

**A Manual for Pennsylvania Historical Architectural
Review Boards and Historical Commissions**

by Michel R. Lefèvre



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FOREWORD	vii
ACKNOWLEDGMENTS	viii
EPIGRAPHS	ix
INTRODUCTION	1
HARBs and Historical Commissions	2
Establishing a Historic District	2
The Problem: Locating Qualified HARB Members and Staff	3
Mandated HARB Professionals	3
Due Process Issues	3
PHMC Assistance	4
Developing the HARB Manual	4
Chapter 1. EFFECTIVE MANAGEMENT OF THE HISTORIC DISTRICT	5
The Historic District Ordinance	5
Budgeting for Historic Preservation	5
Revenue Sources	6
Grants	6
Setting Up the Preservation Office	7
Staff Responsibilities	7
Hiring a Preservation Consultant	8
Developing a Guide to Acquiring a COA	8
The COA Application	8
Developing a Guide to Acquiring Permits	10
Administrative Approval Procedures	10
Building Codes and Historic Preservation	11
The HARB Preliminary Review Form	12
Sample Building Materials	13
Handling Violations	13
Enforcement	14
Demolition by Neglect	14
HARB Meeting Announcements	15
Personalized Meeting Notice	16
Neighbor Notification	16
When to Hold the HARB Meeting	16
Chapter 2. DEVELOPING A DESIGN GUIDELINE	17
Background of the Historic District	17
Architectural Styles	17
Historic Preservation Projects	17
Step-by-Step Procedures for Acquiring a COA	18
Sign Design Guidelines	18

TABLE OF CONTENTS

Awnings	18
Canopies	18
Vending Machines	19
The "Dos" and "Don'ts"	19
Landscaping	19
New Construction and Additions	19
The Central Business District	20
 Chapter 3. RESPONSIBILITIES OF THE HARB AND HISTORICAL COMMISSION	 23
Who Should Be a HARB Member?	23
Duties and Responsibilities of the HARB Member	23
HARBs and Historical Bylaws	23
Choosing the Chair	24
The HARB or Historical Commission Agenda	24
Before the HARB Meeting	25
Audio and Visual Equipment	25
Conducting the HARB Meeting	25
Hearing Cases	26
More on Conducting the HARB Meeting	27
HARB Meeting Minutes	28
The Docket or Log of HARB Cases	29
HARB Defends Its Recommendations to the Governing Body	29
How to Prepare for a Demolition Permit Request	30
More on Preparing for a Demolition Request	31
The HARB and Governing Body Resolutions	32
HARB and Historical Commission Training	33
Why Some Professionals on HARBs Avoid Training	34
 Chapter 4. BUILDING COMMUNITY SUPPORT FOR HISTORIC PRESERVATION	 37
How HARBs Sabotage Their Efforts	37
Steps to Establishing HARB/Historical Commission Support	38
Inform and Educate General Contractors	38
Assist Building Contractors and Property Owners	38
Provide Incentives	38
Help Locate Historic Materials and Architectural Features	39
Establish a Building Salvage Warehouse	39
Develop Building Contractor Seminars	39
Provide Historical Rehabilitation Advice	39
Coordinate Inter-department Permit Reviews	39
Inform and Educate Property Owners	40
Printed Materials	40
Cable Television Public Access Channel	40
Newspapers	40
Events	40

Speakers Bureau	40
National Historic Preservation Week	40
Newsletters	41
Logos	41
Getting the Press on Your Side	41
Other Promotional Ideas	42
Getting the Magistrates on Your Side	42
Develop Allies	43
The Role of the Local Government	43
Handling COA Violations	43
First Impressions Are Lasting	44
Chapter 5. POLITICS, LAW, AND HISTORIC PRESERVATION	45
The Importance of a Local Historic Preservation Organization	45
HARBs as Consumer Advocates	45
Know the Law	46
Running for Political Office	46
The "E" Word: Elitism and Historic Preservation	47
Social, Economic, and Cultural Differences	48
Prejudice: Anathema to Preservation	49
Free Enterprise and Social Responsibility	49
Historic Preservation Is Economic Development	50
Marketing Historic Areas	50
The Built Environment Counts In Economic Development	51
Legal Issues	51
Appeals of Local Agency Law	52
Legal Assistance from Outside the Municipality	52
Abuse of Discretion	53
Void for Vagueness	53
Chapter 6. THE CERTIFIED LOCAL GOVERNMENT PROGRAM IN PENNSYLVANIA	55
The CLG Application Process	55
Advantages	55
Disadvantages	56
The CLG Grant Process	56
The PHMC's HARB-CLG Advisory Board	58
REFERENCES	59
ANNOTATED BIBLIOGRAPHY	61
APPENDIX A: HARB-CLG Training Workshop Brochures	
APPENDIX B: <i>HARBulletin</i> Newsletter	
APPENDIX C: HARB Information Brochures	
APPENDIX D: COA Applications	

TABLE OF CONTENTS

APPENDIX E: Administrative Approval
APPENDIX F: HARB Preliminary Review Forms
APPENDIX G: Demolition by Neglect Statements
APPENDIX H: Notarized Proof of Publication
APPENDIX I: Sample Notification Letter
APPENDIX J: HARB Meeting Agenda
APPENDIX K: HARB Meeting Minutes
APPENDIX L: Important Organizations
APPENDIX M: HARB Newsletters
APPENDIX N: Historic Preservation Organizations in PA
APPENDIX O: Historic District Designation and Property Values Bibliography
APPENDIX P: HARB-CLG Advisory Board Membership List
APPENDIX Q: A Model Historic District Ordinance for Local Governments in Pennsylvania
APPENDIX R: The Historic District Act
APPENDIX S: Steps to Establishing A Historic District Ordinance Under the Historic District Act
APPENDIX T: HARB Meeting Checklist
APPENDIX U: Historic District Guidelines
APPENDIX V: Preservation Literature Available from BHP
APPENDIX W: Certified Local Governments in Pa.
APPENDIX X: National Trust Order Forms

Appendices

To reduce the expense of publishing this manual, appendices have been omitted, but may be acquired individually, free of charge, by contacting the Bureau for Historic Preservation. As appendices are designated by a letter of the alphabet, specify the material you want by appendix letter. You may telephone (717) 787-0771 or fax your request to (717) 772-0920, or write to HARB Manual Appendices, Bureau for Historic Preservation, PHMC, P.O. Box 1026, Harrisburg, PA 17108-1026.

FOREWORD

The Pennsylvania General Assembly passed the Historic District Act in 1961, authorizing local governments to regulate the erection, restoration, alteration, addition, demolition, and razing of buildings and structures in a historic district certified by the Pennsylvania Historical and Museum Commission as historically significant. The act mandates the appointment of a Historical Architectural Review Board to review the above listed activities on buildings and structures within the historic district which can be seen from a public way. Based on its review the board recommends to the governing body whether to issue a certificate of appropriateness for the proposed work.

To make intelligent, knowledgeable, and fair recommendations based on factual evidence of each case, this board, whose members are volunteers, must familiarize itself with a variety of subjects from archaeology to zoning. This manual is intended to advise members of HARBs and members of historical commissions, government officials, and historic preservation consultants the fundamentals of the administration of historic districts. Some of the topics covered in this manual are management of the preservation office, the development of historic district guidelines, HARB and historical commission meeting procedures, and building community support for preservation. Several issues affecting the success or possible failure of administering a historic district ordinance are discussed. Other topics included are landmark preservation court decisions, preservation and economic development, and the pernicious effect of taste rather than historical significance as a basis for board or commission decisions.

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EPIGRAPHS

The carrying off or removal of constituent elements and decorative components of historical buildings, especially when they are of importance to a town, will be punishable by a fine of six pounds of gold.

Theodorus
January 1, 398 AD

It is forbidden to disfigure external decorations on private buildings through modern additions, and to spoil historic buildings in an important town out of avarice and the desire to make money.

Theodosius, Valentinianus,
Arcadius
July 17, 39 AD

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.

United States Supreme Court 1954 *Berman v. Parker*
348 US 26 Supreme Court 98 Ed 27(1954)

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic, and aesthetics values of the environment. Pennsylvania public natural resources are the common property of all the people, including generations yet to come. As trustees of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

Constitution of Pennsylvania (Adopted May 18, 1971).

INTRODUCTION

Many elected officials, especially those from counties not yet affected by land-development pressures, are reluctant to enact laws regulating land use and cast a jaundiced eye on the concept of historic or aesthetic appropriateness. The wake-up call for many, however is sounded by retail chains or mega businesses introduced to their regions or community, often with adverse consequence or mixed benefit on the environment and the central business district.

The cumulative effect of abandoned storefronts, deteriorating properties, and depressed real estate values together with the loss of well-loved landmarks raises the calls for action. It is then that planning for development and instituting land-use regulation to preserve the local heritage appears less an imposition on citizens and more a solution.

The Pennsylvania General Assembly enacted the Historic District Act in 1961 authorizing municipalities to protect and regulate historic districts which have been determined to be historically significant by the Pennsylvania Historical and Museum Commission.

The Historic District Act is a powerful legislative tool with which every board member must be acquainted. His or her municipality's historic district ordinance must reflect the purpose and have the specific authorization of the act. The purpose of the legislation is to protect the Commonwealth's historic resources for the cultural and economic benefit of a community. The act was intended by the General Assembly to enhance the community's quality of life, its health and welfare. The act decrees that a Board of Historical Architectural Review, comprising a minimum of five members, shall be appointed by the governing body to review alterations to the exteriors of buildings which can be seen from a public right of way. The board acts in an advisory capacity to the governing body, which has the authority to issue or deny certificates of appropriateness to applicants who propose to alter, demolish, erect, restore, the exterior of a building situated in a historic district. The board and the governing body must employ a similar criterion for determining the appropriateness of an applicant's proposed work.

Pennsylvania has a large number of local governments—2,572 to be exact. Of these approximately 125 have made provisions to protect their community's cultural heritage, either by enacting historic overlays on zoning ordinances or by enacting stand-alone historic preservation ordinances under home rule charters or the Historic District Act. This is a mere 5 percent of all local jurisdictions.

Since 1961, under the Historic District Act, sixty-eight municipalities have passed historic district ordinances protecting approximately eighty-nine historic districts. The Historic District Act requires that governing bodies appoint a minimum of five persons to a Board of Historical and Architectural Review, commonly known as HARB, to review exterior work on buildings and structures which can be seen from a public right of way. The state enabling law stipulates that these five members have the following credentials: one member a registered architect, one member a building inspector, one a licensed real estate broker, and two members with an interest and knowledge of historic preservation.

Municipalities have another option in protecting and regulating historic resources within their boundaries: they may employ their zoning powers authorized under the Municipalities Planning Code (MPC). In this instance, municipalities may establish a historic overlay by undertaking an inventory of historic properties, that if affected by development or construction activities, will require review by an appointed historical commission. The MPC does not specify professional qualifications for membership on this commission.

In either type of ordinance, persons owning and/or residing in a property situated in a municipality are eligible for appointment by the governing body. Their duties are purely voluntary and the term of each member is set by the respective municipality's ordinance.

HARBs and Historical Commissions

Unlike zoning hearing boards, Historical Architectural Review Boards (HARBs) and historical commissions have only advisory power. Nevertheless, they can affect the actions of residential and commercial property owners. HARBs' responsibilities generally include recommendations to the governing body as to issuance of a certificate of appropriateness for the work proposed for a building permit. Although the ultimate decision to issue a permit is left with the governing body, the city or borough council, the township supervisors or commissioners generally rely almost exclusively on the expertise of HARBs or historical commissions to make such determinations. Because decisions of HARBs and governing bodies can be appealed to the Court of Common Pleas, the quasi-judicial nature of the decision process by governing bodies and the records of HARBs and historical commissions are thoroughly scrutinized by courts to determine if due process has been provided and if decisions have been based on findings of fact.

Establishing a Historic District

There are several ways that a municipality can establish a historic district. In the booklet *Historic District Designation in Pennsylvania*, published by the Pennsylvania Historical and Museum Commission (PHMC), these various ways are discussed. Under the state enabling law titled the Historic District Act, the General Assembly gave the Pennsylvania Historical and Museum Commission the responsibility to determine whether areas chosen by municipalities as historic districts are, in fact, historically significant. To make this determination, the PHMC's Bureau for Historic Preservation requests the information to be submitted on an Inventory Resource Survey form. This form requests the historical and architectural background of the area under review to justify the contention that the area has historical significance. The information is accompanied by photographs, a map of the area, and an inventory of the buildings and structures within the district. Once the area has been determined to be historically significant by PHMC, the HARB is appointed by the local governing body.

When the board meets to review proposed alterations to buildings or requests for their demolition, the board or its staff assembles as many relevant facts as possible about the building. However, it may find that the Inventory Resource Survey form may not have been specific enough and that the information about the building is not available. Even the National Register of Historic Places nomination application may not have the information about the building under review. This is the reason that comprehensive historical surveys are undertaken. Some communities actually begin the process with a such a survey, and then go on to the other steps in the protection of the district. However, due to financial and/or time limitations, the municipality may not be able to undertake such a survey. But a survey of the community's historic resources should eventually occur and be updated over time.

When faced with the review of a building or structure, the board needs to know its history and how it architecturally compares to other buildings within the municipality — is it one of a kind? Was it designed by a well-known architect? Perhaps an important person lived in the building at one time. The building's architecture does not have to be particularly noteworthy. For example, Wallace Stevens, one of America's greatest twentieth-century poets resided in his youth in an unpretentious town house on North Fifth Street in Reading, Pennsylvania. In another instance, a building may have been constructed by the first African American freedman in the area. This type of historical research illuminates the obscurity of the past and helps the board, and hence the community, to decide what is worthy of preservation. The decision is based on findings of fact, not on mere whim or personal taste. Not every building requires an individual survey form. There are districts which encompass thousands of buildings. In many Pennsylvania cities, row houses were constructed during certain periods of a city's history, reflecting the architectural style prevalent in that period. Many of these dwellings vary in quality of construction and affordability. A survey form may provide information on an entire row or on several streets.

The point is that the board needs to base its judgement on sound scholarship, and a comprehensive survey can provide the documentation it needs. The Bureau for Historic Preservation has developed guidelines for historic surveys and they are available upon request.

The Problem: Locating Qualified HARB Members and Staff

Pennsylvania is essentially a rural state, with forty-two of its sixty-seven counties considered rural by the U.S. Census Bureau. Locating persons with knowledge in historic preservation, due process, and meeting procedures who are willing to serve on a HARB or historical commission can be difficult in such places as Venango, Greene, Beaver, and Elk Counties. This even applies to certain boroughs, townships and third-class cities in more urban areas. In fact, finding qualified and affordable staff to properly administer historic preservation programs and historic district ordinances is daunting.

To add to this difficulty criticism by the local press, private property rights advocates, and members of the very body that has appointed HARB members makes serving on the HARB a rather unattractive prospect. It is indeed a fortunate municipality that can find members with a combination of professional talent and ability willing to serve on such boards or commissions.

Mandated HARB Professionals

Historic preservation has become a catch-all concept encompassing a variety of disciplines. In the Code of Federal Regulations, qualified professionals in the field of historic preservation may have degrees in anthropology, American history, American studies, archaeology, architectural history, architecture, cultural geography, planning and related fields. Under Pennsylvania's Historic District Act, a building inspector, registered architect, and licensed real estate broker must be appointed to a HARB. But the building inspector or code enforcement officer of a municipality, in spite of having years of experience in the building trades, may not be trained or experienced in a historic preservation approach for repairs and maintenance, of historic buildings and may have little sympathy and understanding of the preservation ethos. The same is true of a registered architect. Being one does not insure that the person will know of the history of American architecture, or be familiar with a preservation approach to rehabilitating historic buildings. Licensed real estate brokers must also be appointed to HARBs, but finding a broker who appreciates the finer points of an older building and champions real estate in historic neighborhoods — neighborhoods which may initially have depressed property values — is also difficult. Lastly, locating two individuals well grounded in American history and culture who demonstrate both fairness and consistency in the decision-making process can be daunting.

Due Process Issues

A crucial element of the HARB review process is the importance of providing all applicants for certificates of appropriateness and building permits due process under the law. Public notice of meetings, opportunity for the applicant to be heard, access to records, and timely decisions insure that individuals are treated fairly. HARBs have been accused of short-circuiting due process (more often out of ignorance of procedure than willfully) and this accusation is not unjustified.

As regards the decision process itself, it too has come under serious criticism. Too often HARBs have based their recommendations on quirky and capricious reasoning rather than on findings of fact and conclusions of law. Inconsistent decisions in similar cases, overzealousness, and outright subjectivity have eroded confidence in the HARB review process in some communities and ignited opposition to historic preservation ordinances (Ridley Park). In the 1970s and 1980s, the cities of Lancaster, Allentown, and Reading experienced their share of neighbor-

hood activists calling for the rescinding of historic district ordinances. In each case, except for the city of Lancaster, opposition against the ordinance eventually fizzled. In Lancaster, the Cabbage Hill historic district boundaries were reconfigured by decreasing the size of the district. The Saint Thomas Historic District of Lower Paxton Township, certified by the PHMC in 1976, is the only community in Pennsylvania known to the author to have rescinded its historic district ordinance — eight years after its certification by the PHMC.

PHMC Assistance

The Pennsylvania Historical and Museum Commission's Bureau for Historic Preservation provides technical assistance and responds to local historic preservation organizations, local and state government officials, HARBs, and historical commissions. This technical assistance is provided through the planning and organizing of annual regional seminars and workshops, newsletters, and matching grants, and through personal consultations with staff of the Bureau for Historic Preservation, also known as the State Historic Preservation Office. See Appendix A for sample HARB-CLG workshop programs and Appendix B for sample copies of the *HARBulletin*, the PHMC's Historical Architectural Review Board-Historical Commission-Certified Local Government newsletter.

Developing the HARB Manual

Many of the questions and problems posed and encountered by applicants for certificates of appropriateness, Historical Architectural Review Boards, historical commissions and governing bodies administering regulated historic districts (there are many more historic districts that are *not* regulated by local ordinances) tend to fall into certain categories. Consequently, an attempt has been made to write an informative and readable manual to answer common questions about the administration of historic districts.

This manual is based, in part, on the author's twenty years of experience in the administration of historic districts at the local and state levels. In addition, a study of manuals developed by other state historic preservation offices (see bibliography), was undertaken. A comparison of the best of these manuals, enabled the author to develop this publication. Furthermore, guidance as to the content and organization of this manual has been provided by the Pennsylvania Historical and Museum Commission's HARB-CLG Advisory Board, a volunteer board appointed by the Bureau for Historic Preservation to advise staff regarding PHMC administration and policy related to historic preservation at the local government level.

If the reader wishes to be informed as to the historic district designation process in Pennsylvania, he or she can refer to the author's companion volume, *Historic District Designation in Pennsylvania*, which provides the background for the historical, legislative, legal, and strategic process required to designate areas as historic districts in Pennsylvania. Both books are available through the Publications Sales program of the Pennsylvania Historical and Museum Commission, P. O. Box 1146, Harrisburg, PA 17108, (800) 747-7790.

Chapter 1

EFFECTIVE MANAGEMENT OF THE HISTORIC DISTRICT

The Historic District Ordinance

Historic district ordinances must be carefully crafted, written in a plain and direct style, and should include at a minimum the following sections: table of contents; definitions of terms used in the ordinance; the authorizing legislation; the purpose of the ordinance; specifics regarding the appointment of HARB or historical commission members; the duties and responsibilities of the HARB or commission and governing body; design criteria to be used by both the HARB and governing body in making their determinations; procedures and steps to be followed by the applicant, the HARB, and governing body; sections on violations, penalties, and appeals; the demolition of buildings by neglect; and an economic hardship section. In addition, the ordinance may authorize the HARB or historical commission to initiate surveys of individual historic resources, potential archaeological sites, and historic districts, and make recommendations to the governing body for their protection (Roddewig, 1983).

If a historic district has a significant population of non-English speakers, it may be useful to have the ordinance translated into the language of that population. For a more detailed discussion of the contents of a historic district ordinance, refer to *Historic District Designation in Pennsylvania*.

Budgeting for Historic Preservation

The various steps and activities associated with the certificate of appropriateness process logically devolve to the code enforcement department of a municipality. Of course this depends on the size of the municipality. Other departments, such as planning or community development, may share the cost and responsibility for the administration of the historic district and the implementation of historic preservation policies and regulations. This brings us to the subject of budgeting. What kinds of expenses can a municipality expect and where might the revenue be sought?

Let us first look at the expenses. Again, this will depend on the size of the municipality. A salary for a part-time or full-time employee may have to be considered. Another option is hiring a consultant. Neither of these alternatives may be necessary as the present complement of employees may be adequate. The next line item to consider may be transportation, as site visits and inspections will have to be undertaken. Office supplies, which includes copying and adequate office space, are also required. When the municipality undertakes a comprehensive historical survey of the historic district and eventually the entire municipality, an accessible room to review this documentation by the public will be necessary. All records except those for archaeological sites and financial hardship testimony must be made public (see Pennsylvania's Right to Know Act). Certificate of appropriateness applications, HARB Preliminary Review forms, etc., will need to be filed and easily retrievable for the HARB's and the governing body's review.

