, to focus their attention on the special character of designated areas.

## Should there be some modest additional regulations in a conservation area?

Whether or not to impose regulatory restraints in a conservation area, such as one prohibiting the demolition of older structures that might in another setting be regarded as "contributing," or reviewing new construction, raises a policy issue that must be decided in each local situation. However, the basic concept of a conservation area strongly implies a presumption against such regulation. The reason, as noted earlier, is that the times call for a new approach—one that maintains a balanced carrot and stick philosophy, so to

speak. Unless the conservation area approach is perceived as one that is less burdensome or threatening to the average property owner, as well as one that is more positive and forward-looking, it will be perceived as more regulation in disguise.

## Legal and administrative aspects of conservation areas

Since local historic district regulation is an exercise of the sovereign authority of the state, whether carried out through zoning or stand-alone enabling legislation, it may be done only in accordance with state legislation and within state and federal constitutional limits. On the other hand, conservation area designation, as described in this article, does not involve the exercise of any additional regulatory authority, and so the planning enabling legislation of every state, coupled with the council's discretionary authority to manage the affairs of the city or town, is probably already adequate in and of itself. Depending on the form of government, the same would be true of the executive authority of the mayor or city manager to carry out the council's mandate.

In other words, new legislative authority for a city or county to undertake concentrated conservation area planning programs is probably not necessary, even though specific state enabling legislation would probably be useful for its educational or incentive value, or as a foil to the innate conservatism of most city attorneys.

What is required, however, is the political will to shower special attention on special areas of the city. Also required is the creativity and imagination to see the usefulness of the conservation area approach and to utilize it effectively. While it is a requirement in virtually all states that property taxes be collected on a uniform basis, there is no corresponding requirement that the public funds be spent equally on every neighborhood. Given the special qualifications that lead to designation of conservation areas in the first place, justification for the extra expenditure involved should not be politically difficult.

Clearly, such studies, plans, designs, public consultation, and other tasks related to conservation areas will impose additional responsibilities on city employees, and this can be a significant stumbling block to initiating the process unless additional fiscal and personnel resources can be found. Because of the absolute necessity in conservation area planning for extensive public and resident participation and consultation, the use of out-of-town consultants will usually be inappropriate.

As noted earlier, the limits to conservation area efforts are essentially the limits of local imagination and political and financial feasibility. For example, public conservation area planning efforts might in many cases be supplemented by such private sector initiatives as revolving loan funds. Or they might be supplemented by special education programs in local schools or the establishment of local city offices in affected neighborhoods. It remains crucial, however, that efforts targeted to improving the physical environment be balanced by programs that equally benefit the human aspects of the problem. It is clear that sound conservation area planning will require a more broadly based collection of special skills than those traditionally associated with historic preservation planning. The role of the local historic preservation community, lay, and professional, will be even greater.

## What about existing "conservation districts"?

That something less restrictive than the traditional historic district is needed to round out the kit of local preservation tools is evidenced by the fact that several dozen cities around the country

established conservation districts during the 1980s. Variously named ("conservation district," "historic conservation district," "neighborhood conservation overlay district," "architectural conservation district," etc.), these have tended strongly to be variations on the traditional historic district, notwithstanding the nominal difference.

Some are administered by a preservation commission; others by a planning or zoning commission. The nature of the activity regulated varies, the majority restricting demolition, and almost all controlling new construction to some degree, some less strictly than others. Who may nominate such districts also varies: in some cases designation is by property owners or a majority of them, and in others it is by a preservation commission or the governing board itself. Where there are specific design standards, application varies. In some there is control of architectural style, and in others only land use is regulated. The designated reviewing authority also varies: in some districts it is a preservation commission or architectural review board, and at others it is a planning or building official. Occasionally, design review is only advisory.

The existence of these districts raises the question, "What's in a name?" While called "conservation" districts, they rely heavily for their effectiveness on a regulatory approach and are in reality lenient versions of the traditional historic district. While this does not lessen or reduce their usefulness, the proliferation of names and the casual reference to "conservation" values engenders confusion and makes it more difficult for the conservation area planning effort described above to achieve their full potential.

## Conclusion

While historic zoning districts and their milder cousins continue as useful implements in the preservation tool kit, such regulations are essentially sticks. Conservation areas represent more of a carrot approach, in that they emphasize the possibility of significant public contributions to the maintenance of environmental quality. Of special importance is the non-threatening character of conservation areas, with their promise of "no new regulations" and, by implication, additional public investment in operations and maintenance and, through capital improvements, in neighborhood infrastructure. While there is always a tendency to concentrate on design issues and on the improvement of the physical environment, conservation areas, as the planning descendants of earlier approaches to urban renewal and community development, also offer an increasingly relevant and constructive means of dealing with human issues as well. In the long run, conservation area planning and designation, if and when it catches on in the somewhat idealized form presented here, may provide benefits that equal those of the traditional historic district with which we have been preoccupied for so many years.

# A CONSIDERATION OF CONSERVATION DISTRICTS AND PRESERVATION PLANNING:

## Notes from St. Paul, Minnesota

*by Carole Zellie, Principal, Landscape Research, St. Paul, Minnesota*

At first examination, conservation areas or districts appear to offer appealing features to planners seeking an alternative to traditional historic districts with components such as binding design review for exterior alterations. As drafted in some cities, conservation districts offer a means to recognize the special historic and or/neighborhood character, and provide planning assistance and improvement without passing through the often arduous process of historic designation and design review. In 1991, the St. Paul Heritage Preservation Commission studied the conservation district concept to determine if other types of designation might be used to supplement the city's existing local historic districts. The study concluded that although a conservation district model might have some future utility, there were good reasons to continue with the city's program of historic district designation and design review. Combined with broad design criteria, an aggressive public education program, and coordination with St. Paul's existing neighborhood planning effort, the sometimes controversial design review component can be supported as a critical tool for the maintenance and improvement of historic character.

The study was sponsored by the St. Paul Heritage Preservation Commission and the State Historic Preservation Office and conducted by Carole Zellie of Landscape Research. Prior to 1991, all of St. Paul's local historic districts, including high-styled residential areas such as Summit Hill and Irving Park, were also listed in the National Register. Their architectural and historical significance was without dispute. However, a "new crop" of potential districts, characterized by older, largely vernacular buildings and a great need for housing improvement provided some challenge to the past designation process. Although these areas meet the Heritage Preservation Commission's designation criteria—which recognize the significance of urban and social history as well as architectural history—as districts most of these new areas were not eligible for the National Register because of a low level of integrity. Planners and Commission members were interested in examining if a conservation district could provide special recognition and treatment for the architectural and landscape character of these areas without the burdens of traditional designation and design review.

During the course of the study, an excellent test case was evolving in Dayton's Bluff, an historic neighborhood just east of downtown St. Paul. Dayton's Bluff is one of the earliest neighborhoods in the city with some fine examples of late nineteenth-century residential architecture. However, much of the current building stock includes unsympathetically altered houses as well as many simple vernacular house of a type which is ubiquitous across the city. Many residents are of low to moderate income, and there are a good number of absentee landlords. Residents in the area have worked aggressively on strategies to improve the area and have employed several city-sponsored planning and rehabilitation programs. In 1991, Dayton's Bluff was under consideration for designation as a local historic district but did not meet National Register eligibility. Residents lobbied for designation as a local historic district, not as a conservation district, which they regarded as inferior in status and benefits. Design review was understood by many residents as

an important new tool to halt further deterioration of the streetscape.

Although the public's distaste for the interference of design controls is widely discussed, this is not always the case, even in areas where private rehabilitation funds are limited. In Dayton's Bluff, residents viewed the design review controls as a positive benefit, and had a vision of the "Dayton's Bluff Historic District" rather than the "Dayton's Bluff Conservation District" from the beginning.

## The conservation district overview

The St. Paul study examined 20 ordinances in 18 states and Vancouver, British Columbia. Interviews with a selection of planners were intended to learn how well the districts worked from a practical as well as the theoretical perspective. The relationship between co-existing historic districts and conservation districts was of particular interest. Concurrently, existing neighborhood planning programs and the operation of the Heritage Preservation Commission in St. Paul were examined in detail.

These 20 ordinances represented nearly 20 separate variations of a theme related to the conservation of neighborhood character. At one extreme, conservation has been interpreted with rigorous standards for exterior alterations with guidelines based on the Secretary of the Interior's Standards. At the other extreme, only a review of new construction was provided. In general, the ordinances showed how communities differentiate issues of historic character from those of general neighborhood character. Most conservation districts have not been created primarily to meet historic preservation goals; "conservation district" is most often an umbrella term for "neighborhood planning district."

## Definitions

In their introductory language nearly all conservation district ordinances addressed the need to promote the health, safety, economic, cultural, and general welfare of the public by encouraging the conservation and enhancement of the urban environment. The single term conservation (as opposed to conservation district) is seldom defined. Terms such as "built environment," "neighborhood character," and other elements vary in their usage. Language selected from three ordinances illustrates several approaches and conservation district definitions:

***Boston, Massachusetts Architectural Conservation District:*** *"Architectural Conservation District," any area designated by the commission in accordance with section four (designation by commission) as an area containing any physical features or improvements or both which are of historical, social, cultural, architectural, or aesthetic significance to the city and cause such area to constitute a distinctive section of the city.*

***Memphis, Tennessee Historic Conservation District:*** *"A local historic district established by the city council requiring architectural design review guidelines for demolition, new construction, or additions to habitable areas of buildings, structures, sites and objects in the public right of way and within the boundaries of the historic conservation district."*

***Omaha, Nebraska Neighborhood Conservation Overlay District:*** *"The NC Neighborhood Conservation Overlay District is intended to accommodate unique land use, urban design, and other distinctive characteristics of older established neighborhoods. The NC District, used in combination with a base district, allows variations in permitted uses and site development regulations*

*that are adapted to the needs of a specific neighborhood."*

## Purposes and characteristics

The need for a conservation district with a historic preservation focus was apparent in Dallas in 1976, when the City was awarded a HUD 701 Demonstration Study Grant entitled "Conservation Strategies." Today there are eight conservation districts and 11 historic districts in Dallas; six of the historic districts and all of the conservation districts are residential. The conservation district ordinance authorizes the city to regulate and restrict the construction, alteration, reconstruction, or razing of buildings and other structures in "designated places and areas of historic, cultural, or architectural importance and significance." The ordinance notes that "whereas the city has historic districts and areas, the conservation district is established to provide a means of conserving an area's distinctive atmosphere or character by protecting or enhancing its significant architectural or cultural attributes. A separate ordinance is created for each conservation district with a plan which includes design guidelines. While the historic districts in Dallas generally use the Secretary of the Interior's Standards for Rehabilitation, the conservation districts write their own. Many of the conservation districts appear to be eligible as historic districts but have used the conservation district as an alternative.

In other cities, preservation-oriented conservation districts have been created to perform primarily as historic districts. This occurred most often where there exists inadequate state or local legislation or local political support to create or administer historic districts. Conservation districts have often been created primarily to organize neighborhood planning efforts and coordinate housing rehabilitation programs as well as focus land use and zoning controls at the neighborhood scale. In some cities, such as Raleigh and Phoenix, the creation of the ordinance established a structure for creating neighborhood plans.

From the ordinances, it was difficult to determine which conservation areas were not eligible for local historic district designation because of low integrity or other issues. The designation process for conservation districts operates with diverse designation criteria. Conservation districts which evolved from a neighborhood planning base tended to have very broad eligibility criteria. Most of those districts developed as a means to assist historic preservation planning have designation criteria quite similar to those used for traditional historic districts, usually that based on the National Register of Historic Places criteria.

All of the conservation district ordinances reviewed were regulatory and over three-quarters were overlay zoning districts. The choice of form appears to relate primarily to local precedent and the provisions of state enabling legislation. The approval of a majority of residents is required for the creation of conservation districts in most cities and, in most cases, the application appears to have been initiated by neighborhood groups. Where required, application fees paid by neighborhood organizations partially covered the costs of a study, and fee waiver procedures are also provided. The level of citizen participation in the designation process and design review varied greatly.

Some conservation districts appear to serve areas that aren't physically "quite ready" or "quite there" for traditional historic district designation (to quote planners), or where it is thought that the needs of low and moderate-income homeowners are not well served by the creation of a traditional historic district. Conservation districts can offer recognition and some level of

design review to these areas. However, several planners interviewed were careful to note that without design review for exterior alterations, they felt an important revitalization tool was lacking. Some planners endorsed the conservation district as a good interim measure for areas currently not eligible for historic district designation, with later redesignation as historic districts. However, no examples of this kind of transformation were identified.

## Relationship to local historic districts

The relationship of local historic districts and conservation districts within each city varied greatly. In Nashville, the Neighborhood Conservation District, the Historic Preservation District, and Historic Preservation Landmarks are created by the same ordinance and serve the same general goals. Known locally as Historic Zoning and Conservation Zoning, they are promoted as a coordinated pair of strategies designed to conserve areas of historic and architectural significance. Both types of zoning require review of demolition proposals and the design of new construction by the city architectural review board, the Metropolitan Historic Zoning Commission (MHZC). Nashville's Historic Zoning Districts, however, provide an additional level of review and protection, in the review of exterior changes such as alteration to porches, doors, windows, and roofs. Similarly, the Cambridge, Massachusetts Historical Commission coordinates both the city's historic and conservation districts. In a number of cities, however, there is little relationship between the staff or programs which administer the two types of districts.

Some type of design review is a component of all conservation districts. However, **what** is reviewed varies greatly and this is the critical distinction between historic and conservation districts. Most ordinances provide for the tailoring of guidelines for design review to a specific area, but binding review of exterior architectural alterations is usually not a component of conservation districts. More typical in conservation districts is review of "built environmental characteristics," to quote Raleigh's ordinance, usually focusing on new construction considerations such as building height, scale, placement and setback, and materials. Review of demolition permits and the treatment of vacant lots are also standard components. Written guidelines and criteria for design review were included in all ordinances, but few examples included illustrations in the ordinance or in another document such as a handbook.

Public information directed at conservation area residents varied. Some programs, such as those in Cambridge and Nashville, appear to have carefully planned this component of the effort while other programs provided few if any special publications. Vancouver, British Columbia, is among the few cities where the ordinance and design guidelines were illustrated with many drawings and photographs.

Most planners gave mixed reviews of the success of the preservation-oriented conservation districts that they administer. Probably the most frequent critique of note for St. Paul was that some public as well as planner confusion seemed to prevail in cities with both heritage conservation and heritage preservation districts. Nearly all planners endorsed the positive public education role that conservation district designation played, but most wished for stronger design controls.

## Nashville as a model for St. Paul

The conservation districts in this study did not sort into tidy models. This is due in part to the architectural and historical diversity of the cities for which they were written, the diverse plan-

ning objectives at which they are directed, and the political frameworks in which they are administered. However, a primary division between the ordinances can be characterized as the "neighborhood planning model" and the "architectural or historic preservation model." In its final phase, the St. Paul study examined ordinances and conservation district programs in Phoenix, Dallas, Nashville, and Cambridge in additional detail and concluded that the second model, with a focus on historic resources in addition to new construction, land use, and other neighborhood planning issues promised to be most useful for St. Paul.

Nashville was of particular interest. As noted above, Historic and Conservation Districts were created here under one ordinance which gives the two classifications equal status and similar operation. The districts and landmarks were provided "to ensure preservation of structures of historic value to Metropolitan Nashville and Davidson County." Among the specific purposes of the districts are to:

- Preserve and protect the historical and/or architectural value of buildings, other structures, and historically significant areas;
- Create an aesthetic appearance which complements the historic buildings or other structures;
- Stabilize and improve property values;
- Foster civic beauty; and
- Strengthen the local economy.

There are currently two conservation and two historic districts. The largest conservation district includes 1,200 buildings. The general designation provisions of the ordinance incorporate National Register criteria for both types of districts.

Nashville's planner, Shain Dennison, reported that the Conservation Districts "provide a choice." The difference between the Historic Preservation and Neighborhood Conservation Districts is that in the former, no structure shall be "constructed, altered, repaired, relocated, or demolished" unless the action complies with the requirements of the ordinance. In the latter, only construction, relocation, demolition, and increase in habitable area are reviewed.

By the criteria, both conservation and historic districts would appear to be eligible for the National Register although planning staff applied the criteria quite flexibly in the conservation districts. It appears that Nashville's historic districts contain the more high-styled buildings. Here, as in other cities attempting to supplement historic districts with conservation districts, the conservation districts were best suited to areas where there was already good maintenance, a pattern of relatively little exterior change, or where residents were strongly opposed to design review. The conservation district, although offering some control, did not offer much to low-maintenance areas where review of exterior alterations was regarded as critical.

The Nashville model provides a well explained process and rationale for its two-tier system. The recognition provided by the conservation district the Nashville planner noted, was regarded as a positive benefit and served to reassure new buyers that some type of control was in place. Well-designed public education materials included a handbook and several brochures.

## Conclusions for St. Paul

St. Paul's neighborhoods already benefit from 17 District Councils, each staffed with a community organizer and a District Planner, and there already exist specific long-range plans for each area. Each district has prepared a plan which inventories its physical, social, and economic components and makes

recommendations for treatment. However, the District Council plans do not follow a standard format with regard to components of historic and/or neighborhood character. A Heritage Conservation District might encourage recognition and protection of historic neighborhood character in areas where the Commission or area residents do not feel existing Heritage Preservation District controls are appropriate. In particular, a Heritage Conservation District with limited design review, perhaps only of new construction and demolition, might be created in stable "newer" areas of twentieth-century residences where existing historical research does not fully support designation as a Heritage Preservation District. Here, historic architecture might contribute to neighborhood character, but if houses are not poorly maintained or subject to unsympathetic alteration, design review might not be critical but recognition of the area's special qualities would assist in focusing public interest and planning assistance. A Heritage Conservation District might also be created as a buffer around new or existing Heritage Preservation Districts. Review of demolition permits and new construction would be of great use in older areas undergoing selective building clearance and redevelopment.

The study recommended that a Heritage Conservation District for future study should be based on models where:

- The district was administered by the existing Heritage Preservation Commission and planning staff and was well coordinated with historic district planning.
- The district was perceived by residents as having equal status and recognition with other local historic districts.
- The objectives of the Heritage Conservation District were clear and the review process efficient.
- Public information and education were used to further the goals of the district and planning program.

It was also recommended that criteria for eligibility should be the existing Heritage Preservation Commission Guidelines. In their current form, these guidelines provide for broad interpretation of historical significance and would accommodate many types of areas. Activity regulated within the St. Paul Heritage Conservation District would include demolition, exterior design of new buildings, additions which increase habitable areas, and relocation. Activities not regulated within the Heritage Conservation District would include exterior design of alterations to existing buildings and alterations to existing property (including fences, sidewalks, lighting, and signs).

The designation process should include an inventory of buildings and features, initiated by the Heritage Preservation Commission or the District Council; the development of preliminary boundaries and guidelines; and provisions for presentation for approval by residents through a public hearing and informal meetings.

Design guidelines which address the exterior design of new buildings and the design of additions should be developed for each Heritage Conservation District. Additionally, this information should be made available to property owners in the form of a brochure or handbook.

Finally, the permit review procedure should follow that specified in the current Heritage Preservation Ordinance. (It should be noted that unless the Heritage Conservation District met National Register eligibility criteria, Federal rehabilitation tax certification could not be extended to the area.)

## Study follow-up

Heritage Preservation commission members, St. Paul Planning and Economic Development staff, and State Historic Preservation Office staff were among reviewers of drafts of this study. Although the useful applications of the model proposed for St. Paul were recognized, several reviewers commented on the possibility for confusion between Heritage Conservation and Heritage Preservation Districts. Although it has been emphasized that the districts would be presented as of equal status, as has been done in Nashville, a number of reviewers reiterated that the existing guidelines were already flexible enough to designate a broad range of areas as historic districts. This does not, however, provide for special intervention in the buffer zones which usually lie at the edges of districts.

The Heritage Preservation Commission follows the Secretary of the Interior's Standards for Preservation Planning in its evaluation and designation process. However, the Commission takes a broad view of the existing integrity of properties in evaluating their significance. Integrity is not specifically mentioned in the designation criteria. This contributes to the opinion that the existing Heritage Preservation District ordinance is sufficiently broad to protect many types of areas.

The study recommended new opportunities be created to work with the District Councils on strengthening the relationship between historic preservation and neighborhood planning. A good deal of effort has been put into creating legislation and administering historic districts for specific areas. However, while many people recognize the value of a designated historic building, appropriate conservation of older housing stock everywhere in the city is desirable. Much could be accomplished if public education programs encouraged homeowners to use care in planning exterior alterations, and if city-funded rehabilitation programs took a leading role in setting a high standard for affordable maintenance and rehabilitation work, particularly for siding and window replacement and porch repairs. The entire city, with the great bulk of its traditional housing built before 1930, might be regarded—if not designated—as a conservation area. Here, public education and housing improvement programs rather than design regulations could be leading tools in the effort to maintain building condition and integrity.

## General conclusions

Evidence from around the country indicates that architectural and historic preservation-oriented conservation districts with limited design review can be a useful supplement to the traditional historic district. They function best in this role when they are applied to areas with a history of good maintenance and little exterior change and/or where residents are strongly opposed to full-fledged design review. In areas where there is a pattern of low maintenance and unsympathetic exterior alterations, conservation districts with limited design review are less effective at preserving neighborhood character.

*Footnote: In August, 1992 the St. Paul City Council approved the Dayton's Bluff Historic District which contains over 500 properties. A design guidelines handbook has been prepared for distribution to all property owners in the area.*

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**CULTURAL RESOURCES PARTNERSHIP NOTES**

**HERITAGE PRESERVATION SERVICES, NATIONAL PARK SERVICE**

Series editor: Susan L. Henry Renaud, Coordinator, Historic Preservation Planning Program
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# Benefits of Residential Historic District Designation for Property Owners

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(6-7-07)

Historic district designation has become an important tool for local governments in efforts to preserve the character of central-city neighborhoods. Designation of historic districts based on a national level of significance, called National Register Historic Districts, has occurred widely in the U.S. since the passage of the enabling legislation of the National Historic Preservation Act in 1966. In addition, some states have created state historic registers and many municipalities have established local historic registers and special zoning for local historic landmarks and districts. The number of local historic districts in the U.S. has grown from approximately 100 in 1966 to more than 2,000 in the late 1990s (Listokin et al. 1998).

National- and state-level designations convey more prestige to an individual property or historic district, and makes federal and state tax breaks available to owners of individually listed properties and properties listed as contributing to the significance of a district. However, national- or state-level designation offers no real protections, as both listing and participation in tax abatement programs is voluntary, and owners can renovate or demolish a significant historic property to replace it with a "highest and best use" building that maximizes income or sale price.

In contrast, local-level historic designations typically require review of significant exterior alterations, demolitions, and new construction within historic districts in order to restrict incompatible development, and thereby maintain the historic character and integrity of designated structures and neighborhoods. Reviews are conducted by community commissions or neighborhood advisory groups, or both, composed of local residents, and are based on specific design standards and guidelines developed by the community.

The City of Tucson currently has 21 National Register Historic Districts. Six of the nationally designated districts are also designated as local Historic Preservation Zones (districts), as enabled by a 1972 ordinance revising the Land Use Code. In the locally designated districts, there are two levels of review of exterior renovations, demolitions, and new construction. The level of review is determined by whether the property is a contributing or noncontributing property in a National Register District, or whether the proposed changes are major or minor.

## Higher Property Values and Rates of Appreciation

Higher property values and rates of appreciation are important economic benefits of historic district designations of residential neighborhoods. Recent studies in Arizona

document this effect of historic district status on property values. A study of the Speedway-Drachman National Register Historic District in Tucson showed that between 1987 and 2007 the average assessed value of homes in this district appreciated 15 percent higher than the average in a nearby neighborhood with housing stock of similar age, construction, and design (L'Orange 2007:4). A study of 25,975 single family homes sold in Phoenix in 2005, including 212 located in National Register historic districts, showed that historic designation increased the average marketable sales price of a house by 31%, or more than $100,000 (Poppen 2007:7). A study in Mesa comparing house market value changes between 1997-2004 in the Mesa Evergreen National Register Historic District compared to those in two comparable, undesignated neighborhoods identified a +26 percent difference in the historic district (Bellavia 2007:3-4).

There is some data that national-level historic designation has a slightly greater positive effect on property values than local-level historic designation alone (Leichenko et al. 2001:1982-1983). However, this difference is not statistically significant, and the same comparative data shows that properties that carry only local designation also tend to have higher values compared to similar, undesignated properties (Leichenko et al. 2001), and relative to the entire real estate market (Rypkema 2002).

> Local landmarking and design review can actually boost property values by introducing certainty into the marketplace and improving the overall economic climate, which benefits all property owners (Clarion Associates of Colorado 2002).

Comparison of a number of independent studies of local historic districts in New Jersey, Texas, Indiana, Georgia, Colorado, Maryland, North and South Carolina, Kentucky, and Virginia showed that this economic effect of local designation is typical across the country.

> The results of these studies are remarkably consistent: property values in local historic districts appreciate significantly faster than the market as a whole in the vast majority of cases and appreciates at rates equivalent to the market in the worst case. Simply put—local historic districts enhance property values (Rypkema 2002:6).

Other data indicates that the greatest impact on rates of property appreciation occur with the addition of local designation (which usually includes a design review process and more restrictions on property renovations, demolitions, and new construction) on top of national designation. In a recent study conducted in Memphis, Tennessee, combined local/national designation added 18.6% to assessed property values over a four-year period compared to 13% added by national designation alone (Coulson and Lahr 2005:494-495). In Evansville, Indiana, the rate of appreciation between 1980 and 1995 was significantly greater within a locally designated portion of a larger National Register District (Rypkema 1997:7). Over the same period in Indianapolis, average property values appreciated faster in a district with combined local/national designation compared to a neighborhood with only a national designation (Rypkema 1997:9). Between 1976 and 1996 in Georgia, assessed property values in districts with both local and national designations increased at a rate of 47% compared to 23% for properties in districts with

only the national designation (both figures adjusted for inflation) (Athens-Clarke County Planning Department 1996:4).

Table 1 summarizes the findings of 15 recent studies of the effect of historic district designation on property values over time. These studies were conducted in several different regions of the United States, and include both nationally and locally designated districts. These studies vary in the specific aspects of value over time examined, such as assessed value, sales value, and rate of appreciation. However, all of the studies in Table 1 can be compared in terms of average property values in historic districts relative to similar, undesignated neighborhoods.

Table 1. Property Values* in Designated Historic Districts Compared to Similar Undesignated Neighborhoods in the Same Communities

| Study Area | Data Interval | Ave. Value Difference (%) | Annual Rate (%) | Reference |
|---|---|---|---|---|
| Athens, GA | 1976-1996 | +14 | +.7 | Leithe and Tigue 1999 |
| Denver, CO | 1993-2000 | +3-6 | +.4-1.2 | Clarion Assoc. of CO 2002 |
| Durango, CO | 1993-2000 | +.7 | +.1 | Clarion Assoc. of CO 2002 |
| Galveston, TX | 1975-1991 | +85-360 | +5.3-22.5 | Govt. Fin. Res. Center 1991 |
| Memphis, TN | 1998-2002 | +14-23 | +3.5-5.7 | Coulson and Lahr 2005 |
| Mesa, AZ | 1997-2004 | +26 | +3.7 | Bellavia 2007 |
| New Jersey | ? | +5 | — | New Jersey Hist. Trust 1997 |
| New York, NY | 1975-2002 | +13 | +.5 | NYC Ind. Budget Office 2003 |
| Phoenix, AZ | 2005 | +31 | — | Poppen 2007 |
| Rome, GA | 1980-1996 | +10 | +.6 | Leithe and Tigue 1999 |
| San Diego, CA | 2000-2005 | +16 | +3.2 | Narwold 2006 |
| Savannah, GA | 1974-1997 | +264-588 | +11.5-25.6 | Leithe and Tigue 1999 |
| Texas (9 cities) | (variable) | +5-20 | — | Leichenko et al. 2001 |
| Tifton, GA | 1983-1996 | +2 | +.2 | Leithe and Tigue 1999 |
| Tucson, AZ | 1987-2007 | +15 | +.7 | L'Orange 2007 |

* Phoenix and Mesa studies used sales values; all other studies used assessed values.

A few of the designated districts experienced extremely high rates of appreciation, or very modest rates, but most saw property values increase by 5-35% per decade over the values in similar, undesignated neighborhoods.

Within these data, another important pattern is that newer properties within historic districts benefit just as much as older properties. In Memphis, both older and newer (less than 10 years old) buildings in a local/national historic district appreciated to levels higher than similar properties in undesignated neighborhoods (Coulson and Lahr 2005:502-504).

**Insulation from Extreme Market Fluctuations**

Local historic district designation has proven to insulate property values from wild swings in the housing market, including both downturns tied to larger economic trends, and "bubbles" caused by cycles of real estate speculation. This stability is related to investor confidence that, because there are explicit design limits in the zoning code, home investments in historic districts will not be adversely affected by construction of an inappropriate, out-of-scale building next door. It is also due to the fact that neighborhoods with stable values do not offer opportunities for "flipping" (purchase followed by quick resale at a high profit margin). In these ways, local historic district designation reduces the uncertainty facing the buyer regarding the future value of the investment.

> In short, it may be that historic districts are more likely to experience a certain indemnification from extremely modulating property values, perhaps because of a higher degree of investor confidence in these officially recognized and protected areas (Gale 1991:8).

**Tax Breaks**

Increasing property taxes associated with rising property values in nationally designated and state-designated historic districts can be offset by state and federal tax reduction programs. In Arizona, contributing properties in a National Register District are eligible for the State Historic Property Tax Reclassification program. This program reduces the taxes of listed properties by up to 50 percent over 15 years, and reduces assessments of improvements to commercial properties to 1 percent of their full value over 10 years. The Federal Investment Tax Credit program provides a 20 percent tax credit and accelerated depreciation for rehabilitated investment properties listed as contributors in National Register Districts. The reductions in property taxes available in National Register Districts provide needed economic relief for moderate-income neighborhoods experiencing rising property taxes during real estate boom cycles. The tax incentives also provide alternatives to demolition of historic homes, thereby providing stability to the built environments of neighborhoods.

**Stabilization of Residence**

Designation as a historic district raises the value of investments, promoting increased levels of home ownership and longer residence. This stabilizing effect on residence patterns has been documented by a study conducted in Indiana, which found that designated historic districts have higher rates of owner-occupation, and longer durations of residence by both homeowners and renters, than do similar, undesignated neighborhoods (Rypkema 1997:2, 6, 10).

**Increased Connections among Neighbors and Community Involvement**

Neighborhoods with a significant proportion of owner-occupied homes tend to have higher rates of participation in neighborhood associations and improvement projects, which protects shared spaces from decline (Rypkema 2005:51-52). All proposed exterior modifications, new construction, and demolitions in locally designated historic districts require review by neighborhood advisory groups and historical commissions, thereby ensuring community involvement in neighborhood planning.

**Summary**

The findings of recent comparative studies of the effects of historic district designations over time, conducted in many different regions of the U.S., converge on a few key findings:

- Historic district designation typically increases residential property values by 5-35% per decade over the values in similar, undesignated neighborhoods.

- Both nationally designated historic districts and locally designated historic districts outperform similar, undesignated neighborhoods, but districts that carry both local and national designation experience the highest relative increases in property values.

- The values of newer properties within designated historic districts increase along with those of older properties.

- Local historic district designation decreases investor uncertainty and insulates property values from wild swings in the housing market.

- Increasing property taxes due to rising property values in historic districts designated at the national or state levels can be offset by state and federal tax reduction programs.

- The tax incentives also provide alternatives to demolition of historic homes, thereby providing stability to the built environments of neighborhoods.

- Historic district designation leads to increased levels of home ownership and longer residence by both homeowners and renters.

- Designated historic districts tend to have higher rates of participation in neighborhood associations and improvement projects, which protects shared spaces from decline.

- Proposed exterior renovations, demolitions, and new construction in locally designated historic districts are reviewed by neighborhood advisory groups and historical commissions, thereby ensuring community involvement in neighborhood planning.

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Donovan D. Rypkema

# The (Economic) Value of National Register Listing

To ask if properties listed in the National Register of Historic Places have value is to ask a tautological question. Of course they have value or they wouldn't have been listed in the first place. The nomination process to the National Register itself implicitly requires the source and the substantiation of the property's value—architectural, cultural, associative, historical, etc. Further, by implication the National Register property is more valuable on some set of criteria than non-listed properties, otherwise everything would be National Register eligible.

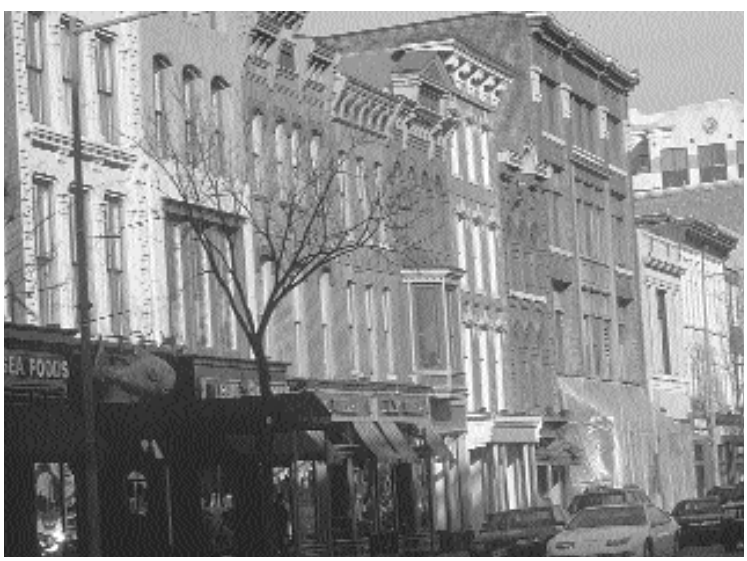
So historic preservation in general and National Register listing in particular doesn't have one value, it has a multitude of values—cultural, environmental, social, educational, aesthetic, historical. The question becomes, "Do these values manifest themselves in economic value?" Let's begin with what we do know, and that is about local designation. Over the last decade a number of analyses have been conducted asking, "What is the impact on property values of local historic districts?" Using a variety of methodologies, conducted by a number of independent researchers, this analysis has been undertaken in New Jersey, Texas, Indiana, Georgia, Colorado, Maryland, North and South Carolina, Kentucky, Virginia, and elsewhere. The results of these studies are remarkably consistent: property values in local historic districts appreciate significantly faster than the market as a whole in the vast majority of cases and appreciate at rates equivalent to the market in the worst case. Simply put—local historic districts enhance property values.

Anecdotally, it has been found that when a local district has the greatest positive impact on property values four variables are usually in place: clear, written design guidelines for the affected properties; staff for the preservation commission; active educational outreach by the staff and commission to property owners, real estate brokers, architects, builders, etc.; and consistent and predictable decisions by the commission.

Since listing in the National Register provides little protection for an individual property, sources of value enhancement created by a local district do not exist. There are, however, at least four situations in which listing in the National Register does often add economic value to the listed properties:

- When the properties are commercial, rather than owner-occupied residential, the eligibility for the Federal Rehabilitation Tax Credit can add economic value to the properties. At a recent symposium funded by the National Park Service and chaired by the Urban Land Institute, some developers noted that in their communities, sellers of unrehabilitated properties were raising the price of listed buildings to reflect the tax credit opportunity potential of the investment.
- In some communities the creation of a National Register district triggers the creation of a corresponding local district. This local district then would provide the protections (and perhaps incentives) as noted above, leading to economic value enhancement.

*Listing can add economic value to commercial properties since National Register status is a prerequisite to using the Federal Rehabilitation Tax Credit.*



*National Register residential neighborhoods may command a premium if local buyers and the real estate community understand and appreciate the significance of designation.*

- In real estate markets that have a level of knowledge and sophistication among both real estate professionals and buyers regarding historic properties, National Register listing can have an economic premium attached. How do you know if the local market has reached that point? When the real estate ads say, "This house is located within the XYZ National Register Historic District," or "This house is listed in the National Register." The broker wouldn't pay for the extra lines in the ad if he/she didn't believe that potential buyers responded knowingly and positively to that information.
- A common characteristic of neighborhoods—both residential and commercial—that are seen as places of sound investment is the existence of a strong citizen-based advocacy organization. Often the creation of a National Register district is a catalyst for the creation of such a citizen advocacy group. The group may have been formed for the specific purpose of getting a neighborhood listed, but once that mission is accomplished the organization expands its focus to broader neighborhood advocacy. This can have a positive affect on property values.

But perhaps it makes sense to step back briefly from the specific question, "Does National Register listing add economic value?" to a broader identification of the variables that affect value. In real estate economics there are identified the Four Forces of Value, those factors in the marketplace that push the value of a given piece of real estate—historic or otherwise—up or down. Those forces are physical, social, economic, and political. If as preservationists it is our intention to positively influence the value of historic properties it will be necessary to knowledgably bring those forces into play.

The physical force of value is the only one of the four even partially emerging from within the property lines. A leaky roof, the wrong kind of mortar, deteriorating foundation walls, sandblasted bricks are all examples of physical forces that will diminish the economic value of a building. But physical forces beyond the lot lines will also have an impact. The condition of the streets and sidewalks, the proximity of parks, levels of public maintenance, and whether nearby properties are vacant or occupied are all examples of the physical force of value over which the individual property owner has no direct control.

The social force of value is how people understand and attach importance to any given property characteristic. When more people hold historic resources "valuable" by any criteria, there will be a corresponding increase in the economic value of those resources.