Postage expenses must be budgeted to adequately cover meeting notices, information brochures, and design guidelines. Incidentals such as classified advertisement fees will also have to be included. Legal expenses may also be incurred—fortunately these ought not to be expected on a regular basis. However, in cases which appear to presage controversy or potential legal challenge, a full transcript of the HARB meeting may be required. A line item for training (attendance at seminars or conferences) for historical commission and HARB members, including preservation staff, will also have to be budgeted.

In addition, the HARB should have ready access to historic preservation reference works. Budgeting for video tape and slide programs for educational purposes may be quite useful. Fees to membership organizations should also be included. This is often the only means that the HARB and preservation staff have of staying informed

regarding preservation issues. Equipment such as a personal computer, a 35mm camera, a slide projector, a pair of binoculars (to observe roofs and other out-of-reach architectural features), and a tape recorder (for recording HARB meetings) are indispensable items to administer the historic district.

One may assume that the HARB will meet on such days that other municipal meetings will not be held. Thus an existing public address system may be used by the board. Nothing is more frustrating and unfair than for the public in attendance at a HARB meeting to have to strain to hear the board's deliberations (Rhode Island Historical Preservation & Heritage Commission and city of Cranston, 1995).

In communities that have a cable television public access channel, and in which the cable company has installed the capability of cablecasting from the municipal building, the HARB may want to consider cablecasting its meetings live. Clear audio and a wide-angle lens camera is all that is needed. This is not intended to be entertainment, but the fact that the board's deliberations may be viewed by the public may have a sobering effect on a HARB's deliberations, which may sometimes be reminiscent of the Mad Hatter's Tea Party in *Alice's Adventures in Wonderland*. Although the cable television company may not charge for time on the public access channel, the cost of the video camera and other electronic equipment to transmit the signal through the system may have to be borne.

A note of caution. The Salem, Massachusetts, Historical Commission garnered some bad publicity when the PBS program, *This Old House* aired several of its meetings in which a building under renovation was under review. The brouhaha over the project created a major controversy in town. Hundreds of thousands of viewers who saw the show were treated to some acrimonious discussion. Many viewers apparently considered the behavior of some members of the Salem review board as prejudicial and elitist. This incident makes certain preservationists leery of having historical commission meetings broadcast or cablecast. To place matters in perspective, the cablecasting of a HARB meeting will only be seen by relatively few viewers, unless, of course, the issue is highly controversial. On the other hand, if the HARB behaves in an arbitrary way and is rude to applicants, the incident is bound to be seen by someone. For this reason, I believe it a useful means to keep the board behaving in a professional manner. For a more complete reportage of the Salem incident, see *Historic Preservation* magazine, May/June 1996, the article "This Old Hass."

Revenue Sources

In cases where the administration of a local government's historic district can be assimilated into the budget of other departments, revenue may not be a major issue. On the other hand, revenue sources may have to be found in cases where the expenses of administering a historic district(s) are simply too great. In that case, charging a fee for the certificate of appropriateness, as is done for a building permit, may help offset some of the expenses. Another option is simply to charge a higher fee for a building permit issued for work within a historic district that must be reviewed by the HARB or the historical commission.

However, the author is not aware of any municipality in Pennsylvania, other than the city of Scranton, which has considered such an option, although it is common in other states and localities.

Grants

Revenue from federal and state grants may offset the expenses incurred by a local government. Because Community Development Block Grants (CDBGs) may be used to eradicate blight and improve the physical conditions of at-risk neighborhoods, the use of such monies for staff time and certain other expenses in the administration of historic districts may be legitimate. Typically, historic districts are located in localities eligible for CDBG funding. Keep informed of any recent changes in CDBG regulations to protect yourself from accusations of unauthorized use of such funding.

The Pennsylvania Historical and Museum Commission administers two grant programs which can also assist

local governments in implementing historic preservation. One is a federal grant authorized by the National Historic Preservation Act, as amended in 1980, under the Certified Local Government (CLG) program. Costs incurred for numerous historic preservation activities and projects, including HARB staffing, are a legitimate use of these monies. Total project amounts range from \$3,000 to \$25,000 and fund staffing and preservation consultants, planning and survey projects, and educational and training activities.

The second grant, a state-funded Historic Preservation Grant, is limited to research and planning projects. Funds from a Certified Local Government Grant can be matched by Community Development Block Grants, but not by the Commonwealth's Historic Preservation Grant.

Setting Up the Preservation Office

Once a statute has been enacted by the local government's governing body, the executive is responsible for implementing it. In the case of a historic district ordinance, this task usually devolves to the code enforcement officer and his or her department. In some cases responsibilities are shared between code and planning departments. Too often neither department has been provided with the extra staff person it will need to successfully administer the new historic district ordinance. What needs to be done is to locate funding to hire a part-time historic preservation consultant or staff person.

Staff Responsibilities

It may have taken years of hard work on the part of dedicated citizens, local elected officials, and municipal employees to arrive at the successful passage of a historic district ordinance. But passage of the ordinance will not guarantee its effective implementation. The next important step is the actual work of administering the district. The following questions need to be answered by each municipality with a code enforcement and planning department:

Who will provide staff support for the HARB?

Who will process the applications?

Who will enforce the ordinance?

Who will apply for grants?

For municipalities with minimal staff these questions are easily answered. It is whatever staff is available, but that may be inadequate for the proper administration of a historic district. These logistical considerations should have been addressed prior to the passage of the ordinance. It may be that there is no one at the municipal level who can take on this responsibility, or can assume certain duties but not others. Unless such administrative problems can be quickly resolved, the municipality's historic preservation goal may be derailed.

Normally, the codes enforcement officer and his or her staff will take on the responsibility of developing the certificate of appropriateness (COA) application. The initial experience of an applicant for a COA when he or she appears at the municipal building will establish the person's attitude about historic preservation in general and the historic district in particular. A code enforcement officer or clerk who does not believe in or is actually hostile to the idea of a preservation approach may engender a permanently negative attitude in the person applying for a COA. If the message is, "Well, it ain't my idea, it's those crazies at the hysterical society, heh heh," the preservation message may be sabotaged. Be on the lookout for such occurrences.

It is unrealistic to expect municipal employees to agree with every new policy, but an effort should be made to explain its purpose. An employee's lack of understanding or outright hostility to the community's preservation efforts should not be tolerated. Every one is entitled to his or her opinion. However, municipal employees are hired to implement municipal policies: denigrating preservation efforts should be censured.

Hiring a Preservation Consultant

A municipality that can hire a preservation consultant to assist in the implementation of its historic preservation program should carefully consider the consultant's professional qualifications and experience. There are planning and architectural firms that comprise professionals in varying disciplines: historic preservation, archaeology, architectural history, architecture, history, planning, cultural geography, and many others. These disciplines, along with the requisite historic preservation experience, fulfill National Historic Preservation Act professional qualifications. Historic preservation plans, architectural/historical surveys, design guidelines, and historical research are just a few of the activities which a municipality may want to undertake, or have to undertake, over time. Much of this can be done in stages (Ellen Beasley, 1980).

Numerous Historical Architectural Review Boards (HARBs) have found the expertise of a historic preservationist with knowledge of one or more of the above disciplines indispensable in the administration of its historic ordinance. The consultant may meet with applicants for COAs, review the proposed work, and prepare a HARB Preliminary Review Form for HARB advisement. In addition, the consultant may attend HARB meetings, prepare the HARB agenda, write HARB minutes, develop design guidelines, and undertake other preservation-related projects or activities. As of this writing, the Certified Local Government program of the National Park Service, which is administered by the Pennsylvania Historical and Museum Commission's Bureau for Historic Preservation, provides partial funding through a competitive grant process to pay for such a consultant. Refer to the grant section of this manual for more information.

Developing a Guide to Acquiring a COA

In order to facilitate the application process, the municipality may find it useful to provide a flyer or brochure which outlines the steps to acquire a COA. The latter option might include a brief history and map of the area, examples of typical architectural styles in the historic district, and a diagram of a building identifying architectural features. Examples of HARB informational brochures, some funded by CLG grants, have been produced by the boroughs of Gettysburg and Bellefonte, the township of Lower Merion, and the cities of Reading and Harrisburg; see Appendix C. Once a brochure or flyer is developed, it can be mailed to all property owners in the district, building contractors, real estate brokers, and individuals or professions likely to be affected by the historic district ordinance. When a property owner or his or her contractor comes to the municipal building for a building or zoning permit, the COA guide can be handed out.

The COA Application

Designing a COA application is another important element in successfully administering the ordinance. While this seems almost too obvious, inadequate forms fail to request the information which the HARB or historical commission and the governing body need to make an intelligent decision. In a particular instance, the Mercersburg HARB rightly complained that an application brought before them did not contain the information the HARB needed to make a determination of appropriateness. It took two separate meetings for the applicant to provide this information. To preclude a situation like this from occurring, consider developing a *submittal criteria*. The submittal criteria should list the specific type of information required. For example, for major alterations or additions the following items must be submitted:

- Elevation drawing indicating proposed alterations, minimum scale of 1/4" equal to 1 foot. Architectural rendering preferred.
- Exterior material description including door and window design. Include catalogue data if applicable.

- Site plan showing dimensions of lot and location of existing building on lot, location of addition, dimensions of existing structure and additions.
- Color chart if applicable
- Photograph or slide of existing conditions from all elevations
- If project is a restoration, submit historic photographs for the period of restoration if possible

To assist the building code official or clerk assigned to accept COA applications and help determine whether adequate information has been submitted, *submittal criteria* should be developed for signs, alterations and additions, painting and changes in material, fences, awnings, demolition, relocation (rare) parking construction, and new buildings. A number of excellent COA applications have been developed by the township of Lower Merion and the boroughs of Hollidaysburg and Bellefonte; see Appendix D for examples. A COA application should request the following information:

- The owner of record as well as the applicant's name—they may not necessarily be the same. Include the address of each.
- Clearly written specifications of the work planned. The amount and kind of information will depend on the complexity of the project. What sort of project is it?
- Is it a preservation, stabilization, rehabilitation, or reconstruction project? Each type of project may require a different standard for considering the appropriateness of the proposed work. For example, nailing exterior plywood to front facade windows to prevent unauthorized entry in an abandoned building may be perfectly appropriate on a stabilization project, whereas it is not appropriate as a permanent repair in a rehabilitation project. Identifying the kind of activity or type of project will aid the HARB or historical commission in determining the appropriateness of the applicant's proposal.
- Is it new construction? Demolition? Repairs or alterations? Fencing? Signage or awning installations?
- How will a building be repointed or cleaned?
- Require a description of the part of the building which will be affected: photographs, site plans, blueprints may all be needed, or a simple sketch may be the only thing required. The submittal criteria will help determine how much and what kind of information are needed for specific projects.
- Whether a municipality has one or more historic districts, the name of the district in which the property is located should be listed.
- If a comprehensive historical and architectural survey was executed of the area in question, it is necessary to note the building's architectural style and historical background. Include whether it is a contributing or noncontributing resource to the district.

Lastly, *an incomplete COA application SHOULD NOT be accepted by the building codes department or the HARB.* Accepting an incomplete application may, depending on the historic district ordinance, initiate the review process and use up the time allotted for municipal review and approval. Refer to your ordinance regarding this point.

When an incomplete COA form reaches the HARB or historical commission, it may not be able to assess intelligently the project, thus wasting both the applicant's and HARB's time. It may then have to table the application to the next regular meeting. Caution! Your ordinance may require a decision by the HARB and governing body within a specified amount of time and may not allow for a suspension of the time allotted. The result may then be approval of the project by default. Again, check your historic district ordinance or have your solicitor clarify this matter for you.

Developing a Guide to Acquiring Permits

Those of us who are familiar with the workings of local government understand that to undertake building projects numerous reviews and approvals must occur. Certain projects may require reviews and approvals by various levels of government — federal, state, and local. Forms need to be filled out, information submitted. Discussions with individuals and boards or commissions may be needed. For some individuals this plethora of inter and intragovernmental steps is confusing, time consuming, frustrating, and costly.

The public may wonder if these reviews are placed there by bored and officious bureaucrats who have nothing better to do than wait in plush offices to harass and annoy innocent taxpayers. It seems that some people think so. In actuality, every review and permit approval is there because someone like you is concerned about the impact of someone else's action on his or her property or community. Whatever your opinion may be on the issue of government regulations — too much or too little — adding the COA process does add another layer of red tape — all to the good perhaps, but nevertheless real. The point is to make the inconvenience worthwhile.

Make the permit review process less of a mystery by explaining it step by step. So that, for example, a person planning to establish a bed and breakfast in a historic district is made aware that he or she will need a zoning permit, which may require a special exception, which may require a zoning hearing board review, and if he or she plan to make changes to the exterior of the building, he or she will also need a certificate of appropriateness. In addition, applicants may have to meet with the planning commission, as well as the fire marshal and others. It should be explained that certain steps may occur concurrently, or in a certain order. Explain the amount of time each step may take. Some local governments, sorely conscious of the time and inconvenience these reviews cause the public, have instituted a preliminary meeting between the applicant and the department officials with whom an individual may have to interact. The applicant, by discussing their project in general terms with the building inspector, fire marshal, preservation planner, or zoning officer (in small municipalities this is the same person), may receive some indication as to potential problems and likely solutions. This helps to prevent acrimonious misunderstandings and unnecessary delays. Include a flow chart illustrating the permit and review process.

Administrative Approval Procedures

To further alleviate delays and to expedite the certificate of appropriateness and building permit review process, municipal governments with geographically large historic districts, and hence, numerous applications, have either formally or informally established administrative approval procedures. The principle is simple. The building inspector or codes enforcement clerk determines on the basis of a completed application whether the proposed work (1) can be seen from a public way, (2) is a replacement in-kind, and (3) is a repair or a maintenance procedure that does not alter the appearance or material of the feature. If any of these alternatives is applicable, the HARB staff, historic preservation specialist/officer, or building inspector approves the work and issues a certificate of appropriateness or building permit. At a regular meeting of the HARB or historical commission, the building inspector can apprise the board or commission, and subsequently the governing body, of the work which he or she has approved. The cities of Harrisburg and York, and the borough of Gettysburg, each of which administers a historic ordinance under the authority of the Historic District Act, have established individual regulations to expedite the HARB review process. The city of Reading has not, as of this writing, formalized the

procedure. The cities of Philadelphia and Pittsburgh which administer their historic preservation ordinances under home rule charters have also established staff review procedures.

Harrisburg's Historic District Ordinance section 1351.06, *Historic District Building Permit Procedure*, refers to in-kind repair and/or replacement. It states as follows:

(1) In-kind repair and/or replacement refers to work completed with the identical materials, design, dimensions, colors, and configuration of any architectural features that currently exist on the structure.

(2) Any application which consists solely of in-kind repair and/or replacement shall be reviewed and approved by the Deputy Director for Planning or his/her designee. The application will be forwarded to the Zoning Administrator and the Building Inspector for appropriate action.

(3) Any application found not to consist solely of in-kind repair and/or replacement shall be submitted to the Board for review.

The city of Pittsburgh essentially operates in a similar fashion. Its administrative approval procedures state the following:

The Historic Review Commission shall review all new construction proposals, all demolition applications, all requests to make major alterations to a building, and all changes in materials; the Historic Review Commission shall authorize the staff to approve all applications to repair or replace buildings elements, and proposals to restore the exterior of a building to a documented original condition;

The staff shall also be authorized to approve an application for work to a building in a row of identical structures, when the Commission has already approved an identical application in the same row. If an application involves both items that could be approved by the staff and items that require HRC review, then the entire application must be reviewed by the Commission.

A list of specific repair and replacement activities and materials is appended; the categories include: masonry, siding, windows, doors, roofing, downspouts, lighting fixtures, awnings, shutters, burglar bars, porch/step railings, sidewalks, steps, stoops, garage doors, fences, and signs. All work approved by the preservation planner must be in accordance with the established guidelines set forth by the Pittsburgh Historic Commission; see Appendix E.

The HARB or historical commission should consider maintaining oversight over this procedure by requiring a list of all administratively approved work to be presented by staff at each regular meeting.

Building Codes and Historic Preservation

A substantial number of today's building codes are the result of major tragedies, such as the 1911 New York City Triangle Shirtwaist Company fire in which 146 workers died, most of them women, when they were unable to exit the building due to locked exterior doors and lack of exits.

Trying to retrofit a historic building to comply with today's life and safety standards may prevent the preservation of its character-defining features, or, in a worse case, actually preclude its preservation because meeting those standards cannot be made cost effective. Today's building codes are written for new construction. In attempting to adapt a historic building to new uses, the prospective developer may find the task financially prohibitive and emotionally exasperating, as when he or she tries to find a solution which will comply with the Secretary of the Interior's *Standards for Rehabilitation* and conform to building codes.

A municipality serious about attracting developers to invest in its stock of older buildings may have to find, in situations where it is feasible, alternative ways to meet the requirements of fire and building codes. But keep in mind that the building inspector or code official, unlike the property owner or architect, is faced with setting precedents for every decision she or he makes.

The National Trust for Historic Preservation *Information Series No. 57*, titled "Safety, Building Codes and Historic Buildings," recommends architectural and engineering solutions which can provide minimum safety standards while at the same time minimizing damage to historic fabric.

There are no easy answers that can be applied to every case. The point which should be kept in mind is that the municipality should do all it can to provide for the public's life, health, and safety while remaining flexible and open to alternative means of fulfilling those objectives. Don't be fooled by unscrupulous individuals who, under the guise of attempting to maintain the historic character of a building, are really trying to avoid fire and safety compliance.

As of this writing, there is no uniform building code in Pennsylvania, although several attempts have been made to introduce such a bill in the state legislature. However, many local jurisdictions have voluntarily adopted the Building Officials and Code Administrators (BOCA) code. Those municipalities that have done so since 1990 have Section 513, titled Special Historic Buildings and Districts, included in the code. This grants alternative means of providing safety for old buildings, thereby making their preservation more feasible. Section 513 reads that:

"The provisions of this code relating to the construction, repair, alteration, enlargement, restoration, and movement of buildings or structures shall not be mandatory for existing buildings or structures identified and classified by the state or local government authority as historic buildings, subject to the approval of the board of appeals, when such buildings are judged by the code official to be safe, and in the interest of public health, safety and welfare regarding any proposed construction, alteration, repair, enlargement and relocation. All such approvals shall be based on the applicant's complete submission of professional architectural and engineering plans and specifications bearing the professional seal of the designer (Kaplan, 1988, p. 13)."

The Bureau for Historic Preservation will authenticate the historic status of a building at the request of a property owner or developer if the building or structure is listed in or meets criteria that make it eligible to the National Register of Historic Places. This authentication may be presented to Pennsylvania Department of Labor and Industry or local government agencies, thereby opening the door to negotiating *alternative* means of providing health and safety.

The HARB Preliminary Review Form

We highly recommend a HARB Preliminary Review form as an aid to the review process. This form can be combined with the COA application as has been done in the borough of Hollidaysburg. It will contain some of the information found in the COA application plus a recommendation made by a historic preservation consultant, historic preservation specialist, or planner about the proposed work. If a professional is not available, this function can be provided by the building inspector. The idea behind this form is to *provide a framework for the HARB to consider an applicant's proposed project.*

The form contains facts about the building such as

- the number of stories
- building materials
- roof type
- architectural style
- historical background
- In addition, a full description of the proposed work should be provided:
- identifying the Secretary of the Interior's Standard for Rehabilitation applicable to the work at hand, if it is being used
- specifying the criterion in the historic district ordinance to which the work applies. This serves the purpose of alerting the HARB in its forthcoming deliberation to consider the applicant's work according to written standards, guidelines, and criteria, and not according to the whims or aesthetic judgments of its members.

Lastly, the form should contain observations about the building component(s) or architectural feature(s) that will be affected. For example, an applicant requests a COA for the replacement of a carved wood entrance door because the door does not fit tightly due to some warping. The specialist will make a site inspection and conclude that rehanging the doors and applying weather stripping are all that is necessary to correct an air infiltration problem. This is the recommendation that will be written up in the HARB Preliminary Review form. See examples of HARB Preliminary Review Forms from the cities of Bethlehem, Lancaster, and York and the boroughs of Gettysburg and Mercersburg in Appendix F.

Every HARB member should receive a copy of this form **prior** to the regular HARB meeting. However, this may not be feasible if the municipality or the HARB allows filing of COA applications immediately prior to the meeting. Historic district ordinances are generally quite specific as to the deadline for filing prior to the HARB meeting. Check your historic district ordinance for the amount of time you have.

Typically, HARBS wanting to accommodate late filers, or because of pressure from colleagues, friends, or local officials, end up reviewing projects at the last minute without having had an opportunity to study the matter at hand. Deliberating about a project without having adequate information results in poorly thought out recommendations either for or against the issuance of a COA. As trite as the saying may be, *someone's lack of planning ought not to become the municipality's emergency situation*. There are occasions when an emergency may arise and imminent danger to life and property requires immediate action. In that case, stabilization of the building or a temporary repair, or in a worst case scenario, demolition of a building may be required. Most historic district ordinances provide for such a contingency, enabling the building inspector to issue a building permit. However, when permanent repairs are to be made, the HARB or historical commission must still review the project.

Sample Building Materials

To assist applicants for COAs, HARB and historical commission members can, over time, accumulate sample building materials to help illustrate specific points about repairs and replacement technology. Many building material vendors will gladly provide sample materials, sometimes in actual size as, for example, simulated slate, asphalt roof shingles, clapboard, vinyl siding, and even scaled replacement windows. It sometimes takes just a telephone call and the material will be delivered at no cost to the municipality. This material needs to be kept in a storage area accessible to the building inspector or codes administrator, so that when building contractors come to apply for building permits in historic districts, sample materials can be used, if the situation warrants it, to illustrate preservation dos and don'ts. The same sample material can be used during the HARB or historical commission meeting.

It is also useful to acquire building material catalogues. Most architectural offices have last year's version which they may donate to you. Also useful are historic paint charts which may be acquired from most paint companies. In one borough a paint company was willing to provide a seminar on proper painting procedures, and it even is considering painting a private dwelling to promote its paints.

Handling Violations

How should the municipality deal with violations of the historic district ordinance? How it enforces its existing ordinances will provide the clue. If enforcement of building and zoning ordinances is haphazard at best and allows influential persons to avoid conformity, the public will not take the historic district ordinance seriously. It may occur that a building code official, through some mistake, issues a building permit for work in a historic district without HARB or historical commission review. *This should automatically make the permit INVALID! This fact should be clearly stated in the historic district ordinance, as well as on all building, zoning, and certificate of appropriateness applications.*

When a person states that he or she was not aware of the ordinance, this does not have to mean that the

municipality simply acquiesces and lets inappropriate work remain in place. When was the last time a police officer excused a speeding violation based on your assertion you did not know the speed limit? Although one wishes to be fair to those who genuinely did not know that they were required to apply for a COA, dismissing the matter is equally unfair to property owners who have complied with the requirements of the ordinance and have made the extra effort to preserve the architectural integrity of their property.

If the work that was done without the issuance of a COA reflects the intent of the ordinance, the person should be commended for his or her contribution but requested to come to the municipal building and file the appropriate forms. However, if the work that was performed is contrary to the aims of the historic district ordinance, there is really no alternative other than to cite the violator and demand the violation be corrected. Violators should be cited and stop-work orders issued. If the work that has been done can be reversed, the municipality should insist it be done according to review and recommendations made by the HARB. The governing body, ought to support, especially under these circumstances, the HARB's decision. If it overturns the HARB's recommendation, this may be interpreted to mean that an applicant may proceed with his or her project without the HARB review process. By circumventing the step-by-step procedure and HARB or historical commission review, and appealing to the governing body to approve the work directly, the intent of the ordinance is undermined.

What if the unapproved work is not reversible, or reversible but at extraordinary cost to the violator? Should the municipality disregard the matter? We recommend that the municipality not disregard the violation, and by enforcing its ordinance and penalizing violators send a clear message as to its intentions. Two relevant court cases are discussed in the *Maryland Historic Preservation Commission Handbook*.

Enforcement

Passage of the ordinance may have been reached only after a long, arduous effort. However, if the ordinance was passed merely to mollify a persistent group of individuals, and if the governing body and municipal staff are going to enforce the ordinance begrudgingly, the HARB is likely to be constantly frustrated and demoralized.

The purpose of strict enforcement is to instill public confidence in the municipality's will to protect its historic resources. Making exceptions and relaxing enforcement undermines not only the efforts of the HARB and historical commission, but erodes the municipality's authority overall. This is self-defeating; it demoralizes board and commission members and municipal officials with the duty to administer and enforce the ordinance. It also places the HARB and historical commission in the role of the "bad cop" to the "good cop" of the governing body. This sort of game or juxtaposition ultimately defeats a municipality's historic preservation objectives. There will be occasions when elected officials find it politically expedient to take a pseudo-populist approach, pretending to be the defenders of the "little guy" against the "tyranny" of the HARB — a "tentacle" of local government. The legitimate role of the governing body is to denounce and rectify documented instances of arbitrary and unfair treatment of applicants by municipal officials and its boards or commissions. Lastly, enforcement of the historic district ordinance is the "insurance" many properties owners are looking for to protect their real estate investment. The attractiveness of investment protection explains, in part, the popularity of home associations, of which there are approximately 250,000 in the United States.

Demolition by Neglect

This is a most serious problem and it is, unfortunately, omnipresent not only in residential slums but in central business districts and the main streets of small towns. Demolition by neglect is either voluntary or involuntary, voluntary in the sense of an owner who merely walks away, involuntary when an incapacitated person who is also poor is no longer able to act responsibly for the maintenance of his/her property. In either case, it is an onerous problem because it is exceedingly difficult under Pennsylvania law to require property owners to take

responsibility for their property. Major companies whose properties have been fully depreciated may turn away from the city, borough, or older suburb to newer and more lucrative investments, leaving commercial buildings to rot, waiting for the "appropriate" time to unload their urban detritus.

Landlords who purchase properties for the value of their tax delinquencies and collect rents without putting a dime in maintenance and repairs, ultimately to abandon these buildings, also participate in this process. Typically, owners who wish to avoid the requirement of HARB or historical commission review, fearing their request for a permit to demolish will be denied, and have the time to spare, wait for the elements or vandals to do the work for them.

In order to counter or at least contain this phenomenon, municipalities have enacted ordinances or added sections in their existing historic district ordinances prohibiting deteriorating conditions of roofs, roof gutters, downspouts, exterior walls, wood members, porches, and peeling paints. The city of New Orleans has such a clause in its Vieux Carré Historic District Ordinance and Pollard (1989) refers to a similar provision in Charlottesville, Virginia's [Building] Code (p. 31). Refer to Appendix G for examples of demolition by neglect wording.

The municipality cannot approach the problem of demolition by neglect in a haphazard manner. It must establish legal and organizational strategies to deal with it. It is simply not enough to cite violators. Municipal files are filled to bursting with violation notices that are disregarded by property owners. There must be the will to enforce the ordinance. In addition, acquisition of properties through the eminent domain authority of the appropriate agencies should be considered as a last resort. Once acquired, properties can be placed on the market for resale, and housing rehabilitation loans and grants can assist eligible property owners to rehabilitate these properties. This strategy must occur before buildings become so dilapidated that rehabilitation is cost prohibitive and the building must eventually be razed.

In the section "Getting the Magistrate on Your Side" in this manual, the role of the magistrate is discussed. The public must unequivocally communicate its concern over the issue of neglected properties. It must insist that appropriate fines be levied on individuals who persist in violating municipal building and housing code requirements. Under the Historic District Act, the regulation of demolition of historic properties is authorized. Since demolition by neglect ultimately leads to the same result, adding a Demolition by Neglect section in a municipality's historic preservation ordinance is recommended.

Legal challenges to demolition by neglect such as the often noted violation of the Fifth Amendment to the U.S. Constitution, namely the prohibition of the taking of property for a public purpose without payment of just compensation, can be met in the same manner as regular demolition requests. See page 73 on "How to Prepare for a Demolition Request."

HARB Meeting Announcements

Municipalities which have relatively large historic districts have enough COA applications to warrant the establishment of a regular HARB meeting schedule. Just as the planning commission and various municipal boards advertise their forthcoming annual meetings in a local newspaper of wide circulation, the HARB should do the same. Notarized proof that the information containing the date, time, and place of the meeting was printed should be solicited from the newspaper and kept in municipal files; see example in Appendix H.

If the local cable television company has a public access channel, the HARB schedule could be posted on its community calendar. Creating a HARB Web page for the Internet is another means to get HARB information out to the public. However, neither of these methods, at this time, can substitute for notarized proof of publication.

Personalized Meeting Notice

When a person has filed his or her COA application at the municipal building, and the building inspector or his staff has ascertained that the application has been properly completed, the applicant should be notified (preferably) by certified mail of the date, time, and place of the meeting. This does not need to be done for every case. But experience has taught those of us in the field that applicants who expect that their project proposal might be denied will attempt to find a means to sabotage the design review process by denying they ever received notice of the HARB or governing body meeting. Mailing this person a postal certified letter will discourage such applicants from using this ploy; a sample notification letter is included in Appendix I.

Neighbor Notification

While it is not common for Pennsylvania municipalities who administer historic districts under the authority of the Historic District Act to send out notices to property owners who live within a certain distance of an applicant for a COA, this procedure which is common in the zoning hearing process should be considered. Many states follow this procedure in their regulated historic districts. Alerting neighbors within a specific number of feet of a proposed project will give them the opportunity to express their opinion as to the impact of the project, if any, on their property.

When to Hold the HARB Meeting

Most local governments hold their zoning hearing board, planning commission, and HARB meetings in the evenings. This is done to accommodate both the members of these commissions and boards and the public that must attend. As in every situation there are exceptions to this rule. But if you plan to show consideration for working men and women, you probably want to hold the HARB meeting in the early evening. Note, elderly property owners or handicapped individuals may have difficulty in traveling to the meeting. You may want to inquire about such potential difficulties by asking questions related to this matter in your meeting notice to the applicant.

Chapter 2

DEVELOPING DESIGN GUIDELINES

It should be clear what your aim is to develop design guidelines. Several questions need to be asked and answered before launching into the development of design guidelines. Are you planning to educate as well as influence all property owners, those included in the historic district as well as those outside of the district? Are the design guidelines to be used by applicants for COAs as well as HARB members and governing body members in assisting them to make decisions? Typically, design guidelines are developed and printed, distributed and survive on someone's shelf thereafter never to be referred to. Many HARBS almost never refer to them. Use them, don't just print them and forget about them!

You can develop design guidelines which (1) are intended to interpret the historic district ordinance criteria, and (2) provide advice on general historic preservation approaches in repairing, maintaining and rehabilitating historic buildings. Include issues of compatible additions and new construction in a historic district context.

Background of the Historic District

The design guidelines should include the reasons for the historical and architectural significance of the district. This information may be culled from the National Register for Historic Places nomination documentation and may simply be a synopsis. An attempt should be made to place the historical significance of the area within a larger historical context. Again keep it short.

Architectural Styles

Another important component of design guidelines is to provide examples of architectural styles, types of buildings and structures to be found in the district(s) and municipality. An explanation of the characteristics of those styles also need to be included. Because the nomenclature of architectural features and building construction is specialized, a glossary of such terms should be considered. The inclusion of a line drawing naming the parts of a house is also useful.

Historic Preservation Projects

HARBS and historical commissions are confronted with different types of historic preservation projects. Usually these fall into the following categories: protection, stabilization, preservation, rehabilitation, and restoration, (acquisition and reconstruction are less usual). The Secretary of the Interior's *Standards for Historic Preservation Projects with Guidelines for Applying the Standards* describes each of these types of preservation projects. It may be worthwhile, at a minimum, to include the definition of preservation project categories in your design guidelines and refer the reader to the U.S. Government Printing Office for copies of the entire document.

The importance of discriminating between preservation projects ought to be self evident. Applying the same standards to different categories of projects may be counter productive. For example, the difference between a preservation and restoration project is a matter of approach and consequently of cost.

Accordingly, *rehabilitation* "[i]s defined as the act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural, and cultural values." *Restoration*, on the other hand, "[i]s defined as the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the

replacement of missing earlier work." The operative words in a rehabilitation project are utility/repair/alteration, and in a restoration project recovering/replacing. The process of repair can be far less costly than the process of recovering a missing element in a historic building.

A HARB or historical commission must take into consideration the differences between each project and apply a different standard to each. For example, if a slate roof has reached its useful life, a restoration project might require a replacement in kind. If, however, it is a rehabilitation project the idea is to return a property to a state of utility, and the expense of a slate roof may be financially infeasible. Therefore, a compatible substitute material may be an acceptable alternative for a rehabilitation project.

Most of Pennsylvania's historic district ordinances provide for the review of alterations to the *exterior* of buildings. How should a board or commission consider the appropriateness of an alteration if it is missing a standard by which to assess it? If the project is to be reviewed as a rehabilitation, the enclosure of a side veranda may be acceptable. If judged as a restoration, the enclosure of a veranda may be entirely unacceptable.

Step-by-Step Procedure for Acquiring a COA

Include a step-by-step procedure in your design guidelines which explains how to acquire a certificate of appropriateness, and be sure that your explanation accords entirely with the requirements of the historic ordinance.

Sign Design Guidelines

Since many historic districts are located in a central business district or main street, consider including guidelines regarding commercial signage. Some communities have dedicated separate design guidelines to this subject, and you might do the same, but consider including some basic principles as to proportion, placement, and construction material.

Awnings

Awnings are both highly practical and ornamental. Traditionally composed of impermeable canvas and designed in single or stripped colors, awnings are used as shade from the sun. By shading the interior of the building awnings reduce heat and thereby energy consumption. The retractable type of awning is the ideal, as it allows light to penetrate into the interior of the building when it is needed. Awnings on store front windows often display the name of the business and street number on the "skirt" or valance element. In recent years curved shaped, non retractable awnings have made their appearance in suburban shopping centers and central business districts. Manufactured out of translucent acrylic material and backlit, they tend *not* to be historically appropriate for most buildings in a historic district.

Canopies

Made of various materials as described for awnings, certain canopies over main entrances to commercial buildings, such as hotels, are supported by tubular metal framing upheld on a public right-of-way sidewalk. Their design is regulated by the historic district ordinance but may also come under zoning regulations as well. The name of the business and building number may also appear on the front and side of the canopy.

Vending Machines

Are vending machines reviewable by HARBs? The Historic District Act authorizes municipalities to regulate alterations on the exterior of buildings which can be seen from a public right of way. Vending machines — and we exclude newspaper vending machines as this encroaches on First Amendment rights — are not buildings or structures. However, under most circumstances vending machines dependent on electricity are usually installed against buildings. Is this an alteration to the building?

To alter is to modify in some manner as in size, style, or course. A broad interpretation might possibly allow for HARB review, especially as soft drink vending machines use the entire front of the machine to advertise their products, and in effect, act as advertising signs. But it would seem far more efficacious to regulate these intrusions of the public right of way in the zoning ordinance.

You will no doubt not be too surprised if you find opposition from various quarters in your efforts to regulate vending machines out of the historic district. Perhaps the way to approach it is to specify where and how vending machines may be installed. In any case, be prepared to fight with the distributors of vending machines on this issue.

The “Dos and Don’ts”

The body of the design guidelines will be devoted to the appropriate as contrasted to the inappropriate manner of repairing, maintaining, and rehabilitating a historic building or structure. In other words, this is the section in which is illustrated the “dos and don’ts.”

If you plan to use photographs, don’t use inappropriate examples from your own district. You will be able fully to illustrate these from a distant community. Instead use the “dos” examples from your own town, and if there simply aren’t enough examples try finding them in another historic district.

Landscaping

If you are planning to discuss matters regarding landscaping, pavements, and street furniture such as lamp posts, benches, and so on, be sure you make it clear what is simply a suggestion and what is required by law. Most historic district ordinances are based on the state enabling statute, the Historic District Act. This act authorizes municipalities to review buildings and structures. If you plan to review other elements of the built environment, you may have to do so under your zoning ordinance. In either case, the HARB can only review and recommend concerning alterations, erection, reconstruction, restoration, or demolition of all or part of any *building* within the historic district. The zoning board, on the other hand, has the authority under the Municipalities Planning Code, to review landscaping, pavements, and so on. This may require the municipality to establish a historic district overlay on the zoning map, and amend the zoning ordinance to accommodate these new requirements.

New Construction and Additions

There will be occasions when the HARB or historical commission will need to review new construction and additions to historic buildings. In regards to *new construction*, emphasis should be placed on siting rather than imitating architectural styles: maintaining traditional setbacks and side yards or front yards if that defines the character of the district. In a more urban setting where buildings were constructed up to the property line, that tradition should be continued. New additions to historic buildings should be recessed somewhat, enough to set them apart from the original building.

Scale is a crucial element of new construction which encompasses mass, height, and width. Human scale is

maintained on residential buildings by porches, and commercial buildings by store fronts.

Form is also a major component of the built environment which is expressed in the architectural style of the building and the building type, whether it is a residential or commercial building.

Proportion is the relation between size and quantity indicative of harmony, balance, or symmetry. Hence, any exaggerated architectural feature will be out of harmony with the whole.

Fenestration and the ratio of solids (walls) and voids (windows and doors) should reflect surrounding buildings. It is the placement of windows and doors on the facades of buildings which creates a rhythm in a streetscape. Hence, an architect must consider how his or her new construction will impact on the built environment.

Materials must also be considered. Buildings in certain historic districts are almost exclusively constructed of either masonry (brick, stone, or stucco) or wood (clapboard, shingle, shake, etc.), or a combination of both. Metals have also been used, such as copper for oriel or bay windows and roof cornices. In new construction, attention to historic materials will contribute to a new building's compatibility with its environment.

Review of *new construction* especially in central business districts may engender some conflict. HARBs and historical commissions must avoid stifling good contemporary design. They may also embroil themselves in bitter disputes about what is compatible and what is not. A historic district, especially in a central business district, is far more likely to come under economic pressures than residential neighborhoods. However, if the HARB focuses on the main points made above, it will not guarantee good design but may decrease the impact of poor design and engender creative solutions.

Roof shapes are also character-defining elements of buildings and historic districts, and new construction should aim for compatibility with surrounding buildings. A new building with a flat roof on a street exclusively with gabled roofs will look out of place. The type of roofing materials contributes to the quality as well as the character of a roof.

Colors and textures enhance architectural features of a building, and reflect regional tastes and traditions. Conservative earth tones would clash with bright pastel colors.

Architectural details help define the architectural style of a building or structure. Dentillated roof cornices, eyebrow lintels, "stained" glass windows, roof cresting, and other details need not be imitated, but some aspect of these features can be incorporated in new construction.

The Central Business District

Many historic districts include a town's main commercial street or the central business district (CBD). As this is the area of a historic district which may be the oldest, a wide variety of commercial or mixed commercial and residential buildings may be represented. Various periods of a town's history may be depicted in the types and architectural styles and the technological innovations of its buildings. The scale of the area may also be disparate, with turn-of-the-century ten-story "skyscrapers" next to three-story commercial buildings.

The CBD is in a state of transition; many traditional retail businesses have moved out to be replaced by new ones. A design guideline should address design issues typical of a CBD. These will include store front alterations and signage. Pressures for new construction may be more intense in the CBD than other areas of the municipality, thereby bringing requests for demolition and parking facilities before HARB review. Preservation of the historic character of the CBD is often placed in the balance with new real estate development. Too often it is the former which loses out to the latter. The HARB and historical commission task is to determine the historical appropriateness and the compatibility of changes to historic buildings and compatibility of new construction in a historic setting. Economic development issues are best left out of the board's consideration except as they can shed light on the feasibility of the rehabilitation of a building versus its demolition for new construction, or a surface parking lot. This is not to say that the cost associated with a preservation project is not a consideration in its feasibility. The board must remain flexible, compromise, and stand firm when it needs to.

Many of Pennsylvania's municipalities which have historic districts have at one time or another developed historic district design guidelines. There are many good to excellent example of the genre. Some of the more recent ones, in part funded by Certified Local Government matching grants include the boroughs of Gettysburg and Hollidaysburg, the township of Lower Merion, the cities of Bethlehem, Williamsport and Philadelphia. Ordinarily the Bureau for Historic Preservation has only one or two copies for its library. However, copies of the *Lower Merion Historic District Design Guidelines* are available from the BHP courtesy of the township. Of the two thousand or more historic preservation commissions in the United States we do not have the statistics as to how many have published historic district design guidelines. A broad sample of ten to twenty should provide good enough examples for your own efforts. Some design guidelines which have come to our attention from our membership to the National Association of Preservation Commissions, and which have been recognized as fine examples include the *Rock Hill, South Carolina Design Review Guideline Manual*, the *City of Manassas Historic District Handbook*, and the *Loudoun County, Virginia Historic District Guidelines*.

Chapter 3

RESPONSIBILITIES OF THE HARB AND HISTORICAL COMMISSION

Who Should Be a HARB Member?

In assembling a Historical Architectural Review Board under the state enabling law — the Historic District Act — the municipality must appoint a minimum of five members, one of whom must be a licensed real estate broker, a registered architect, and a building inspector, and at least two of whom have demonstrated interest and knowledge in historic preservation.

In addition, if the municipality has been awarded the status of a Certified Local Government (CLG), a program administered by the National Park Service and each respective State Historic Preservation Office, the question as to who should be a HARB member becomes even more sharply defined. This is because CLG regulations stipulate that the municipality make a good faith effort to appoint specific professionals should these individuals be available in the community. In our democratic system of government, appointments to boards and commissions occur in a political context. This is perfectly legitimate, for it is assumed that the individual appointed to a board or commission supports and agrees with his or her party's political policies. In most situations, appointees are chosen, in part, due to their political party affiliations, their interests, and their qualifications. Certain municipalities are more conscientious about fulfilling the political requirement of this equation than they are the others. The result, in the long run, can spell trouble for the board and ultimately for the municipality's efforts to administer the historic district.

Duties and Responsibilities of the HARB Member

Do not accept an appointment to the HARB unless you have the time to devote to it. That seems fairly obvious, but if the board you are joining reviews six to ten cases per month, consider that you may have to visit at least half the sites to determine some of the facts for yourself. This does not have to take an inordinate amount of time. However, you should expect to spend ten to twenty minutes or more on each site depending on the complexity of the proposed project and the size of the building. That's about three hours of on-site inspections and three hours at the HARB meeting per month. In addition you will probably spend some time keeping up with historic preservation literature, such as articles in *Preservation News*, newsletters, *The Old House Journal*, and so on. Add attendance of at least one conference per year and a seminar on a specific preservation issue, and it would be fair to say that if you are not ready to donate a yearly total of two to three weeks to board duties and responsibilities, you probably should think twice before saying yes to a request that you serve.