The economic force of value is more complex than it may seem. If financing is more difficult to obtain for historic properties than for new properties, there will be a relative adverse impact on historic properties' values. Adaptive re-use of historic properties, when the use for which they were built is no longer in demand, is central to the buildings having economic value. The proposed Historic Homeowners Tax Credit, by adding an economic incentive for re-investment, will add economic value.

The last of the four forces of value is political. To the extent that elected officials and other political decision makers recognize and emphasize the importance of heritage buildings and correspondingly take public policy actions to encourage appropriate rehabilitation, the economic value of historic buildings will increase.

Listing in the National Register of Historic Places does not necessarily add economic value to a given piece of real estate. Rather, National Register status can be an important catalytic tool to utilize all four forces of value. National Register listing is one of a basket of tools that can be used to assure that the economic value of historic preservation takes its rightful place among the multiple values that historic buildings contribute to American communities of every size.

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Photos by the author.

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# Historic Preservation and Residential Property Values: An Analysis of Texas Cities

Robin M. Leichenko, N. Edward Coulson and David Listokin

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**Summary. Designation of historic districts is increasingly used as a tool to revive or halt the deterioration of central-city neighbourhoods. While historic designation is generally thought to have a positive impact on property values, evidence on this issue is mixed. One limitation of previous research is that it typically focuses on historic neighbourhoods in one city and thus bases its conclusions on a very limited sample. This study expands upon previous work by examining the effects of designation on property values across a larger set of cities. The study employs hedonic regression models to estimate housing prices in historic districts and comparable neighbourhoods in nine Texas cities. Results suggest that, in most cases, historic designation is associated with higher property values.**

## 1. Introduction

Historic designation has become an important tool in efforts to preserve central-city neighbourhoods and to promote urban economic development (Listokin *et al.*, 1998; Slaughter, 1997; Rypkema, 1995; Wojno, 1991). Designation of historic districts has been employed on a broad basis in the US since the 1960s, following legal decisions that upheld landmarking and passage in 1966 of the National Historic Preservation Act (NHPA) (Listokin, 1986). The act gave the Secretary of the Interior the authority to maintain a National Register of Historic Places, comprising districts, sites, buildings and objects of local, state or national historic significance (Wojno, 1991, p. 297). In addition, many municipalities have established local historic registers that allow local governments to establish historic districts and to designate properties as historically significant. Although establishment of many local historic districts preceded NHPA—for example, Charleston, South Carolina, established historic district zoning in 1931 (Lockhard and Hinds, 1983)—the rate of establishment of local registers dramatically accelerated after 1966 (Listokin, 1986). In 1966, there were approximately 100 local historic district commissions in the US. Presently, there are more than 2000 such commissions (Listokin *et al.*, 1998).

One of the main justifications for designation of a historic district within a city is that it provides a means to protect a historic neighbourhood from physical deterioration. With regard to property values, however, designation of a historic district may be either value-enhancing or value-detracting.

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Historic designation is thought to have a positive impact on property values by providing a form of insurance of future neighbourhood quality. The prestige of official landmark designation in conjunction with assurance that its desirable historic amenities will be fostered into the future by public regulation, may make property-owners in historic districts more willing to invest in rehabilitation and maintenance of their properties. One study of New York City, for example, concluded that historic district designation, by fostering neighbourhood pride and other attributes, "serves to strengthen both property values and social fabric" (New York Landmarks Conservancy, 1977, p. 2).

In addition to direct effects on property values in a district, historic designation is also thought to have positive spillovers for neighbouring areas, whereby designation of a district leads to a ripple effect of rehabilitation and upgrading of properties in surrounding neighbourhoods (Listokin *et al.*, 1998; Rypkema, 1994; Coulson and Leichenko, 2001). Thus, historic designation is seen as more than just a way to preserve historic buildings; it is also increasingly regarded as both a community preservation and an economic development strategy. A recent article noted that economics and revitalisation have taken their rightful places as the pillars upon which the preservation ethic is based (Rypkema, 1995). A prime example of the growing recognition of the linkages between preservation and local development can be seen in the Community Partners Program, a new initiative of the National Trust for Historic Preservation, which aims to demonstrate the "effectiveness of preservation-based community development" (National Trust for Historic Preservation, 1998, p. 1).

There are, however, a number of potential value-detracting aspects of historic designation. Designation of a historic district may impose restrictions on alterations and demolition (or it may at least require administrative review and/or some delay of such actions) and it may require maintenance of exterior ornamentation and other historic façade treatments over and above those required in the jurisdiction's general maintenance code. For example, in the city of Abilene, owners of designated properties must apply for a 'certificate of appropriateness' (C of A) prior to performing any type of work on the property's exterior (Coulson and Leichenko, 2001). A 'C of A' is, in fact, a requirement in many of the 2000 or so communities with local landmarking. Furthermore, maintenance work on the historic property is often more expensive than it might otherwise be because it has to conform to fairly rigorous guidelines (for example, only certain types of paint may be allowed). These landmark restrictions and demands can exert a downward pressure on prices.

In addition to control over a property's appearance, designation may also detract from a property's value by prohibiting the conversion to other uses or to a more intensive use. This type of argument would suggest that, in some instances, designation of historic districts might not reflect the 'highest and best' use of land—i.e. the most profitable use incorporating those uses that are legally permissible, physically possible and financially or economically feasible (Kinnard, 1971, p. 39).

The practice of historic designation also raises a number of broader legal and equity-related issues. These issues have been addressed in literature on preservation and property rights and on urban renewal and gentrification (see, for example, Smith and Williams, 1986; Smith, 1996; Schuler *et al.*, 1992) and therefore will be only briefly described. With regard to the legal aspects of designation, debate continues to surround the issue of whether designation is a 'taking of property'. The courts have overwhelmingly decided that designation is not a 'taking' but rather a police power regulation that justifiably furthers the public's health, safety and welfare while recognising the rights of private property-owners (see, for example, *Penn Central Transportation Company v. New York City*, 438 vs. 104 [1978]); yet designation's property value impact continues to be discussed (as does the more general

issue of public land-use regulations) in both legal and non-legal forums (Duerksen, 1983; Rypkema, 1994; Miller, 1998).

Other issues raised include equity considerations. For example, how should the burden of a public good—in this instance, preservation—be borne and shared between the affected private property-owner and the public at large? Another equity issue is the possibility of displacement of low-income residents who can no longer afford to live in historic neighbourhoods (Smith, 1998). According to this argument, higher property values as the result of historic designation lead to increased rental prices and higher property taxes, and these, in turn, may displace low- to moderate-income residents (Wojno, 1991). Although designation of historic districts cannot be equated with urban redevelopment and gentrification, which have been associated in many cases with the attraction of higher-income residents and increased housing prices, the potential for displacement of low- to moderate-income residents continues to be an important consideration. For this reason, the potential benefits of designation in terms of higher property values and increased tax revenues must be weighed against the possibility of displacement of lower-income renters, particularly in cities with very limited low-income housing supplies.

## 2. Empirical Studies of Historic Designation and Property Values

The question of the effects of historic designation on property values has been explored in the empirical literature for more than 20 years (Table 1). Many studies employ a difference-in-difference methodology whereby the changes in property values of houses within a district and houses outside a district are compared.[1] If prices increase (decrease) more within the designated district, then designation is inferred to have a significant and positive (negative) effect. A number of difference-in-difference studies have found that designation has a positive effect on property values (for example, Scribner, 1976; Rackham, 1977; US Advisory Panel on Historic Preservation, 1979). Other difference-in-difference studies found, however, that designation has a neutral or negative effect on property values (for example, Heudorfer, 1975; New York Landmarks Conservancy, 1977; Samuels, 1981; Gale, 1991).

One important limitation of the above studies of historic designation and property values is that they rely solely on comparing sample averages of the growth rate in property values in historic areas with those in non-historic areas. Typically, no other variables (for example, property characteristics) are controlled and, to the extent that there may be variables independent of designation that explain the changes in property values, the results may be biased and inconsistent. In an effort to rectify the above limitations, most of the more recent studies of the effects of historic designation employ hedonic regression models. This method of analysis provides a means to assess the implicit value of the structural characteristics of a house.[2] Use of a hedonic approach enables assessment of the effect of historic designation on housing values while holding constant property and neighbourhood characteristics.

A number of studies employing hedonic methods have concluded that designated historic properties and properties located within historic districts typically sell for a premium when compared with similar, non-designated properties (for example, Ford, 1989; Asabere and Huffman, 1994a; Clark and Herrin, 1997; Coulson and Leichenko, 2001). Other hedonic studies, however, have found mixed or negative results (for example, Schaeffer and Millerick, 1991; Asabere and Huffman, 1994b; and Asabere *et al.*, 1994). In accounting for their mixed results, Schaeffer and Millerick (1991) note that the effect of historic designation on price may depend upon whether a property is locally or nationally designated. Their study found a positive impact on values with national designation but a negative impact with local designation. This difference, according to the authors, resulted from more stringent controls in the

**Table 1.** Results of previous empirical studies

| Study | Location | Method | Impact of designation on property values |
|---|---|---|---|
| Heudorfer (1975) | New York City | Difference-on-difference | Neutral |
| Scribner (1976) | Alexander, VA | Difference-on-difference | Positive |
| Rackham (1977) | Washington, DC | Difference-on-difference | Positive |
| New York Landmarks Conservancy (1977) | New York City | Difference-on-difference | Neutral |
| US Advisory Panel on Historic Preservation (1979) | Alexandria, VA; Galveston, TX; Savannah, GA; Seattle, WA | Difference-on-difference | Positive |
| Samuels (1981) | Washington, DC | Difference-on-difference | Neutral |
| Ford (1989) | Baltimore, MD | Hedonic | Positive |
| Gale (1991) | Washington, DC | Difference-on-difference | Neutral |
| Schaeffer and Millerick (1991) | Chicago, IL | Hedonic | Mixed |
| Asabere and Huffman (1994a) | Philadephia, PA | Hedonic | Positive |
| Asabere and Huffman (1994b) | Philadephia, PA | Hedonic | Negative |
| Asabere *et al.* (1994) | Philadephia, PA | Hedonic | Negative |
| Clark and Herrin (1997) | Sacramento, CA | Hedonic | Positive |
| Coulson and Leichenko (2001) | Abilene, TX | Hedonic | Positive |

local districts and from the prestige associated with location in a national district.

Overall, the more recent, hedonic studies represent an important improvement over the earlier difference-in-difference studies. However, one limitation of the multivariate studies—and one possible reason for their mixed findings—is that they typically look at a small number of historic neighbourhoods in one city and thus base their conclusions on a relatively limited sample within a single housing market. This study expands upon previous hedonic studies by examining the effects of historic designation on residential property values across a larger sample of cities. The advantage of our approach is that we employ a roughly common econometric framework across the different models (although there are some differences in the various city-models) and this facilitates comparison across a large pool of cities—a comparison which is not otherwise available given the disparate models that previous research has provided. Nine Texas cities—Abilene, Dallas, Fort Worth, Grapevine, Laredo, Lubbock, Nacogdoches, San Antonio and San Marcos are included in the hedonic analysis.

## 3. Data

### *3.1 Selection of Historic and Comparable Properties*

Prior to the estimation of the hedonic models, it was necessary to select historic and comparable properties for inclusion in the analysis of each city. A complete list of designated historic properties was obtained from city-planning and/or historic preservation officials in each city.[3] In six of the cities (Dallas, Grapevine, Lubbock, Laredo, San Antonio and San Marcos), all of the historic properties included in the analysis are located within designated historic districts. In these cases, residential properties within the historic neighbourhoods were compared with properties located in comparable neighbourhoods in the city. Criteria for the selection of comparable neighbourhoods included similarity in general characteristics of the housing (for example, age of the buildings, size and architectural style), similarity in income levels and similarity of demographic characteristics. City planners and/or historic preservation officers selected the comparable neighbourhoods in each city.

In the cities of Abilene and Nacogdoches, historic properties are designated individually; the cities do not have designated historic districts. Comparable properties in each city were selected based on location in the same neighbourhood or in neighbourhoods similar to those where the designated houses were located. In Fort Worth, historic properties included properties located within historic districts as well as a large number of properties (93) with individual historic designation that were not located in a historic district. In order to take into account both types of historic properties, the Fort Worth analysis used property value data for the entire city. Designated properties were compared with all other residential properties in the city.

### *3.2 Type of Historic Designation*

In several of the cities, we were able to distinguish between different types of historical designation. In the cities of Abilene and San Marcos, we were able to differentiate between nationally and locally designated historic properties or historic districts, while in the city of Lubbock, we were able to differentiate between national, State of Texas and local historic designation. National designation means that a property or district is included on the National Register of Historic Places. State of Texas designation is a historic designation category that has been granted at the state level. Local historic designation may include designation of a local historic district, designation of individual properties as historically significant, or inclusion on special listings of historic local properties.

Because national or state designation seems likely to convey more prestige to an individual property or historic district and

**Table 2.** Data sources

| City | Data Source | Sample size | Average property value | Number of historic properties in the sample |
|---|---|---|---|---|
| Abilene | Appraisal | 7 620 | $39 160 | 222 |
| Dallas | Appraisal | 4 920 | $64 838 | 2 200 |
| Fort Worth | Appraisal | 102 948 | $54 519 | 1 338 |
| Grapevine | Appraisal | 59 | $44 673 | 27 |
| Laredo | Appraisal | 338 | $45 396 | 177 |
| Lubbock | Appraisal | 1 922 | $30 471 | 440 |
| Nacogdoches | MLS | 30 | $93 130 | 15 |
| San Antonio | Appraisal | 3 806 | $47 970 | 1 912 |
| San Marcos | MLS | 80 | $94 920 | 34 |

may therefore make the property or district more desirable, we expect that, all other things being equal, nationally or state-designated properties will have higher values than will properties that carry only local designation. In addition to conveying greater prestige than that conveyed by local designation, national and state designations are typically less restrictive (Schaeffer and Millerick, 1991). If there is no federal or state funding or other involvement (for example, federal or state rehabilitation grants or licenses), then the owner of a federal or state landmark can, by and large, make alterations without historic 'C of A' approval. In the same vein, the owner can demolish the federal/state landmark and replace it with a 'highest and best use' structure. It is only with local landmarking that significant restrictions on alterations and demolishing are sometimes triggered. These differences should further contribute to the more pronounced value-enhancing effect of national or state designation. We were able to test this hypothesis in Abilene, Lubbock and San Marcos.

### *3.3 Data Sources*

For the majority of the cities, data on residential property values were obtained from county appraisal district databases (Table 2). These cities include Abilene, Dallas, Fort Worth, Grapevine, Laredo, Lubbock and San Antonio. Appraisal district data were selected as our primary data source because these data are comprehensive, covering all of the historic properties in an entire neighbourhood and all properties in comparable neighbourhoods. While appraisal data have been used in other recent studies of the property value impacts of historic preservation (see, for example, Gale, 1991; Coulson and Leichenko, 2001), potential limitations of appraisal data include possible inflation or reduction of housing values by appraisers due to historic status. In each city where appraisal data were used, we enlisted the aid of city planners in compilation of the datasets in order to ensure that the historic and comparison properties (neighbourhoods) included in the sample had been recently appraised based on a consistent method.

In two cases, San Marcos and Nacogdoches, where appraisal data were not available or were not consistent, property values were obtained from Real Estate Multiple Listing services. Data from Real Estate Multiple Listings, which include the actual price at which a property sold, provide an accurate reflection of the market value of a home. The key problem with these data, however, is that the sample sizes tend to be smaller because the data are based on actual sales. In the city of Nacogdoches, for example, there were only 15 sales of designated historic properties during the study period. Smaller sample sizes limit the accuracy and reliability of the

hedonic analysis of the impact of historic designation.[4]

## 4. Modelling Approach

The property value analysis involved the application of multivariate regression models to assess the impact of historic designation on residential property values. The model form used in the study involves estimation of house price as a function of property characteristics, neighbourhood location and historic status. Since we are primarily interested in determining whether historic status exerts a statistically significant effect on housing price, and whether this effect is positive or negative, the key variable of interest is historic status.

The basic form of the hedonic model is as follows

$$\ln Price = \mathrm{f}(structural\ characteristics, neighbourhood, historic) \quad (1)$$

where, ln*Price* is the natural logarithm of the assessed total value (or sale price) of the house; *structural characteristics* of the house include variables such as square footage, year built, number of bathrooms, number of bedrooms; *neighbourhood* indicates the neighbourhood in which the house is located; and *historic* indicates whether or not the house is individually designated as historic or is located in a historic district.

Definitions of all of the variables used in the analyses are presented in Table 3. To ensure as much comparability as possible across the cities, each model started with a similar set of basic explanatory variables, such as square footage, year built and historic status. For most of the cities, we were also able to add additional explanatory variables such as number of garage spaces or presence of central air-conditioning.[5] Several models (Abilene, Lubbock and San Marcos) include variables designating type of historic district,[6] and the larger city models include variables designating neighbourhood type.[7]

The hedonic models are specified in semi-logarithmic form, meaning that the house price is specified as the natural log and the explanatory variables are specified in linear units (for example, *bath* is simply the number of bathrooms in the house). With the semi-logarithmic form, the coefficient on each explanatory variable (square footage, number of baths, etc.) is interpreted as the percentage change in the house's price that is associated with a one-unit increase in the explanatory variable. For example, a coefficient of 0.07 on the variable *bath* implies that the addition of one bathroom is associated with an increase in house price of approximately 7 per cent.

As is typical in hedonic studies of this type, it is important to control for covariates of historical designation in our specifications, as this variable can be correlated to some degree with other attributes. To address this issue, we examined bivariate correlations between designation and the other housing attributes in each sample. Designation is obviously correlated with the year built in each case, but in a number of our samples it is also (positively) correlated with land or interior area at least as strongly as it is with year built. Hence inclusion of these and other attributes is appropriate, as omission of them would bias upwards our measurement of the price difference between designated and non-designated properties.

## 5. Empirical Results

Detailed results of the hedonic models for each city are presented in Table 4. Interpretation of the individual estimated values in each city model may be illustrated through the example of Abilene. For houses in the Abilene area, other things being equal, an increase in size of 1 square foot is associated with an increase in property value of 0.059 per cent; based on the average house value ($39 160), each additional square foot increases house value by $23. Similarly, an increase of 1 square foot in land area is associated with an increase in property value of 0.0091 per cent, implying that each additional square foot of land area increases property value by $0.36. An additional bathroom adds 16 per cent to the value of the

**Table 3.** Variable definitions

| Variable name | Variable definition |
|---|---|
| *Housing characteristics* | |
| *Bath* | Number of bathrooms (full and half) |
| *Fullbath* | Number of full bathrooms |
| *Halfbath* | Number of half bathrooms |
| *Yearbuilt* | Year the house was built |
| *Squarefoot* | Square footage of the house |
| *Lotsize* | Square footage of the house's lot |
| *Bedroom* | Number of bedrooms |
| *Heatac* | Presence of central heating and central air-conditioning |
| *Numstory* | Number of storeys |
| *Numporch* | Number of porches |
| *Garagesp* | Number of garage spaces |
| *Structure* | Number of buildings on the property |
| *Condition* | Condition of the house |
| *Depreciation* | Depreciation of the house (alternative indicator of housing condition) |
| *Yearsold* | Year in which the house was sold |
| *Historic designation* | |
| *Historic* | Located in a historic district and/or designated as a historic home |
| *National* | Located in a nationally designated district or on the National Register |
| *Texas* | Designated as a Texas historic property |
| *Noncontrib* | Located in a historic district but not contributing to the district (Lubbock) |
| *Neighborhood controls*[a] | |
| *Abilene* | |
| *Census track* | Census track in which the property is located (13 tracks in total) |
| *Dallas* | |
| *Rosemont Crest–Sunset Hills* | Historic District location–comparison area |
| *Winnetka Heights–South Winnetka* | Historic District location–comparison area |
| *Tenth Street–Bottoms* | Historic District location–comparison area |
| *Munger Place–Junius Heights* | Historic District location–comparison area |
| *Queen City–Charles Rice* | Historic District location–comparison area |
| *South Blvd/Park Rw–comparison area* | Historic District location–comparison area |
| *Colonial Hill–Saint Phillips* | Historic District location–comparison area |
| *Kessler Park–East Kessler* | Historic District location–comparison area |
| *Miller-Stemmons–Kidd Springs* | Historic District location–comparison area |
| *Kings Highway–Dallas Land and Loan* | Historic District location–comparison area |
| *Lake Cliff–South Lake Cliff* | Historic District location–comparison area |
| *Peak's Suburban–Mill Creek* | Historic District location–comparison area |
| *Fort Worth* | |
| *Elizabeth* | Located in Elizabeth Ave. Historic District |
| *Grand* | Located in the Grand Ave. Historic District |
| *Fairmont* | Located in the Fairmont Historic District |
| *Isolated* | Historically designated property, but is not a district |
| *School District* | School district in which the property is located (12 districts in total) |
| *San Antonio* | |
| *Dignowity Hill–comparison* | Historic District location–comparison area |
| *King William–comparison* | Historic District location–comparison area |
| *Monticello Park–comparison* | Historic District location–comparison area |

*Note:* A selection of these variables were included in the individual models for each city.
[a] Not all cities required neighbourhood variables.

house, an increase of $6268. On average, houses with central heating and air-conditioning have values that are 45 per cent greater ($17 628) than similar houses without this amenity. (While it seems unlikely that central heating and air-conditioning alone would have such a large effect on housing values, the presence of central heating and air-conditioning is likely to be associated with other amenities that raise the value of a house—for example, higher-quality roofing, carpeting and so forth.) With regard to year built, more recently constructed houses have higher values; each additional year of age decreases the house's value by 1.4 per cent. All of the above estimates are statistically significant at standard levels of confidence and all of the coefficients are of magnitudes similar to those found in other studies of this type.

The housing characteristic coefficients in the other city models may be interpreted in a similar fashion. In general, the housing characteristic variables tend to have the expected signs and are generally statistically significant. Basic characteristics, including numbers of bathrooms, square footage and lot size generally have the expected, positive signs[8] and are statistically significant in almost all cases. A positive coefficient on *yearbuilt* indicates that older houses generally have lower values than do newer houses. Although the sign pattern on the *yearbuilt* variables is generally as expected, the coefficients are not statistically significant in all cases.[9]

Most of the additional structural variables, including presence of central heating and air conditioning (Abilene, Fort Worth, Grapevine), number of garage spaces (Fort Worth, Grapevine), number of porches (Laredo) and number of structures on the property (Fort Worth, San Antonio), have the expected (positive) sign and most are statistically significant. While the negative effects of number of storeys (Abilene) and number of bedrooms (Nacogdoches and San Antonio) seem to be counterintuitive, the reason for these negative results becomes clear if one keeps in mind that we are controlling for square footage. Given the control for square footage, the negative sign on number of storeys in Abilene simply implies that a 2500-square-foot ranch-style house would have a higher value than a 2500-square-foot 2-storey house. Similarly, in the Nacogdoches and San Antonio models, the negative sign on bedroom tells us that a 2500-square-foot house with 2 (large) bedrooms is worth more than a 2500-square-foot house with 3 (small) bedrooms. The individual coefficients for the neighbourhood controls (not reported) were generally found to be statistically significant.[10]

Concerning the interpretation of the coefficients on historic designation, we again use an illustration from Abilene. The *historic* coefficient of 0.19 (Table 4) suggests that values for designated historic houses are approximately 19 per cent higher than for similar, non-designated properties. The coefficient on *national* indicates that nationally designated historic properties sell for approximately 5 per cent more than locally designated historic properties. However, the effect of national designation is not statistically significant; we therefore cannot state that national designation has a positive impact above and beyond that of local designation within the city.

In general, the results indicate that historic designation has a positive effect on property values in all of the cities. The positive effect of historic preservation is statistically significant in Abilene, Dallas, Fort Worth, Grapevine, Lubbock, Nacogdoches and San Antonio. The effect of historic preservation is negative in San Marcos, but it is not statistically significant. The (positive) effect of historic preservation is also not significant in Laredo. Among those cities where historic designation has a statistically significant effect on property values, historic designation is associated with average property value increases ranging between approximately 5 per cent and 20 per cent of the total property value. In percentage terms, the smallest average increases in property values occur in Dallas, where the value of historic properties is 4.9 per cent higher than the value of

**Table 4.** Results for all cities

| | Abilene | Dallas | Fort Worth | Grapevine | Laredo | Lubbock | Nacogdoches | San Antonio | San Marcos |
|---|---|---|---|---|---|---|---|---|---|
| *Variable* | | | | | | | | | |
| *Bath* | 0.160 (13.1)** | — | 0.14 (37.2)** | 0.0628 (0.75) | — | — | 0.174 (1.85)* | — | 8.43E-4 (0.013) |
| *Fullbath* | — | −0.0253 (−4.23)** | — | — | — | — | — | 0.0714 (5.64)** | — |
| *Halfbath* | — | 0.0673 (4.75)** | — | — | — | — | — | 0.109 (4.85)** | — |
| *Yearbuilt* | 0.0144 (33.7)** | −0.00347 (−12.1)** | 0.00671 (88.7)** | 0.00156 (1.0) | −7.5E-07 (−0.64) | 0.0175 (13.3)** | 0.00397 (1.4) | — | 0.00251 (1.47) |
| *Squarefoot* | 5.86E-4 (46.9)** | 4.17E-4 (60.7)** | 6.07E-4 (257)** | 3.27E-4 (5.84)** | 1.84E-4 (9.84)** | −5.1E-05 (−2.98)** | 4.83E-4 (4.92)** | 3.79E-4 (30.4)** | 5.95E-4 (8.92)** |
| *Lotsize* | 9.1E-5 (9.0)** | — | 2.35E-06 (21.5)** | 9.85E-06 (7.6)** | 7.43E-5 (11.27)** | — | — | 3.31E-5 (18.1)** | — |
| *Bedroom* | — | — | — | — | — | — | −0.174 (−3.51)** | −0.00237 (−0.76) | — |
| *Heatac* | 0.452 (41.6)** | — | 0.409 (110)** | 0.157 (1.8)* | — | — | — | — | |
| *Numstory* | −0.144 (−4.67)** | — | — | — | — | — | — | — | — |
| *Numporch* | — | — | — | — | 8.51–5 (3.05)** | — | — | — | — |
| *Garagespace* | — | — | 0.103 (67.2)** | 0.0436 (1.62) | — | — | — | — | — |
| *Structure* | — | — | 0.185 (24.5)** | — | — | — | — | 0.0737 (12.8)** | — |
| *Condition* | — | — | — | — | — | — | — | — | 0.156 (3.24)** |
| *Depreciation* | — | −0.0215 (−63.7)** | — | — | — | — | — | — | — |
| *Yearsold* | — | — | — | — | — | — | 0.00156 (0.05) | — | 0.0639 (4.14)** |
| *Historic Status* | | | | | | | | | |
| *Historic* | 0.191 (4.79)** | 0.0495 (6.08)** | 0.0882 (8.24)* | 0.191 (3.03)** | 0.044 (1.19) | 0.064 (2.01)** | 0.201 (2.06)* | 0.186 (16.9)** | −0.124 (−1.11) |
| *National* | 0.0516 (0.834) | — | — | — | — | 1.17 (6.71)** | — | — | 0.222 (1.80)* |
| *Texas* | — | — | — | — | — | 0.782 (2.26)** | — | — | — |
| *Noncontrib* | — | — | — | — | — | −0.0503 (−1.01) | — | — | — |
| *Neighbourhood controls* | Included | Included | Included | — | — | — | — | Included | — |
| $R^2$ | 0.77 | 0.91 | 0.805 | 0.819 | 0.603 | 0.114 | 0.839 | 0.722 | 0.700 |
| *n* | 7 620 | 4 920 | 102 948 | 59 | 338 | 1 922 | 30 | 3 806 | 80 |

** indicates statistically significant at the 5 per cent level. * indicates statistically significant at the 10 per cent level.

**Table 5.** Summary of the property value impacts of historic designation

| City | Number of historic properties | Is historic designation significant? | Percentage change in value from historic designation | Change in value from historic designation for an individual property ($) |
|---|---|---|---|---|
| Abilene | 222 | Yes | + 19.1 | + 7 500 |
| Dallas | 2 200 | Yes | + 4.9 | + 3 200 |
| Fort Worth | 1 338 | Yes | + 8.8 | + 4 800 |
| Grapevine | 27 | Yes | + 19.1 | + 8 500 |
| Laredo | 177 | No | — | — |
| Lubbock | 440 | Yes | + 6.4 | + 1 950 |
| Nacogdoches | 15 | Yes | + 20.1 | + 18 700 |
| San Antonio | 1 912 | Yes | + 18.6 | + 8 900 |
| San Marcos | 34 | No | — | — |

comparable, non-historic properties. The largest average percentage increases occur in Nacogdoches, where the value of historic properties is 20.1 per cent higher than the value of comparable, non-historic properties.

Among the cities in which we were able to distinguish between nationally and locally designated historic properties, our results were somewhat mixed. In Lubbock, nationally and state-designated historic properties had statistically significantly higher values than did locally designated historic properties. Furthermore, national designation in Lubbock had a larger impact on property values than state designation did. In San Marcos, nationally designated properties also had significantly higher values than did locally designated properties. Because local historic designation, itself, is not statistically significant in San Marcos, this result implies that properties with national designation have values that are significantly higher than all other properties (both locally designated and non-designated) in the city. In Abilene, as noted above, properties with national designation had higher values than did those with local designation, but this difference was not statistically significant. Overall, these mixed results suggest that local housing market conditions and variations in local historic zoning rules determine whether or not national or state designation has a statistically significant effect above and beyond the effect of local designation.

In terms of the overall explanatory power of the models, the $R^2$ values indicate that in all cities except Lubbock, the attributes included account for a large share—between 60 and 91 per cent—of the variation in house prices. The model for Lubbock explains only 11 per cent of the variation in housing values for the city, which implies that other factors not currently controlled account for the vast majority of the variation in housing values in that city.[11]

Based on the above modelling results, Table 5 estimates an average dollar value impact of historic designation in each city. To calculate a dollar value impact in each, we multiplied the coefficient on historic preservation (*historic*) by the average property value in the city. In Dallas, for example, where the average housing value in the sample is approximately $64 000, the 4.9 per cent increase in value associated with historic designation translates to an average increase in housing values of $3200. Similarly, in the city of San Antonio, historic designation is associated with an 18.6 per cent increase in housing values which translates to an increase of $8900 for designated homes, based on an average housing value of $47 970.

## 5. Summary and Implications

Historic designation is increasingly used as a means to achieve both preservation and com-

munity economic development. This study considered the effects of historic designation on residential property values in nine Texas cities. Results suggest that historic preservation generally has a positive impact on property values and that historic designation is associated with average property value increases ranging between 5 per cent and 20 per cent of the total property value.[12] Results also suggest that type of historic designation—whether national, state or local—tends to have a mixed effect on housing values. In Lubbock and San Marcos, nationally designated historic properties had significantly higher values than did locally designated historic properties. By contrast, in Abilene, this effect was not statistically significant. These results suggest that local housing market conditions and variations in local historic zoning rules within each city determine whether national or state designation has a significant effect above and beyond the effect of local designation.

There are a number of important implications to our findings. Critics of historic preservation often charge that designation negatively impacts property values. While that surely could be the case on an individual basis; overall, it was not true for the Texas cities. The evidence from Texas suggests just the opposite: designation enhances value. Yet, appreciation may displace less-affluent residents of historic areas. Smith (1998), in particular, has warned that the neighbourhood revitalisation fostered by historic preservation also has a downside in that it can lead to the displacement of area residents. While this study has not examined the issue of displacement, rising prices in landmark neighbourhoods surely add to gentrification pressures, which may in turn result in displacement of lower-income residents. Historic preservationists should guard against this. In Savannah, Georgia (Victorian district) and Pittsburgh, Pennsylvania (Manchester district), designation was proactively accompanied by efforts to retain affordable housing (Leopold, 1993). More action of this type is needed when effecting preservation.

Our findings also have implications for the granting of special property tax incentives for the rehabilitation of designated properties. The policy of granting exemptions or abatements is quite common (Beaumont, 1996; Listokin *et al.*, 1982). Our finding that designation enhances property values (in part due to the encouragement of rehabilitation) partially supports such a policy. The rise in property values ultimately means higher property taxes and, given that, landmark-owners might hesitate to engage in rehabilitation in the absence of exemptions/abatements. Yet, there is a counter-interpretation. Given property appreciation, must the public sector give tax-breaks to landmark-owners? Or, if this incentive is extended, perhaps it should be means-tested—that is, limited to the less affluent. Such a policy would dampen displacement pressures and it would also target assistance to where it is needed.

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## Notes

1. Sewin Chan of Rutgers University contributed to the literature review contained in this section. We acknowledge and appreciate her contribution.

2. Anderson and Crocker (1971) conducted a pioneering effort in the use of hedonic analysis to assess the value of locational amenities.
3. Within the city of Dallas, we were not able to obtain property value data for all of the historically designated historic districts in the city. The 12 historic districts (and 12 comparable neighbourhoods) included in our analysis—containing a total of more than 4900 properties—were judged to provide a representative sample for the city as a whole.
4. The issue of sample size is important for interpretation of the results of the regression analyses. We have less confidence in the magnitude of the estimated coefficients that are based on very small sample sizes. In Nacogdoches, for example, we had complete data for only 30 properties. Although we are confident that historic designation is statistically significant (see Table 4) among the properties sampled in Nacogdoches, we are less confident about the magnitude of the estimates of the impact of historic preservation on average property values. By contrast, in Abilene, where we had data for more than 7000 properties, we are confident that our estimates present a true reflection of the value of historic designation within the city overall.
5. It should be noted that, while each model included all available 'core' structural variables for each city (for example, square footage, number of bathrooms), we did not include in the final models all of the additional categorical, structural variables that were available. For example, in the city of Laredo, the appraisal data-set included information on type of building exterior (i.e. brick, stone, etc.); however, these categorical variables were not found to add to the explanatory power of the model and therefore are not included the final analysis.
6. In cities where we were not able to distinguish between different types of historic designation, the designated properties are simply defined as 'historic'. In both Dallas and Fort Worth, for example, all of the historic properties included in the analysis are in nationally designated districts and, therefore, we were not able to distinguish the effects of locally and nationally designated districts in the city.
7. The neighbourhood controls help to account for unobserved differences across neighbourhoods in the larger city samples including Dallas, Fort Worth, San Antonio and Abilene.
8. There is an anomaly in the Dallas sample, where the coefficient on the *fullbath* variable is negative. This is apparently due to its high collinearity with the *squarefoot* variable. The correlation coefficient between these 2 variables is around 0.67; in our exploration of alternative specifications, whenever *squarefoot* was included in the regression the *fullbath* coefficient was negative, and whenever *squarefoot* was excluded the coefficient was positive, as expected. This pair of results is invariant with respect to the set of remaining regressors. We wish to stress that these high bivariate correlations have no impact on our conclusions about historical designation.
9. Again, the exception is in Dallas where there is a negative value of *yearbuilt*. A similar situation to that detailed in note 8 is observed here. The *depreciation* variable is correlated with *yearbuilt* and, whenever it is excluded from the regression, the *yearbuilt* coefficient becomes positive as expected. Including it causes the coefficient to have the opposite sign; again, this occurs regardless of the rest of the model specification and has no impact on our conclusions about historic designation.
10. For interested readers, the full modelling results for each city are available from the authors.
11. The low value of the $R^2$ in the Lubbock model does not indicate that the model is 'wrong', but instead suggests that we are not accounting for a large share of the variation in housing value in city. Several 'core' housing characteristic variables, including number of bathrooms and lot size, were not available on a consistent basis in the Lubbock sample.
12. In addition to direct benefits for property-owners, higher property values also imply benefits for a city as a whole in the form of higher property tax payments. Based on the results of the regression analysis, we may estimate the overall impact of historic preservation of residential properties on property tax payments within the State of Texas. Using a conservative assumption that historic designation is associated with a 5 per cent increase in residential property values, the property tax estimate proceeds as follows:

    (1) According to the 1990 Census of Population, there are approximately 500 000 housing units in Texas that were built in 1939 or earlier. Among these older properties, we assume that approximately 5 per cent are candidates for historic designation. For the state as a whole, we therefore assume that there are 25 000 ($500\,000 \times 0.05$) candidates for historic designation. To estimate the

total market value of the historic landmark stock, we assume that these historic houses are priced at the median housing value of $58 900. The total market value of the landmark stock is therefore estimated to be $1.47 billion (25 000 × $58 900).

(2) Assuming that designation has a conservation value-enhancing effect of 5 per cent, designation increases the value of the state's landmark stock by $73.5 million ($1.47 billion × 0.05).

(3) Holding aside the effect of designation, the extant total property taxes paid by the Texas historic landmark stock should be identified separately. Using an average equalised property tax rate of 2.07 per cent, the total Texas historic stock, valued at $1.47 billion, pays a total of approximately $30.4 million yearly ($1.47 billion × 0.0207) in total local property taxes.

(4) Assuming the 5 per cent value-enhancing effect of designation, historic designation results in $1.52 million ($73.5 million × 0.0207) in added property taxes per year.

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# The Secretary of the Interior's Standards for the Treatment of Historic Properties

The Secretary of the Interior's Standards for the Treatment of Historic Properties are common sense principles in non-technical language. They were developed to help protect our nation's irreplaceable cultural resources by promoting consistent preservation practices.

The Standards may be applied to all properties listed in the National Register of Historic Places: buildings, sites, structures, objects, and districts.

The Standards are a series of concepts about maintaining, repairing and replacing historic materials, as well as designing new additions or making alterations. They cannot, in and of themselves, be used to make decisions about which features of a historic property should be preserved and which might be changed. But once an appropriate treatment is selected, the Standards provide philosophical consistency to the work.

The Standards are neither technical nor prescriptive, but are intended to promote responsible preservation practices that help protect our Nation's irreplaceable cultural resources. For example, they cannot, in and of themselves, be used to make essential decisions about which features of the historic building should be saved and which can be changed. But once a treatment is selected, the Standards provide philosophical consistency to the work.

The four treatment approaches are Preservation, Rehabilitation, Restoration, and Reconstruction.

U.S. Department of the Interior
National Park Service
Preservation Assistance Division
Washington, D.C.
October, 1992

***Preservation*** *is defined as the act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.*

1. A property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces, and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken.

2. The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate, and conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

6. The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color, and texture.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

***Rehabilitation*** *is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.*

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction will be undertaken in a such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

***Restoration*** *is defined as the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.*

1. A property will be used as it was historically or be given a new use which reflects the property's restoration period.

2. Materials and features from the restoration period will be retained and preserved. The removal of materials or alteration of features, spaces, and spatial relationships that characterize the period will not be undertaken.

3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate and conserve materials and features from the restoration period will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.

4. Materials, features, spaces, and finishes that characterize other historical periods will be documented prior to their alteration or removal.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the restoration period will be preserved.

6. Deteriorated features from the restoration period will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials.

7. Replacement of missing features from the restoration period will be substantiated by documentary and physical evidence. A false sense of history will not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.

8. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

9. Archeological resources affected by a project will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

10. Designs that were never executed historically will not be constructed.

***Reconstruction*** *is defined as the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.*

1. Reconstruction will be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture, and such reconstruction is essential to the public understanding of the property.

2. Reconstruction of a landscape, building, structure, or object in its historic location will be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts which are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures will be undertaken.

3. Reconstruction will include measures to preserve any remaining historic materials, features, and spatial relationships.

4. Reconstruction will be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color, and texture.

5. A reconstruction will be clearly identified as a contemporary re-creation.

6. Designs that were never executed historically will not be constructed.

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NEWS *from the* NATIONAL ALLIANCE *of* PRESERVATION COMMISSIONS

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# The Benefits of Design Review

By Nore' Winter

Today, almost 2,300 historic preserva-tion commissions operate throughout the United States, and many of these include design review in their responsibilities. All share a common goal: to protect the historic resources of their communities. Many of these places have developed and use design guidelines in their review of proposed renovations and new construction. Design guidelines are important and provide the following:

- A basis for making decisions that are fair
- Consistency in design review
- Incentives for investment
- A tool for property value protection and enhancement
- A tool for education

In recent years, numerous communities have asked for more protection in their historic districts, with the result that more historic preservation commissions are developing guidelines. A significant trend is that many of these commissions are developing guidelines in greater detail than ever before, while others are experimenting with educational and incentive programs to encourage property owners to follow their design guidelines.

However, the challenge that faces most commissions is: how may one develop guidelines that will be fair and protect historic resources while also encouraging creative design solutions? Guidelines should focus on identifying the most important features of an historic district that should be respected, while refraining from dictating design outcomes.

### *WHAT ARE DESIGN GUIDELINES?*

Local governments typically create design review ordinances under local zoning regulations, within the framework of appropriate state enabling legislation. The courts have upheld this legal basis for design review, to the extent that local governments clearly have the right to adopt design review regulations as part of historic preservation ordinances; they also have a responsibility to see that such powers are fairly and consistently administered.

Design guidelines thereby convey community policies about neighborhood design. As such, they provide a common basis for making decisions about work that may affect the appearance of individual properties or the overall character of a district. They also serve as an educational and planning tool for property owners and their design professionals who seek to make improvements that may affect historic resources. **Continued p.3**

# The Benefits of Design Review

## Continued

By Nore' Winter

*Winter & Co. developed design guidelines for the South Main St. Historic District in St. Charles, Missouri.*

Design guidelines typically address the following categories of work:

**• Rehabilitation and alterations to historic buildings:**
These may be individually designated historic structures or they may be properties designated as "contributing" in a locally defined historic district. Alterations to the exterior of a historic building, including construction of an addition, are subject to review.

**• Alterations to "non-contributing" structures in historic districts:**
These are properties that may be old but have lost their integrity as historic structures, or they may be newer buildings that have not achieved historic significance. In general, the guidelines for new construction apply to these properties.

**• New building:**
Construction of new, freestanding structures, either as primary or secondary buildings within a locally designated historic district, are subject to review.

**• Site work:**
This includes new landscaping designs, the removal of original or historic landscaping and new grading and driveway construction affecting an individually designated landmark and for any property within a locally designated historic district.

*Winter & Co. developed design guidelines for the Old Town Historic District in Wichita, Kansas.*

***WHY HAVE DESIGN REVIEW?***
First and foremost, design review helps preserve historic districts as records of our heritage in a consistent and fair manner. The design guidelines used provide for unbiased and uniform reviews of proposed work in historic districts. They provide uniform standards by which all projects are evaluated. Design guidelines should not, however, dictate design by formula. Instead, they should identify key features of the historic resources that should be respected when planning any repairs, alterations or new construction.

Design guidelines also can establish a climate for investment for businesses, residents and property owners because the associated review process provides assurance that alterations and new construction by others will reinforce the preservation goals for the district. In a similar manner, where historic properties have been maintained, residents frequently adopt design guidelines to protect property values.

Design guidelines give local residents who wish to protect the distinct historic identity of the neighborhood a strong tool. They provide a framework for insuring compatible new construction that enhances, rather than undermines, a community's unique character.

Guidelines also may serve as educational tools, providing useful information about rehabilitation procedures and design concepts that are appropriate. They often provide practical guidance, helping property owners make well-informed design decisions.

*Winter & Co developed design guidelines for the Northwest Quadrant Conservation District in Beaufort, S. C.*

**Benefits of historic preservation**
Across the nation, thousands of communities promote historic preservation because doing so contributes to neighborhood livability and quality of life, minimizes negative impacts on the environment and yields economic rewards. Many property owners are also drawn to historic resources because the quality of construction is typically quite high and the buildings are readily adaptable to contemporary needs.

**Construction quality**
Most historic structures are of high quality construction. Lumber used came from mature trees and was properly seasoned and it typically was milled to "full dimensions" as well, which often yielded stronger framing. These structures also were thoughtfully detailed and the finishes of materials, including fixtures, wood floors and trim were generally of high quality, all features that owners today appreciate. By comparison, in today's new construction, materials of such quality are rarely available and comparable detailing is very expensive. The high quality of construction in historic buildings is therefore a "value" for many people.

**Adaptability**
Owners also recognize that the floor plans of historic buildings easily accommodate comfortable life-styles and support a diversity of populations. Rooms are frequently large, permitting a variety of uses while retaining the overall historic character of each structure and open space often exists on a lot to accommodate an addition, if needed.

**Livability and quality of life**
When groups of older buildings occur as a historic district, they create a street scene that is "pedestrian friendly," which encourages walking and neighborly interaction. Mature trees and decorative architectural features also contribute to a sense of identity, an attribute that is rare and difficult to achieve in newer areas of a city. This physical sense of neighborhood can also reinforce desirable community social patterns and contribute to a sense of security.

**Environmental benefits**
Preserving a historic structure is also sound environmental conservation policy because "recycling" it saves energy and reduces the need for producing new construction materials. Three types of energy savings occur: first, energy is not consumed to demolish the existing building and dispose of the resulting debris; second, energy is not used to create new building materials, transport them and assemble them on site; finally, the "embodied" energy, that which was used to create the original building and its components, is preserved.

By "reusing" older materials as a historic building, pressure is also reduced to harvest new lumber and other materials that also may have negative effects on the environment of other locales where these materials are produced. Because older buildings are often more energy-efficient than new construction, when properly used, heating and cooling needs are reduced as well.

**Economic benefits**
Historic resources are finite and cannot be replaced, making them precious commodities that many buyers seek. Therefore, preservation adds value to private property. Many studies across the nation document that, where historic districts are established, property values typically rise, or at least are stabilized. In this sense, designation of a historic district appears to help establish a climate for investment. Property owners within the district know that the time and money they spend on improving their properties will be matched with similar efforts on surrounding lots; these investments will not be undermined by inappropriate construction next door.

The condition of neighboring properties also affects the value of one's own property: people invest in a neighborhood as much as the individual structure itself and, in historic districts where investment is attracted, property owners recognize that each benefits from the commitment of their neighbors. An indication of the success of historic preservation is that the number of designated districts across the country has increased, due to local support, such that an estimated 1,000,000 properties, both as individual landmarks and in historic districts, are under local jurisdictions.

*Design guidelines for downtown Boulder, Colorado, directed the developer of this parking garage to provide a two-story commercial storefront which relates to the traditional character.*

*Winter & Company developed design guidelines for the Napa Abajo/Fuller Park Historic District in Napa, California.*

Preservation projects also contribute more to the local economy than do new building programs because each dollar spent on a preservation project has a higher percentage devoted to labor and to purchase of materials available locally. By contrast, new construction typically has a higher percentage of each dollar spent devoted to materials that are produced outside of the local economy and to special construction skills that may be imported as well. Therefore, when money is spent on rehabilitating a building, it has a higher "multiplier effect," keeping more money circulating in the local economy.

Rehabilitating a historic building also can cost less than constructing a new one. In fact, guidelines for the rehabilitation of historic structures typically promote cost-saving measures: they encourage smaller and simpler solutions, which in themselves provide savings. Preserving building elements that are in good repair is preferred, for example, to replacing them. This typically is less expensive. In some instances, appropriate restoration procedures may cost more than less sensitive treatments, however. In such cases, property owners are compensated for this extra effort, to some extent, in the added value that historic district designation provides.

*Public participation is a vital component to any planning process, especially those directly related to a community member's quality of life. Here workshop participants in Carmel-by-the-Sea, California, help Winter & Company identify those character-defining features which are important and should be preserved.*

**CASE STUDY:**
**OLD TOWN FORT COLLINS HISTORIC DISTRICT**

Many architects have now engaged in successful projects within locally-designated historic districts. While they recognize that doing so may involve some limitation in the range of design choices available, they also acknowledge that design guidelines, when applied consistently and objectively, create a positive climate for investment. Numerous studies now demonstrate that local historic districts stabilize and often enhance property values. The Old Town Fort Collins Historic District is a dramatic example of such successes.

Old Town emerged in the 1880s as the central business district of Fort Collins, with its street grid oriented parallel to the Cache La Poudre river, and by 1900, it was the thriving focus of commerce for the community. It grew to include a mix of banks, hotels, retail stores, professional offices and apartments. The area continued to thrive until the 1930s, when College Avenue became the dominant business corridor. Then, in the 1960s, new strip commercial areas provided additional challenges. Over the years, Old Town declined, but many of its early buildings survived, although sometimes substantially altered. A few were demolished. Then, in 1979, the City of Fort Collins designated the area as a historic district and established a process to review alterations and new construction. Design guidelines were also developed that established the basic policies for review.

The guidelines asked that historic buildings be preserved, while accommodating new uses. When renovation was to occur, it was to be in a manner that maintained the character-defining features of the properties. New construction was to respect the historic context, but without literally imitating it.

***Over the past fifteen years, more than $50,000,000 in investment has occurred in the Old Town area. The master plan and design guidelines helped establish a vision for the area and create a stable climate for this activity.***

*As investors came into Old Town Ft. Collins, they found structures in need of restoration. This row of buildings had lost some details over time and a monochromatic color scheme obscured the original design character.*

*Restoration work followed the Old Town Design Guidelines. In some cases, missing storefronts were reconstructed. In others, later uses were retained and designs were developed that enhanced the historic character while retaining future restoration options.*

*In the early 1980s, the windows in the Miller Block were boarded and architectural details needed repair.*

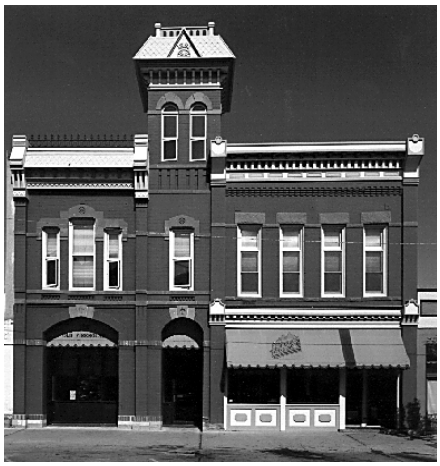
Individual investors were attracted to the area, purchasing buildings and restoring them. These early projects raised community consciousness of the potential for Old Town. Improvements continued into the mid-1980s when larger development companies became interested and spearheaded a series of major projects, including several rehabilitation and new building projects. Cooperative programs with the city led to an improvement district that guided construction of a pedestrian mall and parking structure.

Each project was executed in a manner compatible with the previous ones, and thus the cumulative benefits of each investment has been shared by everyone, including property owners and the public in general. Today, the area exhibits a distinct identity that combines individual historic resources with contemporary infill into a harmonious whole that is rich with variety and detail.

*The Miller Block was restored, following Winter's Old Town Design Guidelines. The plaza in the foreground is a part of the Old Town Master Plan.*

*During the 1890s, the City of Ft. Collins housed its first department and administrative offices in this pair of Old Town structures.*

*By the 1980s, the buildings had been severely altered. When sold as surplus property, a private investor sought to renovate the structures.*

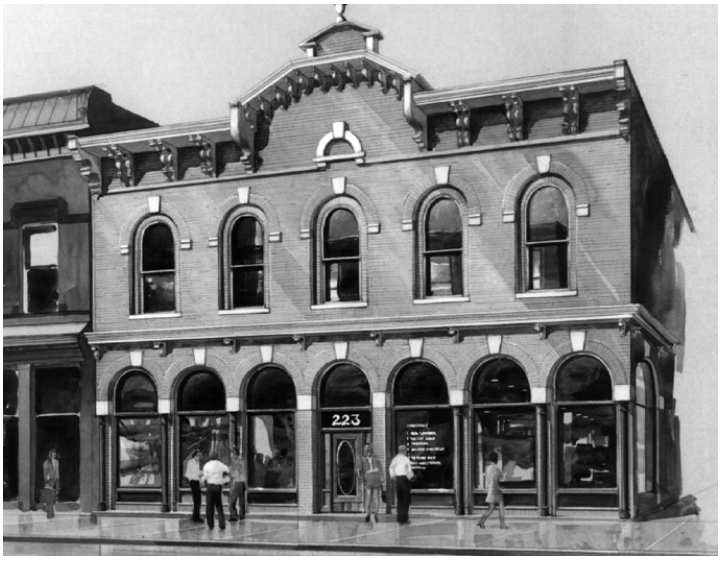


*Winter assisted the property owner in developing a preservation approach that secured federal tax credits.*

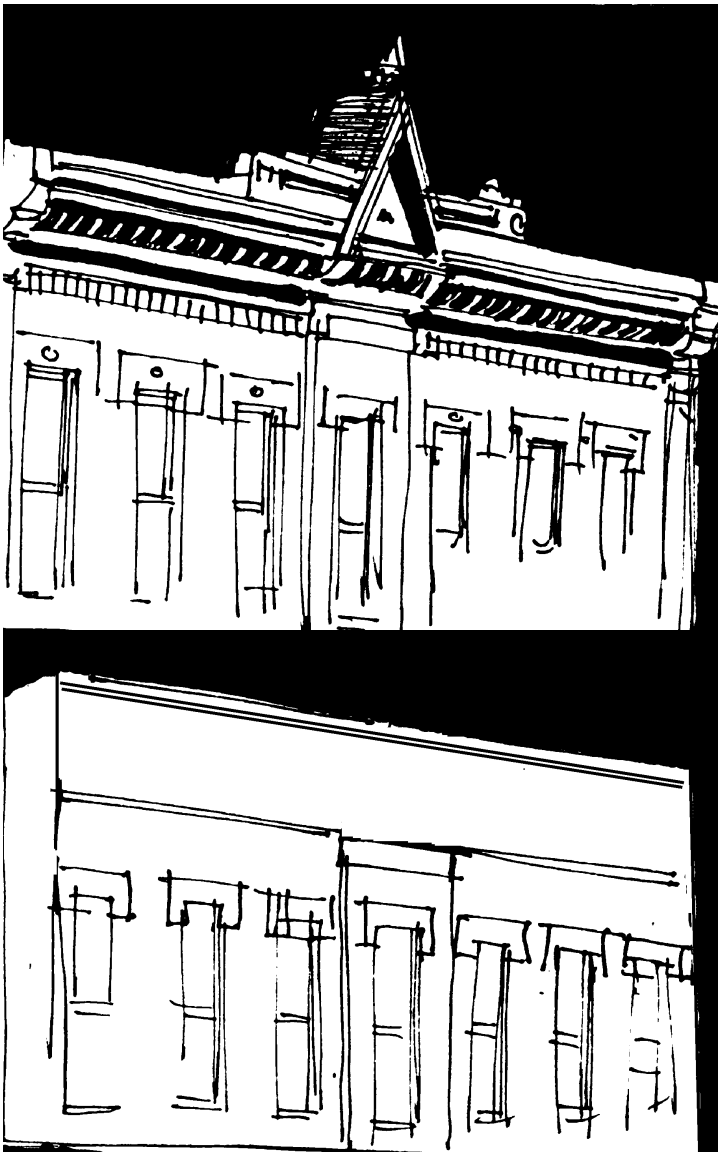
The results speak for themselves. Old Town now is a lively neighborhood, with specialty retail, dining, entertainment and professional offices. A substantial economic generator in its own right, community leaders also acknowledge that Old Town helps in broader business recruitment strategies, because the quality of life that it represents is an attraction for many companies who may in fact locate elsewhere in the city.

While many other factors have certainly contributed to the success of Old Town, the preservation program has helped create an asset for the community and it also has generated many jobs, including several architectural commissions! It demonstrates that the use of design guidelines can be a strategic tool in enhancing the built environment.

*In 1982, The Reed & Dauth Building survived with upper story windows intact, but key ornamental features were missing or obscured.*




*Winter directed rehabilitation design sketches that illustrated the potential character of the Reed & Dauth Building.*



*The Old Town guidelines encourage reconstruction of missing elements, such as ornamental cornices.*

*After rehabilitation, the Reed & Dauth Building exhibits the distinctive cornice and arched ground floor that were a part of its history.*

# Design Review Reviewed: A Comparison of Addministrative Versus Discretionary Design Review

Jack L. Nasar and Peg Grannis

Most American cities use design review to improve the visual quality and compatibility of ordinary nonhistoric projects. They often use a discretionary design review process. How well does discretionary design review improve community appearance by keeping building projects compatible with their surroundings? This article presents two complementary studies aimed at answering this question. For a neighborhood in Columbus, Ohio, our research team did a physical inventory of the compatibility of 96 projects that underwent discretionary design review and 68 that did not. The latter projects met less restrictive administrative appearance controls present in the zoning ordinance. The team also surveyed 39 residents for their opinions of a subset of projects built according to either the discretionary review of the design or the administrative controls. The results indicate that discretionary design review is not demonstrably better than administrative review. Communities can use methods like the ones discussed here to evaluate their own design review programs. They may find that the replacement of discretionary design review with more explicit administrative appearance controls achieves the intended compatibility more efficiently.

Urban form results from many activities by many actors, including governing bodies, developers, banks, and independent groups (Bacow, 1995). To shape the design decisions of these agencies and individuals, urban designers use a variety of administrative, regulatory, and financial techniques (Shirvani, 1985). This article centers on one such technique: design review. Design review differs from most zoning, subdivision, and building regulations in its emphasis on appearance. Local governments say they use design review to serve such purposes as improving quality of life, enhancing a unique place, promoting vitality, creating comfortable places for pedestrians, protecting property values, promoting compatible development, or improving community appearance (Scheer, 1994). Critics complain that design review is cosmetic, limits designer creativity, and unnecessarily intrudes on private property (Lightner, 1992). Yet most courts support design review and hold aesthetics alone as an adequate public purpose in land use

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regulation (Mandelker, 1993; Smardon & Karp, 1993). In early decisions, courts found aesthetics to be an adequate government purpose if it advanced other legitimate purposes, such as the protection of property value. In *Berman v. Parker* (1954), however, the U.S. Supreme Court went further to state that the values of public welfare include "spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy" (p. 33). Most State courts followed suit. Design review might also raise problems with free speech (Costonis, 1989; Lightner, 1992; Scheer, 1994). For example, if the review goes beyond regulating "the time, place and manner of architectural expression . . . [to] totally exclude an architectural style . . . courts could hold [this an] invalid prohibition on the content of free speech" (Mandelker, 1993, p. 479). However, the courts have consistently supported regulation of design over free speech, although in such cases the local government may have the burden of showing that design review serves a legitimate public interest, such as aesthetics (Mandelker, 1993).

Design review remains a major tool that local governments use to improve community appearance. A study of 1114 U.S. cities found that more than 90% had architectural appearance controls (International City Management Association, 1984). A later survey of 700 city and county planning departments obtained usable responses from 369 cities and towns (Lightner, 1993). Most of them (78%, 83% when counties were dropped, and 93 % of cities having more than 100,000 residents) had some form of design review, and only 3% "limited design review to historic districts" (p. 1). Most of these ordinances apply to single-family residences (Mandelker, 1993).

In areas with design review, private and public proposals for development must be approved by the design review board to proceed. Typically, one submits a design to local planning staff, who may approve it, disapprove it, or ask for modifications. A planning (or review) commission or a staff member makes the decision. The review may evaluate many factors, such as architectural excellence, visual bulk, style, scale, materials, or environmental or historical factors, but it most often evaluates the compatibility of projects with their surroundings (Lightner, 1993; Preiser & Rohane, 1988). Court support for zoning rests on the compatibility principle: Courts allow communities to protect areas from incompatible uses. Thus appearance controls for compatibility eases substantive due process problems (Mandelker, 1993). Psychological studies also suggest that humans need visual compatibility and order, especially in residential areas (Nasar, 1998). Compatibility does not necessarily require one to mimic the surroundings. Rather it refers to the degree to which a proposal has features that make it appear to fit with its surroundings. Project approval often rests on the appraisal of the compatibility of the proposed project.[1]

Communities vary in the amount of discretion left to the reviewers in deciding whether or not to approve a proposal. Discretionary design review refers to ordinances in which the decision rests on the reviewers' personal discretion. Administrative design review refers to ordinances that limit personal discretion by requiring projects to satisfy clear, precise, and measurable standards (Shirvani, 1985). As most U.S. cities lack the standards for administrative review (Lightner, 1993), they typically rely on a discretionary approach. This approach leaves them vulnerable to charges of abuse for being arbitrary, capricious, or vague (Hinshaw, 1995; Lai, 1994; Poole, 1987). To avoid such problems, communities have a compelling need to know how specific modifications of the physical environment will affect community appearance, and they need to develop clear guidelines or controls to support their objectives. They need to know how well design review boards perform, especially with discretionary reviews. Does discretionary design

review improve the publicly perceived compatibility and appearance of developments? Previous research suggests that it does not.

A series of studies in California found that more often than not, discretionary design review by a board did not result in buildings that the public found more appealing (see Stamps, 1997a). Consider one case study that examined the performance of discretionary design review in the Oakland Hills Restoration Area, California (Stamps & Nasar, 1997). After a 1991 fire destroyed more than 2500 houses in Oakland Hills, the Oakland Hills Restoration Area rebuilt rapidly. People built many houses without design review. Later, the local planning department set up a discretionary design review process, in which planning staff served as reviewers. The criteria the reviewers had for evaluating the projects were vague. For example, one criterion referred to not having an adverse effect on the "livability of adjacent homes" or "the harmony of neighborhood appearance." At the time of the study, the Oakland Hills Restoration area had completed 257 projects prior to discretionary design review and 476 under discretionary design review. Because all of the rebuilt houses had many characteristics in common, such as topography, planning process, demography, geographical location, trees, utility poles, street furniture, and car parking, the Oakland Hills Restoration Area provided a good opportunity to evaluate the performance of design review by comparing popular responses to houses built under discretionary design review to ones built with no design review.

Forty-two local and 40 nonlocal observers viewed photographs of seven projects selected at random from the design review projects and seven selected at random from projects with no design review. The results indicated that design review did not make a *noticeable* difference. Though the observers judged the discretionary design review houses as slightly more pleasant than the houses built without design review or appearance codes, the difference did not achieve statistical significance. Beyond statistical significance, the study examined the magnitude of effect. Cohen (1988) discusses three effect sizes—small, medium, and large. The analysis indicated a small effect (0.14). This means that the Oakland Hills Restoration Area discretionary design review had a nearly undetectable effect on public preferences.

In cases when design review deals with issues beyond appearance, such as functional effects of a structure through its site plan or building bulk, public opinion may not be the sole criterion. In the more typical case in which design review focuses on appearance, measures of the responses of individuals exposed to the project represent appropriate measures of success.

## Design Review in a Columbus, Ohio Neighborhood

No single study in one city can fully evaluate the performance of design review in the hundreds of communities that use it. The projects, designers, reviewers, criteria and degree of review board discretion may affect the result. We offer the present research to suggest that individual communities evaluate the performance of design review, and as an example of how they might go about such an evaluation.

The research reported here adds to the information provided in the Oakland study in several ways. First, it tests the performance of discretionary design review in a different city: Columbus, Ohio. Second, it does so in the context of additions and renovations, rather than new buildings. Third, to improve internal validity, it matches and compares discretionary design review projects with neighboring administrative review projects. Fourth, while the Oakland study compared discretionary design review with no design review, the present research

compares discretionary review with administrative review of mandatory appearance controls (such as roof pitch) in the zoning ordinance. Fifth, it looks at several dimensions of response and uses a multiple method approach. One method examines the physical compatibility of the houses resulting from the discretionary design review and those resulting from the administrative review; the second examines residents' ratings of preference and compatibility of the discretionary review and administrative review projects.[2]

The study centered on the University district, one of fourteen designated Area Commission Neighborhoods in Columbus, Ohio. Such neighborhoods elect their own commissioners to oversee development issues in the neighborhood and forward recommendations to City Council. The University District contains approximately 45,000 households in an area of 2 square miles. In September, 1990 the City of Columbus extended the jurisdiction of an appearance/compatibility review board from a core area of the University District to the full district on an interim basis for a 27-month trial period. To proceed, proposed projects had to meet zoning requirements for appearance and gain approval from this review board. The review board had no explicit criteria. Many projects in the outer district were completed both before and after the city established the interim design review board to do discretionary review. Prior to this design review process, the neighborhood had only an administrative review process in which residential projects had to satisfy some appearance controls in the zoning ordinance.

The research grew from a request from the City. In December, 1992, city planners asked the first author for help in determining whether the City should continue the discretionary design review for the outer area. The city attorney indicated that for the City to continue, he had to be convinced that the level of regulation would be legally defensible.[3] In the research, we compared projects completed under administrative review only with those completed under discretionary design review. Recall that we use the term administrative review to refer to a process removing discretion from the reviewers rather than to identify who does the review. City staff in the zoning department conducted the administrative reviews. One city planning staff member and a panel of residents appointed by the City made the discretionary review decisions. Consistent with national data showing that a majority of design review commissioners come from fields other than design, such as business, real estate, education, law, engineering, or home building (Sanders & Getzels, 1987), the panel had people from various backgrounds as well as design professionals.

## Methodology

We evaluated 164 projects—96 completed under discretionary design review (DR) and 68 completed earlier under administrative review (AR). The 96 DR projects included all applications heard by the interim review board during the 27-month trial period that were approved and eventually constructed. At the time of the study, the board had reviewed applications for 113 projects, 17 of which, though approved, had not yet completed construction. We also selected 68 AR projects from a list of building permits issued during the year prior to the establishment of the interim design review board. We chose AR projects that matched as closely as possible the neighborhood locations and type of work performed on the DR projects. For example, if a DR project involved new siding, we chose an AR project from the same block that involved new siding.

First, we conducted a physical inventory of the compatibility of the specific building features (e.g., roof pitch, siding material, lot coverage, deck size) that were considered in the

discretionary review and administrative review work, and gave each relevant feature a "compatibility" rating. Next, we had the public rate the compatibility of and their preferences for the appeal of selected discretionary design review and administrative review projects. We used two approaches to mitigate biases inherent in each one. The physical inventory evaluations allowed us to obtain ratings for a large number of discretionary and administrative review projects, but it did not assess popular reactions. The public ratings obtained popular reactions, but the research design limited it to a small number of projects. Together, the approaches allowed us to get compatibility judgments for every discretionary design review and administrative review project completed between September 1989 and December 1992, plus public appraisals of a selected subset of projects from that same time period.

## Physical Inventory Evaluations of Compatibility

We constructed a checklist covering a comprehensive set of the physical features in all the projects under study. The checklist included the address, type of modification, broad categories of work, and features within those categories that could affect compatibility (See Figure 1).

FIGURE 1. Physical Inventory Checklist for Building Features

Our judges scored whether or not each project feature was compatible with the rest of the building and the surrounding neighborhood. For reliability, we would have preferred to have a large number of judges complete the physical inventory on all 164 projects, but this proved impractical. Instead we enlisted seven graduate students in city and regional planning. To improve consistency, we had these judges run through pretests in which each person rated the same building followed by comparison and discussion of the ratings. The process was repeated until all judges had given consistent responses for three buildings. Then the seven students divided into teams of two or three members to inventory their subset of the properties.

The judges made their evaluations independently. They visited each project location and evaluated only the work completed under design review. While the yes/no choice may have overlooked degrees of compatibility, this simplification was necessary in order to inventory so many projects in a such a short period. We assigned each project one score between 0 and 100, representing the percentage of the relevant features judged as compatible.

**Results.** The physical inventory evaluations did not show the DR projects as more compatible than the AR projects; we found no significant differences in scores. The tally revealed a mean compatibility score of 87.7% (*SD* = 15.00) for DR work and 84.4% (*SD* = 23.24) for AR work. Though the results seem to favor the DR process, the difference did not achieve statistical significance. Further, the magnitude of the effect was small. This means that the difference may have resulted from chance, and that discretionary design review had a relatively undetectable effect on the rated compatibility.[4]

The physical inventory evaluations suggested that the addition of DR did not produce a meaningful improvement in compatibility over what resulted from AR. It is possible, however, that because the physical inventory was conducted by a small sample of judges, though it was

comprehensive, it did not reflect the perceptions of the public who experience the buildings on a regular basis. Also, the sum of the ratings of various elements of each building may not accurately reflect public perceptions. We therefore conducted a second study to gather and examine public evaluations of DR and AR designs.

## Public Evaluations of Compatibility and Preference

For the public evaluations, we sought pairs of projects similar to one another in location, kind of building, and type of work, but differing in whether they were AR or DR projects. We photographed all AR projects completed during the 12-month period prior to the start of the discretionary design review process and all DR projects completed during the 27-month period of the interim discretionary design review. Each photograph presented a color view of the target building from directly across the street. To show the building in its setting, the photograph included portions of the building on either side of the target building. We used color photographs because research consistently confirms that responses to color photos accurately reflect on-site response (Stamps, 1990). As the interviewees (see below) lived in the same neighborhood, we assumed they would judge the target buildings against their broader sense of their neighborhood's character.

For purposes of experimental control, we used a subset of the DR and AR projects for the public evaluation. We selected pairs of DR and AR buildings that had similar kinds of structures, locations, types of work, and other site features. For example, we compared DR and AR buildings of similar size; DR porch projects with AR porch projects, DR siding projects with AR siding projects, etc.; and we compared DR and AR buildings that had similar amounts of vegetation. In each case, we tried to control features other than the type of design review that might affect ratings. This process led to six pairs of projects; see Figure 2 for a black and white version of one color photo pair used in the study.

**FIGURE 2. One of the six pairs of University District buildings used in the public opinion survey.**
Note: Photos had no labels during the experiment.

For each matched pair, we obtained paired comparison evaluations by surveying area residents. Interviewers worked in teams of two or three in each subarea of the study area, where they selected residences at random to recruit participants for the survey. They randomly choose streets, cross streets, number of houses from the corner, and the side of street. They returned to the selected addresses in early morning and late afternoon. If they failed to get an interview, they selected at random one of the five houses surrounding the target house.

A questionnaire given to participants stated that they would see photos of pairs of buildings. It asked them to respond to a marked building in each photo. The interviewers shuffled the photograph pairs before each interview to reduce potential order effects on responses. They also randomly varied the order of the placement of the DR and AR projects on the right or left. The photographs did not have labels, and we did not inform participants which project had gone through discretionary design review and which had gone through administrative

review. As each photograph showed several buildings, we placed a dot above the building that we wanted participants to judge.

For each pair, the interviewers called attention to the kind of work done (e.g., siding, front porch, roof). To reduce biases from considering other portions of the buildings, participants were instructed to consider only the remodeling work. Participants then answered two or three of the following questions:

1) When you look at the [name of work done] on each pair of buildings, which one better *fits* with its neighboring buildings?
2) When you look at the [name of work done] on each pair of buildings, which one do you *like* better?
3) When you look at the [name of work done] on each pair of buildings, which one do you think would command a higher *rent*?[5]

The interviewers told participants that if they felt the same about the two buildings, they could answer "neither."

Design review often seeks to create more compatible and more pleasant results. We used the first two questions to look at those aspects of design review. Of the various ways to obtain responses, we chose a rank order procedure which involved ordering projects relative to each other. We considered other kinds of scales and checklists, but studies have found that the these different kinds of measurement scales produce similar results (Gould & White, 1974; Stamps, 1997a). Rank order approach offers additional benefits. It tends to produce a higher level of agreement among respondents, and it has greater efficiency in that it allows one to obtain responses to many scenes rapidly (Brush, 1976; Zube, Pitt, & Anderson, 1974).

Thirty-nine residents took part in the survey. We had 19 participants answer all three questions, and to reduce biases for judgments of *like* or *fit* on one another, we had 20 participants answer the *like* and *rent* questions only and 20 participants answer the *fit* and *rent* questions only. We varied the order of the questions to reduce systematic bias from question order. The interviewers also requested demographic information: whether the respondent had owned or rented, whether they owned any other properties in the area, how long they had lived at their present address, and whether or not they thought the area needs some form of regulation to ensure that new buildings, additions, and changes fit their surroundings. [6]

**Results.** Of the 39 participants, most (72%) said they were renters. Their tenure in the area varied. Most (67%) said they had lived there for more than a year (1-3 years, 41%; more than 3 years, 26%). They should have had enough familiarity with the area to make judgments about the target house's compatibility with the neighborhood. This sample had enough participants to allow statistical comparisons.

Tests of results by question order did not reveal significant differences. Therefore, we combined the data and examined the 25 responses to *fit*, and the 33 responses to *like*. Table 1 shows the percentages of participants who evaluated DR or AR work as a better fit to the surroundings, or better liked. It also shows the associated test statistics when differences were significant. For each measure, DR work received scores lower than or equal to those for AR work.

**Fit**. As shown in Table 1, more participants judged DR projects the better fit in three project pairs (A, C, and D) and AR in two project pairs (B and E), but only one difference achieved statistical significance. For project pair E, significantly more people selected AR as the

better fit. Adjusting for multiple comparisons, this effect becomes statistically insignificant. The analysis also looked at the effect size, calculated by transforming the $X^2$ into a standardized difference between the means, *d* (Judd et al., 1991). Project pair E achieved a large effect (*d* = 1.21) strongly favoring the AR project over the DR one.

**TABLE 1. Resident ratings of fit to surroundings, and preference for DR versus AR projects.**

| **Better fit** | | | |
|---|---|---|---|
| Project Pair | DR | AR | Neither |
| A (n=25) | 44.0% | 28.0% | 28.0% |
| B (n=25) | 28.0 | 44.0 | 28.0 |
| C (n=25) | 48.0 | 40.0 | 12.0 |
| D (n=25) | 48.0 | 20.0 | 32.0 |
| E (n=25)* | 20.0 | 68.0 | 12.0 |
| F (n=25) | 40.0 | 40.0 | 20.0 |
| Mean* | 38.0 | 40.0 | 22.0 |
| Total (= or better) n=150 | 62.0 | 38.0 | — |
| Significant differences, Bonferonni adjusted for multiple comparisons<br>E: AR+Neither better than DR: $X^2$ = 9.0, 1 *df*, p < .02 | | | |
| **Better liked** | | | |
| Project Pair | DR | AR | Neither |
| A (n=33)* | 0.0% | 90.9% | 9.1% |
| B (n=33) | 63.6 | 18.2 | 18.2 |
| C (n=33) | 39.4 | 48.5 | 12.1 |
| D (n=33) | 42.5 | 42.4 | 12.1 |
| E (n=33) | 30.3 | 57.6 | 12.1 |
| F (n=33) | 39.4 | 39.4 | 21.2 |
| Mean* | 35.9 | 49.5 | 14.1 |
| Total (= or better) n = 198 | 37.9 | 62.1 | — |
| Significant differences, Bonferonni adjusted for multiple comparisons<br>A:: AR better than DR: $X^2$ = 30.0, 1 *df*, p < .02<br>A: AR+Neither better than DR: $X^2$ = 33.0, 1 *df*, p < .02<br>TOTAL: AR+Neither better than DR: $X^2$ = 11.64, 1 *df*, *p* < .02 | | | |

*Significant differences, Bonferonni adjusted for multiple comparisons:

For discretionary design review to be justifiable, it should produce work that more than equals the fit of work done under administrative review: It should yield better results. To test

whether it did in our study, we compared the number of people judging DR work as a better fit to those choosing AR work or neither. The results of these comparisons suggested that discretionary design review is not demonstrably better than administrative review. For all six project pairs, 62.0% of participants rated the fit of the AR projects as equal to or better than that of the DR projects. Considering multiple claims, this became statistically insignificant, but it had a large effect ($d$ = 1.72). The results for each pair paralleled those for the full set: A majority of the participants rated the fit of the AR project as equal to or better than that of the DR project. The differences achieved statistical significance for two pairs, B and E, but with multiple claims, only the comparison in pair E remained significant. The effect sizes varied from medium (B: $d$ = .86) to large (E: $d$ = 1.80) against DR. Residents thus judged the fit of these AR projects as noticeably better than the fit of the DR projects.