Individuals who feel they ought to serve but know they can't devote the time required, usually end up frustrated and are doing a disservice to themselves and others.

HARB and Historical Bylaws

Generally, the duties and responsibilities of the HARB are spelled out in the historic district ordinance, and bylaws may not be necessary. However, board policies regarding the minimum required attendance at HARB meetings, unexcused absences, conflict of interest, and training requirements may be included in bylaws.

In addition, matters relating to the election of officers, quorums, rules of order, committees, and adoption of the Secretary of the Interior's *Standards for Historic Preservation Projects* have been included.

What constitutes a conflict of interest? It is any activity that creates a conflict between the public interest and the private interests of you, your immediate family, or your business associates. Originally, interest was defined as

financial benefit. Now it is defined more generally as "benefit." When you have identified a conflict of interest you must recuse yourself from discussing and voting on the case. We recommend that you absent yourself from the room in which discussion is taking place (Rhode Island Historical Preservation and Heritage Commission, 1995).

Historic ordinances enacted under the Historic District Act require, in addition to other persons, the appointment of a registered architect and licensed real estate broker. These two persons may have clients who will eventually apply for a certificate of appropriateness (COA). For example, the architect on the board may have been hired to design an addition to a building in the historic district. The case will require that the architect explain the project and answer questions put by the board. Having answered the questions put to him or her, the architect may then recuse himself from the discussion and from the room. In a situation where, through momentary absence, there is a lack of a quorum, thereby preventing a vote from occurring, the case will have to be delayed to another meeting when a quorum has been established. Warning, be sure the time period in which the board or commission has to respond has not expired (this may require a special meeting), otherwise the project will be considered approved by default.

Bylaws are not always taken very seriously. Many board members, in fact, are unaware of their bylaws, due possibly to the fact that these bylaws were enacted before they were appointed.

The chair must see to it that the bylaws are adhered to. Because HARB or historical commission members are volunteers, it is sometime thought that a higher standard of behavior is simply asking too much. Such an attitude discourages a responsible approach and indicates a lack of understanding of the importance of the HARB's or historical commission's quasi-judicial role.

Choosing the Chair

The importance of the HARB or historical commission chair should not be underestimated. In fact it is a crucial role, and the person chosen to fulfill the duties of the chair can influence the success or lack of success of the historic district. We urge all board members to consider carefully what the job entails, and having done so determine who on the board is best qualified for that position.

The chair ought to be a person who does not need the constant approval of his peers. Ideally, the chair should be familiar with the rules of order essential to running a meeting. The chair ought not to be chosen because no one else wants the responsibility. Familiarity with the Historic District Act and the local ordinance should be a requisite. Ability to summarize the essential elements of a debate is also important. The chair must, at all times, have control of the meeting.

The chair should be a person who demonstrates respect and concern for all applicants and concentrates on the issue at hand, not on personalities. The chair sets the tone of the meeting. The chair should not allow side conversations to occur during deliberations, nor should he or she allow anyone to speak unless recognized. The chair has a leadership role and, therefore, represents the board or commission before the governing body, and the public through the news media. The chair's position is demanding and should go to the person best suited for it.

The HARB or Historical Commission Agenda

The HARB agenda should be more than a list of prospective applicants and their addresses. A brief explanation of the proposed work should be included. See examples in Appendix J.

Before the HARB Meeting

Before the meeting begins, be sure that each HARB member name placard is in place. This is a courtesy to applicants and the public attending the meeting to help identify each board or commission member. A permanent placard is best, but if this is not available a simple hand-printed folded cardboard sign will do.

To assist the board each board member should be provided, when appointed to the HARB or historical commission, with the *HARB or Historical Commission Reference Book*, a three-ring binder containing, at a minimum, the following documents and information:

- (1) the state enabling legislation
- (2) the historic district ordinance including amendments
- (3) the Secretary of the Interior's *Standards and Guidelines for Historic Preservation Projects*
- (4) a copy(ies) of the National Register of Historic Places nomination application(s). This document provides the reasoning and facts according to which the historic district(s) has/have been designated to the National Register
- (5) a sheet containing a "How to Make Motions Concerning an Application for a Certificate of Appropriateness"
- (6) the HARB or Historical Commission bylaws
- (7) a clear map showing historic district boundaries

Note, unless a HARB or historical commission member is familiar with the above-listed information or has access to it, he or she may not be able to base decisions and recommendations on findings of fact and of law. As this three-ring binder with all these documents can be cumbersome to carry, consider providing duplicate copies for each member, one of which may be kept permanently at the municipal building and distributed at HARB or commission meetings, the other at each member's home or office. (Consider applying for CLG grant funding to help defray this cost.)

Audio and Visual Equipment

You may want to tape record all or certain portions of meetings when you think there may be a contested HARB recommendation. The meeting can then be transcribed verbatim or the secretary assisted in the writing of minutes.

Having a slide or overhead projector handy may also be useful in those instances where slides or illustrations can best illustrate the board's or applicant's points.

Conducting the HARB Meeting

It cannot be emphasized enough that a poorly run HARB or commission meeting has a pernicious influence on the successful administration of the municipality's historic district and preservation objectives. Consider applying the following procedural steps or some modification of them to insure that due process of law will be provided to each applicant:

The chair calls the meeting to order and the secretary calls the roll. The secretary notes excused and unexcused absences and records the presence of a quorum. Before going to the next item the chair may want to welcome members of the public attending the meeting and briefly explain the purpose of the ordinance and the board's function. In addition, the chair may want to explain how the meeting will proceed, indicating the approximate amount of time each applicant will have to explain his or her application. (These preliminary formalities should not take more than a few minutes.)

Next, the chair calls on the secretary or the historic preservation consultant or staff for a “reading” of the minutes. These do not need to be read *per se*, as, ostensibly, board members have previously read them. The secretary asks if there are any corrections. If there are no corrections, the minutes are then approved as read.

Next, the chair may then call for a committee report, assuming that the HARB or commission has undertaken one.

At a previous HARB or commission meeting an item or “question” under review may have been tabled due to insufficient information, or the meeting may have been postponed for any number of reasons. The next step, therefore, is to bring any unfinished business before the board or commission. If you have adopted a formal parliamentary procedure you may want to introduce this item in the following manner:

The next item of business is the motion relating to...postponed to this meeting. The question is on the adoption of the motion that.... Are you ready for the question?” (National Association of Parliamentarians)

Next, the chair then calls for new business. Taking each item or case in the order in which it has been listed in the board or commission meeting agenda.

Hearing Cases

Step 1. The chair should ask whether any board or commission member has a conflict of interest related to the case under review. A conflict of interest usually means that a person involved in a determination could financially benefit based on his or her decision. Even if financial gain is not at issue, but some other benefit could accrue to the member, it would be best under these circumstances, for the sake of the member’s credibility, that the HARB or commission member absent him or herself from the room until such time as the case under review has been resolved.

Step 2. The chair calls the name of the person listed in the agenda.

Comment: It is important for the record to ascertain who this person is or whom he or she represents. Is it the owner of record, a lessee, or a representative of the owner, and in what capacity is this person representing the owner? The ideal situation is to have the property owner and his or her contractor or architect attend the meeting, especially if the work proposed is controversial or complex. Without the owner present, questions and recommendations from the board or commission, and responses which could be made by the owner, cannot usually be ascertained by the owner’s representative. The case may therefore have to be tabled for further information causing the owner further delay.

Step 3. The chair calls the secretary, HARB or commission staff, or historic preservation consultant to present the facts of the case.

Comment: If a HARB Preliminary Review Form (HPRF) was prepared for the case under consideration, the facts of the case have been clearly organized. The added value of a HPRF, besides providing all members and the applicant with the relevant background, is that it can be attached as an exhibit and made part of the HARB or commission minutes. The cities of York and Lancaster follow this procedure; see Appendix K for examples.

In order to make a sound, informed recommendation to the applicant and the governing body, the following information is useful if not indispensable:

- (a) Is the district listed in or eligible to the National Register of Historic Places?
- (b) Does the building, structure, or object contribute to the historic district?
- (c) What type of preservation project is it, i.e., preservation, restoration, etc.?
- (d) What is the architectural style of the building?
- (e) Does the work proposed affect a character-defining feature of the building? In addition to these questions the HPRF should
- (f) Provide a brief physical description of the building, for example:
 - The building is a row/town house.
 - It is a three-story brick and ashlar stone facade.

- It has a grey slate mansard roof.
- The roof cornice is made of copper to simulate stone.
- The outstanding features of the building are the stone steps leading to an ornate, central entrance, carved wooden door and stained-glass transom.

(g) The HPRF should also contain a description of the proposed work. Historic and recent photographs may be presented of the building and street. Catalogue cuts, detailed blueprints, schematic drawings, and sample materials may also be included depending on the complexity of the project.

At this juncture the chair may ask the applicant if he or she has anything to add to the information presented. Board or commission members may then have an opportunity to ask questions. When the applicant and board members are satisfied that they have both presented and acquired the facts on which to base their recommendations, the staff, preservation consultant, or secretary should refer to

(h) the applicable historic ordinance criterion, Secretary of the Interior's *Standards*, and local design guideline which will be used to determine the historical appropriateness of the proposed work. This information is also included in the HPRF.

(i) If there are members of the public at the meeting, the chair may entertain questions from the "gallery" to be posed to the applicant. The chair should only entertain questions which are relevant to the case and limit the public to questions which have not been previously asked. An equal time limit should be imposed for each questioner.

(j) The municipal staff, preservation consultant, or secretary will make his or her recommendation to the board or the commission regarding the application, based on his site visit and all relevant information.

After these preliminary steps have been addressed the chair can then ask if there is a motion regarding the proposed work. The chair recognizes the member who wishes to make a motion. Once a motion has been made and seconded, a debate or a discussion on the "question" may take place.

Comment: It is imperative that board members speak only when recognized by the chair. Each member should be given the opportunity to express his or her view regarding the question under discussion. Once the chair has ascertained that every member has had the opportunity to address the question, he or she can proceed to close the discussion. The chair then "puts the question" to a vote. In other words, calls for a motion.

The chair says, "The question is on the adoption of the motion that [the application for a COA be accepted, rejected, approved based on and according to the following stipulations]." Then the chair says, "As many as are in favor, say aye. Those opposed, say no." The chair then announces the result of the vote (National Association of Parliamentarians).

Comment: It is important to remember that a motion and vote by the board does not close the case. It is a recommendation to issue or deny a certificate of appropriateness only. Thus it merely advances the case to the next level for a determination before the governing body, or to some other higher body for reconsideration. Ninety to 95 percent of the time, however, the matter is essentially settled or resolved at the HARB or commission level because the application is of a routine nature, and the governing body affirms the board's or commission's recommendation.

The chair should thank the applicant for his or her cooperation, and remind him or her that should he wish to appeal the board's or commission's recommendation to the governing body, he should alert the secretary to notify the applicant of the governing body's meeting at which the case will be reviewed.

More on Conducting the HARB Meeting

As important as some of the elements which we have discussed are in contributing to the effective administration of a historic district ordinance, *nothing is as important as the actual HARB review meeting*. It must be said, however, that many HARBS run their meetings in such a haphazard manner that it is extraordinary that these boards are not taken to court more often. Perhaps nothing can sabotage the efforts of a municipality attempting to

market its historic district for economic and cultural reasons more than to have a HARB conduct its meeting in a chaotic and unstructured manner.

Too many meetings are held which do not adhere to the simplest rules of parliamentary procedure, often depriving applicants for COAs of their right to procedural due process. (For further amplification of procedural due process refer to the section on Legal Issues.) To exacerbate matters, there are HARB meetings where individual applicants are not even shown basic courtesies but are rudely treated. An Allentown *Morning Call* news article dated August 23, 1995, depicted such an incident. The applicant for COA appealed to Bethlehem's City Council the HARB's decision denying him a permit to enclose a side porch. He told council that he had been "badgered and interrupted" by a board member while making his request. Asked by a council member whether the applicant's story was true, the historic preservation officer confirmed that it was.

On the other hand, there are HARB meetings which are held with the idea that they should be as casual as possible so that the applicant should not have to experience a bureaucratic and supposedly unfriendly reception. But lack of structure and rules create uncertainty and chaos which contribute to interminably long meetings, with results that are sometimes vague.

To prevent these potential problems the HARB review meeting must be held according to some rules of order. Learning the basic motions from *Robert's Rules of Order* should be considered a prerequisite to accepting the position of HARB chair. If the person is not initially familiar with *Robert's Rules* or variations such as the *Modern Rules of Order*, he or she can learn them in a relatively short time. Adopting rules of order and using them is essential!

In a publicly disseminated memorandum dated February 5, 1997, addressed to Pratt Cassity of the National Alliance of Preservation Commissions, from Stephen N. Dennis, the former director of the National Center for Preservation Law, Dennis asserts that "*Robert's Rules of Order* is probably not what should guide discussion during a commission meeting." He doesn't explain why but adds, "A firm chairman must be prepared to define how long each public speaker can have, and how long each side will have to make its presentation, cross examine the other side (if permitted), and submit rebuttal arguments. In my experience most commissions do a poor job on this point." The assumption is that *Robert's Rules* would obviate the chairman's ability to move the review process along. But this isn't made clear. We agree with the "poor job" part of his opinion, but since he does not provide an alternative suggestion, we urge a set of rules be adopted in order to prevent the kind of long, drawn-out meetings which Dennis rightly criticizes. If you or your HARB balk at the idea of using *Robert's Rules*, invent your own, but stick to them.

HARB Meeting Minutes

Unlike minutes of many organizations which do not require that reasons be given for actions taken, the HARB or historical commission minutes do, in that if the municipality's decision is appealed to the court of common pleas, the court will need to review the record of the proceedings to determine if due process was provided to the applicant, and if decisions to deny or approve a COA were based on findings of fact and of law.

While it is true that under the Historic District Act of 1961 as amended, the ultimate responsibility for the issuance of the COA and building permit resides with the governing body, the court will scrutinize the governing body's and HARB's procedures for any violation of due process. Since the governing body depends on the HARB or historical commission to establish the findings of fact, and since HARB members are required to have historic preservation expertise under the Historic District Act, the court will hold the municipality responsible for the HARB's or historical commission's irregularities. Refer to Appeals of Local Agency Law. For example, if HARB meeting minutes state that a Mr. X made a motion to approve or deny the installation of vinyl siding on the front façade of such and such building and it was duly seconded, and the board unanimously approved or denied said motion, and no reference is made to the relevant standard or historic district ordinance criteria, the court may assume that the board arrived at its decision arbitrarily. Indeed, the board may not have done so, but the record —

the meeting minutes — will not show that. On this point Stephen Dennis' article, "Building a Defensible Record," firmly supports and emphatically stresses the importance of concise but thorough minutes.

We can now see how useful the HARB Preliminary Review Form can be by merely incorporating it into the minutes as an exhibit. Minutes do not have to be laboriously long or overly detailed. Just provide the facts. For examples of HARB minutes and agendas refer to Appendix K.

The Docket or Log of HARB Cases

If you have not as yet developed a docket of HARB or historical commission cases this is the time to do so. You will find it indispensable over time and it will become a useful reference. The docket idea originated with court procedures. It is a compendium which contains an abstract of cases and their decisions. Since all Certified Local Governments must provide an annual report of HARB or historical commission activities, the docket makes this task much easier. But whether your local government participates in the CLG program or not the docket idea is useful. Each COA application should be assigned a number and dated; this number can then be entered in the docket. This docket can easily be computerized and all manner of data can be retrieved.

Having statistics at your command will go a long way to providing you with the ammunition you will need to counter common misconceptions about the review process and the HARB. You can point out with confidence the percentage of COA denials compared to COA recommendations. You can easily retrieve the percentage of types of cases, and so on.

HARB Defends Its Recommendations to the Governing Body

When an applicant decides to appeal a HARB or historical commission recommendation to the governing body, the HARB chair, another HARB member, or the historic preservation consultant or staff person should present the case on behalf of the HARB. If the HARB does not send a representative to the governing body's meeting, it may communicate a lack of concern regarding the issue in question. After the applicant has made his or her presentation, the representative of the HARB can present the information as it appears in the HARB Preliminary Review Form. The case should be clearly and logically laid out, with the facts about the building, the relevant ordinance and design standards, the guidelines addressed, and the professional recommendations made by the consultant, staff, and HARB. The HARB should avoid pomposity, posturing, and histrionics. If a proposed project has galvanized sentiment on both sides of the issue, the governing body may hold a special hearing and representatives of opposing views can have their opinions heard.

At this juncture it should be made clear that there will be occasions when the HARB is overruled, often on political grounds rather than for reasons of historic appropriateness. Although under the Historic District Act the governing body is enjoined to employ a criterion in making its judgment similar to the HARB, the governing body may consider other factors, such as extenuating circumstances or the economic impact of the HARB recommendation. Because councils have overturned HARB recommendations, some HARB members become quite embittered, some get discouraged, others view the members of governing body as sellouts. But under our democratic system the ability to appeal a decision is intrinsic to due process, a right protected by the Fifth Amendment of the U.S. Constitution. In fact, some HARB members seem to forget that the balance of power between the three branches of government applies to the local government level as well as to higher levels of government. And it should be kept in mind that according to annual Certified Local Government reports, the preponderance of HARB recommendations are affirmed by the governing body. When the governing body *does* overturn the HARB or historical commission, it is true that it may be over an important historical building or structure. In spite of some occasional setbacks, the HARB, with the governing body's support, manages to preserve the historic character of its community.

The HARB and the historical commission is appointed to provide its professional judgments to the governing body. Perhaps, as historic preservation issues become more crucial, the Pennsylvania Assembly may legislate more power to HARBs and these bodies may become as autonomous as zoning hearing boards, whose decisions can only be appealed to the Court of Common Pleas. If this should come to pass it may not guarantee that more historic buildings would be protected but the likelihood of clogging an already overburdened court docket would be certain.

How to Prepare for a Demolition Permit Request

Because demolition is the most drastic act, the antithesis of preservation, it is imperative that HARBs carefully prepare for demolition requests. When an applicant requests a certificate of appropriateness to demolish a building or structure in a historic district, the appeal on the denial of a demolition permit is usually made on the basis of an economic hardship. The owner's main concern in an income-producing property is his or her return on investment. An appeal to an investor's appreciation of a building's historical or architectural significance will normally fail. The entrepreneurial approach to property ownership is its so-called "highest and best use."

However, since the U.S. Supreme Court's *Penn Central* decision, courts have generally found in favor of municipalities in taking cases. They have reasoned along the lines of Justice Brennan, that land-use regulations "reasonably related to the promotion of the general welfare," such as historic preservation ordinances, even if they have the effect of a diminution in property value, do not constitute a taking as long as there remains *a reasonable rate of return on an owner's investment-backed expectations* (Roddewig and Duerksen, 1989, p. 14). To assess if the property in question retains a both a reasonable rate of return and useful life, a number of questions need to be answered by the applicant. But before those questions are posed, it is important to establish findings of fact about the building. The idea is to build a solid case based on documented fact of the historical and/or architectural significance of the property, and subsequently, whether genuine efforts have been made to use, reuse, or market the property. Pose such questions as will provide you with enough documented information whereby you can make a sound recommendation to the governing body whether or not to issue a certificate of appropriateness for the demolition of said building or structure. For example,

- Is the building individually listed or been determined eligible for the National Register of Historic Places?
- How does the building contribute to the historic district?
- What role did the building and its occupants play in the history of the community, the state or the nation?
- Has the architectural style of the building been identified?
- What then does it say about a period of the community's history?
- Does the building retain its architectural integrity?
- What is the building's condition?
- Is it structurally sound?
- On what authority has a determination of unsound or sound structural assessment been made?

To assess if denial of a demolition permit would prevent a property owner from realizing the following benefits: "reasonable return" on his or her investment, "beneficial use" of the property, or near total loss of "investment backed expectations," the municipality must acquire a financial profile from the applicant. This is the legal triadic criteria established by Justice Brennan in his *Penn Central* decision and in his dissenting opinion in the *San Diego Gas and Electric* case, from which enlightened courts determine if a taking has occurred (Roddewig and Duerksen, 1989, p. 14).

- What is the ownership structure, is it a single proprietor, a partnership, nonprofit corporation, or joint venture?

- What price was paid for the property?
- How much has the building and land been assessed for?
- What is the property's estimated market value in its present and rehabilitated condition?
- On whose authority has the market value of the property been made; was it from a professional with historical rehabilitation experience?
- What are the real estate taxes for the last X years?
- How much has been invested in the building in operating and maintenance costs over the past X years?
- Can the building be used for its original purpose or can it be adapted to a new use?
- What is the annual gross income from the property for the past X years?
- Is there a remaining balance on the mortgage; annual debt service?

In addition:

- (Is the property listed for sale or rent; what price is asked; any offers made, rejected?)
- What is the income range of the owner or owners?