**Like**. Taible 1 also shows that the AR project was better liked in three pairs (A, C, and E), while the DR project was better liked in one pair (B). The differences achieved statistical significance for two pairs, A and B. With multiple claims, only the comparison in pair A remained statistically significant. Both A and B had large effect sizes, with A favoring AR ($d$ = 11.57) and B favoring DR ($d$ = 1.15). The comparison of those judging DR as better liked versus those judging AR as equal to or better than DR does not offer support for discretionary design review. For all six pairs, 62.1% of the participants rated the AR projects as equally or better liked than the DR projects. This remained statistically significant under multiple claims. It also had a large effect ($d$ = 1.72). The findings held for the comparisons of each pair. In five of the six pairs, fewer participants liked the DR projects better than liked the AR project equally or better. The differences achieved statistical significance for two comparisons (A and E), but with multiple claims, only the comparison in pair A remained statistically significant. The comparisons for A and E had a large and medium effect size, respectively (A: $d$ = 4.00; E: $d$ = .69).

In sum, the results show that residents rated DR projects as having a poorer fit for pair E and for the full set, with large effect sizes for each. For preferences, the results show DR projects rated as less liked for pair A and the full set, with large effect sizes for each.

## Discussion

The public opinion data on the six project pairs suggest that projects done under discretionary design review produced results that were viewed as neither more compatible nor more preferable than projects undergoing administrative review. These findings agree with the broader findings from the physical inventory, which indicated only minor differences in physical compatibility between the DR and AR projects. Both sets of findings result from a relatively small sample of respondents evaluating a small set of changes, additions, or remodeling of existing houses. Though limited, they agree with findings from larger samples of respondents evaluating the overall impact of completed projects (Stamps, 1997a; Stamps & Nasar, 1997).

As the present research only evaluated *completed* projects, it does not indicate whether discretionary design review had improved any projects as initially *proposed.* The results do indicate that discretionary design review failed to yield projects more compatible than or preferred to those approved through only administrative review. Because discretionary design review involves extra cost, resources, and time for both the City and individuals proposing

changes, the findings did not support it as a cost effective procedure. Columbus discontinued the discretionary design review process for the tested area.

Can we rely on public opinion over the informed judgment of design reviewers? Yes. Federal and state law support design review to improve the built environment for the public (Costonis, 1989), but the judgments of design professionals and other outsiders on such boards often differ from the judgments of residents (Nasar, 1999). Though some people believe the public will eventually follow the views of the experts, research suggests otherwise. Public preferences are remarkably stable over time. For example, a series of studies of an award-winning building found that negative public evaluations of the building remained unchanged 10 years after completion of the project (Nasar, 1999). When a developer proposed the Transamerica Tower in San Francisco, local planners objected. Public opinion obtained 2 years, 18 years, and 23 years after construction revealed that the public initially liked the building and continued to do so (Stamps, 1997b). A study of 20 buildings in San Francisco revealed similar stability in public evaluations (Stamps, 1997b). In sum, research indicates that compared to judgments by design professionals, public opinion polls offer a better indicator of likely long-term public preferences.

## Conclusion

Through a two-part study, we sought to determine whether discretionary design review adequately served the purpose of enhancing aesthetics in building designs, often mandated by local governments. The approaches also demonstrate methods for evaluating the effectiveness of both types of review. Placing discretionary design review and administrative review projects in matched pairs for the survey portion of the present study provided greater internal validity than the previous Oakland study (Stamps & Nasar, 1997) by controlling for extraneous variables. However, its reliance on a small sample of projects and survey participants may have reduced the generalizability of the findings. In response to this limitation, the Columbus study supplemented the small sample by examining compatibility judgments for all of its 164 projects.

The Oakland and Columbus findings differ in detail, but both show potential problems with discretionary design review. For the Columbus additions and renovations, the administrative review projects outscored those subject to discretionary design review in popular judgments of compatibility and preference. The physical inventory evaluations showed the discretionary design review work as slightly more compatible, but this difference did not achieve statistical significance, and the strength of the effect was small. For Oakland, the discretionary design review houses emerged as preferred to the houses that had no design review, but the strength of the effect was again relatively small. The findings replicate other work highlighting problems with discretionary design review (Stamps, 1997a). Though limited, our research agrees with a larger set of data. A meta-analysis of several design review studies in California indicated an insignificant correlation ($n$ = 42, $r$ = .09) between discretionary design review and public preferences (Stamps, 1997a).

The meta-analysis and the present study did not examine the effects of the makeup of the review board on the results. Research has consistently found that for evaluations of appearance, design professionals and outsiders differ from local residents and the public (Brower, 1988; Nasar, 1994). Though these findings may point to some benefits of design review panels of non-professionals and residents for issues of community appearance, those who choose to serve on

review commissions may judge design differently from their neighbors. Ambiguous criteria may also skew their judgments.

Our results point to the need for continued evaluations of design review in various contexts, and the present research offers methods that planners can use for such evaluations. The present findings suggest that communities could opt for administrative design controls over discretionary design review. Administrative controls involve less cost and time, and, if the present results are accurate, they produce designs that are judged equal to or better than those obtained through discretionary design review. However, the lower scores for discretionary design review projects may have resulted from the absence of explicit criteria or criteria based on scientific evidence to guide the reviewers' judgments. Communities may reduce problems by improving the discretionary design review procedures, through replacing ambiguous or unstated criteria with clear, specific, and explicit criteria. Courts have upheld challenges on the grounds of vagueness (Blaeser, 1994; Lai, 1994). For example, in *Anderson v. City of Issaquah* (1993), an appeals court in Washington decided against unconstitutionally vague provisions such as "compatible", stating: that "aesthetic standards . . . must be drafted to give clear guidance to all parties concerned. Applicants must have an understandable statement of what is expected"(p. 82). The Supreme Court has also placed a greater burden on local governments to demonstrate the benefit of their regulatory actions and has called for heightened judicial scrutiny for land-use regulations (*Dolan v. City of Tigard*, 1994; *Nollan v. California Coastal Commission*, 1987). Implicit or arbitrary appearance guidelines and controls may not provide an adequate legal basis for design review decisions.

## Acknowledgments

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### Notes

1 To prevent monotony, some ordinances require moderate but not excessive variation from the typical appearance in the surrounding neighborhood (Mandelker, 1993).

2 We also examined the minutes of review board meetings to understand the basis for decisions and to make recommendations for guidelines that could help applicants. This article does not include the analysis of the meeting minutes.

3 Recent U.S. Supreme Court decisions suggest that although aesthetics represents an adequate basis for control, in some cases local governments may have a greater burden to show an adequate public purpose (Lai, 1994; Mandelker, 1993).

4 For this test, we transformed the $F$ value into the standardized difference between the means ($d = .03$). According to Cohen (1988), this represents a small effect.

5 The question about rent related to a specific interest of City officials. As the rent variable does not link to the theoretical framework, we do not present results for it other than to note that they echo the findings for the other variables.

6 The question about support for regulations related to a specific interest of City officials. As the support variable does not link to the theoretical framework, we do not present results for it other than to note that most respondents (63%) favored regulation to ensure that design changes fit their surroundings.

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# PREPARING A PROJECT FOR DESIGN REVIEW

*Technical Paper No. 21*

Historic Preservation Program, Business Relations and Economic Development
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Any major restoration work or projects involving alterations to a significant feature of a designated King County Landmark property require a Certificate of Appropriateness (COA), which is obtained through an established design review process. This paper explains the purpose of design review and offers suggestions for planning a restoration or rehabilitation project. Contact Historic Preservation Program staff early in project planning, since they can help identify resources and provide technical information.

**Purpose of Design Review**

A King County Landmark must exhibit physical "integrity." This means that the property retains physical features and design characteristics that contribute to and reflect its historic significance. These features, which are called the "character-defining features," are unique to each property and may include the overall scale and massing of the building, design elements such as front porches or windows, or even planting materials and open space on the building site. The purpose of design review is to ensure that any project involving a Landmark property is carefully planned to maximize and protect the integrity--or historic character--of the property.

**Design Guidelines**

The King County Landmarks Commission uses ***The Secretary of Interior's Standards for the Treatment of Historic Properties*** and companion guidelines to guide the COA design review process. Because these *Standards* are used to review a project, it is best to consult them well before you begin to seriously plan a project. Copies are easily available via the Internet or can be obtained from the King County Historic Preservation Program. Every project involving an historic property is unique, so the *Standards* distinguish between four basic approaches (preservation, restoration, rehabilitation, and reconstruction) and the accompanying guidelines provide further specific guidance. Recommended general guidance is summarized below:

1. *Identify, Retain and Preserve*

Identify historic building materials and design features that define the character of the property and should be retained in the process of rehabilitation work. These character-defining features are usually noted in the final designation report.

2. *Protect and Maintain*

Extending the life of the historic building materials through timely and appropriate maintenance is always a priority. Protecting the historic materials typically helps reduce the need for more extensive repairs in the future. It is also important to consider the protection of historic features during a rehabilitation project. For example, if your project

involves cleaning a roof, choose a gentle cleaning method that does not damage the historic roofing material or adjacent siding and roof retails.

3. *Repair*
When character-defining features and materials are deteriorated, repair is the first option to consider. Repair also includes the limited replacement of deteriorated or missing parts when there are surviving prototypes. For example, if shingles are missing from a roof, new shingles that match the originals should be installed to fill the gaps.

4. *Replacement*
When a character-defining feature is too deteriorated or damaged to repair, "in-kind" replacement (using the same design and materials) is the preferred option. If replacement in-kind is not technically or economically feasible, use of a compatible substitute material may be considered. For example, a roof originally clad with large cedar shingles might be re-roofed with a product of similar appearance since high quality cedar products are no longer readily available.

5. *Design for Missing Historic Features*
When an important architectural feature is missing, reconstruction of the element (based on sound documentation of the original design) is preferred. However, if documentation is unavailable, a second option for the replacement feature is a new design, which is compatible with the remaining historic features of the property.

6. *Alterations/Additions to Historic Buildings*
Construction of a new addition to a landmark building or within the boundaries of a landmark site should be undertaken only after carefully considering how best to accommodate the need for additional space. If an addition or new construction adjacent to an historic building is required, it should be designed to minimize alterations and/or visual impacts to the primary elevations and features of significance.

**Preparing a Project for Design Review**
To prepare an application for design review, the applicant must clearly describe and explain the scope of the project, the present condition of the feature(s) involved, the original appearance of the feature(s), and the design standards and guidelines which apply to the project. The following section outlines questions the applicant should consider and information the applicant should gather when preparing a project for design review.

1. *Define the Scope of the Project*
What parts of the building or site does the project involve? How do those elements relate to the other parts of the landmark property? For example, will the project involve features of the Landmark that are visible from the roadway? Current photographs or design drawings (including a site plan) are usually essential to illustrate the scope of most projects.

2. *Document the Present Condition*
   What is the present condition of the part of the property that will be affected by the proposed project? Are the building features in good repair, deteriorated, or missing? Photographs of the features and/or inspection reports serve to clearly document the present condition.

3. *Describe the Historic Appearance*
   What did the property (building and site) look like historically? What changes have been made? Use historic photographs or archival materials to understand the historic appearance of the property and any alterations that may have occurred over time.

   The Landmark Registration Form, prepared prior to the designation of the property, may describe the property's historic appearance. Also, consult the King County Historic Preservation Program to find out if there are historic photographs of your property on file or where photographs might be located. Plans, maps, and interviews may also help document the original appearance.

   Close physical examination of the historic property can also yield useful important information. Take a good look at other local buildings of a similar construction date, function, building materials or architectural style. They may provide insight about the original appearance of the subject building. Architectural style guides and/or historic architectural plan books may be another useful source of information.

4. *Evaluate Alternatives and Determine Most Appropriate Action*
   Once the above steps are completed; the applicant should use the information to evaluate alternatives recommended in the *Standards*. For example, if the goal is to restore a porch that had been previously removed, the applicant will be deciding how to replace a missing feature (See Note #5 above). So, the applicant will need to use a combination of sources (historic photographs, original plans - if they exist – and physical examination) to determine the original appearance of the porch and obtain sufficient information to design the replacement porch. If historic documentation is not available, the design of the new porch should not be based on conjecture but should be compatible with the historic character of the building.

**Considerations in the Design Review Process**

While retaining or restoring a Landmark's historic appearance is always a priority, the design review process acknowledges that changes are often needed to extend the life of the property. In evaluating proposed alterations to historic properties, the Landmarks Commission also considers a number of factors. These include:

- the extent of impact on the historic property;
- the reasonableness of the alteration in light of other alternatives available;
- the extent alteration is necessary to meet the requirements of law; and
- the extent alteration is necessary to achieve a reasonable economic return.

Gathering information that helps answer these questions will enable the applicant to work expeditiously with the Design Review Committee to develop a restoration or rehabilitation strategy which preserves the historic character of the property while allowing for its continued use.

For more information about preparing a project for design review or obtaining a Certificate of Appropriateness, please contact the Design Review Coordinator at (206) 296-8636.

**This information is available upon request in alternative formats for persons with disabilities at (206) 296-7580 TTY.**

Revised 09/08

The ALLIANCE REVIEW NAPC

NEWS *from the* NATIONAL ALLIANCE *of* PRESERVATION COMMISSIONS FALL 1990

# DESIGN GUIDELINES FOR HISTORIC DISTRICTS WITHIN THE CONTEXT OF COMMUNITY PLANNING

*by Noré V. Winter*

Public officials often find themselves reviewing designs for new construction in historic districts to determine the appropriateness of proposed new buildings. These people are accustomed to dealing with standards for rehabilitation, based on the Secretary of the Interior's Standards, that are generally applied uniformly from one jurisdiction to another. When dealing with the issue of new construction, however, they are often rudely awakened to wide variations in local design policies for new construction. The reason is that design policies for new construction are not developed in a pristine setting in which "pure" preservation theory establishes the playing field. Local governmental structure, public opinion, and basic community goals influence the standards as do variations in the physical characteristics of the individual historic districts themselves.

Spacing between buildings is one of the most important characteristics of Remington Avenue in Fort Collins. The core group used this illustration to weigh the relationship of spacing to other visual characteristics of the street.

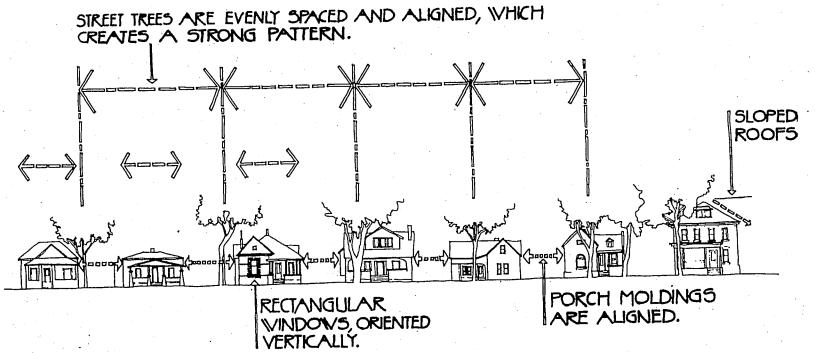



*Illustration from the Fort Collins design guidelines prepared by Noré Winter.*

## THE FACTORS THAT INFLUENCE LOCAL DESIGN STANDARDS

**Governmental structure affects the character of the guidelines.** The degree of regulation provided for an individual historic district will greatly influence the level of review and the specificity of the standards that are applied. City governments usually hold the strongest review powers. Some county governments have similar powers, but many have advisory capabilities only. Some state governments may also provide for design review of historic resources on state-owned lands, but the level of protection and detail of review varies widely. Even federal projects that involve the Section 106 process may yield widely varying results, depending upon the particular agency and the corresponding State Historic Preservation Officer.

**Community goals also affect the character of the guidelines.** Communities seeking to encourage development and growth may be less restrictive in their preservation regulations for historic districts than governments that are trying to limit the rate of expansion. Even where protection is provided for historic resources within the district, guidelines for new construction may be quite lenient. Other communities may seek to encourage new, creative architectural designs and therefore may feel that inhibiting creativity through design review in the historic district is inappropriate. They may argue for very limited criteria in order to allow wider flexibility in design solutions for new construction.

*Continued on page 2*

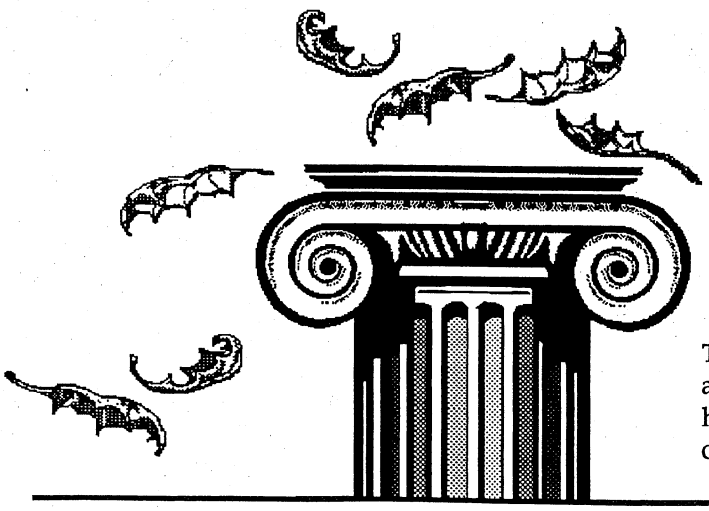
## Executive Directors Message

Welcome to Charleston, South Carolina and the 44th National Preservation Conference. Here we are in the city that not only boasts the birth of historic district design review but also is the birthplace of the National Alliance of Preservation Commissions. Thanks for helping us celebrate a beautiful city that has literally changed the nation's definition of our sense of place.

This issue of ***The Alliance Review*** is dedicated to design guidelines. More and more review commissions are realizing the importance of having a road map to follow when they make decisions and both Noré Winter and Dale Jaeger have pointed out how important design guidelines are to effective local review programs. The NAPC strongly encourages commissions to begin the process of developing and using clear, concise and thorough guidelines as the basis for their decisions. Communities which have become Certified Local Governments have an even greater opportunity to use the grant money that is available to them for the production of guidelines. You should contact your State Historic Preservation Office for more information about how to take advantage of this program.

Many of you have received an invoice for membership in the Alliance recently. Some of you have already responded and renewed for another year, we appreciate that! Those of you who are waiting to renew....do it soon, the Alliance needs your support! Our hardworking board of directors and all volunteer staff want to continue serving your commission or preservation organization, so let us here from you.

Pratt Cassity,
Acting Executive Director



*Continued from page 1*

The agenda of neighborhood groups may also influence the outcome of design review for new construction. They are usually more concerned about change in social character of the neighborhood than in the rehabilitation of the existing buildings. Other factors, including land use, traffic impacts, and property values often color their response to new design proposals and these sentiments frequently come to light in the design review process.

The desire to preserve general community character that extends beyond the boundaries of defined historic district boundaries may also influence local design guidelines and the public review process. Design guidelines for "transitional" or "conservation" areas may be developed in such cases.

Other community goals for the overall density of development, as defined in local zoning regulations and building codes, may also influence the character of new construction. These policies often suggest architectural solutions that contrast with the existing historic context and may be in direct conflict with stated policies in the design guidelines

**The physical setting also greatly influences the details of the guidelines.** Each district is a unique combination of physical characteristics, many of which may contribute to the historic significance of the area, and some of which do not. An inventory of the characteristics of the district helps to catalog those features that contribute to its significance and to establish priorities for writing guidelines based on the importance of these characteristics. Features to consider when conducting a visual survey include:

- The physical characteristics of individual buildings, including their style, materials, and scale
- The physical character of the landscape, including fences, plantings and paving.
- The spatial arrangement of these features, including buildings, site elements and public infrastructure
- The natural site forms and topography that often influence the way things are arranged

**Temporal issues also influence the guidelines.** Our attitude about design standards is also influenced by how <u>important</u> we perceive the physical characteristics of the district to be. Our perception of this character is

often a mixture of what is was like hysterically and how it exists today. Our sense of priorities for design standards is also influenced by how we anticipate the district will appear in the future, given current development policies and trends in the community.

### OPERATING IN A CHANGING ARENA

What do these factors mean, in terms of developing designs for new construction in historic districts? They suggest that officials should be prepared to operate in a political environment that holds a high degree of variability. Local zoning regulations may contradict what are assumed to be federal standards. For example, local regulations may allow an increase in site density, resulting in a reduction of open space that is an important characteristic of the area.

In some cases, the historic context is so "sub-standard" with respect to today's building codes that any new construction by definition will differ from the character of the original architecture. Local zoning may also allow new uses, with correspondingly different building types, that were unknown historically. If current zoning allows auto service businesses in the district, for example, there is little likelihood that structures built to accommodate them will resemble a row of town houses, no matter how materials are used or what style is used.

In these cases, the relationship of preservation goals to broader community plans and goals becomes very important. A residential neighborhood that seeks to reserve development to single family occupancy structures may therefore oppose a multi-family apartment project, even if the massing is configured to resemble the established building fabric.

Some confusion often occurs in the review process because local boards have a dual allegiance. They must serve their local masters (their town councils) by law, for these are the groups that create them. On the other hand they also seek to conform to what are perceived to be national standards for historic districts. In some cases they are more strongly obliged to promote such standards by participating in the Certified Local Governments program.

**Blending planning and preservation policies.** Policies for new construction will be a combination of the factors described above. As an example, the review board in the mountain resort of Telluride, Colorado, of which a significant part is a National Historic Landmark District, is concerned about loosing historic open space in the yards in the residential neighborhoods, but it also seeks to accommodate more employees as local residents, because of housing pressures of a ski resort. The town cannot expand its boundaries to allow new development on the periphery without altering its "small town" character that is an essential marketing ingredient and source of civic identity.

Should the community allow an increase in density in its established neighborhoods to provide close-in worker housing, or does it maintain the historic low density, forcing new housing out of town and causing an increase in commuter traffic by employees who must then drive in to work? Such questions arise with each new development proposal. The results of the review process, the designs of structures that are built and of those that are denied permits will vary each year as the politics, local sentiment and community needs are blended into evolving preservation policies.

Most communities with historic districts face similar questions. Each must find their own answers to these are related design policies, which, if founded on clearly articulated goals and well understood design policies will help to retain the unique character of the district.

*Noré Winter is president of Winter & Company, a consulting firm in Boulder, Colorado, specializing in historic preservation and urban design. He has developed design guidelines and has conducted design review training programs for numerous communities and states. Recent projects include design guidelines for Biltmore Village, North Carolina, design review training for the counties of Hawai'i and planning for Flagstaff, Arizona and Aspen, Colorado. Winter also directs the architectural team for the rehabilitation of the Colorado governor's mansion and is member of the board of directors of the National Alliance of Preservation Commissions.*

# Design Guidelines for the Landscape

*by Dale Jaeger*

Design guidelines have typically addressed buildings and have given little attention, if any, to the landscape setting. The preservation movement in recent years has moved away from this building-only orientation to a recognition of the important role a setting plays in creating and preserving historic character. A comprehensive set of design guidelines should include all aspects of the built environment, including the landscape setting, natural and man-made. To develop guidelines for the landscape one should begin with a recognition of the overall form of a setting and the arrangement of elements within it, and identify the details

# CLARITY, COMMON SENSE AND DIPLOMACY

## The Challenges of Selling Design Guidelines

*By: Sharon Ferraro*

As dedicated preservationists determined to save our historic resources for upcoming generations, we all understand the importance of choosing to repair rather than replace and the importance of setbacks and massing in new construction to maintain the character of the districts. But in our throw-away society, we need to sell that concept to the property owners. The average property owner today wants to take good care of their investment and, in many cases, has no idea how to take care of an old structure. Our job is to persuade and educate along with requiring that the work meet the standards we have established. We need to be diplomats and salesmen as well as enforcers.

And the process of education and persuasion begins where the property owner first comes into contact with the design guidelines. This will be either the first phone call or visit to the buildings department or the process of filling out the application for a Certificate of Appropriateness or reading your design guidelines.

**FIRST CONTACT - DOCUMENTS - setting up the rules**
**THE APPLICATION AND THE DESIGN GUIDELINES**

The Application for Project Review/ Application for Certificate of Appropriateness

Keep the form as simple as possible while asking the applicant to provide full information. This simplicity will be different for different types of districts - clearly a large city with commercial 10 story buildings as well as modest bungalows may have a more complicated form - or perhaps more than one form, depending on the character of the buildings under review. But the over-riding principle should be simplicity. The applicant should be able to understand the form, whether an experienced carpenter or a single mom who is handy with power tools or a belligerent landlord who prefers duct tape and T-111 to tuck-pointing and code-compliant handrails. And keep in mind that the building department staff should also understand the form so they can assist the applicant.

Be clear about how detailed support materials should be. Do you expect simple line drawings with measurements? Or more detailed draftsman or architects style details? This may be project dependent. A set of front steps will need less detail than a three story exterior stair providing emergency egress to a finished third floor. It can be very helpful to have an example available as a handout.

### *A short comment about language.*

Whether you are a commissioner or part of the city staff that regulates the historic districts, be sure that you are actually communicating with the applicant. It may not be a problem to discuss the crown mould and decking and brackets with a roofer or the meeting rail and stiles with a window repair person. If you are talking to a grandmother who is making an application and she doesn't know a crown mould from a water table, be sure to define your terms so there is a level of necessary understanding. The use of appropriate language extends from conversations and discussions to your application for project review, the design guidelines and the commission meeting. If the applicant's eyes start glazing over, restate the topic in language they understand.

*436 W. Dutton, Kalamazoo, prior to rehabilitation*

*Photo: Sharon Ferraro*

**The Design Guidelines**
Writing a set of design guidelines that cover every type of work on a historic building is impossible in a historic district of any size. Perhaps a set of exquisitely detailed standards could be written for a set of five Frank Lloyd Wright Usonian houses on the same block, but that kind of homogeneity is rare in most districts. Indeed it is the diversity that makes our districts attractive.

The ultimate goal of design guidelines is to assure that changes are appropriate to the specific structure in the context of its neighborhood and district. New handrails for a Queen Anne Barber pattern house will be substantially different from a Spanish Colonial Revival bungalow. The design guidelines MUST be comprehensible to the property owner and his contractor.

Avoid the obvious trap of making the design guidelines an exhaustive list of "Thou Shalt Not". Keep the specifically prohibited topics to a minimum. "Vinyl windows are strictly prohibited on any contributing structure within the historic districts." is appropriate. Be sure that every strictly prohibited item is an issue your commission is willing and able to support on appeal.

**STANDARDS = Administrative review**
In Kalamazoo our design guidelines are very clearly differentiated. The STANDARDS apply to very specific, common projects, mostly eligible for administrative review. These include roofing, porch repairs, fences, storm doors and storm windows and eaves troughs. These projects are very clearly defined and if the application falls outside those specific details, it must be considered according to the guidelines.

**GUIDELINES = Commission review**
The GUIDELINES are more general and philosophical. The standards may specify that spindles on a porch rail be 5/4" cedar or redwood, turned or square, spaced no more than 2½ " apart with a total height from the porch deck including rails not to exceed 24". The guideline will discuss the rail height relative to the height of the windowsills that face the porch and the spacing of the spindles relative to the style of the house.

The guidelines also refer to the context of the surrounding district and will cover complex issues such as new infill construction and rebuilding missing features. The guidelines rely much more heavily on the Secretary of the Interior's Standards for Rehabilitation. So to comply with guidelines a new house to replace a burned house will have a setback from the road or sidewalk similar to the houses around it and have a massing similar to the houses around it. If the nearby houses are 1½-story bungalows,

the new house will not be a 3-story Queen Anne covered with gingerbread or, heaven forbid, an end gable one story manufactured house with an attached garage.

When you formulate your design guidelines be sure you have at least one reviewer who:

1) Is not a preservationist so they will be lost if your language is too specialized
2) Does not live in a historic district so they will not be reading with their own building in mind and miss the forest for the trees
3) Has no more than a passing understanding of building terms - i.e. may know the difference between a joist and a rafter but not too much more.

Consider using a glossary for terms to help applicants understand. Review line drawings for clarity and detail.

*436 W. Dutton, Kalamazoo,after rehabilitation, demonstrating effective use of design guidelines.*

*Photo: Sharon Ferraro*

**WORKING WITH THE APPLICANT**

Start with an assumption that the applicant is unfamiliar with the design guidelines. This is not always the case - there are many property owners out there - both owner-occupied and landlords that would rather ask forgiveness than permission. Starting from an assumption of unfamiliarity allows the property owner to back pedal and save face when he is caught. Confrontation, no matter how well justified, rarely opens the door to finding a solution and always leaves the owner prone to spread the word about how badly the "hysterical commission" treated him. Remember we are protecting the buildings, not our egos.

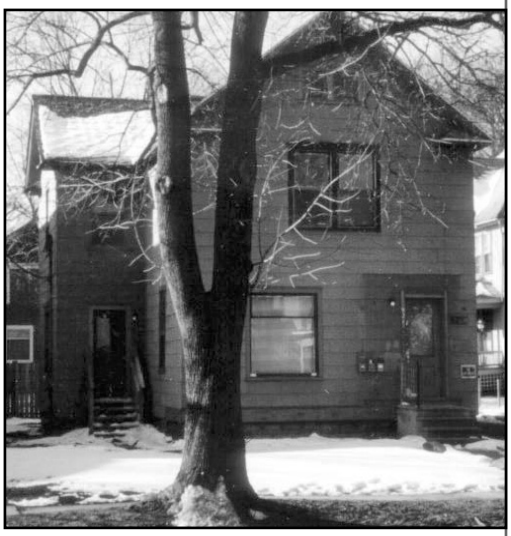
**First - help the applicant define the project.**

Listening to the applicant is vital. Let the applicant outline the proposed work and then re-state it back to him. Find out what he envisions as the final product. Then make a suggestion, which complies with the design guidelines.

***An example:*** Mr. Albright shows up at the counter - he is a burly 50 year old and put a fence around his Arts and Crafts bungalow three years ago to keep his puppy in. He keeps calling the house a Cape Cod because that is what the realtor called it. Since then his son has gone off to college and wrecked his car and a tree has fallen on his garage. He does not remember all the details of the standards from his last visit and anyway, it was only a fence last time. Ask him to describe what he needs to do, or hopes to accomplish. He wants to do some repairs and modifications to the front porch. He wants to replace some of the decking, repair one column and he proposes enclosing the porch in a new low solid home center knee wall below with standard sized combination aluminum storms above. The storms are on sale at home center next week. Currently the porch has a low-spindled rail.

*(Continued on page 9)*

What does he expect of the front porch project? After a little discussion it becomes clear that he is tired of being dive bombed by wasps and not being able to use the porch at night for fear of mosquitoes and West Nile Virus but he does not use the porch much in the early spring and late fall, mostly he likes to sit out there with a radio and a beer and listen to the ball game. So his application can be simplified to enclosing the porch with screens. He likes this because it will be much less expensive and he won't have to hire his brother-in-law's stupid neighbor again since he took six months to fix the garage last time. His original plan was something the commission would probably not approve. The compromise he has come to still fulfills his needs and is a project that complies with the design guidelines.



*917 W. Lovell, Kalamazoo, prior to rehabilitation*

*Photo: Sharon Ferraro*

**Second - filling out the application**
How much detail is needed to define the project? Too much detail may limit the project unnecessarily and make modifications impossible while work is in progress. Included as needed:

- **Measurements** - width of the new window frame, height of the new porch rail, overall footprint of the new garage.
- **Drawings** - preferably black ink on white paper, but be flexible - if a pencil drawing is clear and copies well, don't get hung up on media.
- **Photos** - May be provided by the applicant if necessary or the coordinator. Be sure that each project includes a photo of the full structure from the front and not just the item in question. A project application for a set of back porch steps should include a photo of the whole house, not just the back porch.

**Third - Administrative or commission review?**
If the project proposes no alterations, no additions, just repair of existing features, usually this can be an administrative review. For example, Mr. Albright's porch project. If his proposal was limited to the deck and column repair it could be approved administratively without full commission review. However, because he is proposing an alteration with the addition of the screening, it will need full commission review.

In Kalamazoo, there are some items that always require full commission review such as replacement siding, replacement windows, removing a chimney, removing windows or doors and any new construction.

**Fourth - Applying the design guidelines**
Ideally, by this point the applicant and staff have worked out a proposal for work that will comply with the design guidelines and the review by the full commission is merely a formality. In many cases, however, there will need to be some negotiation between the applicant and the commission. Ultimately the commission's mandate is to protect the historic character of the district and the structure and not let bad things happen.

Some items to consider when reviewing a project for compliance with the design guidelines:

- **Is the proposed work reversible?** Replacing a 2x4 porch rail with a slightly too tall square spindled rail to comply with the rental housing code is reversible next time. Removing all the windows and replacing them with tilt-in sash is not reversible. Paint color is reversible; paint on previously unpainted masonry is hard to reverse.
- **Does the proposed work preserve the historic character of the district and the structure?** Mr. Albright's porch screens preserve the character of the structure and the district. If he wanted to make the porch five feet deeper and change the pitch of the porch roof to accommodate this, it would alter the relationship of the house to the rest of the bungalows on the street and would be inappropriate.
- **Does the proposed work meet the Secretary of the Interior's Standards for Rehabilitation?** A good exercise is to identify the standards the project complies with or violates and state it as part of the motion.
- **Finally, apply common sense.** Keep in mind the primary goal of preserving the district and the need to keep the property owners on the side of preservation. Overly restrictive decisions can sour owners on the idea of design review and make for more intentional violations and less cooperation. Don't fight over the 2x8 treads on the back porch steps, but insist on 5/4" on front and side steps.

*917 W. Lovell, Kalamazoo,after rehabilitation, demonstrating effective use of design guidelines.*

*Photo: Sharon Ferraro*

As part of a historic preservation commission or as city staff working with historic districts, our ultimate responsibility is to speak for the historic buildings and resources. A significant part of that process will always be educating the property owners. We need the owners on our side and even when we need to restate a principle or a guideline for the seeming 100th time, we must to do it. In this field you will meet ignorant people who own historic properties - and belligerent property rights owners and clumsy do-it-yourselfers as well as the occasional committed old building lover or skilled restoration contractor. Treat them all with respect, give them the benefit of the doubt and remember they are the stewards of the building - it is our job to teach them how to be good stewards.

*Sharon Ferraro is the historic preservation coordinator for Kalamazoo, a city of 78,000 in southwestern Michigan. She works with 1800 properties in five districts, primarily residential with an expanding commercial district downtown.*

***Scott Whipple,*** *is the Historic Preservation Section Supervisor for the Montgomery County (Maryland) Planning Department. The Historic Preservation Section is responsible for research and designation, historic area work permit review, county preservation tax credit and historic preservation grant administration, and education and outreach activities, and is staff to the county Historic Preservation Commission and Planning Board.*

# Design Guidelines

## Getting the Most out of Your Commission's Design Guidelines

by Scott Whipple

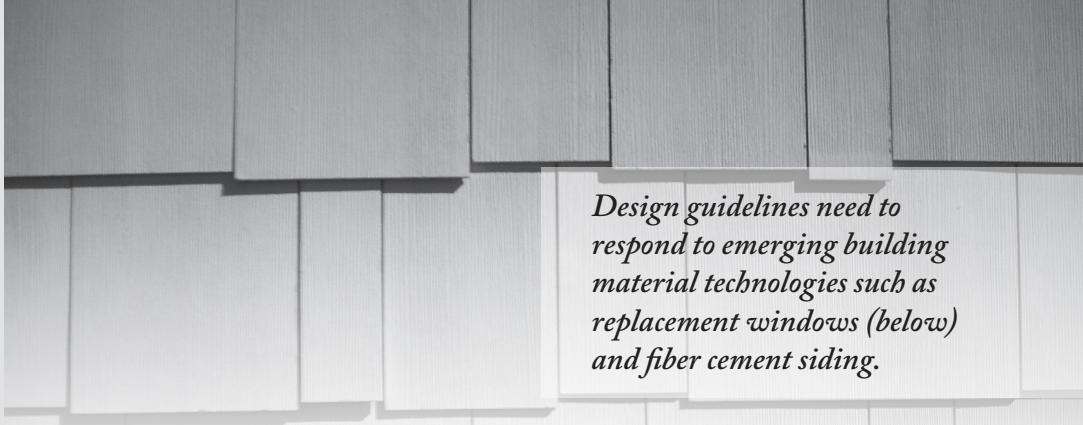
Nearly all of us who serve on, or are staff to, historic preservation commissions (HPCs) recognize that commissions need to use design guidelines in order to act in a fair, appropriate, and defensible manner in the review of historic area work permit applications or Certificates of Appropriateness (COAs). Putting aside the legal obligation – most, if not all, state enabling legislation requires adoption of design guidelines – many commissions may not utilize their guidelines to their full potential when reviewing COAs. But what should guidelines include? How do jurisdictions set about getting the guidelines they need? And, once a jurisdiction has the guidelines it needs, what can be done to ensure that the HPC uses – actually *uses* – those guidelines?