These and similar questions appear in historic preservation ordinances throughout the United States. The above example is an amalgam from Portland, Maine and Liberty, Missouri; the latter ordinance appears in draft form in *Preparing a Historic Preservation Ordinance*, an invaluable resource for the researcher and for municipalities contemplating establishing historic district ordinances (Roddewig, 1983, p. 38).

More on Preparing for a Demolition Request

The municipality and its HARB or historical commission must assume that a property owner/developer has built a case for demolition and has relied on the professional opinions of real estate brokers, structural engineers, architects, and historians who will affirm that demolition is the only reasonable alternative in coping with a property. The owner may present a proposal for a new building on the cleared site which he or she believes will be demonstrably more valuable for the economic well-being of the town. It will be up to the judgment of the HARB and the governing body to determine if the owner's case has merit. In order to make such a decision, the municipality will have to rely on experts. Professional opinions may be solicited from the municipality's own employees, or from county or state agencies. Testimony about the building or structure under review can be elicited from architects, structural engineers, historic preservation developers, the state historic preservation officer, and accountants. For a better understanding of the financial issues associated with real estate development refer to the *Economics of Revitalization: A Decisionmaking Guide for Local Officials* (1981) and a more recent article by Rypkema, *The Economics of Rehabilitation* (1991) in which he analyzes the issue of demolition versus new construction.

Don't wait until the last minute to contact these individuals and expect them to be at your disposal without considerable lead time. Also, some of them will have to charge for their services; be sure it is clear what you expect from them. Will they have to attend a single meeting or several to provide oral testimony and a written report? Is it clear what their fees are? If you are going to rely on experts to assess the evidence presented by the property owner, be sure you have all the documents you need, and make sure they were introduced and identified at the HARB meeting as specific exhibits.

Not all demolition denials end up in court on appeal, but as a number of them do, you want to have a clear record of the proceedings. If you expect a well-organized fight, have the municipal solicitor present, and have the meeting recorded by a court stenographer.

Emotional displays, grandstanding, personal attacks, and other histrionics from either side, should be suppressed by the chair. Controversy attracts the news media, and an off-comment may be blown quite out of proportion. Provide the media with the facts based on the HARB Preliminary Review Form and documented

evidence; be prepared to provide a written news release. A lot of this preparation assumes you have the cooperation of the municipality. If you do not, your task is going to be made much more difficult. You may not be able to solicit paid professionals for their opinions. Do the best you can with the resources at your disposal. The local historic preservation organization, or other community organization, may be ready to lend its moral and financial support. Solicit representatives from your community who oppose the demolition of a building and ask them to attend and testify at the meeting. If the governing body overturns your recommendation to deny a certificate of appropriateness for demolition, know that you have done the best that you could do under the circumstances. Don't be bitter. Remember, you may have lost the battle but not the war. By putting up a well-organized fight, demolition requests will be far less likely.

The HARB and Governing Body Resolutions

The example below is how *not* to write a governing body resolution; this example is from the City of Noitall, Pennsylvania.

Resolved by the Council of the City of Noitall, That

Whereas, a Certificate of Appropriateness is required under the provisions of the Act of the General Assembly of the Commonwealth of Pennsylvania No. 167, June 13, 1961 (P.L. 282) and the City of Noitall Ordinance No. 12314; and **Whereas**, Pierre Lafleur, owner, proposes to alter the exterior of a building located at 615 N. Law St.; and

Whereas, on April 2, 1997, the Noitall Historical Architectural Review Board (HARB) recommended denial of the above application to City Council; and

Whereas, after reviewing the above mentioned HARB report, it is the opinion of city council that the proposed work is inappropriate within the Historic District.

Now, therefore, be it resolved by the Council of the City of Noitall that a certificate of appropriateness is hereby denied for the above referenced work.

The example below is preferred.

WHEREAS, the applicant, Lafleur Associates, applied to the Noitall Historical Architectural Review Board (HARB) for a Certificate of Appropriateness to demolish the entire building and improvements at 500 Penn Street, Plat 25 Lot 20, and

WHEREAS, the HARB held a meeting on said matter on April 2, 1997 at which time testimony was heard from Mr. Michael Smith, general partner, Dr. Susan Precious, Noitall Preservation, Inc., and the city's historic preservation officer, Harold Shortpants, and other interested parties; and

WHEREAS, the HARB members visited the site individually and as a subcommittee; and

WHEREAS, based upon the testimony heard and the evidence presented, the HARB makes the following finding of fact:

1. 500 Penn Street known as the Pomeroy Department Store, is located in the Callowhill Historic District.
2. The building is valuable for the period of architecture it represents and the history of the central business district from 1860 to 1977, in which it played a major role in the commercial activity of the city.
3. The HARB finds that the expert testimony presented by Noitall Preservation, Inc., and the Pennsylvania Historical and Museum Commission (PHMC) outlining the potential reuse and rehabilitation of said property, including assessed value, taxes, interior and exterior rehabilitation costs, scaled floor plans, cost

analysis, financing options, and income tax incentives for historic rehabilitation, rental options, operating proforma, and parking options, is credible. In addition, the PHMC submitted a written report as to the significance and structural soundness of said building.

4. The reports were submitted by volunteer experts in the field of design, architecture, history, real estate, development, and rehabilitation contracting.

5. The applicant was given adequate and timely notice to meet the requests of the HARB for information; however, said applicant did not provide the HARB with sufficient testimony or reports as to the necessity to permit demolition of a historic structure for reason of: undue reasonable hardship, a hazard to public safety, interest of the majority of the community, or bona fide and reasonable efforts to sell property.

6. The HARB sustained its burden under Noitall Historic District Ordinance, Article V, Section 2 by assisting the property owner in identifying and evaluating alternatives to demolition.

Based on the above finding of fact, the HARB determined that it gave full consideration to the historic and architectural significance of the structure and the way in which it contributes to the Callowhill Historic District.

Based on the above findings of fact, the HARB determined that said applicant did not sustain his burden under the historic district ordinance Article VI, Section 1 (a). The certificate of appropriateness to demolish the entire building at 500 Penn Street is denied.

Caroline Mulehead, Chair

The above example was plagiarized from the appendices section on historical commission resolutions from the Rhode Island *Workshop Handbook*. The names have been changed to protect both the guilty and the innocent. See annotated bibliography for more details.

HARB and Historical Commission Training

Because historic preservation encompasses such a diversity of academic disciplines, no one individual can be expected to have mastered all of them. Realistically, in the more rural counties it is difficult to locate a qualified person who is willing to serve on the HARB. Hence the responsibility of self-education is paramount. Each HARB member should choose a subject relevant to the review of cases. Knowledge about architectural styles, the history of the community, historic preservation techniques for rehabilitating older buildings, familiarity with tax incentives, knowledge of important past historic preservation court decisions at the federal and state levels, expertise on any of these subjects can help the HARB analyze the cases before it, and make informed decisions.

It is commendable that there are individuals who are willing to commit their time and effort to their communities by accepting appointments to board and commissions. There might be even fewer such volunteers if these persons knew how much was expected of them. Persons who are appointed to HARBs and historical commissions not only have the responsibility to attend late evening meetings and visit sites where proposed work is planned, they must maintain and improve their expertise on numerous subjects related to historic preservation. Hence, the importance of attendance at seminars, workshops, and conferences.

At the present time, the Bureau for Historic Preservation provides a minimum of two HARB-CLG training workshops per year, and also National Register, survey, and grant application seminars. In addition, Preservation

Pennsylvania, Inc., the statewide nonprofit historic preservation organization holds numerous seminars on a variety of topics, and one annual historic preservation-related conference each year in cooperation with other nonprofit and government agencies.

The National Trust for Historic Preservation likewise provides training and educational opportunities. Furthermore, many cities and counties in Pennsylvania have well-organized and active historic preservation organizations; they too plan and organize lectures, architectural walking tours, and seminars. With a little bit of effort your historic preservation board members and staff can find a variety of training opportunities.

However, it must be kept in mind that Pennsylvania is a large state and includes many rural counties. Certain regions contain few historic districts protected by local historic district ordinances. The only active historic preservation group may be the HARB. In that case, the HARB can seek training opportunities by soliciting training assistance from the Bureau for Historic Preservation, which can send staff to the area and provide training on site. Another option is to identify grant opportunities offered by the Pennsylvania Historical and Museum Commission, the National Trust, and other historic preservation organizations that can help defray the costs of registration and travel expenses to conferences and seminars.

Some municipalities have applied for and received Certified Local Government status, a National Park Service program administered by the Bureau for Historic Preservation. This provides the municipality the opportunity to apply for grants which can be used not only for registration and travel expenses, but also to hire professional historic preservation consultants who can plan and produce training for HARBs, municipal officials, and the public.

Why Some Professionals on HARBs Avoid Training

Attendance at historic preservation training opportunities by some professional members of HARBs and historical commissions is sometimes difficult to bring about. The most common explanation given is that as professionals they already have had to attend their professional association conferences and functions and do not feel the need to attend anything else. To put it bluntly they don't think they will learn anything new. Lack of time is another reason commonly given for not attending HARB training.

Both reasons have validity; however, the convocation of different HARBs and the sharing of problems and solutions, if they do nothing else, can help every HARB member realize that his or her community is not alone in the fight to preserve its built heritage. And while an architect, building inspector, or real estate broker may have an in-depth knowledge of his or her field, the typical HARB-CLG workshop or historic preservation conference provides a wide variety of topics with which he or she may not have familiarity. Another reason it is important for professional members of HARBs and historical commissions to attend HARB-CLG workshops, historic preservation conferences, and seminars is the opportunity they give to share knowledge and insights about historic preservation with their board and commission colleagues. One of the most effective ways for board, commission, and staff members to continue and improve their knowledge is to have access to information. Maintaining memberships in state and national nonprofit historic preservation organizations will generally include regularly distributed newsletters or magazines. This literature includes reviews of relevant books, calendars of events, reduced registration fees to conferences and seminars, and other benefits. Internet access can also yield valuable contacts and information from both governmental and nonprofit organizations. The National Park Service (NPS) is a fertile source of historic preservation information. Its series on the technology of historic building repair, maintenance, and rehabilitation in its *Preservation Brief* series is both highly informative and inexpensive. NPS publishes historic preservation book catalogues which describe their offerings. The other major source of information and assistance is the private nonprofit organization, the National Trust for Historic Preservation. Through its membership and special subscriptions, the Trust provides one of the major sources of historic preservation literature. You can receive its book catalogues on subjects from archaeology to zoning. For the list of these organizations, addresses, and telephone numbers see Appendix L.

Another important source of information is The Advisory Council on Historic Preservation, a federal agency empowered by Congress to scrutinize the effect on historic resources of projects and activities funded by the federal government. Its annual report to Congress and its regularly scheduled seminars on applying Section 106 of the National Preservation Act are important sources of information.

Professional organizations such as the American Institute of Architects, American Institute of Planners, and Association for Preservation Technology International provide rich sources of historic preservation information. And don't forget your nearby university and community college. They may offer degrees or diploma programs in historic preservation; if this should be the case, their libraries may offer many of the above sources in their reference sections. The University of Pennsylvania, Bucks County Community College, and Harrisburg Area Community College are typical examples.

In conclusion, with a modicum of effort every HARB and historical commission and local historic preservation organization can tap into a ready source of information by soliciting assistance from government agencies and membership in nonprofit organizations, including university and college libraries.

Chapter 4

BUILDING COMMUNITY SUPPORT FOR HISTORIC PRESERVATION

A recurrent concern of HARBs and historical commissions is the public's negative image of its function. When we consider that it has been fashionable for a number of decades to make government a scapegoat for people's frustrations, it is no wonder that HARBs and historical commissions representing government regulations and the police power should be associated in a like manner.

Rather than being identified as a helping organization, many HARBs are seen as nay-sayers, existing to impede the property owner and business person in his or her personal endeavor. The cause cannot be placed entirely on "bad" press, although that definitely plays a role. While certain elected officials attempt to gain public notice at the expense of the HARB by pretending to defend the interests of the beleaguered individual, simply blaming governing bodies for the plight of HARBs will not stand close scrutiny. While all the above instances contribute to a negative image, HARBs and historical commissions need to look themselves squarely in the eye and ask how they might have contributed to this public perception.

How HARBs Sabotage Their Efforts

It should by now be clear that poorly run meetings and unprepared members can only damage the credibility of the HARB. Expressing disapproval of the applicant rather than the project itself is also to be scrupulously avoided. For example, accusing applicants of poor taste or suggesting that they are ignorant must be censured by the chair.

Accusations by opponents of historic preservation that historic preservationists and HARBs or historical commissions are "elitists" is not entirely without justification. The question that has been posed by concerned historic preservation advocates has been put this way: who is preserving whose neighborhood — in other words, whose history are we preserving and for whom? Preserving historic architecture is a value to which many of us ascribe. As historic preservation advocates we have defended this value on the grounds of economic revitalization, energy saving, social stability, property value enhancement, and so on. This may all be quite valid, although not always convincingly proven. Nevertheless, not everyone shares our appreciation for a historic built environment, or if they do, he or she may be less willing than we are to police it. It would be wise, therefore, to retain some skepticism or doubt about our own values, thereby allowing us to maintain a sense of perspective about our mission. We then may rely more on convincing others to accept our vision through explanation rather than depending on the erratic enforcement of the law. Hence education and propaganda are the key to the success of a historic preservation approach.

Many of us have the barest understanding as to how to repair or maintain our homes. The typical homeowner does not have a maintenance schedule to which he or she adheres. Problems are addressed when they are in their later stages and the causes may have worsened. Not everyone who owns a building is a do-it-yourselfer and a large proportion of homeowners depend on the opinion and knowledge of the first contractor willing to perform the task at hand.

Finding the right contractor is not an easy task. Just finding a contractor willing to work on an old building is an accomplishment. Locating one who is willing to perform repairs rather than replacement is another feat. Another factor making the certificate of appropriateness process cumbersome is that many property owners have no choice but to rely on the expertise of a contractor. Financial considerations also play an important part in the property owner's decision-making process. He or she must weigh the cost of the project against the value of the building and the time it will take to recapture the investment.

Therefore, when applicants for COAs come before a HARB they may not be receptive to the finer points of

“historical appropriateness,” since they have already made both their plans and decisions. The review task of the board or commission, and the compliance requirements of the applicant could, at this stage, have been made easier if certain intervening steps had been established prior to the application review.

Steps to Establishing HARB/Commission Support

To solicit the cooperation of important segments of your community you will need to convince each influential group that historic preservation is not only beneficial for the community at large, but that it has the potential to confer personal benefits as well. To bring this about you will need to develop a long-term educational campaign to inform and educate property owners about the advantages of a historic preservation approach. Keep in mind that regulating changes to buildings affects many individuals and groups, i.e., general contractors, sign makers, merchants, real estate brokers, and many others. It is important therefore to communicate what the COA process is about and that technical assistance and, in some cases, financial incentives may be available.

Inform and Educate General Contractors

Building contractors know that if they spend an inordinate amount of time on one project they will lose out on other contracting jobs. For example, repairing windows according to sound preservation practice may take more time to accomplish than ripping out the deteriorated window and replacing it with a new window component. It also takes more skill to repair in-kind than to replace.

Another problem is the difficulty in finding a contractor who is willing to attend to “small jobs.” Obviously, a well-maintained house needs regular maintenance. Regular maintenance requires the repair of what start out as minor problems before these problems turn into major ones, but it is not generally cost effective for a contractor to take on small jobs. The outcome is that a property owner may be unable to have a contractor attend to a particular problem thus deferring maintenance until serious problems result. To add to both the property owner’s and contractor’s difficulties, old houses were made with building stock sizes which are still available, but they may have to be milled for a particular job, or are stocked only by certain building supply houses. This results in more expense.

The permitting process itself is often perceived by small contracting firms as burdensome and annoying, and unless the job is financially worthwhile the contractor would just as soon avoid dealing with the municipality. Many boroughs, townships, and cities require that contractors be licensed or registered with the building code department and carry liability insurance. Many small contractors don’t want to be bothered with this important compliance requirement. Inability to find parking at or near the municipal building in urban environments can also cause petty annoyances. It is not unknown that while the contractor is applying for his permit, he returns to his vehicle to see it ticketed for a parking violation. Add the requirements of the certificate of appropriateness (COA) process in which the contractor may have to appear at an evening HARB meeting after he has labored all day, and you can see why property owners who live in a historic district and contractors who are called to work in them may find the HARB process pretty trying. This is more or less the reality of owning and working on an old house in a historic district regulated by a historic district ordinance. The issue before the municipality is how to lessen or remove some of these annoyances and disincentives to cooperation.

Assist Building Contractors and Property Owners

Provide Incentives Consider some of the following solutions: Take on those difficulties which can be addressed through administrative action. The municipality might consider providing incentives to contractors willing to work in a historic district. For example, temporary free parking spaces for contractors while they apply for their permits might be one small incentive (this is more likely to be useful in cities rather than in rural areas where

parking is not a problem). Waiving or reducing certain fees for licenses may be another.

Help Locate Historic Materials and Architectural Features Make searching for hard-to-find historically authentic or compatible materials easier. For example, the HARB or historical commission staff or consultant could develop a resource directory containing information as to where certain buildings materials are available in the region, based on such publications as the *Old House Journal Catalogue*, or *Traditional Building: The Professional's Source for Historical Products*. Developing a publication listing contractors and mechanics who are willing and able to work on historical buildings and structures can help property owners locate them. This latter endeavor is best left to a historic preservation organization to preclude accusations that a municipality is showing favoritism to certain contractors. The Allentown Preservation League, Historic Harrisburg Association, Historic York Inc., and the Historic Preservation Trust of Lancaster County are just several of the local historic preservation organizations that have published such resource guides. However, if this is not feasible, providing a list of contractors who have worked on historic projects without recommending any contractor in particular should be acceptable.

Establish a Building Salvage Warehouse Certain communities with active historic preservation organizations, such as Historic York Inc., the Allentown Preservation League, or the Centre Park Historic District in Reading, have established historic building salvage warehouses or artefact banks. This requires a large, inexpensive, and secure interior space. The income derived from this venture can contribute to the operation of a historic preservation organization. Owners of historic buildings in the municipality who are undertaking historic rehabilitation may be able to locate architectural artifacts suitable for their purpose. It can save them a considerable sum and it recycles historic building materials which would otherwise end up in a landfill.

Develop Building Contractor Seminars During the winter months, when some building contractors have less construction work, consider developing historic preservation seminars for them. As 85 to 90 percent of HARB applications for COAs have to do with roofing, window, door, and siding or masonry repairs or replacement, topics addressing each of these preservation "dos" and "don'ts" may be helpful. Ideally, a hands-on expert in each of these categories, preferably a contractor, should provide instruction. The local historic preservation organization can contribute to the refreshment bill. This may also be a good time to award commendations to contractors who have done excellent work.

Provide Historical Rehabilitation Advice Through Certified Local Government or Community Development Block Grants, the municipality may be able to cover the costs of a preservation consultant or qualified part-time staff person who can meet with property owners and/or their contractors prior to any decision on repair, maintenance, or rehabilitation projects. The consultant can meet the parties at the project site and, after assessing the situation, recommend alternative repair, maintenance, or rehabilitation approaches that are both historically appropriate and financially acceptable to the property owner. This "service" does not constitute approval, merely advice pursuant to the HARB's or historical commission's formal review.

With a better idea of how to deal with the problem, the property owner can come better prepared to propose his or her project for HARB review. The board will have had an opportunity to review the consultant's HARB Preliminary Review Form, in which the facts of the case and the consultant's recommendation have been made. This should help to alleviate some, if not all, of the unnecessary conflict and bitterness which ensues without such preliminary steps. The cities of York, Lancaster, Reading, and Bethlehem have adopted variations of this pre-application procedure. Other municipalities such as the Township of Lower Merion, meet with prospective applicants after the regular meeting of the HARB has adjourned. The board architect or building inspector informally reviews and responds to a property owner's proposed project by indicating how his or her project may meet historic district guidelines.

Coordinate Inter-department Permit Reviews Major historical rehabilitation projects which may involve thousands to millions of dollars and in which various municipal departments will be involved, should require a meeting arranged by the mayor, president of council, or chairman of the supervisors with the prospective developer, his or her staff, and the respective municipal inspectors and engineers to help avert surprises and misunderstandings between all parties. This is the idea behind the one-stop-permitting process. The developer can then have a clearer idea of what is expected of him and, therefore, better coordination between him and the municipal departments.

Inform and Educate Property Owners

Printed Materials The public, it has been said, suffers from information overload. Capturing the attention of a property owner under these circumstances is both a daunting necessity and a recurring process. Developing, distributing, and mailing brochures which explain the HARB process is necessary. Good examples of these, paid for, in part, with Certified Local Government grants, were executed by the boroughs of Gettysburg and Bellefonte, and the cities of Lancaster, Reading, and Pittsburgh. These brochures inform as well as promote the municipality's historic preservation efforts. A simple, inexpensive brochure can be printed in large quantity and distributed to a larger population. These brochures can be placed in real estate agencies, banks, the chamber of commerce, libraries and historical societies, and other places to which the public has access.

Cable Television Public Access Channels If your local cable television company has a public access channel and you have the means of producing or acquiring programs, you may want to consider this form of communication as a means of getting your message about historic preservation to local audiences. If you have only basic production equipment, keep your programming *very* simple. Remember, however, that you are competing for the attention of viewers in a highly competitive medium. Your audience potential may not warrant the effort and cost to develop such programming. The city of Reading has used Berks County Community Television, Inc., a nonprofit organization to produce programming about historic preservation. The borough of Gettysburg attempted a similar experiment with mixed success.

Newspapers When a community has a newspaper with an editorial staff supportive of the municipality's efforts to preserve the historic environment, you may be able to develop a series of articles featuring the architecture and history of the town's historic district. One of the more consistently successful of such efforts was launched by the *Reading Eagle* in Berks County. Many of the articles were generated by the findings of a comprehensive architectural and historical survey. In Bellefonte, on the other hand, one now former newspaper publisher was antagonistic to the HARB's efforts. To counter the poor publicity, the borough applied for a CLG grant to hire a historian to write a series of articles about the benefits of historic preservation and published them as paid advertising in the newspaper that consistently attacked the local HARB. The publisher, avid for advertising dollars, ran the articles in his newspaper. The series was later compiled into a softbound book and made available to property owners in the historic district free of charge.

Events Only the constraints of one's imagination and funding can limit the ways to promote and educate the public to a historic preservation approach. Reading's "Historic Reading Run," a ten-kilometer run through the city's three historic districts was for several years a highly successful event generating much positive publicity and public participation. Likewise, that city's historical "Doors of Reading" poster, imitated by hundreds of other communities, generated a consistent source of income for preservation endeavors, and has done a lot to promote that city's architecture. What must be kept in mind is that promoting and educating the public is not a once and done project.

Speakers Bureau Developing a "speakers bureau" may create a very useful tool. Whether delivered by a HARB or

historical commission member, staff or preservation consultant, every opportunity to identify the benefits of historic preservation and the HARB process should be taken. There are many civic and fraternal organizations, as well as local companies, that provide lecture opportunities to their members or staff. Letting these organizations know that you are available to give a slide lecture and talk for a modest honorarium, or none at all, can help spread the preservation philosophy.

National Historic Preservation Week Annual historic preservation award ceremonies can also generate good publicity and good will. Planned for National Historic Preservation Week (usually the second week in May), the HARB or historical commission, with staff help, and in cooperation with the community's historical society and preservation organization, can cooperatively organize an award event. The idea is to award commendations to individuals and organizations that have undertaken a whole variety of historic preservation projects in the community. Be sure to include all sorts of endeavors, not just the costliest or flashiest. An especially good quality repainting job and historic color selection can galvanize neighbors to undertake similar projects. Including local elected officials in the award ceremony will give them an opportunity to appreciate the positive publicity that can be generated by the HARB. All too often elected officials hear the complaints and negative opposition issues stirred by the historic district ordinance and rarely receive positive feedback from it. The National Trust for Historic Preservation provides its members with a Historic Preservation Week kit full of good ideas and suggestions.

Newsletters Publish a monthly or quarterly newsletter dedicated to historic preservation issues and topics as the City of Lancaster does in its *HARB News*, or, as in the case of the boroughs of Bellefonte and Hollidaysburg, include a historic preservation article in your municipal newsletter; see Appendix M for examples.

Logos Some municipalities have devised a HARB or historical commission letterhead which includes a logo. But choose a professionally executed logo which is attractive and easily recognizable. The city of Reading used a fine drawing of an entrance door for its HARB letterhead. Print your logo on t-shirts, caps, and all sorts of items, whether you sell them or give them away.

Getting the Press on Your Side Keep in mind, a newspaper is an organization and not everyone in the editorial department thinks alike about every issue. Some reporters and editors may oppose various aspects of historic preservation, others may not really be informed about it and may need some education on the subject. Other reporters may be quite supportive of your efforts. Don't assume that everyone has the same attitude, lest by doing so you shut out those who can help your cause.

Another point to keep in mind in regard to controversial issues such as demolition of historic buildings versus new construction or parking lots, is to provide the facts of the case under review by HARB or the historical commission to the news desk. You will find the HARB Preliminary Review Form especially useful in such situations. It is common knowledge that the newspaper business is highly competitive. To sell newspapers stories have to hold the reader's interest. Conflict captivates the human mind. Caricaturing a HARB case as Goliath versus David makes news. Newspapers almost always like to feature the populist angle—the hapless property owner fighting city hall and the “elitist hysterical board,” elicits guffaws from the peanut gallery and reinforces anti-government prejudices. To counter this “bad” press may require a letter to the opinion page of the newspaper. It may also be necessary to ask to speak to the editor to explain the intent of the historic district ordinance. The editor may not run a story to counter the most recent article which brought you into his or her office, but may consider running an article about historic preservation at a later time — just to be fair.

Because the press usually covers council meetings, the local historic preservation organization may consider demonstrating its support for HARB by showing up in force. It will send a clear message to the governing body that there is a constituency which cares about the issue, and the reporter covering the meeting will report on the event. As a last resort you may have to pay to advertise your point of view just as the Borough of Bellefonte did.

This is not uncommon and on crucial issues may be necessary. The local historic preservation organization may have a contingency fund for just such a purpose.

Below are some practical suggestions which may help to get your message across:

- Prepare press releases about preservation activities or issues in your community.
- Develop a press kit for special preservation events or activities: for example, National Historic Preservation Week.
- Develop a human interest story. The news media are always searching for a new twist to an old story. Preservation is full of good ones. For example, the couple who rehabilitated a historic property on a shoestring by doing most of the work themselves, the developer who saved his former elementary school and adapted it for apartments, the Tiffany stained glass ceiling worth thousands of dollars that was discovered once a dropped ceiling was removed, and the discovery that a famous or infamous person lived in a particular house. Remember that the result of a historical survey can be a treasure chest for story ideas and leads.
- Radio stations will air public service announcements free of charge; use this opportunity to publicize your events.

Other Promotional Ideas Other promotional ideas include contests identifying certain architectural features or buildings. Through working with your school district or private schools, you can develop competition awards for the best essay, art project, or photography related to historic preservation or local architecture.

There may already be certain events in your community with which you can be involved; for example many communities have antique car shows. Perhaps the organizers will allow you to mount an exhibit about buildings associated with the automobile, i.e., early gas stations, garages, automobile showrooms, manufacturers, and so on.

Keep in mind that it is better to avoid any of these activities unless you can devote the time to it. Find the person who can organize and follow through, and is a stickler on details. If you want to work with schools or other organizations you must find out how much lead time they will need to implement some of your ideas.

The more complex the event the more time and resources it will take to implement. One cardinal rule: don't take volunteers for granted. Everyone whom you want involved will probably want something besides a handshake and a thank you. And don't forget:

- For outside events, consider a rain day.
- Liability insurance may be an issue.
- Don't exhaust your volunteers on one event.
- If it's your idea, your genius, and your perspiration, let those who have the influence to help you get the limelight — work behind the scenes.

Getting the Magistrates on Your Side We seem to forget that the judiciary plays a role in governance at the local level just as it does at the state and national level. The district justice is elected to his or her position, and every historic district is located within a magistrate's district. If enough property owners care about the issue of enforcement of the historic district ordinance, they will expect violators to be prosecuted. Elections are an appropriate time to make these views perfectly clear.

In addition, it is useful to know when a case will come before the district justice for a hearing. The building inspector or staff person who issued a citation for a violation is alerted to the hearing date and time by mail. He

should make this information known to the HARB chair, who should consider asking those persons supportive of the historic district to appear at the hearing. It should be clear to the district justice why you and your supporters are attending the hearing. Although you may not be called on to express your views, the person lodging the complaint can do so for you.

Lastly, it is perfectly legitimate to make an attempt at educating the district justice regarding historic preservation. A letter to the district justice or possibly a meeting explaining the purpose of the historic ordinance may be useful as well. Do not attempt to sway the magistrate regarding a particular case; you are merely trying to bring the larger issues to his or her attention.

Develop Allies To gain allies you may have to give support to other causes. If the local fire company is having a fund drive, or other organizations are looking for volunteers for a specific event, you or your historic preservation supporters might be wise to be represented. The HARB members may not themselves be able to do so (there is just so much time available), but members of the local historic preservation organization can play an important role in this regard.

Historic preservation affects the community as a whole—it's a quality of life issue—and by involving yourself in the life of the community, your neighbors will be more likely to lend a sympathetic ear to your concerns about the importance of the historic built environment. If you care about what is important to them they may reciprocate.

In some communities the historical society has taken on the preservation cause, but in most instances historical societies are content to focus their efforts on genealogical and historical objectives. When reaching out to your local and county historical society for support on controversial preservation issues, you may find it resistant to your appeals. This may be due to its base of support which it does not wish to alienate. However, what it cannot do publicly it may do privately. Provide the society with the facts; you may be able to sway some of its members to your side. HARB or historical commission members may be members of their local and county historical societies. If they are not they might consider joining, as insiders they may have a little more clout with the historical society board's policies.

The Role of the Local Government

Property owners, contractors, and real estate brokers need to be aware that the historic ordinance may require them or their clients to apply for a certificate of appropriateness. The mere passage of the ordinance, the public hearings held prior to its passage, and even local press coverage are no guarantee that the public has understood how the ordinance will affect it. For this reason it is important that the municipal manager meet with his or her staff and members of the Historical Architectural Review Board or historical commission to discuss appropriate strategies to raise awareness in the community. It is also crucial that the chief executive officer of the municipality, whether mayor, chairman of supervisors or commissioners, or president of council, issue a memorandum to all municipal employees declaring the municipality's commitment to historic preservation policies.

Handling COA Violations How can the administrator determine the difference between genuine and pretended lack of knowledge of the ordinance by the public? How should violations be handled? Should the code enforcement officer or building inspector "patrol" the district? Should HARB members who see individuals working on properties who have not been issued COAs address these persons and tell them they have to apply for a COA? There is often no way to know whether someone is prevaricating about his or her knowledge of the regulations. Obviously, if the person in question is a local contractor there is little likelihood he doesn't know, but it's not worth the time to wonder about it. One simply assumes that adults are responsible enough to inform themselves about local regulations before they begin work on a building. In municipalities where a building permit is normally required for most work on a property, there is really no excuse for avoiding HARB or commission review.

This is not to suggest that an individual should be harassed about an infraction, but looking the other way is as poor a strategy as being overly punitive.

We don't recommend that HARB members take it on themselves to approach individuals working on properties that appear not to have been issued COAs, it is best not to confront the person and risk an altercation. Alert the building inspector to determine if a building permit was issued and, if not, request him to take the appropriate action. Policing the historic district is not a HARB or historical commission function. It is a municipal responsibility. Confronting property owners while they are working on their property is not a good public relations strategy for board or commission members unless they have something positive to say.

Requiring that certificates of appropriateness are posted on the exterior of buildings will tend to alert neighbors whether a person has been issued a COA for the work he is doing. In most historic districts property owners volunteer to telephone the appropriate municipal official if they believe a violation of the historic district ordinance is taking place.

First Impressions Are Lasting Maintain a helpful attitude. It is crucial that the municipal employee who first comes into contact with a property owner or his agent, whether he attempted to avoid the law or not, is treated courteously. It is also crucial that the municipal employee understands the HARB process and supports the municipality's historic preservation goals. It is useful for him or her to acknowledge that although the historic district ordinance has added another layer of bureaucracy causing some inconvenience, it is intended to benefit the community as whole.

Public relations is not just about distributing brochures or pamphlets explaining the purpose of the HARB process and the public's responsibility. This is a useful and necessary activity, but the initial experience of an applicant with a municipal official or HARB member may affect the applicant's attitude from then on.

Because the HARB process creates an added layer of oversight, the HARB is identified in the public's mind as merely a regulatory tool of government — nay-saying, self-righteous elitists. This perception is often promulgated by the press, which plays the populist defender of the "little guy" being squeezed by faceless bureaucrats.

The press often feels compelled to embellish the confrontational aspect of the HARB review process to lend interest and excitement to a story: it's a way to sell newspapers. This is why it is so important for the HARB to promote its role as an advocate for the property owner as consumer. It must demonstrate that its function is to assist individuals to solve problems of repair, maintenance, and design of their older buildings. Each board or commission member is there with his or her expertise to advise property owners, uninfluenced by monetary remuneration. It can provide various alternative solutions to accommodate a property owner's financial constraints.

Chapter 5

POLITICS, LAW, AND HISTORIC PRESERVATION

It has often been said that politics is about who gets what, when, and how. It has also been explained as a power struggle for scarce resources. Whether we like it or not, historic preservation exists in a political arena. Those who are shy or unwilling to involve themselves in politics need to realize that it is the engine that activates our democratic system of government.

Having said this, the HARB or historical commission must base its decision on the facts of the case, *not* on political considerations. It should avoid second-guessing what the governing body will decide by speculating on the political issues at hand. Too often HARBs and historical commissions, after thoroughly reviewing the facts of the case before them, conclude that since the governing body will no doubt overturn their recommendation, they might as well approve or disapprove a certificate of appropriateness on political instead of historical grounds. This sweeps away the finding of facts on which the HARB's decision should be based. It establishes poor precedents on which a board or commission may rely in similar cases in the future.

The Importance of a Local Historic Preservation Organization

Distasteful as it is for many historic preservationists to involve themselves in the game of politics, there will be occasions when it cannot be avoided. This means that HARB or historical commission members may need to appeal to the local historic preservation organization for support. The historic preservation organization may have to take a public stand on issues which reflect differing points of view as to what is "good" for the community. Based on interest group politics, it would seem that it would be in preservationists' interest to support candidates who declare themselves for historic preservation values and policies.

One of Pennsylvania's most politically astute local preservation organizations known to this writer, is Historic Harrisburg, Inc. The organization understands that it must wheel and deal, give and take, demand and compromise. Above all it continues to increase its membership, drawing its support not only from the city but from surrounding suburbs. An organization is as strong as its political support. It may be based on grassroots support or the support of deep pockets — ideally on both. For a partial list of historic preservation organizations in Pennsylvania see Appendix N.

Older urban areas struggle for economic viability and are in a life and death competition with their more affluent neighbors. Bringing business to downtown, sustaining the core city as a major player in the metropolitan region, requires more than a historic setting. The setting is important; it enhances and creates an environment which has a human scale. It keeps us rooted in our history and culture. But to sustain this historic environment a difficult balance must be reached between the new and the old.

HARBs as Consumer Advocates

The role of HARB is clear. It is there to provide the best advice it can to both applicants and the governing body on the effects of specific actions on the municipality's historic fabric. In *Penn Central Transportation Company v. City of New York*, 438 U.S. 104 (1978), Justice William Brennan said one of the reasons why cities and states have passed historic preservation laws "is recognition that, in recent years, large numbers of historic structures, landmarks, and areas have been destroyed without adequate consideration of either the values represented therein or the possibility of preserving the destroyed properties for use in economically productive ways" (Freund and Gilbert, 1983, p. 13). In order to be effective a HARB can advocate the preservation of that historic fabric by supporting its arguments with facts. This is its function. But it is up to the public, to the community as a whole, to

make its opinion known to the governing body regarding controversial issues; for example, the demolition of historic landmarks and their substitution by office buildings and parking garages.

We must look to local governments that have successfully preserved their historic character and have either stabilized or augmented their economic strength for guidance and ideas. The cities of York, Williamsport, Lancaster, Pittsburgh, Reading, Allentown, Harrisburg, Philadelphia, Bethlehem, Easton, Meadville, Beaver, and Scranton, to list just a few, have all tapped into the positive effects of historic preservation. Likewise the boroughs of Bellefonte, Chalfont, Doylestown, Pottstown, Hollidaysburg, Bedford, Harmony, Sewickley, Bristol, and many more. Townships which have also taken this direction include Lower Merion, Warwick, West Whiteland, East Marlborough, Annville, and several others. For a complete list of Pennsylvania communities that have established varying degrees of preservation initiatives contact the Bureau for Historic Preservation.

Know the Law

Unfortunately, there are too many instances where historic preservationists have neither the political nor the economic clout to be invited to the table to take part in decision-making. Placed in that position, they must rely on a clear understanding of local, state, and federal laws to give them an opportunity, in spite of local resistance, to be part of the negotiating process. The State Historic Preservation Officer (in Pennsylvania the Historical and Museum Commission), Preservation Pennsylvania, Inc., the National Trust for Historic Preservation, the National Park Service, and the Advisory Council on Historic Preservation can help you identify, locate, and interpret laws relevant to the issue at hand.

If you have strong evidence that the local government has avoided implementing federally mandated steps, or actually prevaricated as to its intent on applications for federal or state funding (as was alleged by historic preservation supporters, plaintiffs in a case against the city of Scranton in 1988 over the demolition of twenty-one historic buildings for the construction of a downtown shopping mall), you may have to litigate to assure that laws affecting your city or town are enforced. Unfortunately, this may be your only recourse to affect policy. Typically, you will be accused of being an "obstructionist," or of "obstructing progress."

Finally, everybody owes something to somebody. Don't be surprised if in seeking help from one agency or organization you get the cold shoulder or the run-around. The issue in question may place the agency in a situation it would rather avoid. Fortunately, power is diversified, and you may find allies in other quarters. The news media may find the issue of interest and may follow up on a story. Don't expect too much; most small-town newspapers have neither the time, money, nor political will to do investigative reporting, and may fear losing substantial advertising income from a limited number of advertisers. Keep trying, it's through persistence that you will be able to bring your issues to the bargaining table.

Running for Political Office

Out of a sense of duty or sheer frustration, or a desire to change established public policies which have stymied historic preservation efforts, historic preservation advocates have campaigned for local political office and succeeded in winning seats as mayors, supervisors, commissioners, and council members. It might be useful to remember that single-issue candidates generally have a short shelf life unless they expand their concerns to a broader spectrum of issues.

Philip Mitman, a business owner in the city of Easton was elected mayor in 1980 and served one term. His campaign emphasized a historic preservation strategy as a major component for revitalizing the city of Easton's commercial and residential neighborhoods. Due to business demands he did not run for a second term.

Eugene L. Aleci, an architect with his own firm in the city of Lancaster, was elected to council in 1990 and served one term. He campaigned on the following issues: to strengthen the historic preservation element in planning and economic development policies.

Candace M. Dannaker, housewife and a community activist in the borough of Bellefonte was elected mayor in 1993 and is presently serving. She campaigned on the following issues: to market and cultivate the highly distinctive qualities of Bellefonte, its extraordinary fine nineteenth century architecture, beautiful natural environment, proximity to the main campus of the Pennsylvania State University, and other outstanding attractions as a means to maintaining the borough's economic vitality.

William C. Brobst, is a business owner, former chairman of the planning commission and HARB member of the town of Bloomsburg, and past president of the Bloomsburg Preservation Society. He was elected to the Bloomsburg Town Council in 1994, and is presently serving. He campaigned on the issues of downtown revitalization and economic development.

Barbara Smith, businesswoman, borough of Ridley Park historical commission member, ran for council and was elected in 1994, and is presently serving. She did not campaign on the preservation platform, instead, she emphasized her willingness to "make a difference."

Barry F. Robertson, business owner and past president of the Pottstown Preservation Society, in the borough of Pottstown, was elected mayor in 1990 and served one term. He campaigned on the following issues: more consistent enforcement of the borough's housing, building and zoning codes, including enforcement of its historic district ordinance.

Diane Synder, is a biochemist, and has been a teacher, businesswoman, and author. As chairman of the West Whiteland Township Historical Commission, she helped complete a county-wide inventory of historic resources. She helped write a comprehensive historic preservation ordinance based on the Municipalities Planning Code which won the Bureau for Historic Preservation's 1987 Historic Preservation Initiative Award. The ordinance has been emulated by numerous Pennsylvania municipalities. She was elected to the Township Board of Supervisors in 1991, and is presently its chairman. She campaigned on the following issues: finding a balance between economic and real estate development pressures, protection of the township's threatened and dwindling historic resources.

Charles Jacob, is a conservator and cabinetmaker by profession, and has been active in Warwick Township as a member of its planning commission since 1982. He has helped to develop the French Creek Scenic Rivers Management Guidelines and other water conservation studies. He was instrumental in developing the township historical commission. He is the owner of historic Joanna Furnace, a National Register site. He was elected to the township of Warwick Board of Supervisors in 1990 and is presently its chairman. He campaigned on land use, environmental and historic preservation issues.

You may be able to furnish similar examples from your own community; the point is that if historic preservation advocates are not satisfied with present policies and wish to influence them directly, they may have to run for political office to do so. Once in office, however, many other considerations besides historic preservation will demand the official's attention. He or she will discover that in order to legislate specific preservation initiatives, he will have to back down on some preservation issues or discover he cannot get the cooperation to push through any of his own agenda. The problem he may face is that when he backs down on a preservation issue as a bargaining gambit with his elected colleagues, his supporters may abandon him as a sellout. His ability to navigate through these difficult shoals will determine his success.

The "E" Word: Elitism and Historic Preservation

Now for a sensitive subject. First this question: are historic preservationists elitists? That question is as loaded as asking your neighbor when he stopped beating his wife. *The New Shorter Oxford Dictionary* defines the word elitist as, "The choice part, the best (of society, a group of people, etc.); a select group or class."