*Design guidelines for Historic Sites and Districts in Montgomery County, Maryland.*

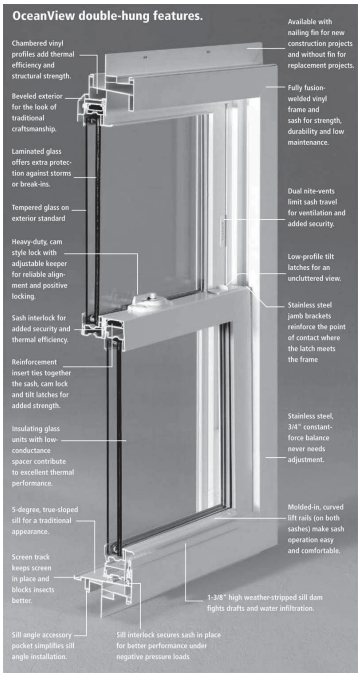
Many jurisdictions turn to district-specific design guidelines. But developing guidelines specific for a jurisdiction generally involves getting outside help. As a result, an industry of consultants who specialize in drafting guidelines has emerged. So how do you get the process started? Elsewhere in this issue of *The Alliance Review,* Steph McDougal writes about factors to consider before hiring a consultant, including what goes into establishing the fee consultants charge to prepare a set of guidelines. Steph's article is full of good information. Think of it as knowing what is behind the sticker price on a car before walking into the dealership.

In Montgomery County Maryland, where I am staff to the historic preservation commission, we used a Certified Local Government grant to hire a consultant to develop general design guidelines to assist in the commission's review process (http://www.montgomeryplanning.org/historic/designguidelines.shtm). The guidelines were developed to supplement the existing criteria the County Council had adopted for issuance of Historic Area Work Permits. In our case, as in many other jurisdictions, the *Secretary of the Interior's Standards and Guidelines for Rehabilitation* are the basis of our review criteria.

Jurisdictions can also consider adopting the broader *Secretary of the Interior's Treatment for Historic Properties*, which encompasses the rehab standards along with standards for the three other preservation treatments [preserving, restoring, and reconstructing]. Although the rehabilitation standards are the most widely and often-used – and most appropriate for the majority of projects most HPCs review – once in a while commissions are bound to review a project where one of the other treatment standards are more appropriately applied and the flexibility to use them is beneficial.



***Design guidelines need to respond to emerging building material technologies such as replacement windows (below) and fiber cement siding.***



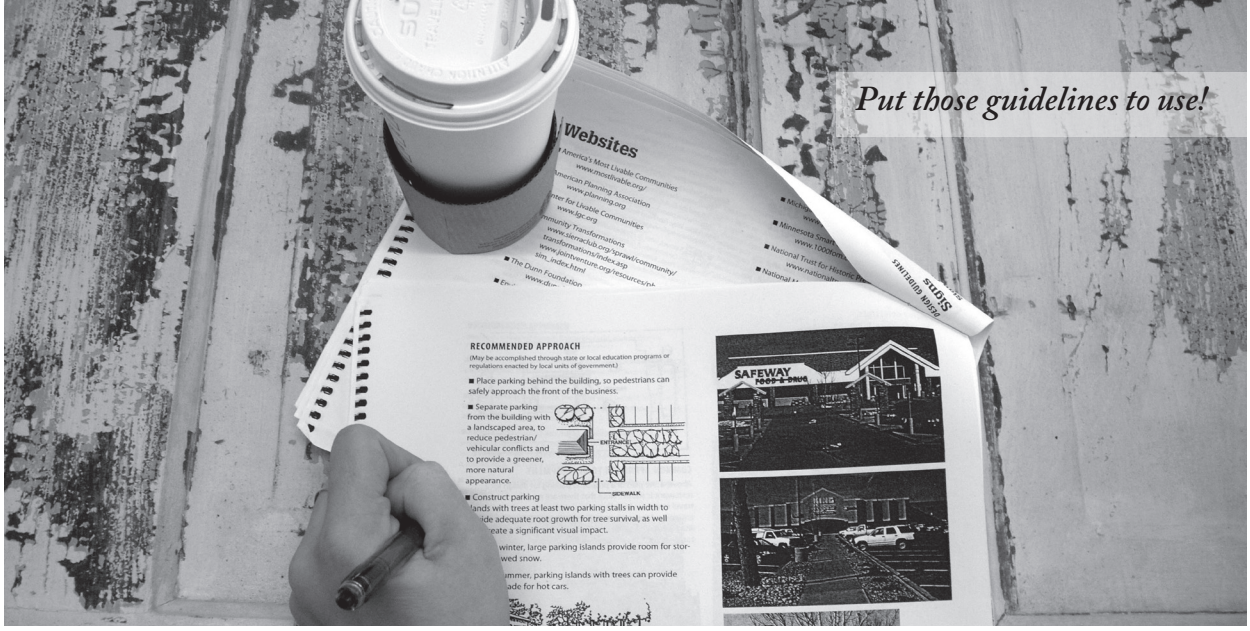

The Montgomery County Council has also seen fit to adopt district-specific design guidelines for nine of our 22 historic districts (and even site-specific guidelines for a handful of our 425 individually-designated sites). In some cases the adoption of district-specific guidelines was something of a political necessity to build support for the designation of these districts. District-specific guidelines also provide a mechanism to identify the specific physical characteristics of a district and its built environment, and provide guidelines that respond directly to those. In the Montgomery County experience, these guidelines are drafted to respond to a district's specific development type and pattern, its preservation needs, and in some cases, its residents' tolerance for historic preservation, not always in equal measure.

Recognizing and responding to the different conditions and specific preservation needs in a community is important, from both an applied historic preservation vantage point as well as from the perspective of building support for historic preservation within the community. This intersection can change over time. The manner in which HPCs respond to an evolving understanding of historic preservation practice, acceptance (or not) of new materials or technology, and historic preservation's role in sustainability or urban development all may change how they evaluate applications before them. And guidelines need to change along with these considerations in order to remain relevant and useful.

Take, for example, sustainability. An applicant's desire to implement 'green' strategies can put tremendous pressure on an HPC or, handled differently, can present a remarkable opportunity for an HPC to demonstrate the relevance, importance, and even cost-effectiveness of historic preservation. Phil Thomason's "Greening Oklahoma City's Guidelines" article, also in this issue, reinforces this point by making the case for establishing explicit connections between sustainability and historic preservation in design guidelines.

Each jurisdiction may respond somewhat differently to the range of historic preservation issues, and to my thinking, that is appropriate and necessary. This is where design guidelines come into play. But as the Oklahoma City case study illustrates, design guidelines can provide an opportunity for historic preservation to be forward looking, driving creative responses to challenges, rather than stuck in the past and susceptible to criticism that preservationists are afraid to change. By adopting guidelines that adequately reflect the preservation ethic in the community as it relates to the specific historic resources in that district, a community sets the ground rules for historic preservation in a way that everyone should be able to understand.

This brings me to my final point. Once agreed upon and adopted, design guidelines must be the basis for a commission's decisions. Commission members need to use – *actually use* – their guidelines in evaluating applications and making findings that lead to the approval,




approval with conditions, or denial of an application. This should sound obvious. But as evident an observation as this may be, experience suggests otherwise.

A few questions illustrate the point. How many of us are aware of, or perhaps even affiliated with, a commission that has been accused of reaching arbitrary decisions or acting as an arbiter of taste? Who among us has heard during a hearing a commissioner say that he or she supported an application because they liked it or because it will make a historic resource look better? The same can be said for forming motions. How often have we heard motions that make no mention of the basis of the action? This is to say, a motion crafted simply to approve or deny an application without referencing the basis – what standard or criteria is used – of the action.

How we answer these questions and others has direct bearing on whether the criticism leveled against a commission in the first question is fair. By striving to leave personal taste out of the review of an application (and not allowing what a commissioner likes or dislikes to enter into the deliberation over an application) and attempting to include in their deliberation and motion-making a finding based on criteria established in the preservation ordinance, regulations, or rules of procedure, historic preservation commission members erode criticism claiming that they are acting in an arbitrary manner. Using guidelines leads to defensible decision-making.

In considering an application, the design guidelines should be the first document consulted, with each element of the project measured for appropriateness against the relevant section of the design guidelines. In the deliberation over an application, design guidelines should inform commissioners' position on the appropriateness of a project, and in making a motion, the appropriate design guideline sections should be explicitly cited as the bases for the finding.

In those jurisdictions with staff support, staff can help commissioners by preparing staff reports that reference relevant sections of the design guidelines and include staff recommendations based on the appropriate design guideline standards. Without question, staff members make the review of applications easier for commissioners. But regardless of whether a commission is staffed, it is incumbent on commissioners to identify as the basis of their finding their interpretation of the relevant criteria for the action.

In the end, the one measure of the success of a set of design guidelines is whether or not they are used. As illustrated by Bill Frazier's article in this issue on the use of design guidelines in Virginia communities, guidelines need to include appropriate content, applicants need to be aware of the existence of guidelines and consult them during project design, and commissions need to base their decisions on their guidelines.

If commissions work to get the design guidelines they need – that is, guidelines appropriate for their community by reflecting the resources and the communities preservation ethic/tolerance for preservation – the guidelines will be easier to use, and therefore more likely to be used. Whether or not a commission uses their design guidelines is influenced by many factors, but clearly central to how well they are used is how well they reflect how a community does preservation: whether they are appropriately place-specific, reflecting the types of resources in a district, and whether they adequately respond to the community's preservation ethic, fully addressing and responding to the range of preservation issues of consequence to the community. Making sure you develop appropriate guidelines is important. Actually putting them to use is critical.■

***Phil Thomason** is a principal at Thomason & Associates, a preservation consulting firm based in Nashville, TN*

by Phil Thomason

# "Greening" Oklahoma City's Guidelines

GREENING

*Permeable parking surfaces allow greater water absorption and less runoff. New parking areas should be of these types of surfaces rather than asphalt or solid concrete. This is especially important in Oklahoma and the Southwest, which has suffered droughts in recent years.*

Preservationists are increasingly connecting sustainability with historic building rehabilitation and design review in historic districts. Many communities have also adopted formal programs in support of sustainability or "green" principles. Historic preservation and sustainability are both based on the ethic of reusing, recycling and retaining as much of the built and natural environments as possible. While these approaches are mutually compatible, making this connection more tangible is now the goal of historic preservation commissions and boards of architectural review to promote appropriate rehabilitation and new construction in historic districts.

In the past decade, the National Trust, the National Park Service, and many local and state governments have focused attention on the connection between historic preservation and sustainability. This has taken place within the larger context of the "green" movement and adoption of LEED (Leadership in Energy and Environmental Design) standards in 1998 by the U.S. Green Building Council. Historic preservation guidelines have always emphasized reuse, recycle, repair, and replace-in-kind, which are some of the basic principles of sustainable design. As communities across the country adopt sustainable principles as an overarching ethic, historic preservationists are making the case that preserving and maintaining historic buildings is an essential part of a sustainable community approach.

Sustainable principles include conserving energy, increasing energy efficiency, using recyclable materials, and minimizing the use of non-renewable resources.

Dozens of reports studying various aspects of sustainability are published annually, and there is now a large body of research exploring various aspects of "green" design such as solar energy, weatherization of homes, permeable paving materials and geothermal heating and cooling systems. The importance of preserving and recycling existing buildings is a sustainable principle as well, and this ethic is now incorporated into many community's "green" guidelines and standards.

The connection between historic preservation and sustainability has been a major theme of the National Trust and the preservation community over the past decade. *Preservation News*, the membership publication of the National Trust, has had several issues in recent years featuring sustainable design. The January/February 2008 issue was titled "The Green Issue," and the majority of its articles discussed the connection between preservation and sustainable principles. Another National Trust publication, the Forum Journal, has devoted many articles on sustainability in the past several years. The Spring 2009 issue was headlined "Positioning Preservation in a Green World," and all of the articles dealt with preservation and the green movement. The NAPC's *The Alliance Review* has featured several "Going Green" articles in recent years, and its September/October 2010 issue was dedicated to weatherization of older houses.

In addition to these professional periodicals, there have also been a number of reports and studies published in recent years with a specific emphasis on how historic preservation commissions and design review boards can use sustainable principles in their advocacy and education efforts. Some of the best of these and available on-line include:

- *"It's Easy Being Green: Sustainability from a Historic Preservation Perspective." (City of Bayfield, Wisconsin, 2009).*
- *"Sustainable Preservation, an Addendum to Building with Nantucket in Mind." (Clean Air-Cool Planet, 2009)*
- *Energy Efficiency, Renewable Energy and Historic Preservation: A Guide for Historic District Commissions (Clean Air-Cool Planet, 2009)*
- *Over-The-Rhine, Green-Historic Study, Exploring the Intersection Between Environmental Sustainability and Historic Preservation (Over-The-Rhine Inc. and Gray & Pape Inc., 2009)*

Beyond these studies, there are dozens of published reports providing recommendations for restoring historic buildings using green principles. The amount of literature published in recent years in America and the United Kingdom on energy efficiency, retrofitting, and overall rehabilitation using LEED standards is substantial and provides ample information relevant to historic design review guidelines. Of particular importance is the National Park Service's *The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines on Sustainability for Rehabilitating Historic Buildings* (www.nps.gov/history/hps/tps/). Published in early 2011, this report provides specific recommendations for rehabilitating historic buildings based on sustainable procedures and actions.

The growing dialogue on historic preservation's relevance to sustainable principles has shifted into the area of design guidelines as well. Most design guidelines are inherently "green" through the overall emphasis on preserving original materials, repairing rather than replacing historic elements, and, if replacement is necessary, using materials to match the original. While sustainability is inferred within these principles, the explicit connection to sustainability is a recent development. In the past few years some design guidelines prepared by local municipalities have featured introductory sections detailing the connection between sustainability and design review standards.

The National Trust's Forum News has included two relevant articles on this subject in the past two years. The first of these is Jo Leimenstoll's "Going Green: Applying a Sustainability Lens to Historic District Guidelines" from the Spring 2009 issue. In this article Ms. Leimenstoll discusses writing design guidelines for Davidson, North Carolina.

Her approach was to "weave sustainability principles into the document from its inception," and this manual was largely completed by February of 2011.

The second article by Nore Winter in the December, 2010 issue, is "Developing 'Green'-Friendly Guidelines: Advice for Preservation Commissions." This article is a summary of recommendations in a booklet published in February of 2011 by the National Trust, "Developing Sustainability Design Guidelines for Historic Districts." The Forum News article contends that preservation commission members have an opportunity to advocate for the inherent energy efficiency of historic buildings and to use their design guidelines to promote preservation and sustainability. The article concludes:

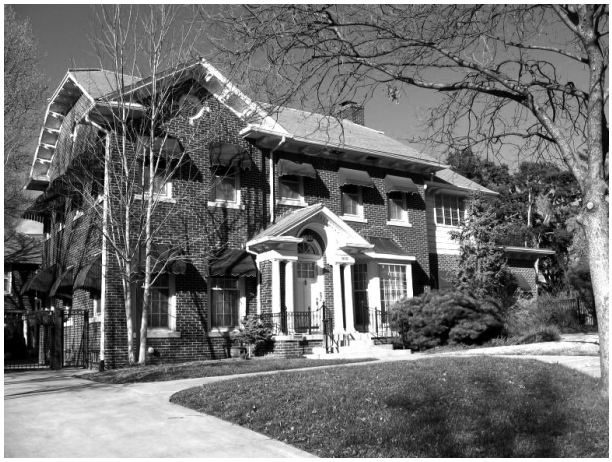
*The basic principles of most guidelines certainly call for preserving original materials and other character-defining features as well as respecting the inherent energy-saving properties of historic resources, but they usually only touch on sustainability indirectly. Commissions should take steps to move beyond that point, to provide clearer, positive guidance to users.*

This article was expanded into the informational booklet, "*Developing Sustainability Guidelines for Historic Districts*," published in February of 2011 by the National Trust. This publication outlines the opportunities for historic preservation commissions to integrate sustainability into new or updated design guidelines. The three primary recommendations are: to rewrite or write design guidelines with sustainability emphasized throughout; to discuss sustainability as a stand-alone chapter; and, to present the information is a separate brochure or booklet.

The approach to rewrite existing guidelines was undertaken in 2010 by Oklahoma City, which has nine historic and predominantly single-family residential districts, four individually designated buildings, and one cemetery zoned as Historic Preservation (HP) or Historic Landmark (HL) Districts (all designated between 1969 and 1999). Until 2003, decisions regarding appropriate preservation treatments in HP- and HL-zoned areas were generally governed by the Secretary of the Interior's Standards for Rehabilitation. In 2003, the city prepared and adopted a new set of design guidelines, Preservation Guidelines and Standards for the Oklahoma City Historic Districts, which govern design review in the districts.

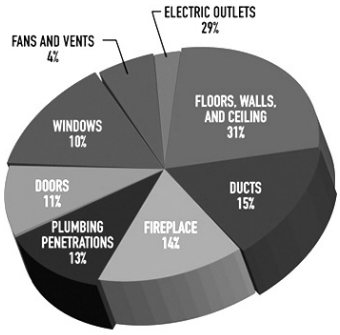
After attending sessions on preservation and sustainability at the 2010 NAPC Forum in Grand Rapids, Michigan, the staff of the Oklahoma Historic Preservation Commission researched funding options for introducing sustainability components into their 2003 guidelines. After applying for a grant, the city was awarded an Energy Efficiency Conservation Block Grant from the U.S. Department of Energy to revise the guidelines. The city then sought and hired consultants to prepare the guidelines and complete the project. This undertaking included several public forums and a series of neighborhood meetings. Over 150 residents attended a presentation where the overall approach to sustainability was discussed along with preliminary recommendations for changes to the current guidelines.

The approach taken by the city and consultants was to first include introductory sections on the inherent energy efficiency of older buildings. Nineteenth-century and early twentieth-century houses are often considered difficult to heat and cool, when in fact houses built before 1920 are the most energy-efficient in America except for those built after 2000. The energy efficiency of these old dwellings comes from high floor-to-ceiling heights, operable transoms over doors for air circulation, operable double-hung windows, and broad eaves and large porches for shade. Even greater energy savings is gained through the installation of porch and window awnings which can cut air conditioning bills by 10% to 25% per year. Preserving original old-growth wood windows and adding storm windows provides as much thermal efficiency as new vinyl or aluminum windows with a much better payback to the owner.



*The use of window awnings is encouraged to provide additional shading and reduce solar gain. Awnings can assist in lowering air conditioning bills by ten to twenty percent.*

Older houses can be made much more energy efficient not by replacement or concealment of original materials, but by adding attic insulation, sealing cracks around openings, and insulating ductwork. Most houses lose energy primarily through the ceiling and floors followed by fireplaces, plumbing penetrations and ductwork. Energy loss through windows is usually only 10% to 15% of a monthly household bill. Adding sufficient insulation in crawl spaces and attics along with appropriate sealants around openings, vents and ducts are all cost-saving measures and generally do not affect a historic dwelling's architectural character.




*This energy loss chart illustrates how much energy is lost through windows versus ceilings, walls, floors, etc. A homeowner would improve energy efficiency more noticeably by increasing insulation, rather than replacing windows. (U.S. Department of Energy)*

The introductory sections on energy efficiency and conservation are followed by basic principles to be used by the city's Historic Preservation Commission as they review Certificates of Appropriateness (COA) applications. These principles are congruent with the Secretary of Interior's sustainability guidelines and include:

- Property owners and applicants are encouraged to first consider preserving, maintaining and repairing original or historic building features.
- If such features and elements cannot be preserved, maintained and repaired, replacement in kind is then recommended. They should ideally be replaced with the same materials and with profiles, dimensions, and textures to match the original as closely as possible.
- Architectural details and materials can be documented through historic and/or physical evidence. Such documentation will aid in defining appropriate rehabilitation activities.
- If replacement in kind is not feasible or practical, the Commission will consider the use of appropriate sustainable materials where feasible and practical.
- Rehabilitation of historic buildings is reviewed to determine impact, compatibility, and appropriateness of proposed work to the existing structure, site, streetscape, and district.
- Rehabilitation should "work with" the historic building or structure for which it is proposed. Compatible rehabilitation efforts are those that protect significant architectural and historic resources of individual buildings and the district.

Each chapter and subchapter of the guidelines is organized to provide background information as well as specific regulatory principles and requirements. Each design guideline element is described with a broad policy statement followed by justification of this policy on both design and sustainability principles. For example, in the case of windows, the policy statement and principles are:

POLICY:
*Retain original wood and metal windows. Repair, rather than replace, original windows. If the need for replacement can be demonstrated, new windows should match the original as closely as possible in materials and appearance.*

JUSTIFICATION - DESIGN:
*The proportion, shape, location, pattern and size of windows contribute significantly to the historic character of a residential building and help convey the architectural style and period of the building.*

JUSTIFICATION - SUSTAINABILITY:
*Most dwellings in the historic districts retain old-growth wood windows which can last indefinitely as long as they are properly maintained. In most cases, windows account for less than one-fourth of a home's heat loss. Insulating the attic, walls and basement is a much more economical approach to reducing energy costs, than replacing historic windows, which can benefit from weatherizing. Proper sealing of windows and added storm windows enhance a building's energy efficiency.*

*Maintaining original sash windows and adding a storm window equals or exceeds the thermal efficiency of most vinyl replacement windows.*

This approach provides property owners with clear policy statements and justification for rehabilitation based on both design and sustainability. It advances the arguments for preserving historic materials from purely design-related considerations to overall energy efficiency and cost-payback formulas. The guidelines also address the appropriateness of adding solar panels, solar shingles, and geo-thermal units to older dwellings as well as compatible and sustainable materials for new construction.

Historic preservation is now a key component in sustainable policies for many communities. Planning efforts on the local, state and national level are all integrating sustainability as an overarching ethic. Preservationists have made great strides in tying sustainability to preservation principles in order to revitalize downtowns and older neighborhoods. Revising existing design guidelines to emphasize sustainability educates property owners about the inherent "green" character of their buildings, builds public support for design review and overlay districts, and provides additional arguments for preservation based on conservation and sound economic principles. Over the next decade, many other communities are expected to follow Oklahoma City's example as they develop or revise their design guidelines.■

PRESERVATION

*information*

*One in a series of Historic Preservation Information Booklets*

# Design and Development: Infill Housing Compatible with Historic Neighborhoods

*by Ellen Beasley*

Infill development is a concept that has been with us for decades—for centuries—because buildings in most cities and towns reflect a continual state of construction, alteration, and replacement. Infill is a never-ending process in a thriving, active community. It is distinguished from other types of development because it is surrounded by an existing, built-up area. The infill—the new construction—fills in a vacant parcel of land.

The term "infill" emerged as part of the preservation vocabulary in the 1970s, when many historic areas and inner-city neighborhoods experienced their first new construction in years. Although identified primarily with urban settings and neighborhoods—areas where context is most obvious—the term is also applicable to new development in small, even rural, towns. The size of an infill project can vary dramatically, from single-family dwellings built on scattered lots to large mixed-use developments covering several city blocks.

Preservation is directly responsible for refining, if not actually defining, the second characteristic that now distinguishes infill projects from other types of development: The emphasis that is placed on relating the new design to the existing, surrounding context.

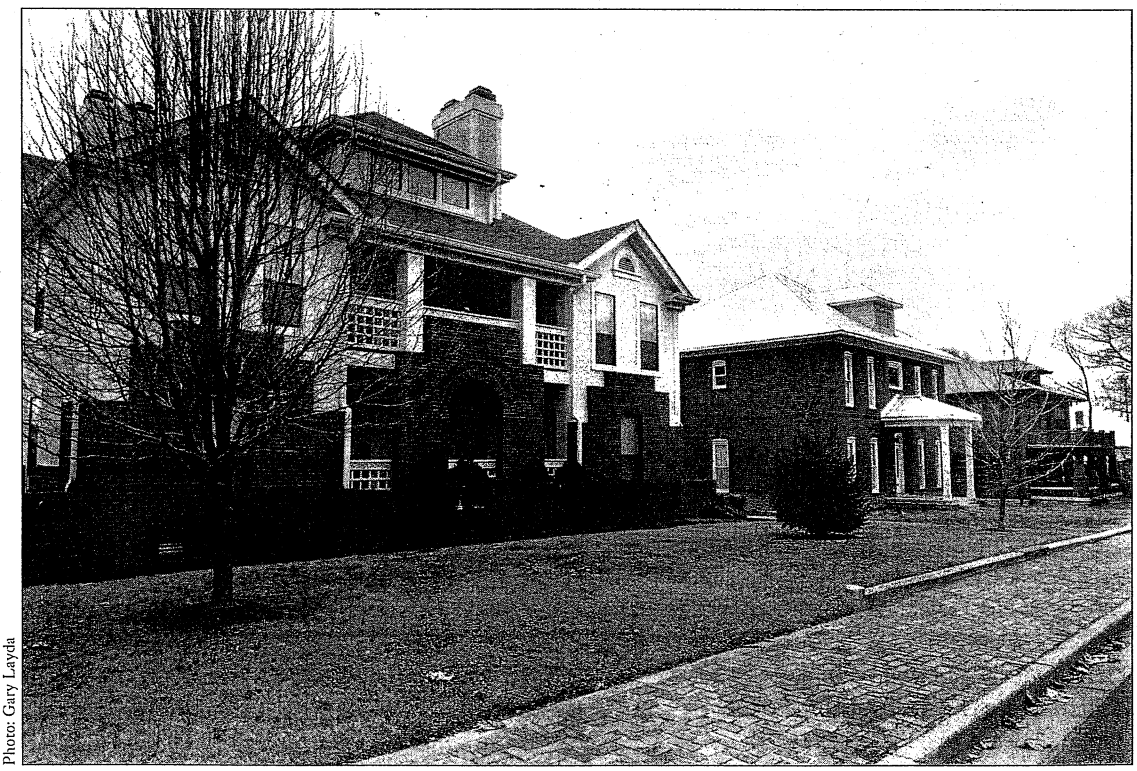


Photo: Gary Layda

*Streetscape showing infill housing in the Edgefield Historic District in Nashville, Tenn. In the foreground is one of three structures completed in 1987 as part of the Russell Street Commons; in the center is the Napier house, 941 Russell Street, completed in 1997; and in the background is 943 Russell Street, an early 20th century residence. Photograph taken 1998.*

National Trust for Historic Preservation

*A typical streetscape in the Edgefield Historic District exhibits a variety of building types and periods. Photograph taken 1988.*

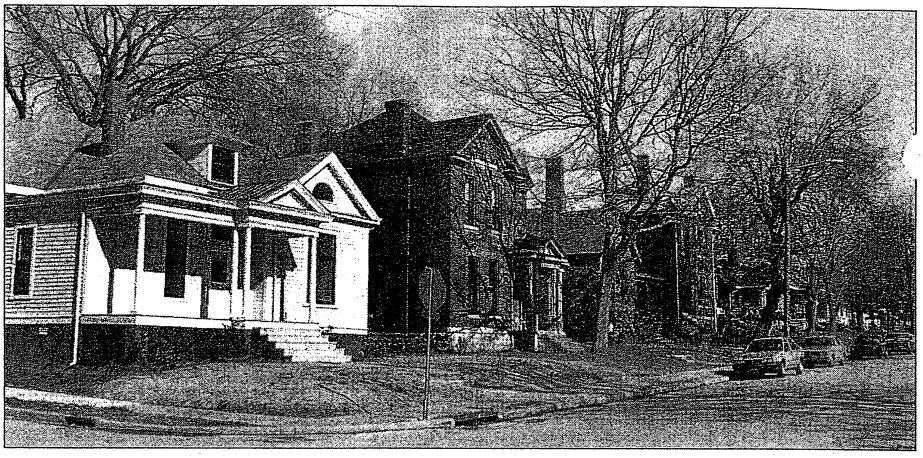


Photo: Ellen Beasley

Certainly, design has always been a major consideration for infill projects in historic areas.

Since this *Information* booklet was first published in 1988 and reprinted in 1992, infill projects in older neighborhoods, especially in locally designated historic districts, have become less contentious for which there are several reasons. Preservation programs have existed long enough for communities to witness a stabilization and gradual rise in property values in many older neighborhoods. The economics in many of these neighborhoods now encourage the construction of single-family dwellings and small multi-unit residential buildings whereas, not so many years ago, high density development was perceived as the only financially feasible answer to new construction.

A general consensus has evolved regarding what defines an appropriate or successful new design for infill projects in older areas. This consensus often verges on direct replication, a solution that does indeed reduce controversy although it may not produce the most creative design.

Of course, the interpretation of what constitutes a "successful" design can vary according to the context. For neighborhoods characterized by heavy demolition and deterioration, the construction of any new housing may be a victory, regardless of design. In neighborhoods where the housing stock is intact and there are few vacant lots, design may be the paramount concern. Unquestionably, however, neighborhood residents at all economic levels have become more demanding regarding the design and construction quality of infill projects.

Small-scale infill housing projects in older residential neighborhoods, the specific subject of this *Information* booklet, are built by a variety of groups for different reasons:

- Members of a neighborhood group want to ensure residential, rather than commercial, construction and buy a vacant lot to control development.
- A private developer sees an opportunity for profit.
- An individual home owner is attracted by an urban historic district, but wants a new house.
- A preservation group wants to demonstrate the feasibility of designing and constructing a compatible infill project.
- A local housing authority needs to provide affordable housing units and upgrade a deteriorating neighborhood.
- A city wants to put vacant land back on the tax rolls.

As was true in 1988, potential developers for residential infill projects in historic areas do not fit a single description. There has been, however, a growing interest among nonprofit organizations in controlling the development and design of infill construction. As a result, more and more infill projects have become joint ventures between the public and private sectors, and for-profit and nonprofit groups and individuals.

Neighborhood and preservation groups may take part in such projects by purchasing vacant lots, pursuing sympathetic developers, joining the development team, or participating in the design review process. The city and the neighborhood may take an active role in encouraging infill development or become developers themselves through a local housing authority or development corporation. These collaborative efforts among diverse groups that have traditionally been adversaries can be helpful in obtaining both financial commitments and design acceptance for infill projects. It also means that all participants share an understanding of what the design and development processes require in order to achieve the common objective of building new housing compatible with an older neighborhood.

## *Understanding the Infill Development Process*

The development process itself has not changed since this booklet was first printed. Successful residential infill projects still demand focus and definition. Seeing such projects through to completion is not for the poorly organized or faint of heart. Experience may not be a prerequisite, but determination and purpose certainly are.

Many factors influence the choices and decisions made in the course of infill development and construction. Among them are

- program and budget for the project,
- ability of the developer to guide the project,
- skill of both the designer and the builder,
- level of support for project goals by all participants, and
- each party's understanding of its role and responsibilities.

This discussion focuses on the preconstruction phase of the infill process. The developer could be an individual, an organization, or a public-private joint venture.

**Defining the Goals**

The potential developer must be prepared to answer several basic questions at the outset of any infill project. Most important, what is the primary goal of the project? Is it to control development? To clean up the area? To provide housing? To make money? To stabilize the neighborhood? To control design? Or, perhaps, all of the above?

The next question is whether the developer is able to administer and finance the project. If not, can the developer get the help needed? A neighborhood organization in an established historic district may conclude, for example, that it can best control design by buying vacant lots and reselling them with deed restrictions, rather than actually developing the lots itself. A neighborhood group in a deteriorating area, on the other hand, might decide that the only way it can provide housing for moderate and low-income residents and stabilize the area is to become an active partner in a joint venture.

**Researching the Project Site**

Determining the feasibility of residential infill projects begins with a research trip—or, more likely, several trips—to city hall. This research should identify

- ownership, availability and condition of vacant lots in the neighborhood,
- encumbrances on potential sites,
- applicable zoning, building and design regulations, and
- incentives offered by local government to encourage new development.

Getting this information will involve visits to community development, planning, housing, tax and other departments and possibly obtaining legal and technical assistance.

The amount of easily accessible information about vacant lots may depend on where they are located. Many cities have inventoried vacant land parcels, which are often the legacy of urban renewal and demolition programs that began in the 1960s. These inventories, which should provide basic information such as lot size, ownership and encumbrances, are most likely to exist for less stable, lower-income neighborhoods where local governments are eager to encourage new development.

In fact, the local government may own many of these vacant lots, especially in deteriorating neighborhoods or urban renewal areas. Many cities hope to attract development by selling lots at below market value or by offering incentives, such as assuming the cost of site preparation, waiving water and sewer hookup fees, or offering tax abatements. Conditions may be attached to these incentives, including requirements that construction be under way within a specified period of time or that the developer be financially responsible for all infrastructure improvements, such as roads, utilities, and other public services. It is worth asking if incentives or conditions are negotiable.

The tax assessor can identify owners of privately held lots, although tax records are not always current. It is critical to establish the correct ownership and legal description of potential sites, even if it means lengthy deed

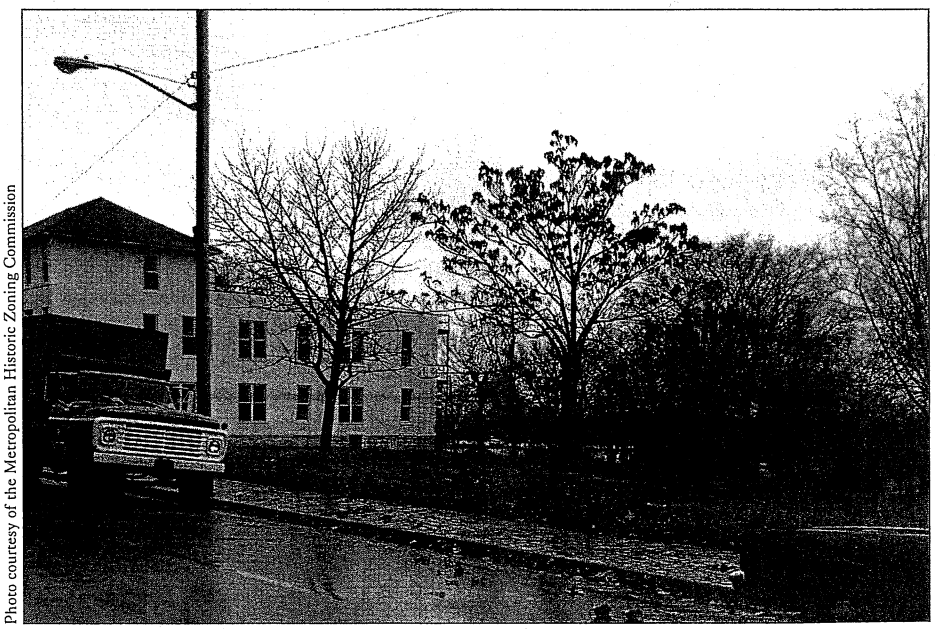


Photo courtesy of the Metropolitan Historic Zoning Commission

*Vacant lot at 935 Russell Street in Nashville's Edgefield Historic District, the site of the future Russell Street Commons. (Project 4)*

and title searches. Complications can arise with privately owned lots. Are back taxes due? Are there liens on distressed properties? Is the property in foreclosure? Even if a property is not formally for sale, the owner can be approached directly or through a real estate agent or broker to determine availability and price.

The developer should become familiar with zoning and building regulations and design guidelines, both for specific lots and the areas in which they are located. These documents define what *can* be built and what *should* be built to be compatible with the area. They will also help the developer formulate what *has* to be built to make the project economically feasible. Information on regulatory and review procedures, such as public hearing requirements and schedules for obtaining project approvals, can be obtained from the planning department.

The public utilities department and private utility companies—gas, telephone, electric—can provide information about existing infrastructure and utilities on the proposed site. Site clearance or new installations may not be required, but both can be expensive surprises if not anticipated.

At this point, the developer has the following information about the proposed project site:

- availability and cost of vacant lots,
- requirements for basic site preparation,
- zoning and design guidelines that define what can be built, and
- a reasonable project timetable that takes into account the required regulatory and inspection processes.

As an added benefit, the research effort provides an opportunity to become acquainted with key city hall staff who can help expedite the development and design processes.

**Understanding the Market and the Neighborhood**

The viability of the real estate market and the interests of local residents are crucial to the success of any infill housing project in an older neighborhood. The developer should research both in the early stages of the project.

The goal of an infill project influences the extent to which market research is necessary. A developer planning to sell or rent units on the open market, for example, needs to identify the potential pool of buyers or tenants. A local housing authority that is building single-family housing for first-time home owners currently renting in housing projects knows the client group before the project takes shape. Market research in such a case would mean determining the number of current tenants eligible to buy the new units.

Although developers of small-scale residential infill projects may rely on instinct to recognize an area ripe for construction, financial institutions require hard data, including current and projected property values, demographics, and zoning restrictions for the project site. To obtain this data, the developer could commission a market study, although the elaborate studies prepared for large-scale projects are usually unnecessary for small residential infill projects. Data collected for city-wide market studies often does not apply to an infill situation.

Another option would be for the developer to conduct the market research. Much of the necessary information may be readily available from the city planning department, particularly if a neighborhood planning program exists. Other resources might include real estate agents who specialize in older neighborhoods, companies that provide new employee relocation services, financial institutions sympathetic to neighborhood revitalization, and preservation organizations with active real estate programs.

The developer is now equipped with a profile of the area and of potential buyers or renters, a summary of recent real estate activity in the area, and an outline of both the type and price of units considered feasible for new development in the proposed location.

At this point, discussions of the proposed project with representatives of the neighborhood association and other individuals familiar with the area are in order to ensure that the developer's goals are compatible with neighborhood interests. These individuals might include the city staff person for neighborhood programs or the design review commission, the neighborhood liaison of the local preservation organization, and a recognized community leader, such as the minister of a neighborhood church.

**Structuring the Development Team and Obtaining Financing**

While background information is being collected, the developer should investigate the organizational structure that can best support the proposed infill project and potential sources of financing. An individual developer may conclude that an independent, for-profit business is the most desirable arrangement, especially if financing can be secured through conventional lending institutions at a reasonable interest rate.

More and more infill projects are being developed by varied combinations of public and private, for-profit and nonprofit interests, such as a private developer and a neighborhood association. The form a development team takes is often influenced by the availability of funding—particularly if public funds are involved. The common bond among partners, however, has to be more than money; it must include compatible philosophies and goals. The partnership must also be based on sound legal and tax counsel.