From the very beginning of the historic preservation movement, it has been individuals with the time, money, and education who have demonstrated concern for the preservation of historic sites, historic landmarks, and historic neighborhoods. From the initiatives of Ann Pamela Cunningham, the founder of the Mount Vernon

Ladies' Association of the Union, which was instrumental in preserving George Washington's plantation home, to John D. Rockefeller Jr.'s Williamsburg, and Charleston's Susan Pringle Frost's Battery Historic District, "elitists" have led the nation in preserving its built heritage. Between 1950 and our own day, this "elitist" designation has lost its exclusivity as more and more individuals have joined to combat the ravages of urban renewal (slum clearance), the construction of highways through older neighborhoods, the continued deterioration of the inner city, and urban sprawl. The public alarm at the incredible loss of America's built heritage spurred Congress to pass the National Historic Preservation Act in 1966. By then, preservation had become a growing grassroots movement, but its elitist origins with their negative connotations have continued to haunt it.

Concern over the loss of the built heritage continues to grow. At the local level, we find that preservationists include individuals who have an appreciation for historic architecture and who believe that its preservation is closely tied to a quality of life issue for the community. Many advocates of preservation live in formerly exclusive neighborhoods that have seen better days. They are either newcomers who have "discovered" the area, or long-established residents alarmed at the sudden demolition of a historic landmark or the gradual deterioration of a once vibrant area. People who choose to live or remain in historic neighborhoods have an appreciation for the authentic, for quaintness, for the warmth of genuine brick or clapboard. They yearn for a human scale in their environment, quality of construction and detail at affordable prices, and the patina of age—attributes entirely missing from new housing subdivisions.

In the United States, thousands of municipalities have begun to lend an ear to historic preservation to help solve problems inherent in older residential and commercial areas. They have begun to integrate policies associated with revitalization of neighborhoods, to stabilize or increase property values, increase reinvestment, and promote social cohesiveness and the building of neighborhood pride.

Social, Economic, and Cultural Differences

Yet, the word elitist has now become a pejorative flung at those who support historic preservation. Historical Architectural Review Boards and historical commissions have been consistent targets of this epithet, in some communities more than in others. This is worth exploring in order to avoid or mitigate what appears to be derived from social and economic disparities within a particular community. There is an element of class war here, which is likely to increase if the disparity between the rich and the poor continues.

When HARB members are almost exclusively of one educational, economic, or ethnic background, an applicant for a COA who is not of that background may interpret the board's recommendations as elitist, when in actuality they may not be. On the other hand, what the applicant may be seeing is the HARB's blindness to the fact that the finer points of a historic preservation approach may require a difficult choice between restoring porch columns and forgoing a vacation at the seashore. Hence the importance of HARBs and historical commissions is to find historically compatible alternative solutions to a variety of historic preservation problems while accommodating varying-size pocket books.

Prejudice: Anathema to Preservation

There have been numerous instances in which certain HARB or historical commission members expressed their disdain and social superiority through their speech and body language. Let's be blunt, these people are snobs. They believe that they are better than others because of their upbringing, and that their values are superior to everyone else's. Although vehemently denying it, they nevertheless express this attitude in their condescending or patronizing manner to applicants who appear before them for COAs. They address people as though they were children or hearing impaired. Another clue to their attitude is the importance they place on taste over historical appropriateness. As Richard Longstreet has stated in a 1994 article "Taste can destroy the past so that little, if anything, of consequence is preserved at all. While preservationists may deny the specter of taste, its

presence is real, its mischief all around us" (p. 40). HARB members with this attitude can be as detrimental to the historic preservation cause as rabid private property rights activists. Because they do more harm than good, we suggest that you consider not renewing their term.

HARBs and historical commissions must be aware of other issues that have caused considerable strain and conflict. One is rooted in cultural differences. In southeastern Pennsylvania a number of cities, boroughs, and townships have experienced a growing population of Hispanic Americans. This immigration and migration has been occurring since the late 1940s and has increased in the past two decades. Irish, German, Slavic, and Italian immigrants settled in these same neighborhoods during various stages of America's growth. Each ethnic group left its imprint on the neighborhood in varying ways: architectural style of religious buildings, types of stores, civic and fraternal institutions, and building traditions.

We need to ask, if there had been a HARB or historical commission at the time each immigrant group settled in the neighborhood, would the HARB have required conformity to past architectural styles, colors, and design features? This is a rhetorical question. The issue at hand is not easily resolved. If HARBs adhere strictly to historical precedence or appropriateness, how much of a new tradition might they be suppressing? The Vieux Carré in New Orleans would not be what it is today if Spanish influence had been suppressed for French aesthetics.

Through an understanding of our common cultural roots, whose origins belong to Renaissance, Romanesque, Roman, Greek, and North African architecture, it may be possible to persuade that the purpose of historic preservation is not to enforce the dominant culture but to preserve the best of all cultures. Asian influences and contributions to America's architectural history have contributed to the multicultural landscape which is part of our American heritage. The traditional neighborhoods where Chinese have lived and worked for generations, known as "Chinatowns," may become or are historic districts in their own right. Over the years, Chinese architectural details have altered the facades of many buildings and transformed their exteriors. These transformations have become part of the history of the building and of the area, and have given it its distinctive character and appearance. Would a HARB pondering an application for a COA consider the proposed addition of a traditional Chinese motif to a store front find it historically appropriate? These are "sticky" issues which are not easily answered, but should alert us to think carefully about our objectives vis-à-vis preservation. What are we trying to preserve, and for whom and why?

Free Enterprise and Social Responsibility

Private property rights advocates have felt the noose of regulations strangling their ability to alter or use their property to suit their own ends. Accusations of "takings" without due compensation have been heard at HARB or historical commission meetings and in courtrooms from magistrates to the U.S. Supreme Court. The usual argument is that land regulations cause economic hardships by drastically reducing the monetary value of property. The Fifth Amendment to the U.S. Constitution stipulates that private property shall not be taken for public use without just compensation. Property rights advocates assert that a slew of federal, state, and local government regulations do just that.

This argument was dismantled by Justice William Brennan's majority opinion in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978). The owner wished to construct a fifty-five story cantilevered building over Grand Central Station. The New York City Landmark Commission rejected this proposal and the owner sued. Freund and Gilbert (1986) summarize the main points of the case, which are applicable to all HARBs and historical commissions and which have since been affirmed in a rehearing by the Pennsylvania Supreme Court in *United Artists v. Philadelphia Historical Commission*:

- (1) The preservation of aesthetic features by law was upheld.
- (2) The objective of protecting landmarks and historic districts was held to be an "entirely permissible governmental goal."
- (3) The New York City preservation law was held to use "appropriate means" to achieve its purpose.

- (4) The application of the New York City preservation law "has not effected a taking of Penn Central's property. The restrictions imposed are substantially related to the promotion of the general welfare..."
- (5) The New York City law permits this owner "not only to profit from the Terminal but to obtain a reasonable return on his investment."
- (6) The owners are able to make "reasonable beneficial use of the landmark site." If they can "demonstrate at some point in the future that circumstances have changed such that the Terminal ceases to be economically viable, they may "obtain relief."
- (7) The New York City preservation law was upheld as "a comprehensive plan to preserve structures of historic or aesthetic interest wherever they might be found in the city."
- (8) The Supreme Court rejected as "without merit" the claim that "the decision to designate a structure as a landmark is inevitably arbitrary or at least subjective because it is basically a matter of taste."
- (9) The Supreme Court accepted "the judgment of the New York City Council that the preservation of landmarks benefits all New York citizens and all structures, both economically and by improving the quality of life in the city as a whole" (p. 9, 10).

The decisions of the Supreme Courts of Pennsylvania and of the United States regarding the "takings" issue in the context of historic preservation ordinances clarifies what the balance should be between entrepreneurial initiatives and social responsibility. It indicates that American society may place greater value on the welfare of community than on the enrichment of the individual. As long as a person's property retains some value, government regulations that have a viable purpose will not be considered a taking. Of course, what the court says isn't always what popular sentiment believes, but at least you should be confident that you have the law on your side — at least for now.

Historic Preservation Is Economic Development

In the 1930s the protection of one Charleston, South Carolina, historic neighborhood (Battery Historic District), which had fallen on hard times, and was being considered by the city's planners for slum clearance, was saved by the farsightedness of Susan Pringle Frost. Not only was she appalled at the potential loss of some of the country's finest architecture in a setting that once had been Charleston's premiere neighborhood, she realized that once the shabby exteriors of many of the outstanding buildings had been refurbished, the glory of their architecture would shine. She was absolutely right! Today, Charleston is one of America's most beautifully preserved cities, but it took at least forty more years for this concept to spread throughout the nation. Unfortunately, urban renewal a.k.a., slum clearance, has erased many a historic area over the intervening years, and many cities, towns, and villages have yet to learn the valuable lesson she and other dedicated Charlestonians learned nearly seventy years ago — the preservation of historic neighborhoods can be a viable revitalization strategy (Hosmer, Jr., 1981, p. 236).

Marketing Historic Areas

There is enough evidence to conclude that along with a constellation of factors, and with organized effort from both the public and private sectors, the marketing of historic areas can contribute to a number of positive changes. These changes are generally associated with improved real estate values. Also, through a combination of federal and state grants, private investment, federal tax incentives, and local tax rebates, the investment climate has considerably improved. Along with such marketing initiatives as the Main Street Program of the National Trust, formerly dilapidated main streets and central business districts have rebounded.

Residential neighborhoods, too, have improved considerably, with the status of historic district designation

creating a positive climate for the historic rehabilitation of private dwellings. Derelict neighborhoods have come back to life. Even in less than ideal conditions, where the regional economy has been depressed and there has been high unemployment, a historic preservation approach can help sustain hope and instill pride. It may not be able to return the area to its heyday, but it can prevent the thoughtless demolition of its most architecturally worthy buildings, and act as a catalyst to economic development initiatives.

The preponderance of evidence from numerous research studies points to a strong association between historic district designation and improved property values. A partial list of these studies can be found in Appendix O. The National Trust for Historic Preservation has recently developed a model study entitled, "The Economic Benefits of Preserving Community Character: A Practical Methodology," which local governments or public organizations can employ to decide the impact of historic district designation. Presently, the borough of Hollidaysburg has undertaken such a study, funded in part, by a Certified Local Government grant.

The Built Environment Counts in Economic Development

Economic development corporations and professionals have long recognized the importance of the built environment in the quality of life of an area. While no business will locate in an area solely on the basis of a community's well-preserved architecture, all other factors being equal, a town proud of its built heritage which has preserved its special historic character is a magnet to both business and tourism.

By developing a variety of fiscal incentives, and persuading through example, we are more likely to influence those who are skeptical or outright hostile than by exaggerating the benefits of historic preservation.

Legal Issues

Under the section, "Conducting the HARB or Historical Commission Meeting," the importance of procedural due process was outlined. The foundation on which due process rests are the Fifth and Fourteenth Amendments to the U.S. Constitution. In part, the Fifth Amendment reads that a person shall not be "deprived of life, liberty, or property, without due process of law..." The importance of this due process clause was reinforced in 1868 in the Fourteenth Amendment to prevent racial discrimination against former African American slaves. The operative word in this amendment is "State." It reads, in part, "nor shall any State deprive any person of life, liberty, or property, without due process of law..."

What is "due process"? It is the accumulation of principles of fairness, and laws which "safeguard individuals from arbitrary governmental action." Due process is interpreted from two perspectives: its practical or procedural implementation and its philosophical or substantive framework on which the right of an individual to be treated fairly is based.

The U.S. Supreme Court has established that historic landmark designation and the regulation of private property for historic and aesthetic purposes is not a taking of property without compensation. Numerous state courts, including Pennsylvania's Commonwealth Court, have been divided on the aesthetic issue. HARBs and historical commissions are warned to avoid aesthetic considerations in reviewing cases for certificates of appropriateness, and to base their judgments on historical considerations and other factors as expounded in their respective ordinances and design guidelines.

Although municipalities can expect challenges on substantive due process grounds, they are more likely to be taken to court on violations of procedural due process. Once you have established procedural due process by providing for notice of meetings or hearings and fair decision-making based on findings of fact, you must avoid making exceptions to your procedures and regulations. Accusations of bureaucratic red tape may be levelled at your local government because you insist on following procedures, but decisions which are appealed to court because you have not followed your own procedures may give the court the option to find in favor of the plaintiff.

In Pennsylvania all HARB decisions are advisory. Final decisions rest with the governing body. Its delibera-

tions are, strictly speaking, quasi-judicial, but because the findings of fact and the identification of the appropriate standards and guidelines, including the establishment of a record, have occurred initially at the HARB level, the appellation of quasi-judicial can be extended to the HARB as well. Governing body review rests substantially on the HARB record, though this does not preclude elected officials from making their own record, which in fact will be reviewed by the court in case of an appeal.

Appeals of Local Agency Law

An inadequate record of a HARB review of a request for the demolition of two commercial buildings, which was appealed by the applicant in the city of Pottsville's historic district, was remanded to the city by Schuylkill County Judge William E. Baldwin. His decision was based on the board's lack of a rationale in recommending against the issuance of a certificate of appropriateness for a demolition permit. According to an article published Tuesday, May 1, 1990, in the *Pottsville Republican*, the judge concluded from the minutes of the Historical Architectural Review Board meeting that they ought to have used "at least two requirements...in determining whether a building...can be demolished: its historical significance and historical value." The article quoted a city official as saying "What the board must do at future meetings is to organize its information and decisions into findings of fact and conclusions of law in much the same way as the city's Zoning Hearing Board."

HARBs complain that municipalities prefer to avoid litigation, as it uses employee time, is expensive, and the results are unpredictable. These reasons are worthy of consideration, but timidity in defending HARB decisions by avoiding court communicates a lack of resolve and, may embolden persons who plan to contest or violate the historic district ordinance. A municipality which demonstrates its belief in and willingness to defend its actions, when those actions are based on sound judgement, will discourage violations of its laws.

Some municipal solicitors advise against litigation, not because they have carefully weighed the evidence and have found the municipal's case weak, but because they themselves have little sympathy for the goals of the historic district ordinance, or their retainer fee does not allow them the "luxury" to mount a defense. In addition, their unfamiliarity with historic preservation law and court decisions and their wish to avoid alienating other clients may also play a role in their dissuading governing bodies from responding to a court challenge.

Legal Assistance from Outside the Municipality

There are a number of sources ready to assist local governing bodies and their solicitors in mounting a legal defense. The State Historic Preservation Officer (PHMC/BHP), the National Trust for Historic Preservation, Preservation Pennsylvania, and, depending on the case, other potential friends can come to the aid of the municipality.

A municipality may receive help in writing a brief, meet with the Bureau for Historic Preservation staff to discuss strategy, enlist *pro bono* or reduced-fee assistance from attorneys specializing in the field of historic preservation or land use law. Expert testimony may be presented in a court of law by a specialist from a government agency, a university, a museum, or a historic preservation organization. *Amicus curiae* (friend of the court) briefs may be filed by interested parties (stake holders) to lend weight to the municipality's argument.

For example, the city of Williamsport in *Park Home v. City of Williamsport* and the city of Philadelphia in *United Artist v. City of Philadelphia* have had recourse to this form of assistance and ultimately have succeeded in receiving favorable decisions.

Abuse of Discretion

Abuse of discretion is less an example of arbitrary and capricious decision-making, and more an "erroneous conclusion and judgment — one that is clearly against logic and effect of such facts as are presented in support of the application or against the reasonable and probable deductions to be drawn from the facts disclosed upon the hearing" (Black, 1979, p. 10).

If a governing body approves the demolition of a historic building on the ground that it is a noncontributing resource, that it is no longer serviceable, and that its condition is seriously dilapidated, and yet all the facts brought out on the record of the HARB indicate otherwise, we are confronted with a form of *abuse of discretion*. (On the other hand, if the decision is based on considerations which override, in the judgment of the governing body, the property's historical significance, the charge of abuse of discretion would be invalid.)

An inverse situation could occur as well. A HARB or historical commission might determine that a less than fifty-year-old cinder block shed, without any architectural or historical distinction, is a contributing resource and on that basis recommend against the issuance of a certificate of appropriateness. In either case decisions that are made contrary to the facts could be determined an abuse of discretion.

Void for Vagueness

"A law which is so obscure in its promulgation that a reasonable person could not determine from a reading what the law purports to command or prohibit is void as violative of due process" (Black, 1979, p. 1412).

To avoid drafting a historic district ordinance which could be considered *void for vagueness*, keep the purpose of the ordinance clearly in mind; refer to the state enabling legislation; include a glossary of terms used in the ordinance; describe responsibilities of the HARB or historical commission, the governing body, municipal staff, and that of the applicant; specify design guideline criteria; and describe violations, enforcement and appeal procedures.

The ordinance should be read by a person who is unfamiliar with what you intend, if he or she cannot understand what is expected, or what the aim of the ordinance is, consider redrafting it. Above all avoid unnecessary legalese. Paginate. Make it easy to read. Test it out on several individuals. Work through the ordinance as though you were an applicant: is it clear what one is supposed to do? Are you sure you understand the number that constitutes the majority of the board? A quorum? Is it the majority of the board attending or just the majority of the board? Lastly, to help everyone who is going to be affected by the ordinance, develop stand-alone design guidelines to help interpret the criteria established in the ordinance.

Chapter 6

THE CERTIFIED LOCAL GOVERNMENT PROGRAM IN PENNSYLVANIA

The National Historic Preservation Act passed by Congress in 1966 placed the primary responsibility for the identification, evaluation, and protection of the nation's historic resources on the states. To involve local government more directly in the National Register of Historic Places nomination process, increase local responsibility and commitment to preservation, Congress amended the Act in 1980 to provide technical and financial incentives to local governments. The program became the Certified Local Government (CLG) Program. As of this writing twenty-two out of one hundred or more eligible Pennsylvania municipalities have applied for and been accorded CLG status.

The CLG Application Process

To participate in the CLG program requires that the local government commit to certain basic responsibilities. The local government will have to

1. enforce appropriate local legislation for the designation and protection of historic properties
2. establish an adequate and qualified Historical Architectural Review Board or historical commission
3. maintain a system for the survey and inventory of historic properties compatible with the statewide survey
4. provide for adequate public participation in the local historic preservation program, including the process of recommending properties to the National Register of Historic Places
5. perform responsibilities delegated to it under the 1980 Act in a satisfactory manner
 - a. commit HARB or historic commission member participation for a minimum of eight hours of Bureau for Historic Preservation approved training per year
 - b. submit a timely annual report of HARB or historical commission activities

Advantages

The benefits of the CLG program devolve from a stronger partnership between local governments and the Pennsylvania Historical and Museum Commission's Bureau for Historic Preservation. Each organization shares its historic preservation experience and knowledge through the evaluation, monitoring, and grant funding process, thereby increasing its effectiveness in the protection of the Commonwealth's historic resources.

According to the National Historic Preservation Act, the Pennsylvania Historical and Museum Commission, acting as the historic preservation office, must set aside 10 percent of its federal Historic Preservation Fund for CLGs.

Each CLG is eligible to compete for a matching grant to be used for planning, survey, staffing, or other activity which enhances the local government's ability to implement its historic preservation policies. Grants are for projects that can be completed within one year. As there are presently only twenty-two CLGs, of which only slightly more than half normally compete for grant funding, the chances for the award of a grant are substantially enhanced.

Disadvantages

The local government, in formally agreeing to meet certain responsibilities, opens itself to state oversight which would otherwise not occur. This oversight is characterized by a performance audit of the municipality's historic preservation program to occur not less than every three years. If the local government fails to fulfill its responsibilities, it may forfeit its status as a CLG. No Pennsylvania municipality has been decertified for cause since the inception of the CLG program in 1985.

The submittal of an annual report of the HARB's or historical commission's activities; the requirement of continuing education for HARB, commission members, and staff; the requirement to maintain a survey and inventory of historic properties; and the requirement to make a good-faith effort to appoint HARB or commission members who meet professional qualifications could all be considered an imposition by some local governments considering CLG status. (Almost all of these activities, however, are eligible for CLG grant funding.)

A local government may apply for CLG status throughout the year; however, if it plans to apply for a CLG grant it should be aware of the grant application and award cycle. No monies can be disbursed to a local government until the National Park Service has approved the status of the CLG.

To facilitate the CLG application process, a CLG Application Checklist will be mailed along with Pennsylvania's CLG regulations. A municipality will need to submit, at a minimum, the following information to the CLG coordinator at the Bureau for Historic Preservation:

- the most recent historic district ordinance with all its amendments
- résumés of all HARB or historical commission members and historic preservation staff
- the HARB or historical commission bylaws
- documentation submitted on a Historic Resource Survey Form; this will need to be provided substantiating the existence of a historic district or of historic resources unless the protected area is listed in or has been determined eligible to the National Register of Historic Places, or has been certified as historically significant by the Pennsylvania Historical and Museum Commission (a requirement under the Historic District Act).
- evidence that a comprehensive survey of the area's historic resources has been conducted or is *planned*.

Often, some or all of the above requirements have already been met. To find out what steps a municipality needs to follow, contact the CLG coordinator who will extend assistance to all applicants regarding the CLG application process.

In conclusion, the CLG program is a voluntary program and the advantages far outweigh any disadvantages. The mutual benefit of the CLG program insures that it is to be implemented with fairness and a light bureaucratic touch. To determine whether the CLG program would be worth pursuing, we suggest you contact a minimum of three CLGs. A list of Pennsylvania CLGs, along with contact names, addresses, and telephone numbers is available from the Bureau for Historic Preservation.