The possibility of sustained involvement in the infill project is another consideration in establishing the legal and organizational structure of the

development team. Will the team be responsible for long-term maintenance or management of the project? How many and what kind of staff will be required to plan and build the project? To manage and maintain it? Does the team plan to develop more than one project?

There are as many ways to arrange financing as there are to organize the development team. The first places to look are conventional lenders with a history of financing projects in older neighborhoods and municipal departments, such as housing or community development. Government funding for housing programs exists at the local, state, and federal levels.

**Writing a Project Program**

The project program is written when the basic research is complete, the developer's organization is in place, and initial discussions have been held with neighborhood representatives and other involved parties. Although the project program need not be lengthy and its contents can vary, it should always include the following:

- goals of the project,
- members of the development team and their credentials,
- estimated budget,
- potential market,
- physical description of the proposed project, including building type(s) and proposed number and size of units,
- design and zoning parameters, and
- special considerations, such as the historic character of the surrounding area or topographical features.

The project program is a public document that can be used in many ways: to approach financial institutions and other funding sources; to make presentations to local government agencies; to initiate discussions with neighborhood groups; to prepare Requests for Proposals (RFPs); and as a constant reference for the development team itself. The publicly distributed version of a private developer's program usually omits financial information.

Again, the developer should touch base with neighborhood representatives and others who will be involved in the development and design processes before the program document is finalized.

**Selecting an Architect**

The choice of an architect is critical to the success of an infill project in a historic neighborhood. If an architect is not already part of the team, the developer needs to select one. This process varies and may be influenced by the requirements of funding sources. Projects receiving public funds, for instance, are often required to solicit proposals from a number of firms, following a prescribed selection process. If the project is funded privately, the developer will often choose an architect with whom he or she has already worked. If the development team consists of representatives from several different groups, a committee may be appointed to make the decision. The selection process should be made clear to all prospective participants at the outset.

Design *ability* is only one consideration in selecting an architect. The design *philosophies* of the developer and the architect should also be compatible. It would be difficult, for example, to reconcile the approach of an architect who abhors imitative design to the plan of a developer who has precisely that in mind. The design process works best, therefore, when selection is based on the architect's sensitivity to the goals of the project and the special characteristics of the location, rather than on any preconceived notions of appropriate design. The architect's work on previous infill projects, as well as the ability to adhere to a schedule and to operate within budgetary constraints, are other important factors to consider.

The architect must be able to explain the design to a variety of audiences. In addition to regular meetings with the developer, the architect may be asked to make presentations to a neighborhood association and a design review commission. The architect also needs to develop a rapport with future residents if they are directly involved in the design and planning of the project. Further, the ability to work with local government representatives is essential if the architect is charged with clearing the project through regulatory and permit requirements.

During the selection interviews, the decision-making process for planning and design should be clearly explained to the architect. Who will review and approve plans and drawings? One person or a committee? How accessible will they be? Does one person have the authority to speak for the group? Will the arrangement change once construction is under way? What is the architect's role during the construction phase?

**Designing the Project**

The final design of an infill project in an older neighborhood results from the interaction of many different factors and personalities. The design must satisfy the developer, neighborhood residents, the architect and, in many cases, a preservation commission. It must meet zoning and other regulatory requirements, as well as the constraints of the project budget.

Before design work begins, the architect and developer should meet with representatives of both the neighborhood and the preservation commission. The neighborhood group discussion should deal with the relationship between design and economics and the schedule for the design process. The parties should decide how and when the neighborhood group will comment on the design. The architect may want to use drawings from previous projects to explain the phases of the design process and to illustrate the differences between conceptual, working, and finished drawings. The discussion at this and subsequent meetings should be recorded.

The design process begins with an in-depth analysis of the project site and its surrounding neighborhood. General design guidelines may exist

for the area, but are not likely to include a block-by-block analysis. The architect's conceptual design will consist of a series of drawings that focus on mass, scale, placement, and zoning constraints, such as density and parking. At this stage the drawings will not show architectural details.

The developer is the first to view the conceptual drawings. Once the developer is satisfied, the architect will show the drawings to municipal planning, building and utility departments to ascertain that the concept complies with zoning and building regulations. At this point, the drawings are also shown to interested neighborhood groups. For major projects, the preservation commission may require a preliminary review of conceptual plans.

After an agreement has been reached on the general direction of the design, the architect proceeds with the working drawings and calculates estimated costs to determine if design, budget, and program remain compatible. During this phase, the architect and developer should communicate regularly with neighborhood representatives. After it is finalized, the site plan is submitted as quickly as possible to the appropriate city department for approval, especially if zoning variances (such as changes in parking requirements or setback restrictions) are necessary. Denial of a variance can drastically alter both the design and budget of the project.

Reaching consensus on the final design is a challenging task. Balancing design and budget limitations with the expectations of the developer, the neighborhood and the preservation commission can be difficult. Differences of opinion are to be expected. Throughout the design process, therefore, it is imperative that there be continuous communication among all parties, that the established review and approval process be followed and that the goals of the project be emphasized repeatedly.

**Beginning Construction**

Once the final drawings are approved, the required public hearings and reviews held, the financing arranged, and the site prepared, construction can begin.

The mechanism for formal, regular review of the work in progress should be clear. Nothing is more frustrating—or costly—than having to halt construction in midstream or undo work already done. Trees or other features that are to be saved should be marked on the site plan. Any general site improvements, such as utility installations, sidewalks, curb cuts and alleys, should be included in the construction schedule.

How a contractor is selected depends on several factors. If construction is publicly financed, bids from several contractors will probably be required. A contractor's references should be checked carefully and previous construction projects inspected. The architect might recommend a contractor. Some developers operate their own construction firms, as do some public agencies, such as local housing authorities. While not always possible, finding a contractor with infill experience is also a plus.

**Making the Process Work**

Whether there is a formal groundbreaking ceremony or simply the arrival of a backhoe and work crew one morning, the start of construction on an infill site is the culmination of many people's efforts. Successful infill projects result from well-defined goals and the willingness of various participants to work together to achieve those goals. Economic necessity is often the primary motivation that encourages cooperation among diverse groups and the establishment of joint-venture development teams. These collaborations, formal and informal, also promote communication and understanding.

- The developer must deal directly with neighborhood concerns and fears.
- Residents realize that some choices have to be made between aesthetics and economics.
- Public officials and employees learn that neighborhood residents care about design quality.
- The architect must work with the community to receive design approval.
- Financial institutions broaden their community commitment.

Developing an infill project can be a lengthy process, but given the lasting economic, social, and visual impact this type of construction can have on a neighborhood or community, it is not a process that can or should be hastily concluded. The result is a tangible product—one or more buildings—but it is the interaction of people—an intangible—that makes the process work.

## Types of Infill Construction

Residential infill projects can take any of the following forms:

- single-family dwellings,
- duplexes,
- multiple units, such as row houses or apartment complexes,
- alternative housing, such as shared housing,
- detached secondary units, such as rear houses, garages or apartments, or
- attached accessory units (additions).

The feasibility of a particular building type on a given infill site is determined by zoning restrictions, lot size, budget and design considerations.

Construction methods for residential infill projects can include the following:

- site-built,
- factory-built,
- a combination of factory and onsite construction,
- movable structures, such as modular or mobile homes, and
- relocation of existing buildings.

Local and state building codes influence acceptable construction methods.

## Options for Participation by Neighborhood Groups

Neighborhood organizations can participate in the development and design of infill projects in a variety of ways.

- Communicate regularly with local government staff about building and demolition permits and zoning changes in the neighborhood, and with the preservation commission about applications for design review.
- Work with public planning staff to identify qualities that distinguish the neighborhood and that should be respected and enhanced by new development.
- Cooperate with public planning staff in writing and periodically reviewing a neighborhood plan.
- Send representatives to public meetings at which neighborhood development and planning are discussed, e.g., planning commission, preservation commission, zoning board of adjustment and city council meetings.
- Recommend appointment of informed, articulate and reasonable neighborhood residents to appropriate public bodies and committees, such as the planning commission, the preservation commission and neighborhood task forces.
- Stay informed about property transfers in the neighborhood and initiate early dialogue with purchasers and developers of vacant lots.
- Inventory vacant lots in the neighborhood, research zoning and ownership and define development potential.
- Maintain open and constructive communication with the developer throughout the course of designing and building an infill project.
- Acquire vacant lots and actively pursue their sale to selected developers with restrictions such as easements or design review requirements for proposed projects.
- Become developers either by creating a development corporation or participating in a joint venture with a private developer who has experience in infill projects.

## Benefits of Cooperation

Many benefits can result from cooperation and communication between the neighborhood group and the developer of an infill project.

- Developing an awareness and understanding of each other's goals and interests.
- Identifying shared goals and ways to achieve them.
- Creating a defined procedure for neighborhood involvement and review.
- Minimizing surprises and misunderstandings during the planning and construction of an infill project.
- Obtaining financing and zoning variances.
- Promoting positive media coverage for the neighborhood and the developer.

Ultimately, cooperation may foster the creation of a joint venture, drawing upon the skills and strengths of both parties.

# DEVELOPING A MATERIALS EVALUATION METHODOLOGY, PART I

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*The following article expands upon the Working Roundtable* "Developing a Materials Evaluation Methodology" *conducted during the NAPC's 2008 National Commission Forum hosted in New Orleans, Louisiana. The Forum session responded to requests from commissions to address alternative materials. During the session, the conversation expanded to new products embracing the ambitions of sustainable design. This article examines and integrates these twin themes in two installments; the article will conclude in the November/December issue of T*he Alliance Review. *It is hoped that these thoughts will assist a policy discussion at your commission's next retreat.*

We continue to live in an era of increasingly rapid technological change, and the building sciences are seeing their share of evolution and innovation. The application of technical and chemical research principles in the development of various building systems has yielded many bene f ts, such as the remarkable advances during the past 15 years in construction joint caulk and sealant capabilities, and specialized industrial coatings. Critical to the successful use of these products is a thorough understanding of the purposes for which they were developed, their properties, their relationships to other components of a building system, and limitations on appropriate application.

Preservation commissions are continually asked to consider replacement materials and techniques. When the marketing power of product manufacturers is compared to the educational capacity of commissions, it is no wonder that these requests test the commission's ability to evaluate them. Commonly, there are multiple parameters that commissions are asked to address, notably:

- Changes in availability and technology: the historic material is not as common nor of the quality that it was when used to construct resources, e.g. cedar shingle roo f ng, fast-growth farm-produced wood, or terra cotta decorative details;
- Vanishing trades: there are few or no local crafts persons that can work with the historic material, or alternatively, the local building industry is trained in and will only warrant the use of the new materials and techniques;
- Ease of maintenance: new materials are purported to be more durable than original materials;
- Cost: like material of equivalent quality is believed to be economically infeasible, leading to the utilization of less expensive materials as a substitute material during the repair or replacing of original fabric;
- Sustainability: the development of materials or systems that support the ambition of sustainable development, i.e. photovoltaic solar panels.

The use of modern materials on historic buildings has long been a subject of debate, and the literature is full of cautions toward their application. While publications do offer advice and assistance, little guidance is provided to local

**_Preservation Brief 16:_ The Use of Substitute Materials on Historic Building Exteriors**

*Preservation Briefs* are technical assistance guides produced by the Technical Preservation Services division of the National Park Service. Initiated in 1975, there are currently 47 briefs that cover a vast range of preservation and restoration topics. Preservation Brief 16, released in 1988, covers the use of substitute materials on historic buildings, and is another resource available to local commissions when reviewing these types of proposals on designated properties.

Preservation Brief 16 emphasizes that substitute materials should only be used when all repair or restoration alternatives have been explored. When considering the appropriateness of a substitute material, a "thorough investigation" should be carried out to determine its durability, compatibility, and physical properties. It further suggests that the consideration of substitute materials should be based on the unavailability of historic materials and craftsmen, f aws in the original materials, and code compliance. Cost factors can vary depending on the area of the country, the amount of material needed, and the projected life cycle of the material.

The brief does not go into detail on common small-scale residential projects such as the installation of vinyl siding and replacement windows, noting the greater availability of in-kind materials and restoration solutions for these types of propos-

*Continued on next page*

preservation commissions to guide their thoughtful evaluation of such materials and products. As a result, they often find themselves struggling to strike a balance between the preservation industry's standards and local community standards and policies.

Since it is inevitable that commissions will continue to receive proposals for new materials and products, utilizing an evaluation methodology can help a commission when facing such requests. It will also improve community perception of the commission's work when citizens observe a thoughtful review taking place in a predictable manner, which will reduce claims of dogmatic refusal without analysis, or concerns of arbitrary and capricious decision-making.

**Starting with the Standards**

Many communities have adopted *The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Building (Standards)* for use by the local commission as their design review guidelines; some have local guidelines that are based upon the *Standards.* Given the *Standards'* common usage and long history of development, they are a logical place to start in providing the underpinnings for an evaluation methodology.

Among the ten standards, the four cited below most directly address the issues related to alternative or replacement materials. The authors have recast them into "action paraphrases" that distill the guidance to be applied to our task:

2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterizes a property shall be avoided.
   **Avoid…altering features…that characterize a property.**

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
   **Preserve distinctive features…that characterize a historic property.**

6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
   **Replacement features…shall match…in design, color, texture,…visual qualities and, where possible, materials…. Substantiate [with] evidence.**

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the his-

als. However, the points listed in determining the appropriateness of a substitute material can be instructive for local commissions which are regularly reviewing proposals for purported "maintenance-free" products such as engineered siding or trim. "Green" and energy-efficiency issues are also not addressed in the brief, although there is an emphasis on determining the performance expectations and sustainability of a proposed substitute material. In sum, the message is clear in Preservation Brief 16 that the restoration and repair of original materials is always the preferred option.

All Preservation Briefs are viewable online at the National Park Service's website: *http://www.nps.gov/history/hps/TPS/briefs/presbhom.htm*

toric integrity of the property and its environment.

> **Do not destroy historic materials…when constructing… exterior alterations. Differentiate the new work from the old and…protect…historic integrity…by requiring…compatible…architectural features.**

**Rehabilitation** is def ned as "the process of returning a property to a state of utility, through repair or alteration, which makes possible an eff cient contemporary use while preserving those portions and features of the property which are signif cant to its historic, architectural, and cultural values."

It is important to recognize that these are not the standards for Preservation or Restoration treatments. Rehabilitation provides additional latitude. The *Standards* are introduced with the def nition of rehabilitation as "the process of returning a property to a state of utility…." The *Standards* further note that they "are to be applied in a reasonable manner, taking into consideration economic and technical feasibility."

**The Goals of Integrity and Authenticity**

The National Park Service acknowledges the authenticity of a resource as its paradigm. The introduction to the *Standards* explains that "the treatment 'rehabilitation' assumes that at least some repair or alteration of the historic building will be needed in order to provide for an ef f cient contemporary use; however, these repairs and alterations must not damage or destroy materials, features, or f nishes that are important in de f ning the building's historic character." When adopting the *Standards*, a local government embraces this philosophy as a policy statement.

It is, however, a dif f cult policy to apply. The preservation commission is the unit of local government that is called upon to implement this policy. It is important for local commissions to recognize that the *Standards* were created to serve specif c federal uses. "Initially developed by the Secretary of the Interior to determine the appropriateness of proposed project work on registered properties within the Historic Preservation Fund grant-in-aid program, the *Standards for Rehabilitation* have been widely used over the years—particularly to determine if a rehabilitation quali f es as a Certi f ed Rehabilitation for Federal tax purposes." [*http://www.nps.gov/history/hps/tps/tax/rhb/stand.htm*]

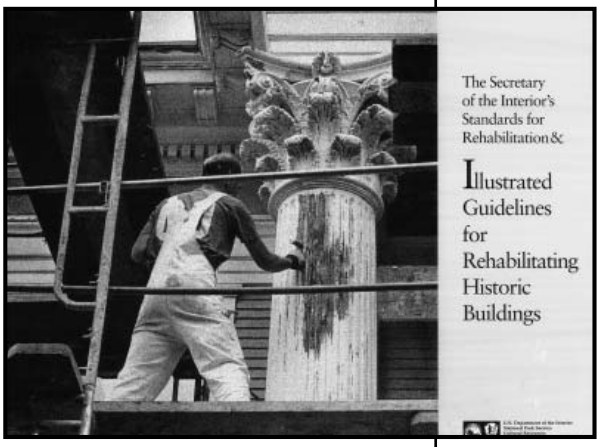
The commission, on the other hand, must be responsive to the local community's culture of regulation and enforcement, and the "will of the citizenry." The *Standards* cannot be applied by the commission in a vacuum detached from the local context, nor does the National Park Service suggest that they should be: "The *Standards* are neither technical nor prescriptive, but are intended to promote responsible preservation practices that help protect our Nation's irreplaceable cultural resources. For example, they cannot, in and of themselves, be used to make essential decisions about which features of the historic building should be saved and which can be changed." [*http://www.nps.gov/history/hps/tps/standguide/overview/choose_treat.htm*]

The tools commonly available to commissions are the nomination documents, design review guidelines, and the process of design review. Ideally, thorough and thoughtful documentation in each of these three areas is available to the preservation commission for guidance in performing its duties.

During the nomination process, the signi f cant features of the resource (individual or district) are identi f ed thus establishing how the resource meets the

criteria for placement on the local register. It also clarifies those features that are important to protect—that is, those elements essential to the integrity of the resource.

The design review guidelines establish the acceptable levels of change and where change can occur and do no harm to the resource. They should also address the acceptability of alternative materials—that is, where departure from original fabric can be accommodated and still retain authenticity. Because new materials and changing technology are a constant, no guidelines can provide a definitive list of acceptable choices.




The process of design review sets out the type of information necessary for a fair and informed judgment as well as the sequences for evaluating the acceptability of the material. During this process, the twin goals of rehabilitation—continued or restored utility of the resource(s) and preserving historic character—are balanced. The "trade off" between the two challenges many commissions.

**Toward An Evaluation Methodology**

A "top ten" (but unranked) list of today's recurring requests might look like this:

1. Exterior Insulation and Finish System (Dryvit and other "synthetic stucco" products)
2. Fiber-cement siding (HardiePlank and related products)
3. Metal roof systems
4. Molded fiberglass/plastic exterior trim
5. Replacement shutters
6. Replacement windows
7. Roofing shingles (synthetic slate, and the like)
8. "Spray-on Siding" e.g. Liquid Vinyl and other exterior coating systems
9. Wood/plastic composite lumber (Trex)
10. And the growing interest in sustainable design expands the list to include:
    a. Energy retrofit "packages"
    b. Green roofs
    c. Photovoltaic (solar) panels
    d. Photovoltaic shingles
    e. Wind turbines

Since every community has its own preservation ethic, no one can provide the commission with the "right answer." Moreover, today's list does not look like 1995's list, and it is unlikely to look like 2025's list. While commissions often look to each other for examples of how to address difficult issues, in the long term, we are better served by developing the capability to make well-informed decisions about these products as opposed to polling each other for pat answers. Each commission ultimately has the charge to find the best answer for its local circumstances.

**The Secretary of the Interior's Standards for the Treatment of Historic Properties**

The *Secretary of the Interior's Standards for the Treatment of Historic Properties* are common-sense principles in non-technical language. They were developed to help protect our nation's irreplaceable cultural resources by promoting consistent preservation practices.

The *Standards* may be applied to all properties listed in the National Register of Historic Places: buildings, sites, structures, objects, and districts.

The *Standards* are a series of concepts about maintaining, repairing and replacing historic materials, as well as designing new additions or making alterations. They cannot, in and of themselves, be used to make decisions about which features of a historic property should be preserved and which might be changed. But once an appropriate treatment is selected, the Standards provide philosophical consistency to the work.

There are *Standards* for four distinct, but interrelated, approaches to the treatment of historic properties: preservation, rehabilitation, restoration, and reconstruction.

**Preservation** focuses on the maintenance and repair of existing historic materials and retention of a property's form as it has evolved over time. (Protection and stabilization have now been consolidated under this treatment.)

*Continued on next page*

**Rehabilitation** acknowledges the need to alter or add to a historic property to meet continuing or changing uses while retaining the property's historic character.

**Restoration** depicts a property at a particular period of time in its history, while removing evidence of other periods.

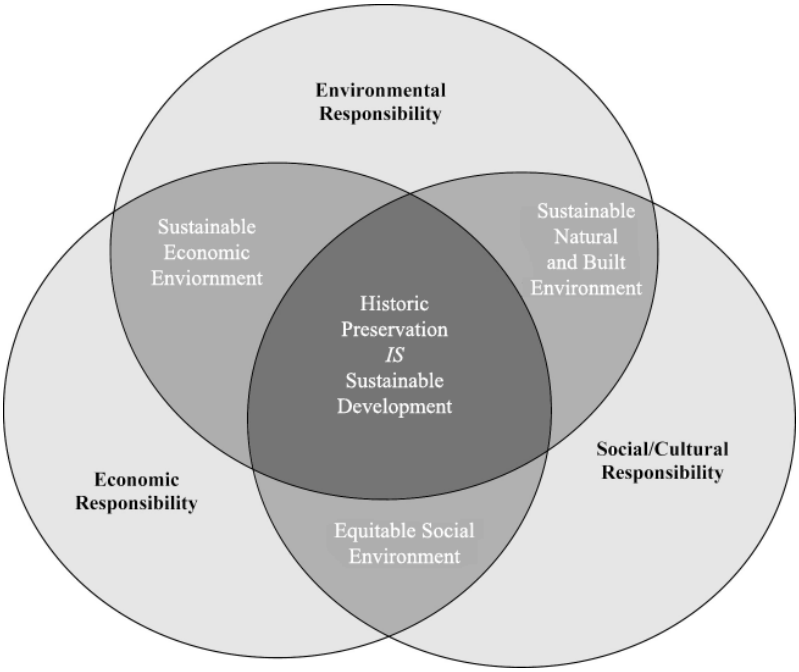
**Reconstruction** re-creates vanished or non-surviving portions of a property for interpretive purposes.

Source: *http://www.nps.gov/history/HPS/TPS/standards_guidelines.htm*

Thus, the commission's decision will come down to finding a community-appropriate balance among a wide array of valid concerns, some of which may stand in opposition to others. What is proposed, then, is a framework for commissions to organize the questions to be asked and to provide a means for weighing and balancing multiple objectives.

**A Sustainability Framework for Balanced Decision-Making**

True sustainability is much more than energy efficiency or various green rating systems for building construction, such as LEED (Leadership in Energy and Environmental Design). The "Three Pillars" framework for sustainability has three primary considerations to produce sustainable outcomes: economic, environmental, and social/cultural. Each of the pillars must be given proper weight to achieve a balanced result.




*The three pillars of sustainability—environmental, economic, and social/cultural responsibility—combine to ensure sustainable development.*

The trend is clear that we, as a global community, are moving toward a new decision-making paradigm—one that embraces these broader sustainability criteria as an umbrella under which individual decisions in a wide range of pursuits should be evaluated. With this background as our context, the next installment of this article will propose a means by which the framework of sustainability can be applied to the decision-making process when considering alternative materials and/or systems promoting sustainable design.

# A SUSTAINABILITY FRAMEWORK FOR THE LOCAL CONSIDERATION OF ALTERNATIVE OR SUBSTITUTE MATERIALS – PART II

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*This article builds upon the Working Roundtable,* "Developing a Materials Evaluation Methodology," *conducted during the NAPC's 2008 National Commission Forum hosted in New Orleans, Louisiana. The Forum session responded to requests from commissions to address alternative materials. During the session, the conversation expanded to new products embracing the ambitions of sustainable design. This article examines and integrates these twin themes in two installments; Part I appeared in the July-August issue of* The Alliance Review, *and this installment concludes the article.*

While this article focuses upon the evaluation of substitute materials, it is worth re-emphasizing at the outset that **the most sustainable practice remains the recommended preservation treatment approach of repairing and reusing existing historic fabric. Only after the commission determines by careful evaluation that the existing material cannot be repaired should replacement or substitute materials be considered.** The core treatments for historic preservation outlined in *The Secretary of Interior's Standards* are demonstrably sustainable practices. The premise of this article is that preservation practitioners must take heed as sustainability concepts become increasingly mainstream. The authors believe that in the coming years, sustainability principles will become the language of decision-making in a broad array of human enterprises, including the preservation field. In particular, when considering **changes** to historic resources or materials, preservationists have a choice of mindset: we can "defend" our standards in the face of sustainability arguments (which the authors contend will be a "no-win" scenario), or we can use our standards to lead the way toward more sustainable outcomes. As the decision-making precepts broaden, so too then must our response to them. **We hope that the ideas presented here can be carefully explored by commissions in a retreat setting as part of the commission's natural growth and evolution responding to a changing world.**

Readers of the July/August issue of *The Alliance Review* will recall that Part I of this article begins with a summary of the challenges that local preservation commissions face from applicant requests for alternative materials. It then:

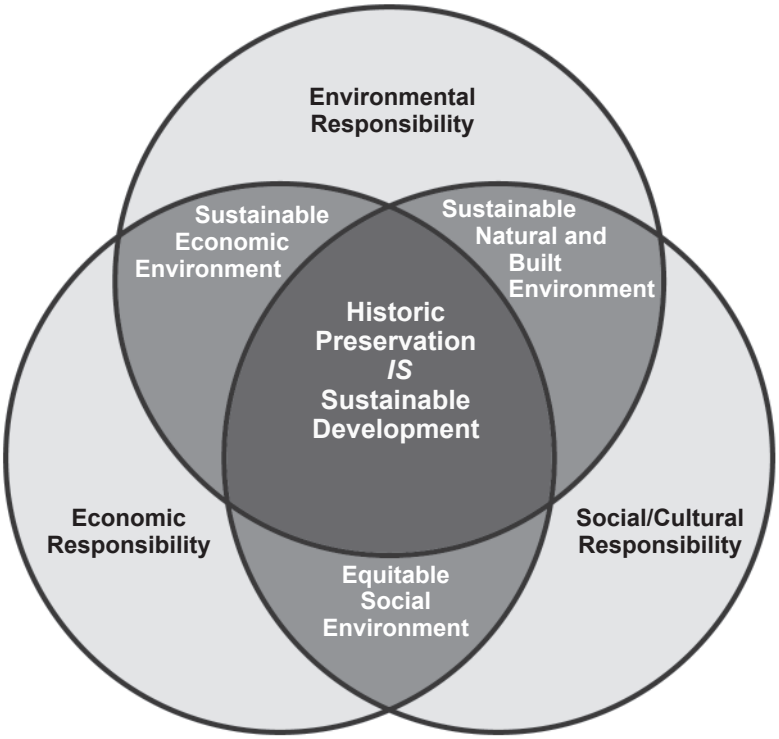
- examines *The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* as they apply to this issue;
- discusses the goals of integrity and authenticity and their implications for public policy at the local level in the process of design review;
- suggests that because the preservation ethic varies from community to community that commissions are better served by developing the capability to make well-informed decisions regarding new materials and products that reflect community values.

The conclusion of Part I introduces a conceptual framework for balanced decision-making at the local level utilizing sustainability principles in the evaluation of alternative materials for historic resources. Part II, beginning below, explores how this framework might be applied, and the final section challenges us to expand our leadership role within our communities by embracing this broader paradigm of decision-making.

**A Sustainability Framework for Balanced Decision-Making**

True sustainability is more than just environmental "green" sustainability. The "Three Pillars" framework for sustainability has three primary considerations to produce sustainable outcomes: social/cultural, environmental, and economic. Each of the pillars must be given proper weight in order to achieve a balanced result.

There is a rational nexus for applying sustainability principles to the evaluation of alternative or substitute materials that underlies the design review work that preservation commissions undertake. A commission's ordinance defines its powers and duties. Commissions commonly understand that their decisions have **economic** consequences. Their efforts stimulate the local economy and enhance the value of real estate. **Environmental** considerations flow from stewardship provisions of ordinances for the conservation of the built environment. This yields reduced pressure on further consumption of the natural environment and reduced expenditure of energy resources for materials manufacture, shipping, and new construction activities. The *Standards* provide the basis for responsible evaluation of the **social/cultural** aspects of projects upon heritage values, including the effect of substitute materials. It is from an awareness of local community standards that the commission determines the appropriate weighting for each of the three elements to achieve a balanced decision.




The following discussion of the three areas of sustainability offers a list of considerations that might be evaluated in examining proposals for alternative materials and systems. While the list is thorough, it is not presented as exhaustive; each community must respond to its own local requirements. It is intended to offer a starting point for the local commission to establish its own lines of inquiry to engage the emerging issue of sustainability during its decision-making process. It should also be noted that while the list is organized to place the various considerations where they seem to have primary relevance, they may also have secondary relevance in other areas.

**Social/Cultural Considerations**

Commissions commonly utilize the *Standards* as the basis for design review. The following four guidelines from the *Standards* (as recast into "action paraphrases" in Part I of this article) offer the most direct guidance when evaluating alternative materials or systems. Boldface terms appear in the table that follows the list.

*SOI* Standard number 2: Avoid altering features that characterize a property.

What does the designation documentation state regarding **property significance?**
— landmark, contributing to a district, non-contributing
— architecture, historic event

Where is the **location** of the feature?
— primary structure, primary or secondary façade
— historic addition, non-historic addition, accessory structures

Which are the **distinctive features**?
— architectural details, siding, massing, space

What is the **visibility** of the feature?
— close, far, public setting, within property

*SOI* Standard number 5: Preserve distinctive features that characterize a historic property.
Is there a **condition assessment** that evaluates the historic fabric?
— credible, complete, clear
Does the assessment support preservation of the feature?
— preservability, **repairability**
Are there **local trades** persons who are skilled in preservation practices?

*SOI* Standard number 6: Replacement features shall match in design, color, texture, visual qualities and, where possible, materials. Substantiate with evidence.
What are the **visual qualifications** of the character defining features?
— design, color, texture, *et. al*.
What is the **resemblance** of the proposed substitution to the feature?
— identical, passable, poor
— fabrication/installation details
Is the substantiating **documentation** credible?
— ASTM Standards for performances, manufacturer's test data
Is the **in-situ sample** offered for inspection reliable?
— length of time, weather, fabrication, material quality, representative of field construction capabilities
What is the **compatibility** of the alternative material with the historic fabric
— coefficient of expansion, electrolysis

*SOI* Standard number 9: Do not destroy historic materials when constructing exterior alterations. Differentiate the new work from the old and protect historic integrity by requiring compatible architectural features.
Can **modern design materials** and methods be employed?
— additions and new construction of modern design
— compatibility, differentiation
With what **design elements** should the substitute material be compatible?
— massing, size, scale
— architectural features
— integrity of the property
— environment
What is the **visual effect** on the resource?
— overwhelming, supportive, compatible
— character-defining features? (e.g. a solar collector that covers patterned slates)
— character-defining design qualities? (e.g. a solar collector that is placed on the primary façade's roof slope)
Does the new work have a significant **historic fabric impact**?
— alteration, removal to accommodate installation
What is the **reversibility** of the new work?
— restoration of resource to its earlier configuration
— failure of untested material or design

This set of questions is neither exhaustive nor germaine to all communities. But they can form a core for deliberation during your retreat.

**Environmental Considerations**
Many communities are adopting policies and enacting legislation to implement a variety of climate change protocols, energy standards, and environmental initiatives, often under the rubric of sustainability. For commissions to act in concert with these actions, commission decision-

making should support key components of these policies. As we receive requests to approve applications proposing alternative materials or systems, we tocan expect to increasingly be called upon to consider these physical characteristics as well as the energy consumed if a certificate of appropriateness is granted.

**Durability**:
If new to marketplace with no track record is any ATSM accelerated aging test data available?
Is today's fast-growth wood farm product vs. old-growth wood really a "like" material?

**Embodied energy:**
What is the energy of production that exists in the manufactured/installed product?

**Energy efficiency:**
What is reduction in greenhouse gases due to less energy input?
What is reduction in required capacity of energy grid?

**Energy source:**
Is it carbon-based or renewable? Is it centralized or off-the-grid?

**Toxicity:**
What are the human health implications of the manufacture/use of the new material? (Material Safety Data Sheets (MSDS) are a good source for general composition of products when marketing materials are not forthcoming.)

**Recyclability:**
Is it possible? Is there a market? What are the energy costs of processing?

**Transport:**
What are the energy costs of shipping materials and systems to and from the building site?

**Economic Considerations**

The economic consequences of our decisions remain key to the viability of historic communities. Regardless of scale, whether it is the cost of an architectural detail, or the financial consideration of entire building systems, or determinations about a district's infrastructure, technical feasibility is tied to economic capability. We need to apply tools that more fully address both considerations.

**Cost/benefit analysis:**
Is it an expense or an investment?

**Life-cycle analysis:**
What are the costs per year of anticipated life span of alternative materials?

**Maintenance cycles:**
Is it reasonable to expect that the maintenance requirements of modern versions of traditional materials can be adhered to by the property owner? Can one really expect to keep all joints caulked and painted all the time on fast growth wood, etc.?

**Labor:**
What are the jobs created per unit of project cost?

**Erection:**
What is the complexity/scale of material/system installation.

**Proximity:**
How close is the harvest/manufacture/assembly of the material to the building site?
What is the monetary value of recycling of local dollars in local economy?

The following table graphically presents a consolidation of this information in summary form showing relationships among the evaluation flow chain, inquiry considerations, and sustainability considerations.

| Matrix for Evaluation of Alternative Materials and/or Systems | | Sustainability Considerations | | |
|---|---|---|---|---|
| Evaluation Flow Chain | SOI Considerations | Social/Cultural Responsibility (Secretary of Interior's Standards -- SOI) | Environmental Responsibility (SOI technical feasibility) | Economic Responsibility (SOI technical and economic feasibility) |
| Repair existing feature? | *property significance<br>*location<br>*distinctive features<br>*visibility | SOI #2 & 5 | *durability<br>*embodied energy | *cost/benefit analysis<br>*life-cycle analysis<br>*maintenance cycles<br>*labor<br>*proximity |
| Match original design and mat'l of existing feature? | *condition assessment<br>*repairability<br>*local trades<br>*visibility | SOI #5 & 6 | *durability<br>*embodied energy<br>*energy efficiency<br>*energy source<br>*transport | *cost/benefit analysis<br>*life-cycle analysis<br>*maintenance cycles<br>*labor<br>*proximity |
| Exterior Alterations/Introduction of new material | | | | |
| Match material design & visual qualities of feature w/ alt. mat'l? | *visual characteristics<br>*resemblance<br>*documentation<br>*in-situ sample<br>*compatibility | SOI #6 | *durability<br>*embodied energy<br>*energy efficiency<br>*energy source<br>*toxicity<br>*recyclability<br>*transport | *cost/benefit analysis<br>*life-cycle analysis<br>*maintenance cycles<br>*labor<br>*proximity |
| Exterior Alterations/Introduction of new materials-features-systems | | | | |
| Introduce new non-imitative material? | *modern design materials<br>*visual effect<br>*reversibility | SOI #9 | *durability<br>*energy<br>*toxicity<br>*recyclability<br>*transport | *cost/benefit analysis<br>*life-cycle analysis<br>*maintenance cycles<br>*labor<br>*proximity |
| Introduce new feature? | *modern design materials<br>*design elements<br>*visual effect<br>*reversibility | SOI #9 | *durability<br>*energy<br>*toxicity<br>*recyclability<br>*transport | *cost/benefit analysis<br>*life-cycle analysis<br>*maintenance cycles<br>*labor<br>*proximity |
| Introduce new system? | *modern design materials<br>*design elements<br>*visual effect<br>*historic fabric impact<br>*reversibility | SOI #9 | *durability<br>*energy<br>*toxicity<br>*recyclability<br>*transport | *cost/benefit analysis<br>*life-cycle analysis<br>*maintenance cycles<br>*labor<br>*erection<br>*proximity |
| | | ← Confluence of these three columns yields SOI's "state of utility" or, looking forward to a new paradigm, "State of Sustainability." → | | |

**Applying the Sustainability Framework**
This methodology provides a structured framework for commissions to work through a flow of issues prompted by four *SOI* standards to evaluate the social/cultural impact of the proposed change, as well as assessing environmental and economic considerations. The list of considerations should not be considered exhaustive, nor should it be assumed that all issues will be present in every case.

Presuming that the gathering of evidence has provided the commission with credible data, the commission can then balance the three pillars through application of the *SOI* definitions for rehabilitation. The *Standards* provide allowance for returning a resource to a "state of utility" (or looking forward to a new decision-making paradigm, "state of sustainability") with an emphasis placed upon "reasonable manner, taking into consideration economic and technical feasibility."

Final weighting and balancing during the decision-making process will require the application of subjective judgment. Careful use of clearly-stated procedures will become increasingly important to guide the process. Once the decision is made, the evidence and discussion should be carefully documented in the record. These are precedent-setting decisions that must be able to stand up to scrutiny; the commission will also want to be able to reference its decisions in the future to ensure consistency.

Balance: historic preservation goals with functional needs
— *SOI* "state of utility";
— *SOI* "reasonable manner."
Burden of proof: upon applicant.
Competent evidence: and substantiation of claims.
Expert testimony: validation of expert's credentials.
Consultation: when expertise to evaluate evidence is not present among commission membership (e.g. SHPO, experienced trades persons, architects, etc.).

Because the trend toward this sustainability-based decision-making paradigm is in its infancy, final weighting and balancing will prove to be a difficult process in the near term. For example, there is a dearth of information available to make informed decisions about the full cradle-to-grave energy-use implications for any given material, product, or system. Without such data, how can a credible comparison be made to evaluate one item against another? Nonetheless, we have to start somewhere. As we begin to ask questions that yield data, a challenge before us is developing information systems that will allow decision-makers to share and retrieve the results of their investigations.

One probable outcome of this exercise is a predictive model that will enable revisions of your commission's design review guidelines. These guidelines will reflect more than the community's expectations regarding the cultural value of historic resources. They will also incorporate the community's attitudes regarding the economic and environmental value of historic resources. The intent is to broaden the reasoned discussions and decision-making activities of the commission.

**Mainstreaming Local Preservation Leadership**
There is no questioning the consciousness-raising impact the environmental movement has had during the past fifty years. As a society, an environmental stewardship that did not exist fifty years ago is now deeply ingrained in many aspects of government and in-

dustry. Because preservation is so inherently a sustainability practice, we have a great opportunity to recast public perception of preservation values from the "hysterical" into the holistic. But to accomplish this, as we pursue our mission-driven objectives we need to engage in some soul-searching about how we connect with our fellow citizens.

Certainly the primary responsibility of commission review of exterior changes to cultural resources applies most directly to the social/cultural aspects of sustainability. If we are not the guardians of these values, who will be? However, no longer do we have the luxury of making these evaluations in social/cultural isolation; a case can be made that preservation commissions have sometimes (frequently?) applied the *Standards* that way in the past. Preservationists get agitated when people decide to install replacement vinyl windows based upon sustainability energy/environmental factors and fail to consider our preservation cultural/social standards, but pot-kettle-black we risk agitating people with our insistence on the immutability of the *SOI*—Social/Cultural factors with no allowance for economic considerations.

We need to take to heart the flexibility provided by the *Standards* when we are applying rehabilitation treatments. Too often perhaps we confuse rehabilitation treatments with restoration or preservation treatments, and hold applicants to too high a standard. Preservationists have long debated the underpinnings of material culture in our historic resources regarding "Authenticity" versus "Integrity." Perhaps it is time to complicate matters further by bringing "Cultural Continuity" into the mix. Rehabilitation introduces the concept of human endeavor over time, suggesting a resultant imprint of current values on cultural resources. Setting aside resources of acknowledged significance that demand preservation and restoration treatments, should we be more open to the evolutionary continuum by acknowledging it, making it part of our process of evaluation, and ultimately embracing it? The social/cultural considerations of the preservation field have evolved greatly during the last 30 years; environmental and economic considerations may now need to be part of our continued progress.

Because of their years of experience, local preservation commissions are already frequently recognized as leaders in historic preservation by citizens that subscribe to preservation values. Our opportunity is to leapfrog the narrow focus of our society's awakening to "green" sustainability to take control of the holistic application of sustainability principles where places that matter meet the lives of the general public: their homes, places of business, and community common spaces. In the process commissions will become leaders in setting the dialog, educating the public, and advancing wide-ranging goals of society. We can offer ourselves a gift: the experience of being perceived by the broader citizenry not as fringe obstructionists but as mainstream leaders.

# PRESERVATION COMMISSIONS: EDUCATING THE COMMUNITY AND PUBLIC OFFICIALS

*Jo Ann Radetic, National Park Service, CLG Coordinator, Missouri SHPO*

The most important method of preserving local historic resources is public outreach and education. Citizens must be informed about **what** in their community is worth preserving, **why** it should be preserved, and **how** to preserve it. A local commission must work constantly to build and maintain public consensus on the importance of preserving local historic resources.

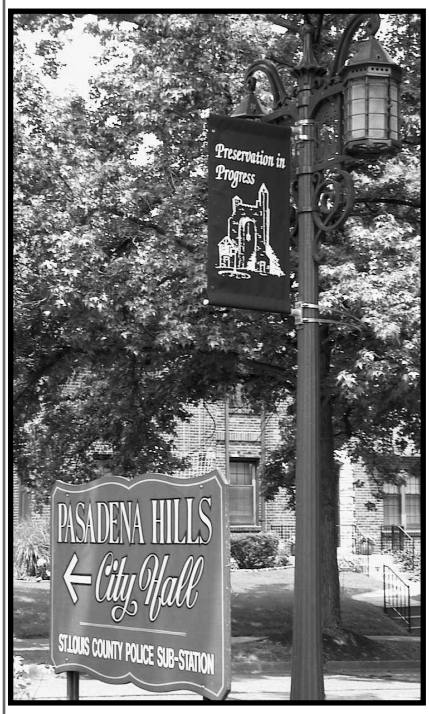
**Working within Local Government**

*Preservation Commissioners*
Before preservation commissioners begin to consider educating their community and public officials, they must first educate themselves. Even commissioners who are supported by professional preservation staff should not sit back and let the staff do their learning for them.

All commissioners should be good spokespersons for historic preservation. They must understand not only the powers and duties of the historic preservation commission, but also the "system" of the local government within which they operate. The most important thing that historic preservation commissioners should remember is that they serve at the pleasure of the local elected officials. Without some support from elected officials, the commission will not exist.

To assure that commissioners understand their role within local government, the commission should conduct an annual self-assessment and review of the local historic preservation ordinance. Review of the ordinance will help the commission set goals and evaluate the role of preservation in the community. The commissioners will also reinforce their knowledge of their responsibilities and assess the progress toward integration of historic preservation into local government's structure.

The commission should issue an annual report that summarizes their activities and accomplishments, which can be used as a tool to train new commissioners. This report should be presented at a public meeting or city council meeting and should be distributed to the city's elected officials, staff, and to the media.




Historic preservation public outreach effort by the City of Pasadena Hills, Missouri.
*Photo courtesy of Kris Zapalac, Missouri Department of Natural Resources.*

The commissioners must attend annual training to keep informed on preservation methods and issues. If the commission is to effectively guide and educate the community on preservation matters, then commissioners must maintain their knowledge and expertise on those subjects.

*Local Government Staff and Appointed Boards and Commissions*
The commission will find it necessary to work with every department of city government and every employee at City Hall should know that the historic preservation commission is a part of city government.The preservation commission may be the "new kid on the block" compared to other city commissions and departments; and may have to work to be recognized as an established part of city government. To be effective, commissioners must appreciate the technical expertise of city staff and promote an atmosphere of candor, fair dealing, and mutual respect in working with city staff.

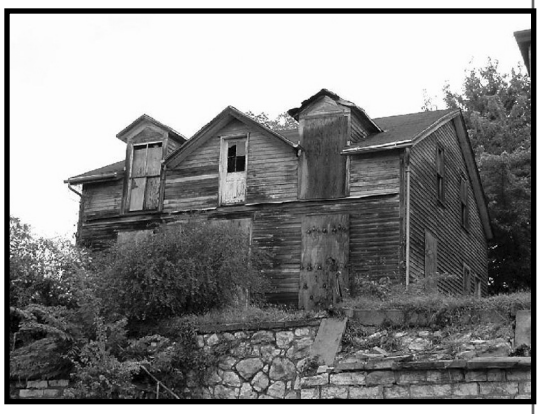
The entire City of Pasadena Hills (pop. 1147) is being nominated to the National Register, including their structures, landscaped areas, streetlights, streets and sidewalks. They are in the process of designating the entire city as a local historic district, also. The preservation commission has been working tirelessly on a number of public outreach projects.

Using their training and expertise in historic preservation methods and design review, the preservation commission can assist city staff and other appointed commissions. The building official, the planning department and the planning and zoning commission, the parks commission, and the economic development department can all benefit from information provided by the preservation commission. Such assistance will help those city departments understand the important

role that historic preservation plays in maintaining and improving the quality of life in the community.

Commissioners should be a visible part of city government by regularly attending city council meetings and keeping informed on all of the issues and projects undertaken by the city. When invited, commissioners should attend city social functions such as the annual holiday party and the City Employees Picnic.

*Local Elected Officials*
As part of the local government, preservation commissions have a unique advocacy role. It is important to emphasize again that historic preservation commissioners must remember that they serve at the pleasure of the local elected officials. Without some support from them, the commission will not exist.



Horton House (1859) in the historic Museum Hill District of St. Joseph, Missouri, before rehabilitation.
*Photo courtesy of Caroline Petrie.*

Presenting an annual report is a necessary part of educating the elected officials about the work of the preservation commission. This is also an opportunity to **give the elected officials credit** for the accomplishments of the historic preservation commission.

The commission should design programs to explain to the elected officials **specifically** how historic preservation benefits the community, and should show how preservation addresses specific concerns such as neighborhood revitalization or restoring and maintaining economic vitality in the historic downtown area. Demonstrating the economic advantages of historic preservation is a particularly effective method of gaining support from elected officials.

The mayor should appoint a liaison from the City Council to the historic preservation commission. This council member attends the preservation commission meetings and regularly reports to the council on commission activities.

If an issue arises on which the elected officials and the preservation commission do not agree, the commission should not argue with the elected officials. The preservation commission should make their recommendation or decision according to their duties as outlined in the preservation ordinance. The elected officials can then act on the recommendation or reject it. The elected officials generally have the final decision and, right or wrong, they usually reflect the feelings of the community that elected them.

Horton House (1859) in the historic Museum Hill District of St. Joseph, Missouri, after rehabilitation.
*Photo courtesy of the City of St. Joseph.*

**Effective Advocacy: Integrating Preservation into Community Decision-Making**

*General Public*
Since the elected officials generally reflect the feelings of the community that elected them, it is important to have a community consensus in favor of good historic preservation practices.

The historic preservation commission should play a significant role in promoting an appreciation of the community's heritage. To be really effective, they should do this in cooperation with non-profit groups such as the local historical society, the local non-profit preservation organization, the downtown Main Street organization, and the Chamber of Commerce.

Public outreach and education efforts by the preservation commission should not only increase a community's appreciation of the local historic resources and the value of preserving the community's character, but should also increase the public's confidence in the expertise of the preservation commission. Demonstrations of the commission's knowledge and ability to assist

The Webster Groves, Missouri, historic commercial district has recently been nominated to the National Register.
*Photo courtesy of Jo Ann Radetic, Missouri Department of Natural Resources*

"At the heart of our Webster Groves business districts are historically preserved buildings. These lovely, old, charming structures house attractive and successful shops, restaurants and offices. Doing business in historic buildings complements our historic homes and neighborhoods to enrich Webster Groves' reputation as a community that values its past as the key to the future."
*Gerry Welch , Mayor*
*Webster Groves, Missouri*

property owners in preserving local historic resources support the ways in which the historic preservation commission can assist in protecting those resources.

*Decision Makers*
The historic preservation commission must identify the key decision-makers in the community. In addition to the elected officials, this group includes property owners, business owners, bankers and other community leaders. The preservation commission should conduct special workshops to educate these decision-makers about the economic value of historic preservation, financial incentives, using design guidelines, and planning for preservation.

Commissioners should attend meetings and public hearings and testify for the integration of preservation into the city's comprehensive plan as well as proposed transportation plans and other community planning and zoning issues.The process of developing or updating local historic preservation plans and design guidelines presents good opportunities for building support for the local historic preservation program. The course of action leading to the publication of preservation planning documents should involve soliciting input from community leaders as well as the general public. Community leaders provide input and ideas for the plan thereby giving those involved a sense of ownership and responsibility for implementing those ideas.

**Conclusion/Summary**

Preservation commissioners must be well versed in preservation issues and methods to be able to educate the public. If the public supports preservation, then the elected officials, reflecting the views of their constituents, will support a knowledgeable historic preservation commission and allow it to be stronger and more effective in their efforts to assist in the preservation of local historic resources.

There is a wealth of educational resources available to preservation commissions. Organizations like The National Trust for Historic Preservation and The National Alliance of Preservation Commissions are prepared to help historic preservation commissions in their public outreach efforts and a number of resources are available online and through local libraries. Commissioners must take time to take advantage of what is available.

## Sources of preservation commission training and information

Always check with your state CLG coordinator for this information. Other resources are:
*http://www2.cr.nps.gov/workingonthepast*
*http://www.cr.nps.gov/training.htm*

If commissions have not already joined NAPC, they should seriously consider doing so. In addition to NAPC's biennial Forum, which is the best preservation commission training in the world, NAPC has the Commission Assistance and Mentoring Program (CAMP), and a great bibliography of "must read" information for preservation commissioners. When I was just starting out in the preservation commission business, NAPC was a life-saver. I would make a call to NAPC to receive wonderful support and information.

In addition to all of their other publications, **the National Trust** publishes a great list of "Preservation Resources on the Internet" every year as a supplement to Forum News. Of course, the National Trust Conference is a good source of annual training and preservation networking for commissions.

The website of **the Advisory Council on Historic Preservation** is also a good source of preservation information
*http://www.achp.gov*

# COMMUNITY PRESERVATION PARTNERSHIPS

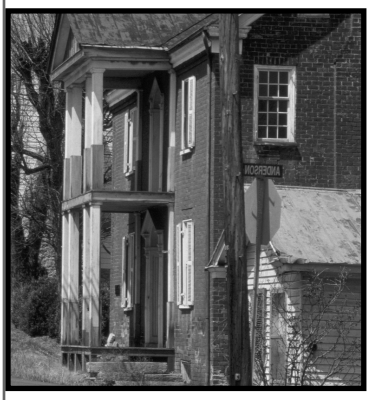
| Public Outreach Activity | Local Partners/Source of Assistance |
|---|---|
| | Non-profit preservation organizations, preservation commissions and historical societies are potential partners in all activities |
| Media releases | Newspapers, radio stations |
| Radio programs | Radio stations |
| Regular newspaper columns | Newspaper |
| Newsletters | Corporate sponsors, print shops |
| Public meetings televised over Local cable TV community access | City staff, community college |
| Guided walking tours of historic districts | Chamber of Commerce, civic organizations, Eagle Scouts |
| Preservation workshops | Main Street org., Chamber of Commerce Local contractors, hardware stores |
| Neighborhood meetings | Property owners, historic district residents |
| Presentations to civic groups | Rotary, Kiwanis, Optimists, Lions |
| Presentations to school groups | Teachers, schools |
| Assisting school teachers with lesson plans that include a local historic preservation focus | Teachers, schools |
| Technical advice | Local craftsmen, SHPO |
| Public access files: | Museum, Public Library |
| Technical information | City Hall, Genealogical Society |
| Survey information | Local historians, SHPO |
| Historic information | |
| Design Guidelines | Main Street org., Chamber of Commerce City Hall |
| Preservation Plans and/or Historic District Plans | Main Street org., Chamber of Commerce City Hall |
| Architectural Treasure Hunt | Main Street org., Chamber of Commerce, Newspaper, print shops |

*For details on the above activities contact: Jo Ann Radetic, Phone: (573) 522-2473, Email: jo.ann.radetic@dnr.mo.gov*

# WORKING COOPERATIVELY: LOCAL COMMISSIONS AND NON-PROFIT PARTNERS

*Lisbeth Cort, Executive Director, Washington Trust for Historic Preservation*

Successful local preservation programs depend on three sectors. Public Sector process, government mandates, citizen support and city politics all have an impact on the strength of local preservation ordinances, commission designees, and staffing levels. All give commissions great regulatory power and influence in times of supportive local governments but can threaten the very existence of local programs when detractors are in office or controversial decisions put heat on local elected officials. In the "Independent Sector," non-profits live and die by their success in being focused on their mission, creative in their outreach, strategic in their advocacy, and successful in building public support for their organization (translate dollars) and preservation. Private Sector developers can be our greatest heroes when they articulate vision and secure financing for rehab projects or they can swing into the "evil developer" camp if they bring money and influence to the task of redevelopment without preserving existing historic assets.



This property in East Tennessee was saved through public and private sector collaboration.
*Photo courtesy of Nancy Jane Baker, Memphis Landmarks Commission.*

In the ideal, yet fully-achievable, world of successful local preservation, the government (Public Sector) along with the non-profit (Independent Sector) and business (Private Sector) are an unbeatable combination to reach the highest level of preservation in a city. Between the three, they possess the full range of tools necessary to achieve preservation success. Alone, each can accomplish good things but never maximize the environment for local preservation in a way that strategic advocacy, targeted public education, financial investment, complimentary public policy, and government regulations can achieve. In fact, none can do it alone and each very much needs the other to achieve the best preservation on a local level. Beyond need, when working at cross purposes we have—at best—bad PR for preservation, public confusion about what "hysterical preservationists" do and want, and silly time- and resource-consuming back biting and turf wars. At worst, we have buildings demolished, a negative reactionary swing in public policy against preservation, and a platform for property rights advocates to gain the ear of the public.

Local non -profit preservation organizations and landmark commissions obviously do business very differently. Everyone's busy and it's hard to find time to look beyond what we each must do to think bigger than ourselves and work in concert. But, I submit, however, that working closely together, thinking bigger, and being strategic are not luxuries of time but are, instead, essential in order to build the most effective local preservation program possible. What are the keys to success in that "ideal yet achievable" world of public and non-profit sectors working toward common purpose?

**Identify roles**

To the outside world it sometimes seems that our movement has redundant players; why does it take a local non-profit and a commission to achieve preservation? We in the field know each has distinct as well as overlapping roles; and we know that's a good thing. Government preservation programs exist to provide preservation services to citizens, to implement zoning codes, forward public policy, carry out public processes, apply planning regulations, and protect a community's public assets—historic buildings that make our communities better places to live. Preservation non-profits exist to educate, advocate (and yes, lobby within legal limits), and promote preservation. Both build community leadership through their commissions, boards, and committees. Both can provide economic incentives for rehab through grants, loans, and easements. Both can provide expertise and technical assistance. Both can hold property.
When used most intentionally, the *distinct* roles absolutely maximize the power of preservation.

For instance:

- If a building is threatened, the commission's role in being able to delay demolition won't ultimately save a building if the will and players aren't there to rehab. A non-profit who testifies in support of demolition delay, builds positive PR for rehab, helps educate elected officials about the value of saving the landmark, brings awareness in the press about the value of preservation, and helps identify new owners, technical experts, similar successful models, or financing options can make the difference on whether demolition is just delayed or rehab is achieved. Alternately, a non-profit can't help turn around a proposed demolition if there are no tools to "buy time" for negotiations, identify additional resources, or change political will.

When used most strategically and cooperatively, the sectors' *overlapping* roles result in a full range of expertise, services and incentives to property owners, and an environment of support for preservation as a fundamental community value.

**Establish partnerships and use the roles to your advantage**

No matter how good the commission or how strong the non-profit, neither can do everything. Because human and financial resources are not limitless, difficult choices have to be made about what each can do and where each should focus its energies. Choices have to be made and priorities determined for where to direct scarce resources to best advance preservation. Each has to ask itself, if we can't do it all, then <u>what can our partners do and what kinds of things are they better positioned to do?</u>

No matter how good the commission or how strong the non-profit, neither can do everything.

For instance:

- If the commission is beginning to work on survey and designation of a mid-Twentieth century landmark or historic district, the non-profit could focus public education beforehand on the architecture of the recent past. Then the public and elected officials are better attuned to the value of such "modern" buildings before the designation comes before them.

- A commission in my state wanted to spotlight and reward owners who had completed projects under design review guidelines but felt that doing so might be perceived as prejudicing itself if the same owners came before the commission again on another matter in the future. The non-profit therefore, added an award category to it's already successful annual preservation awards program and began highlighting owners who completed model projects in compliance with local design review guidelines. The commission's processes were recognized in a positive way, there was a venue to praise city staff and elected officials, perceived future conflicts were avoided, and regulation's positive role was reinforced.

**Get beyond turf issues and keep your eye on the prize**

It's human nature to get comfortable with the "way we do things" and feel protective of our hard-earned status. If, however, we "keep our eyes on the prize," stay focused on our mutual preservation mission, and keep that at the forefront of how we do business, rather than who gets the credit or who does what work, we can achieve great things.

- One non-profit with a strong revolving loan program uses its revolving fund committee to make lending decisions. It has a member of the city's preservation staff on its committee and has found that member to be invaluable. The staff person gives valuable insights into regulatory, zoning, political, or code issues associated with a particular project. He also assists when the committee plans for the future by helping identify "emerging" areas for lending or districts that are being surveyed and soon-to-be

designated in order for the non-profit to focus loan resources concurrently with designation. The expertise and perspective of each bring more tools together for property owners.

- A local landmark commission has strong architectural expertise on staff. The city's non-profit is relatively new and has achieved great success in public education and events that involve the public in preservation. Rather than focusing limited resources on providing technical preservation expertise, the non-profit chose instead to direct technical preservation questions to commission staff and use its time to build membership, provide activities for children and adults to be involved in preservation, and help build a stronger preservation ethic locally. It easily could have felt threatened by not having that architectural expertise on staff; but, it was building a better local movement by focusing on its strengths and having the strong commission staff focus on theirs. Together they provided strong assistance to property owners - just in different ways.

Successful partnerships demand strong and regular communication. Keeping the other partner informed, including them at times of key decision-making about a strategy or initiative, and giving each other a heads up when there are potential delicate political issues, make the difference between disjointed local programs and a strong environment for preservation.

For instance:

- One local non-profit, like many, has a board Advocacy Committee which meets monthly. In its case, the local historic preservation officer attends the monthly meetings. This insures that the committee and the city preservation staff know what issues each is dealing with, can communicate freely about positions and potential strategies, can help "pick battles", and can be clear about the roles each will play on difficult preservation issues. It helps insure a strong non-profit advocacy position, an informed city staff and politicos, and the use of regulatory, advocacy, and public awareness tools to the highest degree.

- Including the historic preservation officer in a non-profit's annual planning retreat can insure that both are informed about each other's work and coming initiatives. It also helps insure that citywide preservation-related issues are tackled from both the public and the non -profit sides.

- One commission had a regular informational item on each meeting agenda that offered the non-profit an opportunity to bring forward key preservation issues and/or opportunities to the commission's attention. This simple measure kept commissioners educated about upcoming public education or advocacy issues, brought advocacy issues to the public front, and got items on the record early.

- In one western city, the commission denied an inappropriate modern awning on a house in an historic district. Stubborn owners installed the awning anyway and the city began enforcement which eventually led to a civil suit against the owners. Unfortunately, contentious enforcement led to bad PR for the commission, which was portrayed by the local media as being the "taste police." The local non-profit moved quickly to distance itself from the issue and reinforce that it was not the same as that group of overbearing regulators. In the end, preservation lost. The public didn't know or care what the difference was between the commission and the non-profit. The

property owners appealed and then sued and ultimately hated preservation. City council took a public hit and looked less favorably toward strong preservation regulations next time they considered ordinance changes. Summarily, preservation in the city got a black eye. If, instead, the commission and non-profit staff had communicated about the issue early and often, things could have been different. The non-profit could have understood and been better positioned to advocate publicly for the commission's difficult design review decision and resulting city enforcement. Likewise, they could have been proactive in exploring ways to get positive press about good design review decisions and satisfied historic district property owners. If the staff and board had been knowledgeable about the decision and resulting enforcement, they might have been prepared to develop a positive spin in the press or among colleagues instead of reacting defensively and distancing themselves from the regu-

Public/private sector partnerships can turn the press' attention to your advantage.
*NAPC file photo*

**Cultivate and build local leadership**

Non-profits generally know that a major part of their success in sustaining and in growing their organization comes from building a strong board of directors. They also know that board development is a pointed task, not just luck. Similarly, good commissions don't just happen. They are the product of the dedication and skills of the people who serve on them.

- Commission chairs and staff can take a cue from non-profits who focus time on board development by recognizing the need to identify and develop a constant pool of qualified people to serve, take the initiative to place their names in front of the appointing bodies, and train commissioners in the regulations as well as broader local preservation issues. Leadership skills are different from preservation skills. Good commissioners need to have both. Cross cultivation between potential commissioners and non-profit board members can also help ensure that skilled and connected leaders serve preservation in the best way they can—either on the public or non-profit side.

- Likewise, as part of board orientation and ongoing board education, non-profits should educate their boards about local regulations and processes, about the benefit of these and the arguments in favor of design review, preservation zoning, and demolition delay or denial. Board members are often well-connected individuals who span lots of different worlds in a community. If they are educated, they are better able to be advocates for local government preservation and the value that distinct public and non-profit preservation tools bring to a community. Similarly, if they are briefed about controversial commission decisions, they are better prepared to defend such actions as they interact professionally and socially with a range of contacts in the community.

Before asking others to preserve, we owe it to ourselves, our constituents, our members, and the public we serve to best position preservation to be successful. If we can't work together, how can we ask a property owner to work with one or the other of us? How can we advocate for more funding for preservation if we're not convinced we're using our existing human and resources most efficiently? How can we best fight against demolition if we fight among ourselves? How can we strengthen public ordinances if we don't support the decisions that commissioners are making?

We craft an environment for preservation to be supported and buildings to be saved if we work together and work smart. If we communicate about what needs to be done to ensure that we have the best policies, laws, incentives, and public support for preservation; if we set aside our egos and determine who does what best and how we can best support each other to build the strength of the other sector; and, if we keep communication open and our eye on the prize, we will reach our goals. Together.

# EDUCATION AND PUBLIC OUTREACH PLANNING
## FOR PRESERVATION COMMISSIONS

*by Stacy Patterson, Preservation Consultant, Silver Spring, Maryland*

Red tape, "paint police," "hysterical commission"—every local preservation commission has heard these words at one time or another. How can a commission combat these stereotypes with little or no staff, small budgets, and lots of work? By creating an outreach and education plan, commissions can proactively address these challenges and many others. Although public outreach and education are central responsibilities of historic preservation commissions, these important activities and opportunities often come second to the commission's regulatory duties. Outreach and education at the local level is often perceived as work that would be nice to do instead of something that is critical. Small or no staff and budgets, public apathy, media misrepresentation, and local bureaucracy can make it more difficult to conduct activities specifically focused on outreach and education; yet these same challenges are the reasons outreach and education are essential. An outreach and education plan can be an effective tool to overcome these challenges.

Montgomery County Historic Preservation Commission

the Preservationist

Winter 2006

**Tax Credits Can Save You $$$!**

**Apply Now!**
In 2005 did you paint your house, replace the roof, or finally repair that back stoop? These, and other projects such as storm window/door installation, chimney relining, and foundation repair qualify for the tax credit. As long as you've spent at least $1,000 over the course of the year (not a hard task) on exterior maintenance, restoration, rehabilitation, or other preservation work you could benefit from this County program.

Before

After

*Each of the projects shown here cost 10% less because of the Montgomery County Historic Preservation Tax Credit. Don't lose your 10%!*

Before After

Montgomery County rewards preservation activities with this tax credit against real property taxes for 10% of the eligible documented expenses on all individual historic sites and properties in historic districts (including non-contributing buildings) designated on the Montgomery County Master Plan for Historic Preservation.

***Completed forms must be postmarked by April 1, 2006. Don't miss out.***

Additional forms can be obtained, or questions about any aspect of the program answered, by calling the Montgomery County Historic Preservation Commission at 301-563-3400, or by visiting our website at: www.mc-mncppc.org/historic/instructions/info_tax.shtm

**Tax Credits from the State, Too!**
Another significant tax incentive for revitalization and rehabilitation of historic structures is the Heritage Preservation Tax Credit Program administered by the Maryland Historical Trust. This provides Maryland income tax credits equal to 20% of the qualified capital costs expended on exterior and interior rehabilitation work (with a $5,000 cumulative minimum over a 24 month period). ***Unlike the county program, the state applications must be completed before the work begins.***

The required forms and more information are available on the Maryland Historical Trust website (www.marylandhistoricaltrust.net) or by calling the Office of Preservation Services at 410-514-7639.

Before

After

**In This Issue:**
- New book on history of Silver Spring. Page 2
- County-wide events to celebrate Black History Month. Page 2
- MPI invites nominations for 2006 Preservation Awards. Page 3
- Preservation tax credit application form. Insert

Newsletters are good examples of outreach and education resources.
*Photo courtesy of the author*

### What is an Outreach and Education Plan?

An outreach and education plan is a tool any commission can create to streamline their public programming efforts. The plan addresses current and future needs of a commission, staff, and the community they serve, as well as the promotion of local historic resources. Through the planning process, a commission can discuss and evaluate their current outreach and education resources, research and develop new ideas, and plan for the specific implementation of the chosen activities. Like a master plan or work plan, an outreach and education plan is a fluid document, meant to be reviewed and updated as programs are implemented and new needs and opportunities arise.

Taking an organized and methodical approach to the outreach and education planning process allows a commission to develop a plan that meets their needs and falls within their budget and capabilities. A plan should serve as a tool to increase an entire community's knowledge and understanding of the significance of local historic resources and the need to protect them through designation, regulation, and review. It should identify community values and how historic preservation fits in or protects those values. Overall, an outreach and education plan is a way for a commission to demonstrate to the public how its regulatory role benefits a community through printed materials, public forums, and personal efforts.

### What are Outreach and Education Resources?

Outreach and education resources can be broadly defined as any material or activity which revolves around an aspect of historic preservation and is available to local stakeholders and the general public. These can include brochures, walking tours, websites, design guidelines, newsletters, events, workshops, meetings, books, maps, technical, and procedural information. Any document released to the public by the commission should be considered in an outreach and education context. Through outreach and education planning, these resources can be redesigned, redistributed, publicized, and promoted to further the understanding of historic preservation in a community.

### Why should your commission create an Outreach and Education Plan?

By educating the public about local historic resources and their preservation, and demon-

strating how preservation connects to existing community values, commissions can bring historic preservation into the mainstream. Failing to educate the community about preservation hurts the preservation movement as a whole and can compromise the commission's efficacy. While it is nearly impossible to convince every citizen of how important historic preservation is as a community value, it is still possible to raise community awareness about historic preservation and gain better coverage in the local media.

Planning specifically for outreach and education can refocus commission efforts toward these important activities and garner new support. While many preservation commissions include outreach and education as a goal within their larger work plans or action plans, it is frequently the part of the plan that is least implemented. By developing a formal, stand-alone outreach and education plan, a commission can ensure that it works toward accomplishing that part of its mission.

Preservation commissions stand on the front lines of historic preservation and their impact—or lack there of—determines the public's impression of historic preservation as a movement overall. Appreciation for cultural and historic resources often starts at the local level, where people feel the greatest sense of connection to a place. Whether a commission is large or small, whether they have public support or not, all commissions can benefit from planning for outreach and education.

**Step-by-Step: Creating an Outreach and Education Plan**

Creating an Outreach and Education Plan is a major commitment for any preservation commission, but it is also an important investment in the community and the role historic preservation will play within it. The following nine steps provide a suggested formula for the creation of a plan for a local commission.

1. **Commit**
   Deciding to create and implement an outreach and education plan is a major step. This means a commission must commit time and money to the development, implementation, and ongoing review of the plan. To make the plan successful, it is essential to designate someone—a staff or commission member—to lead the effort. The organization as a whole must commit to helping in the development, implementation, and review process in one way or another. Make sure everyone is willing to accept potential changes resulting from the plan. When the time and budget become available, the planning can begin in earnest.

2. **Develop Goals and Identifying the Target Audience**
   Since the organization is committing time and money to the plan, it is essential that the final product satisfy the needs of the commission as well as the community it serves. It is therefore important to establish a set of goals for the plan. The commission, staff, and other important stakeholders should be included in the development of goals. These goals can include more organized planning of outreach and education activities, stronger media relations, better educational materials and opportunities, and greater participation at local events. During this process it is also necessary to identify the plan's target audience. The target audience can include the commission, staff and residents of historic districts, as well as school children, politicians, local architects and builders, or an entire city or county. As the target audience broadens, so must the reach of the plan.

3. **Evaluate Current Resources**
   An important preliminary step is identifying resources and activities a commission

already has in place for outreach and education. Examining all current brochures, books, events, and websites will help establish where the commission stands. To keep an organized record, these resources can be logged into a database. Once the list of current resources is complete, the commission or staff can analyze how well these serve the needs of the organization. Asking questions like "Is this brochure current?", "How easy is it to find and navigate the website?" or "How effective is our participation at this event?" can help an organization make the most of its current materials before investing in new ones.

4. **Conduct Interviews and Surveys**
Once current resources have been identified and established, it is time to find out which outreach and education activities work, which ones need to be changed, and which need to be removed. The best way to address this is through interviews and surveys. The person leading the planning process should take time to interview staff and commission members as well as other stakeholders such as district residents, business people, local non-profit organizations, civic groups, educators, and elected officials to learn their opinions on current resources, as well as what they would like to see in the future. Do not be afraid to think outside the box—or budget. Even if an idea will take a lot of money and time, if it is in the plan, it may become possible to secure a grant in the future to see it accomplished. Next, it is important to involve the community you serve. By surveying a historic district or creating focus groups, the commission and staff can learn the opinions of residents, business owners, politicians, and visitors. Surveying your target audience before the plan is created will help assure that the time and money spent on new and improved resources won't be wasted.

**Do not be afraid to think outside the box—or budget. Even if an idea will take a lot of money and time, if it is in the plan, it may become possible to secure a grant in the future to see it accomplished.**

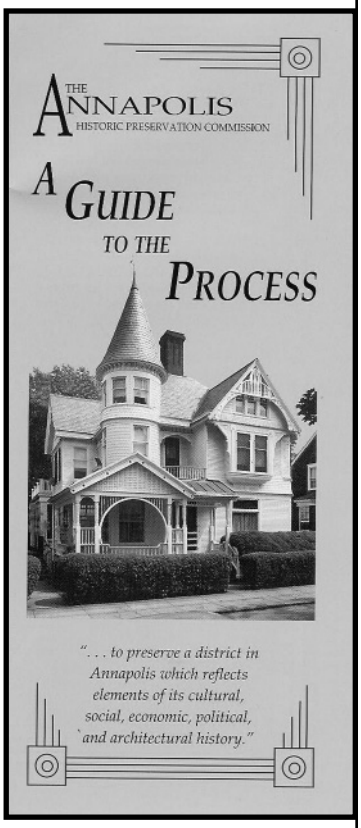
5. **Look Around**
So far the process has been rather internally focused, but now it is time to move outside of your commission and look to others. Get in touch with other commissions to see what has worked for their organizations. Learn the nitty-gritty of a successful project by asking about funding sources, time commitments, partnerships, and publicity. Do not be afraid to copy another idea, in this case imitation *is* the highest form of flattery. Creating open communications between commissions can only benefit each organization. Look at other commission websites, brochures, and events for inspiration. Attend local, state, and national conferences to network and gather new ideas.

6. **Get Organized**
Now that the staff and commission have identified their goals and target audience, their existing resources, and their needs, it is time to get organized and set priorities. The leader, along with the commission and staff must decide which resources and activities are most important to accomplish their goals and which must be accomplished right away. It is often helpful to categorize activities based upon which goal they will meet and then select a priority from each category. For instance, if your goals involve more organized planning of outreach and education activities, stronger media relations, better educational materials and opportunities, and greater participation at local events, you could choose a priority from each of these goals. In that case, you could include in your plan monthly outreach and education updates at staff meetings, drafting regular press releases, holding an annual tax credit seminar, and taking part in a new local event. With commission priorities organized and set, the plan can begin to develop as a document.

7. **Develop a Timeline**
   The next essential step in the process is developing a timeline for implementing the plan. This work becomes easier once organizational priorities are set. Based on the priorities established, it is possible to organize activities on a timeline. Take into consideration the people-hours and budget needed for each activity as well. While there are numerous ways to construct a timeline, simple categories can be Existing (never forget to pat yourself on that back for what you are already doing), Immediate, One year, Two years, and Future (five or ten years). Referring to the plan each year when planning for the next assures that outreach and education activities will be budgeted for and accomplished.

8. **Compile**
   Now that the commission and staff have goals, a target audience, a list of prioritized outreach and education activities, and a timeline for implementation, all of this information can be compiled into the plan. The plan can be a simple spreadsheet or a lengthy document, so long as it is organized and useable. Insert relevant graphics, such as examples of brochures or websites, as well as any relevant tables. A detailed plan will provide a clear picture of the organization's goals and how they will be met.

9. **Implement, Share, and Review**
   After all of the hard work on planning, do not just put the document on a shelf! This plan is meant to be used, shared, and constantly updated. Implement the activities listed under immediate and feel the satisfaction of checking them off the list. Have the plan formally adopted by the commission and celebrate its completion. Bring the plan to yearly meetings for updates and think up new ideas for the plan over time. Remember to share the plan, especially with anyone who contributed through an interview, survey, or research.




Effective outreach requires good printed materials that familiarize applicants with the review process.
*Photo courtesy of the author*

**Recommendations for a good Outreach and Education Plan**
After reviewing input from plans already in use and advice from practicing professionals with experience in outreach and education, the following recommendations have been developed for commissions interested in creating their own outreach and education plan. The recommendations are structured based upon the examples of organizational goals listed previously—more organized planning of outreach and education activities, stronger media relations, better educational materials and opportunities, and greater participation at local events—but are relevant to all outreach and education planning. The recommendations were abbreviated into the following categories: planning, media, education, and events.

*Planning*
Planning for preservation outreach and education in a formal way is critical, whether it is through a master plan, an action plan, or a yearly work plan. The plan must address the needs of the community and the commission, and be realistic given staff and budget limitations.

Advanced planning and assigning members to specific tasks can help keep the plan on track. Commissions should plan for more costly activities in advance to allow time to secure funding. Another critical element is updating the plan regularly as various elements are implemented and new needs arise.

*Media*
All relevant materials should be made available to the public. This can be done through websites and in print, by promoting the commission at local events, in the media, at community presentations, in schools, within the local government, and by any other means possible. Commissions and staff should think outside the box when considering locations to distribute material. All information should be easy to find, easy to use, and highly detailed.

Create a website that educates citizens about historic preservation through a wide variety of written material, such as histories, design guidelines, and plans, as well as images including photographs, drawings, and maps. Utilize technology such as video, audio, and blogging capabilities. An interactive site can allow residents to post information and images of local historic properties and can assist in engaging the public in historic preservation. Staff or commissioners should maintain the site and take responsibility for moderating any interactive features.

Commissions should keep citizens up to date on the variety of historic preservation resources available to them. Provide technical material and assistance when and wherever possible. Maintain useful print and online resources, as well as contractors' lists, organizations that assist preservation projects, and examples of past projects for interested parties.

*Education*
Integrate historic preservation into the lives of community members by teaching the importance of preserving community heritage along with historic preservation goals, benefits, and techniques to students in grade school, college and graduate students, craftsmen, architects, contractors, planners, politicians, realtors, bankers, the media, historic property owners, and any other interested parties. Develop a curriculum for schools and educational opportunities for students of all ages, or provide assistance so local educators can create lesson plans based on historic resources.

Inform local government officials about the work of the commission on a regular basis. Be sure to educate them about how preservation can benefit the communities they serve and address many larger social, economic, and planning issues.

Develop a proactive media campaign that tackles the negative perception of commissions and highlights the many benefits historic preservation has provided a community through time. Letters to the editor can be an effective tool to address problems when they arise, and to keep the media apprised of the good work preservation is doing. Take advantage of opportunities to appear on public access cable TV programs, and other media outlets.

Create strong partnerships with local, state, and national historic preservation and preservation-related organizations to assist in providing technical information, funding, advocacy, and support for outreach and education goals. Along with partnering, take advantage of opportunities to network with and learn from other preservation commissions by attending state and national conferences, attending commission meetings in other jurisdictions, and co-sponsoring preservation events.

Provide seminars and workshops to help owners of historic properties and professionals learn proper techniques and understand the procedural aspects of historic preservation. Also discuss the economic incentives for doing historic preservation work. Develop hands-on workshops and classroom seminars on a wide variety of topics and hold them on a regular basis. Strive to familiarize local craftsman, homeowners, and professionals with

proper preservation techniques. Partner with local hardware stores and other companies to raise the profile of an event and provide funding and tools. Inviting banks and developers to seminars about economic incentives can show these companies how preservation can work for their business and the community. Publish information about these events in the local media and leave information with local businesses.

*Events*
Hold events that emphasize historic preservation efforts in the community, including award ceremonies, dedications for preservation projects, and local events during National Historic Preservation Month.

Utilize local historic resources as education and outreach tools by hosting events, walking tours, exhibits, and other public activities that demonstrate the importance of historic preservation and the critical role the commission plays in protecting these resources.

Demonstrate how historic preservation ties into the broader ethics of maintaining a healthy environment and reducing sprawl. Explain how the goals and work of preservation are environmentally friendly and encourage re-use of old structures rather than the construction of new ones. Publish or provide information about how saving and using cultural resources can help preserve natural resources around Earth Day to draw particular attention to these connections. Finally, don't forget that commission meetings are events and work to make participating in them a positive experience. Help residents understand that the approval process protects the investment they have made in their neighborhood along with their responsibilities to protect their historic resource. Provide applicants with procedural information about hearings so they can be prepared should they need to appear before the commission. Hold pre-hearing meetings with applicants and invite new residents to commission meetings. At the commission meetings, try to maintain a positive atmosphere to avoid the notion that the commission is unnecessary, bureaucratic "red tape."

Make effective use of the World Wide Web to reach a broad audience.
*Photo courtesy of the author*

These recommendations are only a starting point for developing for a strong outreach and education program. The most important concept is to be proactive. Develop a plan, implement it, and bring historic preservation to your community rather than waiting for the community to come to you. A plan won't eliminate all of the challenges, but it will ensure that your commission and community are ready to meet them when they arise.

***Milford Wayne Donaldson**, FAIA*
*Chairman, Advisory Council on*
*Historic Preservation*

# GET YOUTH INVOLVED

## to Build a Better Preservation Ethic – and Nation

## By Milford Wayne Donaldson, FAIA

A wise person once noted that the best time to plant a tree is 50 years ago. The next best time is today. The national historic preservation community has always depended upon volunteers and local action to preserve America's heritage. We need to get those acorns that we should have planted a half-decade ago planted now.

The National Alliance of Preservation Commissions is uniquely situated to partner with the Advisory Council on Historic Preservation, the National Trust for Historic Preservation (National Trust), federal agencies, SHPOs and other key players in historic preservation to reinvigorate the preservation community by bringing more young people into the field. As the 40th anniversary of the National Historic Preservation Act (NHPA) approached in October 2006, the ACHP thought it was a good time to take stock and see what worked well and where improvements were necessary.

A series of panels were held prior to the anniversary, and participants gathered in New Orleans, Louisiana, in October 2006 at the Preserve America Summit. Preserve America is a federal initiative that encourages and supports community efforts to preserve and enjoy our cultural and natural heritage. Part of the 2006 summit was a contingent of young people, organized and sponsored by what was then known as The History Channel's (now officially known as HISTORY) *Save Our History* project, who were considering historic preservation issues from their perspectives and informing Summit participants and the larger preservation community. (see http://www.preserveamerica.gov/youthsummit.html)

Subsequent to the Summit and informed by all the panels that studied various aspects of the nation's preservation

*Prior to the Preserve America Summit in New Orleans in October 2006, an expert panel of educators and historic preservationists held a two-day brainstorming session in Detroit to discuss how to create a stronger and more widespread national preservation ethic . That panel's recommendations, melded with findings from other groups, led to the recommendation to work across the national preservation community to bring more youth into preservation activities with strategies such as youth summits and service learning partnerships with local schools.*

infrastructure under NHPA, a number of recommendations emerged. One of them is critically important to the future of historic preservation. It was: *Engage youth in historic preservation by promoting programs that involve them in hands-on preservation activities and through the possible establishment of an ongoing youth summit as part of the Preserve America initiative.*

At the Preserve America Summit and in subsequent programs the ACHP has participated in and used as models, the inspiration, energy, and insight of fully engaged youths has been transformative.

The ACHP has promoted several paths to involve young people in historic preservation. One has been to urge federal agencies to engage young people in their youth programs (notably the Department of the Interior and the Department of Agriculture) as well as other preservation and affiliated entities such as the National Trust, the Small Museum Association, the American Association for State and Local History, the Partnership for the National Scenic and Historic Trails, State Historic Preservation Officers and many others. The ACHP recommends using programs such as Service Learning in partnership with local community schools. Another approach has been to stimulate a series of local youth summits involving partnerships with preservation organizations, federal, state, and local government entities, schools, and others to help with preservation projects. The aim of these efforts is to create a more diverse and younger group of Americans who are involved in historic preservation activities, volunteerism, public service, and create a wider national historic preservation ethic.

While this sounds like a great centralized strategy, actually these educational and involvement efforts are all largely local in nature.

The ACHP is participating with other federal agencies and their partners to integrate programs such as service learning and youth summits for preservation into this energetic and effective effort.

For more information on **youth summits**, see http://coloradoyouthsummit.org/ and http://historicorps.org/.

**Service learning** is an effective and efficient strategy that can begin as early as kindergarten. For more information on service learning and historic preservation, visit http://www.achp.gov/youth.html and http://www.hallowedground.org/Education/Service-Learning-Programs.

*At Harper's Ferry Middle School, WV, a project by 70 students who created six video podcasts on the eve of the 150th anniversary of John Brown's Raid in 2009 was unveiled by the partnership that created the effort that resulted in student-to-student interpretive materials for Harper's Ferry National Historical Park. The ACHP, the National Park Service, the middle school, and the Journey Through Hallowed Ground Partnership (JTHGP) worked on the project. The JTHGP is working on similar Of the Student, By the Student, For the Student efforts to create interpretive materials and involve youths from many other school districts and 13 National Park Service units contained within the JTHGP Heritage Area.*

*Young intern participants in the 12th Conference on National Scenic and Historic Trails helped accomplish three service projects at Traveler's Rest National Historic Landmark along the Lolo Trail, where the Lewis and Clark Expedition camped on both its westward and eastward journeys. The actual campsite was bisected by this gravel road, which was replanted in native vegetation. The Lewis and Clark Expedition camped in military fashion, and its main camp fire was placed just to the left of the person at the far left of the picture.*

Fortunately for the preservation community and the ACHP, the Obama Administration has launched an effort called America's Great Outdoors to bring the benefits of authentic experience of natural and cultural places to the nation's youth. Many exciting things are taking place and the program is evolving at a rapid pace. America's Great Outdoors is particularly interested in reaching younger Americans who are more urban and less readily acquainted with the nation's rich heritage regarding public lands, stewardship, conservation and cultural and historic preservation than the generations that came before them. The effort seeks to engage, employ, and educate young people (see www.youthGO.gov ).

These are grassroots activities that depend upon volunteers forming alliances with federal agencies, natural and cultural preservation nonprofits, and local schools to create opportunities for place-based learning, stewardship, and civic participation. Preservation commissions are natural partners in spurring such efforts, since the volunteer stewards that characterize commission memberships are precisely the sort of people who are likely to initiate these projects.

The ACHP has discovered that involving youth in educational and volunteer activities is one of those cases of a rising tide lifting all boats. Organizations involved primarily in environmental or natural conservation activities benefit historic preservation by their efforts. Preservation commissioners find that working to introduce youth to historic preservation also offers the benefits of civic involvement, community pride, and serves as a conduit to interesting young people in the professions typically occupied by preservation commissioners. Plus, partnering with local schools inevitably involves parents and a larger segment of the community in historic preservation matters.

The natural and cultural preservation communities realize that they need to connect with and include more young people to create a stronger preservation ethic that will not only endure but grow. You could say that the necessity of bringing young people to historic preservation is somewhat parallel to the first rule of initiating Section 106 consultation: It needs to start as early as possible in order to be most effective and useful.

For those who may not be familiar with Section 106, in a nutshell it is a law that requires federal agencies to consider the effects of projects carried out, approved, or funded by them on properties listed, or eligible for listing, on the National Register of Historic Places (historic properties), and provide the ACHP with a reasonable opportunity to comment on them. While Section 106 requires federal agencies to attempt to negotiate measures to avoid, minimize, or mitigate the adverse effects of their undertakings on historic properties, it does not mandate in favor of preservation.

Oversight of the Section 106 process under the NHPA is the bread and butter activity of the ACHP. There are approximately 100,000 federal undertakings that go through the Section 106 processes every year. The vast majority are handled by State Historic Preservation Officers on the state or local levels, often with commissioners or review boards involved either by direct involvement or consultation and education. Most 106 cases are relatively routine and/or do not pose significant threats to historic places, and never need the direct attention of the ACHP membership. However, several hundred cases do directly involve the ACHP staff each

*The Colorado Preserve America Youth Summits initiated by Colorado Preservation, Inc., that have spread to other states, done in cooperation with the U.S. Forest Service, Bureau of Land Management, and National Park Service, were recognized by the ACHP as exemplary ways of involving youth in historic preservation activities. Participating in the award ceremony were (from left) Harris Sherman, Under Secretary for Natural Resources and Environment, Department of Agriculture; Ken Salazar, Secretary of the Interior; Ann Pritzlaff, ACHP member who initiated the summits; and Milford Wayne Donaldson, FAIA, ACHP Chairman.*

year. Further, when a Section 106 process involves a National Historic Landmark, the federal agency leading the process must notify the National Park Service and may be required to minimize harm to that landmark.

Among the more significant current contemporary preservation concerns that are reflected in Section 106 cases are downsizing city centers and sustainability issues, conventional and emerging alternative energy development and related transmission corridors, and how federal agencies handle government-to-government consultation with Indian tribes. In fact, the ACHP has created a special section, the Office of Native American Affairs, because this issue and related concerns like dealing with Traditional Cultural Properties (TCPs) are of such key importance to the federal government and the larger preservation community in the USA. Section 106 is an essential and important tool for local communities.

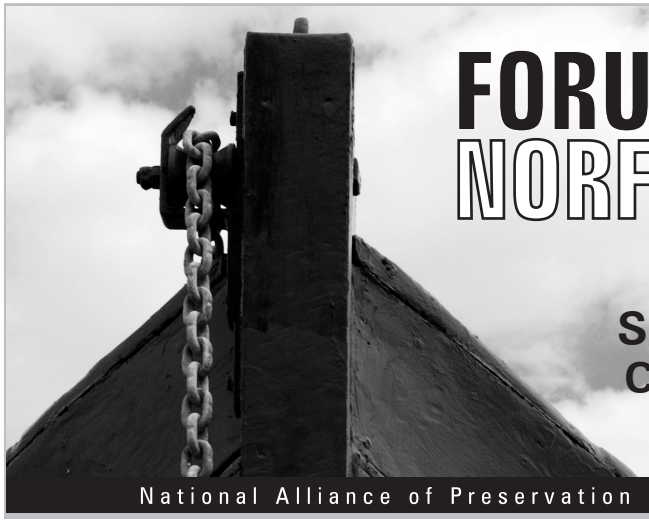
The NHPA itself resulted in 1966 from widespread local concern that federal activities – notably highway construction and urban renewal – were heedlessly destroying too many important historic resources. The U.S. Conference of Mayors and the National Trust, with local historic preservation partners across the nation, were instrumental in urging Congress to enact the legislation to "stop the federal bulldozer." Section 106 is an important tool that continues to function in this way.

The ACHP would be pleased to work with you in starting up some of these youth involvement efforts in your communities, and we would be pleased to provide any additional information you might desire. The best place to start is at our Web site, www.achp.gov. Or directly contact Bruce Milhans, communications coordinator, at bmilhans@achp.gov, 202-606-8513, to reach the right person at the ACHP to provide the information you need.

**The ACHP has recently published an updated "Protecting Historic Properties: A Citizen's Guide to Section 106 Review"** that is available to local preservation interests. It is available at the ACHP Website at: http://www.achp.gov/docs/CitizenGuide.pdf.

**The ACHP offers Section 106 training** tailored for differing needs and professional backgrounds several times a year. The class schedule is available at http://www.achp.gov/106select.html.

**Other useful materials** about Section 106, and its regulations, can be found at: http://ww.achp.gov/work106.html.

FORUM 2012
NORFOLK, VA
July 18-22

CALL FOR TOPICS + SPEAKERS!

SEE PAGE 17 FOR DETAILS
Call for Topics and Spearkers deadline is August 5, 2011

National Alliance of Preservation Commissions 8th Biennial Forum

***Wade Broadhead** is a Planner for the City of Pueblo focusing on the Preservation Commission for five years as well as Bicycle and Walkability Coordinator. Wade grew up in Palatine, Illinois, and received his B.A. in Geology / Anthropology from Western State College of Colorado in Gunnison. After seven years in the world of federal and contract archaeology and GIS he switched gears and went to the 'dark side' of planning and urban preservation, where he found his calling. He will be speaking about creative ways to weave preservation into planning at the Four Corners Planning Conference in Santa Fe and the National Preservation Conference in Buffalo this year. Wade's submission was delayed while he was welcoming his first daughter, Elowyn, into the world.*

# Advocacy through Action: Lessons from Pueblo, Colorado

## by Wade Broadhead

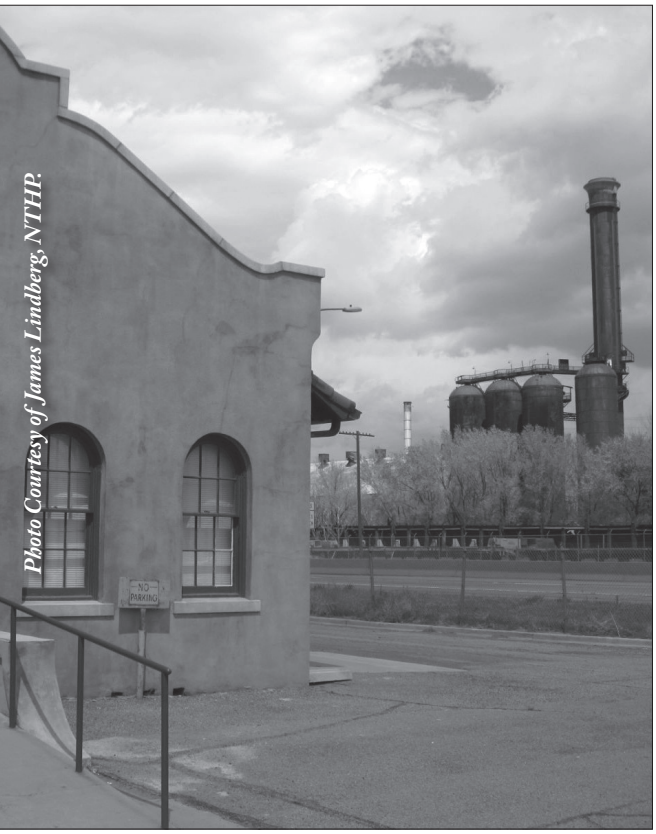



*Photo Courtesy of James Lindberg, NTHP.*

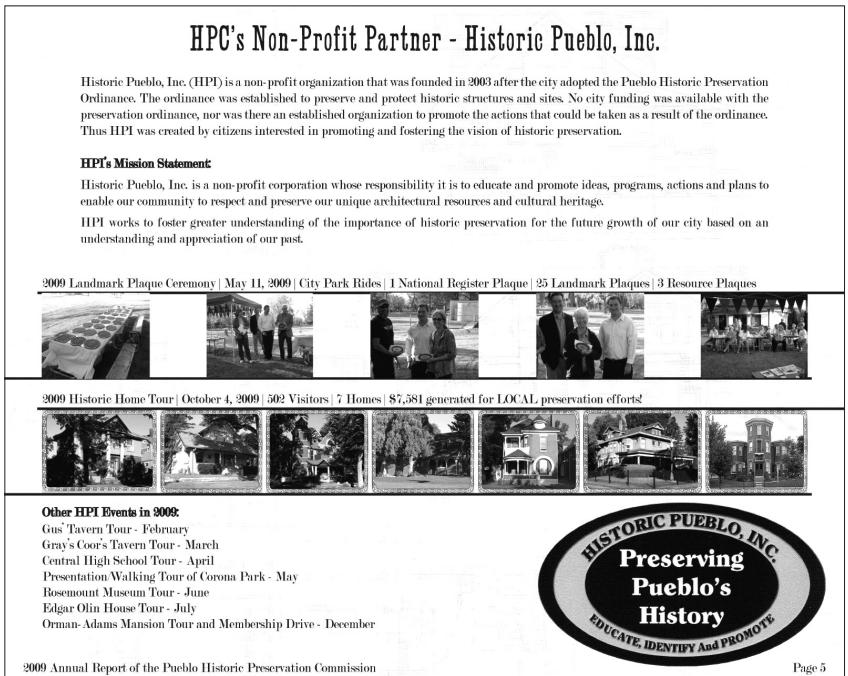
***Pueblo's iconic "Steel City" image of the Bessemer Historical Society's Nationally Renowned Steelworks Museum and the last remaining portions of the Blast Furnace across the interstate.***

Situated at the confluence of the Fountain Creek and Arkansas River lies the town of Pueblo, Colorado (population 106,000). Dubbed "The Steel City," Pueblo has one of the largest operating steel mills west of the Mississippi and a population of 50% third-fourth generation Hispanic. The city has a strong Euro-Hispanic working class culture that is part Pittsburgh, part Denver and part Northern New Mexico. This eclectic socio-economic mélange makes for a challenging and rewarding place to conduct preservation activities. Despite a long tradition of preservation in Pueblo through local societies and museums, a City Historic Preservation Commission was not created until 2003 after the loss of an architecturally significant elementary school. Although the Historic Preservation Commission (HPC) was initially staffed by a dedicated planner without preservation experience, he created good guidelines and in 2005 Pueblo achieved Certified Local Government status. I took over as staff for the commission in 2006-7 and immediately encountered among commission members a high level of frustration about a lack of attention by the City Council and their inability to achieve what I call "relevance." I noticed this frustration was shared by many small and midsized cities throughout Colorado. How we addressed this challenge, how we overcame it to create successful outcomes, and how we took it on the road is the subject of this article.

With a part-time staff and no budget, creating relevance for the HPC was no small challenge. Luckily, Pueblo has access to some powerful local partnerships that have promoted the municipal preservation program and allowed it to become relevant in an economically challenged city, which could just as easily forgo a preservation program in exchange for better code enforcement or a new sign code. Pueblo has a local nonprofit advocacy group, Historic Pueblo, Inc., that raises

money and financially supports the commission in the form of a cash match for grants and a successful plaque program – bronze plaques are purchased for all landmarks. In addition, Colorado has access to a magnificent CLG program which has enjoyable and thorough training as well as a robust, no-match grant program for survey and education programs. I've noticed city councils are always supportive of programs – like those funded with CLG grants – that cost the city nothing. Finally, at a more subtle level, the city management and administration allows staff flexibility to pursue grants and to work with the public on designations.

The key to generating a higher profile for historic preservation was that my role as "current planner" and HPC staff allowed me to spot places where history and preservation were needed to guide efforts toward a broader relevance to city officials, staff members with the Urban Renewal Authority of Pueblo (URAP), and citizens facing challenges in their neighborhoods. The second significant observation was that in a working-class town, actions speak louder than words (or interpretive plaques and pamphlets), and in a land of private-property rights, outreach, engagement and education are crucial to excite the population. Once excited, citizens come to you for preservation programs that have relevance to them. With that perspective, we created the Neighborhood Heritage Enhancement (NHE) Program almost by accident.



## HPC's Non-Profit Partner - Historic Pueblo, Inc.

Historic Pueblo, Inc. (HPI) is a non-profit organization that was founded in 2003 after the city adopted the Pueblo Historic Preservation Ordinance. The ordinance was established to preserve and protect historic structures and sites. No city funding was available with the preservation ordinance, nor was there an established organization to promote the actions that could be taken as a result of the ordinance. Thus HPI was created by citizens interested in promoting and fostering the vision of historic preservation.

**HPI's Mission Statement:**

Historic Pueblo, Inc. is a non-profit corporation whose responsibility it is to educate and promote ideas, programs, actions and plans to enable our community to respect and preserve our unique architectural resources and cultural heritage.

HPI works to foster greater understanding of the importance of historic preservation for the future growth of our city based on an understanding and appreciation of our past.

2009 Landmark Plaque Ceremony | May 11, 2009 | City Park Rides | 1 National Register Plaque | 25 Landmark Plaques | 3 Resource Plaques

2009 Historic Home Tour | October 4, 2009 | 502 Visitors | 7 Homes | $7,581 generated for LOCAL preservation efforts!

**Other HPI Events in 2009:**

Gus' Tavern Tour - February
Gray's Coor's Tavern Tour - March
Central High School Tour - April
Presentation/Walking Tour of Corona Park - May
Rosemount Museum Tour - June
Edgar Olin House Tour - July
Orman-Adams Mansion Tour and Membership Drive - December

HISTORIC PUEBLO, INC.
Preserving Pueblo's History
EDUCATE, IDENTIFY And PROMOTE

2009 Annual Report of the Pueblo Historic Preservation Commission Page 5

*A page of the HPC's 2009 Annual Report presented to City Council describing the relationship to, and help from, Historic Pueblo Inc.*

Pueblo was originally formed from four towns, combined in 1894 and separated by two rivers and a couple of unique landforms; therefore its neighborhoods developed densely (for the West) and in a manner more like Midwestern cities. This neighborhood character gives the city its appeal and is how people relate to their built environment. Also, nothing seems to be more meaningful to citizens than city officials taking a genuine interest in the history of their neighborhood with the purpose of using that knowledge to make smarter planning decisions.

Our solution was the NHE Program, which provides historic contexts to each neighborhood. Unlike most relatively dry historic-context reports, Pueblo teamed with a consultant, Adam Thomas of Historitecture, whose contexts are more like exquisitely written historical novels than bureaucratic technical reports. The consultant's passion for historic neighborhoods, paired with that of our staff, showed people that the city was genuinely interested in their welfare and positive development. We started with a Northside context and survey, which resulted in our first residential historic district,

*Members of the Planning, Urban Renewal, and Latino Chamber showing off locally produced East Side pride shirts at the 2011 Cinco De Mayo parade. The white shirt "Rich in History" (worn by the author) was based on the historic context cover.*

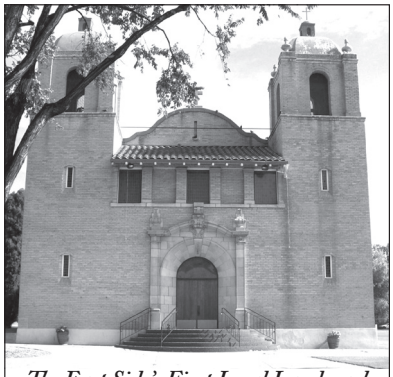
*A homeowner talks about his 1880s residence during a South Pueblo Architectural Walking Tour sponsored by a CLG grant and woven into a Public Health 'Walk N Roll' Campaign, May 2011. The study fascinated locals by determining Pueblo had a nationally significant, garden-style suburb design platted in 1872.*

and moved to our East Side neighborhood, which is 70-80% Hispanic. Seeing widespread disinvestment, staff noted that URAP was setting its sights on the area of 14,000 people and quickly moved to get a historic context report completed of the area (using CLG funds). It was so well received that the city reprinted almost 100 copies, which were both donated and sold to benefit the neighborhood association. Once URAP began a planning effort there, everyone on the redevelopment team received a copy of the study, and neighborhood leader Eva Montoya pushed to rename the neighborhood "The Historic East Side," which was adopted. The area's councilman donated copies of the study to local high schools, where they were used to teach students about designation and history. This simple context began to address long-standing issues of racism, post-La Raza politics, and mid-century city corruption, which had distanced the city and neighborhood residents.

The City is now finishing its South Side neighborhood context, while adding walking tours to the outreach program, and through the support of the CLG program and the State Historic Fund has obtained grants for the last historic charter neighborhood and even all of its postwar developments. Historic Pueblo Inc. has provided a cash match for the grants, meaning the city has received over $150,000 in preservation grants at no cost; those are the types of actions city councils notice. As the saying goes: "Nothing succeeds like success."

The HPC, through staff, then began a series of intergovernmental exchanges, first with Colorado Springs, then with Denver and Greely, and even providing some information for tiny Colorado towns without ordinances like Saguache and Fountain. In most cities, people engaged with historic preservation shared the frustration about not being taken seriously or appreciated by elected officials. I always ask them what they have done, and whether it was relevant to what city officials and citizens needed. In turn, I have benefited from attending other city's HPC meetings, in one case changing the content of my staff report and finding crucial information about an architect for the East Side's first local landmark. We now have a nascent regional network enhanced by official CLG training and expanded by these personal relationships and experiences from visiting staff and commissioners. I am now on the state's Preservation Plan Implementation Team, working on a statewide speaker's bureau tasked to exchange information, experiences, failures, and successes.

Groups like the National Trust of Historic Preservation and statewide nonprofits have always built networks, but the preservation commissions themselves need to build networks and relationships and share stories of the dirty work of implementing preservation activities that non profits sometimes don't always understand. Nothing proves your relevance and your dedication to citizens and councils more than action. Forging projects which create "preservation commodities" that citizens and officials can see, touch, read, share, and use to further their goals will speak for themselves.



*The East Side's First Local Landmark (soon to be National) and most iconic church and focal point constructed in 1926. Inter-commission exchanges led to the discovery of the location of the original plans which were housed in Colorado Springs. The landmarking of this community symbol resulted in numerous newspaper stories and thanks during a mass to city staff, Historic Pueblo, Inc., and community leaders.*

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City of Decatur

Putting a Positive Spin on Preservation

# DECATUR, GEORGIA:

By Regina Brewer

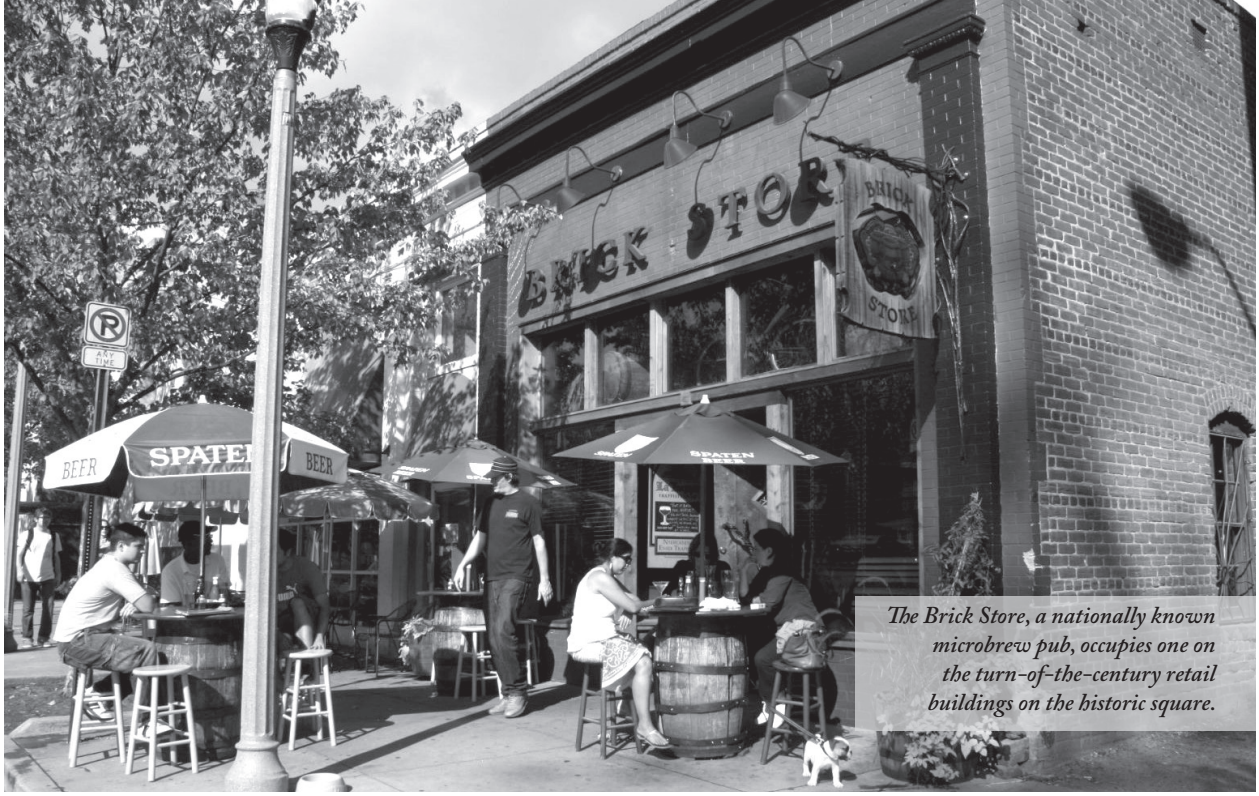
The City of Decatur is 4.2 square miles and has approximately 10,000 structures. In 2009, the City Commission budgeted to have a city-wide historic resource survey completed in response to a failed controversial effort to create a local historic district in the Oakhurst Neighborhood. The question the residents kept asking was, "How do you know this is historic?" The survey was a partial response to that question. Using the standards and procedures established by the U.S. Department of Interior, National Park Service, Historic Preservation Division and the Georgia Department of Natural Resources, Historic Preservation Division, the survey concluded that more than half of Decatur's structures were contributing and it also identified 13 potential National Register and local historic districts. The city had the data but needed to educate its residents and property owners on why these structures were historic and why the City needed to identify them.

The role of a preservation commission and its staff is not solely to review and approve changes to structures located in local historic districts (although for some jurisdictions like the City of Atlanta, the sheer number of applications consumes nearly 100% of their staff resources). Public outreach and education are vital to successful preservation efforts, whether creating National Register districts or taking on the local designation of historic resources.

In 2007, Decatur determined it needed a dedicated staff person to create a preservation ethic for the city. Decatur has always valued its historic downtown and the leafy, bungalow neighborhoods, but the knowledge was intrinsic, not necessarily recognized as "preservation." Hiring a professional trained in historic preservation was a key component to creating a branded program that established preservation in a positive framework as something that benefits the city in terms of environmental, economic, and quality of life initiatives.

Education was the first step to creating consensus to support preservation. The Decatur Old House Fair was held in 2008 (partially funded by a generous CLG grant from the GA SHPO) and is one of the few events of its kind in the country. Education seminars at the fair included researching houses, determining style, applying for preservation tax incentives, restoring wood windows (a must!), preserving historic landscapes, installing storm windows, improving energy efficiency, and creating a maintenance plan for old homes. There were

*Wood window hands-on workshops at the Decatur Old House Fair let owners try their hand at re-glazing.*




*The Brick Store, a nationally known microbrew pub, occupies one on the turn-of-the-century retail buildings on the historic square.*

over 30 exhibitors and preservation-related nonprofit organizations. The event had an extremely successful first year and is now in its fourth year with sessions such as "Plaster Repair" and "Restoring Wood Floors and Trim" being added. The tickets to the event are reasonably priced and the location is accessible by all forms of public transportation. The website (www.decaturoldhousefair.com) is up continuously and the presentations are available online, as is the program which lists all the exhibitors and local/national preservation resources. Residents have been given the tools they need to restore, rehabilitate, and repair their historic houses.

The City also instituted a "Homeowner's Night," which allows only homeowners to come in between 6 and 8 p.m. to talk to the Planning Director, Building Code Official, Zoning and Permitting Technician, and the Preservation Planner about their project. Since 50% of the homes in Decatur are historic, homeowners are also given information on preservation tax credits. In Georgia, the residential incentives are significant, including a maximum tax credit of $100K and an 8 ½ year property tax freeze on the unimproved assessed value. At each Homeowner's Night, more residents came in looking for information on these credits. Suddenly, preservation became interesting! Additionally, Planning Department staff members have been 'indoctrinated' to these credits and continuously refer inquiries to the Preservation Planner regardless if their property is located in a local district. In 2010, four projects were approved for the tax credit program in Decatur, which is sizable given the number of residents and buildings.

The City also looked carefully at the list of potential National Register Districts and determined that the historic downtown should be nominated to the National Register as an important step in creating the preservation ethic. Again, turning to the Georgia CLG Grant Program, Decatur received a $6,000 grant to hire a consultant to write the nomination. Public meetings were held to inform the commercial property owners about the value of being listed in the National Register of Historic Places. Some were skeptical, but most were convinced. In January 2010, the Downtown District was approved for listing in the Georgia Register of Historic Places and is currently under consideration by the National Register staff in Washington DC. This nomination facilitated the renovation of three storefronts in the historic square that will become the new home of

*Renovation of three historic storefronts on the downtown square to become the new home of the Cakes and Ale Restaurant.*

*The Ponce Court Neighbors group photo before carpooling to the National Register Review Board Hearing.*

the Cakes and Ale Restaurant, a national award-winning restaurant. Utilizing Federal and State tax incentives will give the property owners and restaurant owners $660,000 in credits and savings. Now all the commercial property owners are very supportive of creating National Register Districts for small commercial nodes throughout the city. The City also utilized the local preservation program at Georgia State University for student internships. One of the interns prepared the nomination for the Ponce de Leon Court neighborhood to the National Register. Ponce Court is already a local district, but a few of the homes in this small district needed substantial rehabilitation and were prefect candidates for the preservation tax credits. Public meetings were held and the owners were very supportive of the nomination. In fact, they car pooled to the National Register Review Board Hearing and took a group photo next to the historic pine trees in the district.

The City has also become a leader in Georgia for creating a city-wide program on energy efficiency and sustainability. The recommendations for this program encourage the residents to restore their old windows, to use high-quality storm windows, and to insulate and repair rather than replace and send building materials to the landfill. Decatur residents now talk about "embodied energy costs" in their blogs.

Decatur now has a strong preservation ethic despite not having created a local historic district since 2006. The property owners now know why preservation matters. It matters not only because they embrace a "greener" and more sustainable way of life, or because they value their sense of place; it also matters in dollars and cents. In 2010, the GA SHPO commissioned PlaceEconomics to determine the impact of preservation on the Georgia Economy. The results of the study (http://www.gashpo.org/Assets/Documents/Economic_impact_study.pdf) were not surprising to preservationists but certainly shocked some folks in the State Capitol. In the last decade, preservation projects such as those in Decatur resulted in over 10,000 jobs and $420 million in household income, and spurred 117,000 jobs in heritage tourism. All of these factors can be seen in Decatur as a result of education and outreach in a collaborative effort by its city employees, its elected officials, and its residents.


NAPC

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education + advocacy + training

# Social Media Tips for Historic Preservation Commissions

*Josh Silver, Montgomery County (MD) Planning Department*

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**INTRODUCTION**:

A growing number of historic preservation commissions are using social media (Web 2.0) applications to actively communicate with and engage their constituents. Social media is fast becoming a necessity for many historic preservation commissions to maintain an effective online presence in their communities. It provides an easy way to communicate general information and publicize important dates and times. Social media is a distinctive assortment of internet-based applications aimed at the transmission of information in multiple forms to a vast array of interested parties. It should be thought of as a means to create a self-supporting community to move an agenda forward.

Social media applications are beyond basic internet tools like e-mail, webpages and listservs, they actively engage users and visitors in the construction of their experience, rather than just passively absorb existing content. While there are many social media applications available (too many to list here) and each have a unique purpose, the list below highlights some of the more commonly used social media applications. For additional information about different social media applications refer to the resources section below.

**APPLICATION TYPES**:

Twitter – Short-form messaging tool for online communication that enables listening and interacting to the communication of others in new ways. [www.twitter.com]

Facebook – Hybrid of many Web 2.0 technologies which combines blogging, video and photo sharing applications to create virtual representations for others to interact with while enabling active and passive participation of visitors. [www.facebook.com]

Foursquare – Geo-social networking tool that allows users to physically participate by visiting, attending and exploring a particular place or experience. [https://foursquare.com]

YouTube – Forum for people to connect, inform, and discover original content about specific topics of interest. Enables users to watch and share original videos and comment and share with others. [www.youtube.com]

Flickr – Publishes and organizes photos based on content, location or date. Requires a minimal investment of time and helps garner interest and promote learning opportunities. [http://www.flickr.com]

**RESOURCES**:

- Twitter – http://mashable.com/guidebook/twitter/
- Facebook – http://mashable.com/guidebook/facebook/
- Foursquare – https://foursquare.com/business/
- YouTube – http://www.youtube.com/nonprofits
- Flickr – http://www.flickr.com/tour/