The CLG Grant Process

The CLG grant cycle generally begins in mid-November when grant applications are mailed to municipalities which administer ordinances protecting historic resources. By February, local government grant projects have been awarded. The grant year begins in late June and ends mid-July of the next year.

We urge grant applicants to discuss their grant projects with us prior to submitting their application. In fact,

once the applicant has focused on a grant project which can be completed within one year, he or she would be wise to send in a draft of the application for review by Bureau for Historic Preservation staff. Staff will suggest how the application can be improved.

Grant priorities may change from year to year. A wide spectrum of activities or projects has been funded. These include but are not limited to

- Design guidelines
- National Register of Historic Places nomination applications
- Preservation plans
- News articles about historic preservation topics
- Preservation staffing
- Preservation consultants
- Historic district ordinances
- Sign guidelines
- Historical architectural surveys
- Posters
- Photographic documentation
- House tours
- Brochures
- Coloring books
- Elementary school preservation curricula
- HARB training and education
- Special events
- Newsletters
- Conferences and seminars
- and so on....

If a project can be completed within one year let the need and your creative genius be your guide. National Park Service regulations allow CLG grant monies to be used for development projects (meaning rehabilitation, repairs, etc.), *but* the modest amount of CLG funding available and the establishment of the Commonwealth's Keystone Grant, has suspended disbursement for that use in Pennsylvania. Instead, CLG grant funding is expended on planning, surveying, pre-development, and educational projects and activities.

To insure that services, projects, and activities purchased by local governments meet standards of quality and are professionally executed, the National Park Service requires that most persons responsible for fulfilling grant projects meet professional qualifications defined in the Code of Federal Regulations. For specific information regarding this matter contact the CLG coordinator at the Bureau for Historic Preservation.

The PHMC's HARB-CLG Advisory Board

Historic preservationists never tire of saying that preservation, like politics, is local. While federal and state government policies have great impact on local economies, and may ultimately determine their fate, the day-to-day preservation of a community's built heritage is its own responsibility. However, to integrate preservation into municipal governance, Congress realized that incentives would have to be developed, hence in 1980 it amended the National Historic Preservation Act and created the Certified Local Government program. Only 10 percent of each state's historic preservation fund is mandated for Certified Local Government use. This sum, which is less than \$100,000 in Pennsylvania, cannot fulfill the needs of the over one hundred eligible municipalities administering historic district ordinances.

To bring the needs and special problems of local governments to the attention of the Pennsylvania Historical and Museum Commission, Walter L. Powell, historic preservation officer of the borough of Gettysburg, with the cooperation of Bureau for Historic Preservation staff, established the HARB-CLG Advisory Board. The board consisting of five members, each of whom represents a Certified Local Government, is appointed by the PHMC.

In 1997, the HARB-CLG Advisory Board adopted the following mission:

To provide guidance and support to HARBs, historical commissions, and the Pennsylvania Historical and Museum Commission by promoting the education, funding, probity, fairness and professional behavior of its members in the pursuit to preserve the Commonwealth's historic resources.

In the brief period of its existence, the board has participated in the development of HARB-CLG training workshop programs and was instrumental in including a session on historic preservation in the 1997 Heart of Tourism Conference. At this same conference, it was invited to introduce itself and discuss its mission and goals at a meeting of the PHMC's Historic Preservation Board. One of the board's goals is to become an advocate for preservation at the local government level. The responsibility for preserving historic buildings falls essentially on the shoulders of private property owners with limited funds. The challenge for municipalities administering historic district ordinances is to balance preservation standards with owners' ability to pay for them. The HARB-CLG Advisory Board is representative of such municipalities and understands their special problems and needs. You can further the cause of historic preservation in your community by contacting any member of the HARB-CLG Advisory Board, or the Certified Local Government coordinator at the Bureau for Historic Preservation. The names, addresses and telephone numbers of the present members can be found in Appendix P.

References

Black, Henry C. *Black's Law Dictionary*. St. Paul: West Publishing Company, 1979

Communication Organization Review Essentials Workshops For Historic District Commissions: Workshop Handbook. Cranston: Rhode Island Historical Preservation & Heritage Commission and City of Cranston, 1995

Freund, Charles P. and Frank B. Gilbert. *Preserving Historic Districts: A Training Manual for Historic Preservation Commissions and Boards of Architectural Review*. Washington, D.C.: National Trust for Historic Preservation, 1986

Pollard, Oliver A. "Demolition by Neglect: Testing the Limits and Effectiveness of Local Historic Preservation Regulation". *Notes on Virginia*, No. 32, Winter. 1988/1989

Annotated Bibliography

Allen, Kenneth B. "Demolition by Neglect: A Case Report of Resistance to Historic Preservation Land Use Controls in Harrisburg, Pennsylvania." Unpublished student paper, Dickinson School of Law, Carlisle, Pa., 1985.

This student paper is an excellent summary and analysis of the *Cleckner v. City of Harrisburg* (1979) a landmark case in historic preservation law in Pennsylvania. It touches upon the demolition by neglect issue and provides interesting background on the city of Harrisburg's historic preservation efforts begun by the Historic Harrisburg Association in the 1950s. It refers to the city's 1974 comprehensive plan wherein historic preservation goals are formalized. The *Cleckner* case reasserted the arguments established by *Penn Central* that precluding an owner from disposing of his property by demolition is a taking. Copies of this paper are available from the Bureau for Historic Preservation.

Beasley, Ellen. *Design and Development: Infill Housing Compatible with Historic Neighborhoods*. Information Series No. 41. Washington, D.C.: National Trust for Historic Preservation, 1988.

The likelihood of new construction in a historic district is not so remote that HARBs and historical commissions can afford not to know how to respond to it. Unlike the review of "ordinary" alterations, determining what is appropriate for new construction requires a willingness to accept contemporary design, and yet have it be compatible with the historic built environment. Acquaintance with existing zoning and subdivision regulations is necessary because it determines setback regulations and siting in general, which in turn affects design. Defining what compatibility means will have to be more than vague generalities — it must be expressed in design guidelines and examples. This twenty-page booklet will guide you in the right direction by discussing the relevant issues which new construction triggers, and provide you with several case studies illustrating how historical commissions have responded to new construction in historic districts.

Beasley, Ellen. *Using Professional Consultants in Preservation*. Information Series No. 26. Washington, D.C.: National Trust for Historic Preservation, 1980.

A must read before you select and contract with a historic preservation consultant. This invaluable thirty-four page article covers such essential points as clarifying project goals, developing a scope-of-services statement, setting the fee, selecting procedures, selecting the consultant, and preparing the contract. The appendices provide a sample of requests for proposals, a request-for-interview letter, a sample contract for long-term projects, and a sample contract letter for short-term projects. What the article omits to reference is National Park Service regulations as provided under 36 Code of Federal Regulations 61 (36CFR61) establishing historic preservation professional qualifications for federal government contracts or subcontracts which are required with the disbursement of federal grants, as for example, with the Certified Local Government Program (CLG).

Beaumont, Constance E. *A Citizen's Guide to Protecting Historic Places: Local Preservation Ordinances*. Washington, D.C.: National Trust for Historic Preservation, 1992.

This is a clear, well written twenty-one page explanation of the essential components of a historic district ordinance. It is a good introduction to the subject and can act as a guide for one who is contemplating writing or reviewing a historic preservation ordinance. It also includes concerns which can be addressed in a zoning ordinance, such as surface parking, landscaping, and use of historic structures. Beaumont also has added the rationale for enacting a historic preservation ordinance, such as social and economic benefits. She has touched on the

limited powers of Section 106 of the National Historic Preservation Act to protect historic resources, and has suggested other federal laws that may be helpful in protecting the historic built environment.

Boasberg, Tersh. *A Primer on Historic Preservation Law in Pennsylvania*. Washington, D.C.: National Center for Preservation Law, 1982.

Tersh Boasberg was a major contributor to *A Handbook on Historic Preservation Law*. This work is far less comprehensive, but as a brief overview of the legal aspect of historic preservation it is still somewhat useful. Two early and seminal Pennsylvania court cases are discussed in the context of the takings issue and compared to *Penn Central Transportation Co v. City of New York* (1978). They are the *First Presbyterian Church of York, Pennsylvania v. City of York* (1976) and *Cleckner v. Harrisburg* (1979). Although *First Presbyterian* was decided prior to *Penn Central*, Boasberg states that it is "wholly consistent with it." It is worth mentioning that in both cases the court found in favor of local governments in denying demolition permits for properties situated in historic districts. The owners had sued on the basis of a taking because they were precluded by government regulations from the "highest and best use" of their property; this clearly did not entitle them to claim that there had been an unconstitutional taking.

Cassity, Pratt. *Maintaining Community Character: How to Establish a Local Historic District*. Preservation Information. Washington, D.C.: National Trust for Historic Preservation, 1992, 1996.

This twenty-eight-page booklet is certainly one of the best short introductions to establishing a historic district available. Cassity marshals all the important reasons why historic districts can lead to vital communities. He also provides the strategy for gaining the community's support for local historic district ordinance. He has chosen several varied case studies which illustrate the different circumstances in which historic districts function. The historic district may not be the right answer in all situations and the conservation district approach may be more suitable. See also, Lefèvre's *Historic District Designation in Pennsylvania*, in which the topic of conservation districts is discussed. Cassity does not shy away from some of the potentially negative effects of historic designation such as gentrification and its result in displacing lower income residents. But Cassity identifies the means of addressing this issue, for example, by establishing "[r]enters' organizations and anti-displacement housing programs, such as 'circuit breaker' tax relief and rent relief... called into play prior to district designation" (p. 20). The Newport, Kentucky case study is useful as it demonstrates the step-by-step process that works best in establishing a regulated historic district. An example of countering citizens opposed to the district who showed up at a public meeting with posters saying "WE SAY NO" were the buttons worn by supporters which said "I LOVE HISTORIC PRESERVATION AND I VOTE."

Cox, Rachel S. National Trust for Historic Preservation. (1994). *Design Review in Historic Districts*. Preservation Information. Washington, D.C.: National Trust for Historic Preservation, 1994.

For their informational value and cost the National Trust's *Preservation Information* booklets are especially helpful. Over the years it has published on a variety of preservation topics. To receive a list of available booklets, contact the Bureau for Historic Preservation or, better yet, join the National Trust. Cox's article introduces, in a thumbnail sketch, the history of the preservation ordinance in the U.S. and describes the basic elements which constitute it. She also discusses design issues and touches on due process concerns. As an introduction to regulating the appearance of buildings to retain their historic character this article hits the mark. Three case studies of different communities are included: Charleston, South Carolina; Phoenix, Arizona; and Oysterville, Washington. Consider distributing this booklet to members of your governing body, the planning commission, the zoning

hearing board, and be sure to include leaders of civic and fraternal organizations — it can help spread a better understanding.

Dakin, S. *Handbook for Historic Preservation in North Carolina*. Raleigh: Preservation North Carolina and State Historic Preservation Office, 1994.

The three-ring binder seems to be the choice method of assembling the kind of text and material used by historical commissions and design review boards. This North Carolina version of the handbook/manual is ninety-four pages long and includes appendices. It is a comprehensive look at all the major elements of establishing and administering historic districts and preservation programs. The chapters on design guidelines, the certificate of appropriateness process, and public education and public relations provide excellent advice and insights. For example, under "Standards for Evidence" in chapter 3, is a concise explanation worth quoting in full:

The commission should develop findings of fact based only on competent, material, and substantial evidence: *Competent*: evidence is evidence supported by factual data. *Material*: evidence is evidence that addresses the issue being decided. *Substantial*: evidence is sufficient relevant evidence as a reasonable mind might accept as adequate to support a conclusion (p. 21).

I highly recommend North Carolina's *Handbook* to you. Contact the North Carolina State Historic Preservation Office.

Day, Michael K. *Maryland Historic Preservation Commissions Handbook*. Maryland Association of Historic District Commissions, n.d.

Although state historic preservation officers' historical commission handbooks or manuals tend to be pretty much alike, there are enough differences between them to make the student of historic district administration interested to read through several examples. Maryland's is no exception; in fact, it is one of the more comprehensive and well organized of the type. The only caveat which applies to all preservation materials from other states is that state historic preservation enabling laws differ enough from each other that one has to be cautious about uncritically adopting their mode of operations. This "book" is published as a three-ring looseleaf binder, with an explanatory text and appendices.

The emphasis that is placed on the role and importance of historical commissions in the context of state preservation policy *appears* to reflect a commitment to and support of local governments. I found the section titled "A Guide to Drafting Local Historic Preservation Ordinances" clear and to the point. The chapter on the historic preservation commission is excellent and is worth considering for distribution to all HARB or historical commission members. One paragraph is worth quoting in full, although the same idea is presented in *A Manual for Pennsylvania Historical Architectural Review Boards and Historical Commissions*.

A common misunderstanding among commission members and the general public is that the historic preservation commission was created to dictate good taste. In reality, commission members are charged with the protection of historic resources, not the judgment of good taste (Chapter II, p.1).

The "Project Review" chapter offers some particularly good advice regarding the review of large-scale rehabilitation or new construction projects in the historic district. Because close to 85 to 90 percent of projects that HARBS review are of a maintenance and repair nature, most HARBS are rarely ready and able to cope with large-

scale projects even with the assistance of a preservation planner or consultant. A sample of this advice follows:

- Give the applicant specific instructions and time frames for the commission's review of the project;
- Meet with the developer and architect to set up a series of meetings for the various stages of the project;
- Set up a preliminary application meeting: explain the character of the site and neighborhood;
- Set up a preliminary review of conceptual plans;

Also, "[t]ry to reach a general agreement on design and develop a list of guidelines for the developer on what the commission will want to see. Request that the surrounding buildings and environment be illustrated in relationship to the new structures as the [plan] progresses" (p. 3). Another passage worth quoting in full regards demolition. Too often, developers apply for a demolition permit first and provide vague and unrealizable plans for new construction to occur at an unspecified time. The hidden motive may be to end up with a "temporary" parking lot. So, "[r]eview any proposed demolition of existing structures, but withhold final approval of the demolition until plans for the replacement structure have been completed (p. 3)." On that note, you may want to check with your solicitor regarding the legality of having the developer post a bond which he would forfeit if the project were not to go through.

Although the section on "State and Federal Legal Precedents" goes over familiar ground, there are enough new cases to make this portion of the handbook worth studying as well. For example, some HARBs have expressed confusion about the validity of reviewing buildings and structures that are nonhistoric or, to put it another way, noncontributing. In *City of New Orleans v. Pergament* 1941, the Louisiana Supreme Court responded by explaining that

[t]he purpose of the ordinance is not only to preserve the old buildings themselves, but to preserve the antiquity of the whole French and Spanish quarter, the toute ensemble, so to speak, by defending this relic against iconoclasm or vandalism. Preventing or prohibiting eyesores in such a locality is within the police power and within the scope of this municipal ordinance (Chap. IV, p.18).

Other "tricky" issues (within historic districts) covered in this section with accompanying court cases include local jurisdiction over county and state property, vacant lots, and owners who plead ignorance of the ordinance or once they have received a certificate of appropriateness go ahead and refuse to abide by the specifications approved by the commission. Regarding this last point, as it is not an uncommon situation, it would seem inconsiderate to leave the reader in suspense about the result of two separate court decisions. One is *Faulkner v. Town of Chestertown*, Maryland 1981, the other is *Chase F. Parker, Trustee v. Beacon Hill Architectural Commission*, Massachusetts 1988. In both cases the court found in favor of the municipality and required unapproved work to be dismantled and removed, including, in the Beacon Hill case, the addition of an extra floor!

The handbook also contains a comprehensive design guideline which, though not sophisticated from the graphic and layout standpoint, nevertheless is most helpful.

Lastly, as to the subject of administrative approval of proposed work in a historic district, which is discussed at length in *A Manual for Pennsylvania Historical and Architectural Review Boards and Historical Commissions*, the Maryland *Handbook* refers to several examples of the definition of ordinary maintenance, which is one of the criteria on which administrative approval rests. Useful examples are culled from Alexandria and Manassas, Virginia; New Orleans; and Prince Georges and Montgomery Counties, Maryland.

Dennis, Stephen N. *Building a Defensible Record*. Washington, D.C.: National Center for Preservation Law, 1991.

This is a five-page article of a speech which Dennis gave at the March 9, 1991 Annual Preservation Workshop in Arlington County, Virginia. He lists ten essential prescriptions HARBs or historical commissions should follow to build a defensible record, on the assumption that the municipality may have to go to court. Especially useful for newly appointed board or commission members or those members who need a "refresher" on running a successful meeting.

Dennis, Stephen N. *Local Preservation. When Preservation Commissions Go to Court: A Summary of Favorable Treatment of Challenges to Ordinances and Commission Decisions*. Washington, D.C.: National Park Service, 1988.

The demise of the National Center for Historic Preservation Law is a major loss to historic preservation advocates and to local governments who depended on the center's newsletters and publications to keep them up to date on historic preservation law. This particular article, though quite brief (nine pages), discusses central preservation issues and provides a synopsis of the most important court decisions addressing each issue on substantive or procedural grounds up to 1988. The following issues are addressed: (1) designation of properties as historic; (2) police power to regulate private property; (3) regulation of historic and non-historic structures within a historic district; (4) denial of demolition permits; (5) review of *all* exterior alterations to only visible facades; (6) historic designation and regulation of religious properties; (7) regulation of county or state properties by local government; (8) inclusion of vacant lots in the historic district; (9) economic hardship (takings) issues; and a situation that HARBs consistently face — (10) owner excuse that he was unaware of the ordinance.

Dennis, Stephen N. *Zoning and Historic Preservation in Local Preservation*. Washington, D.C.: National Park Service, 1989.

I highly recommend this eleven-page article especially for individuals who are vague about what zoning actually is intended to accomplish. It is also useful in that it gives clear and precise explanations about such concepts as variances, special exceptions, downzoning, transfer of development rights, and bonus or incentive zoning. The most important point that the article makes is the importance of coordinating the zoning ordinance with the historic district ordinance. The article also provides guidance on how a community can assess the effect of its zoning ordinance on its historic district, and what to do about it.

Devlin, William E. *Handbook for Connecticut Historical District and Historic Properties Commissions*. Hartford: Connecticut Historical Commission, 1988.

I will not pretend to have read a representative sample of commission manuals and handbooks, but after reading through some of the manuals and handbooks mentioned in this bibliography I have concluded that each one covers more or less the same ground. However, to be fair, each manual that I have read has some feature different from all the others, which makes reading through them worthwhile. This is especially true of the *Handbook* from Connecticut, half of which is dedicated to seven historic district case studies. As the author explains, the "purpose of the handbook was not simply to produce a handbook but also to assist local historic district properties commissions in incorporating historical perspectives and standards in a consistent manner in their deliberations" (VII-1). If this sounds like something that should be taking place, it must be said that too many HARB and historical commission members have never actually read the National Register of Historic Places nomination form (or any other historical documentation) describing the district for which they determine historical appropriateness (this is especially true of members replacing the originally appointed members). Once the historical

context of the district has been researched, historic district guidelines can be developed that will protect the character defining features of the district. Finally, Devlin makes numerous recommendations many of which are applicable to Pennsylvania HARBs and historical commissions. I am partial to recommendation number seven:

Commissioners should be required, within one year of their appointment, to take a course of instruction in basic historic architecture, concepts of design, and historic preservation law. The [State Historic Preservation Office] should be the vehicle for developing and administering this course of basic instruction and should be funded to develop such a course. At the completion of the course, each participant would receive a certificate (IX-5).

Donia, Tom. *Public Relations for Local Preservation Organizations: Press Relations, Public Education and Special Events*. Information Sheet No. 24. Washington, D.C.: National Trust for Historic Preservation, 1980.

This twenty-nine-page publication is quite useful and is full of excellent ideas and examples which you need to know about and to implement. While most HARBs or historical commissions cannot be expected to be involved in the more organizationally complex events, the ideas and advice about press relations and public education are certainly implementable with some assistance from the municipality and the local historic preservation organization. Included are appendices of sample news releases, a public affairs announcement, and even a brief television script. Because the bibliography was written seventeen years ago many of the books cited may no longer be available; however, most of the organizations are still in existence and they may have updated much of the information the author references.

Duerksen, Christopher J., ed., *A Handbook on Historic Preservation Law*. Washington, D.C.: The Conservation Foundation and The National Center for Preservation Law, 1983.

As Hosmer's two-volume history of the preservation movement of the United States has become a classic, the same can be said of Duerksen's *Handbook*, which encompasses a wide spectrum of preservation topics. Each chapter covers a specific subject matter and is written by an acknowledged specialist in that field. Beginning with a chronology and review of historic preservation law, going on to the rationale for establishing a preservation program, which includes an overview of historic preservation ordinances and an analysis of their components, explaining the process of designating historic districts and individual landmarks, and recommending administrative procedures and standards for the review of demolition, alteration and new construction, nothing is left out, including a discussion of economic hardship and enforcement procedures. What makes this book so valuable are the countless examples of legal cases culled from throughout the United States which the author uses to illustrate each subject matter.

Other topics include separate chapters on the role that state governments and the federal government play with their enabling legislation and preservation programs, and the legal responsibilities of each. State and federal tax incentives for historic rehabilitation are covered as well. A full exposition and legal analysis of the National Historic Preservation Act, with specific attention to Section 106 review is provided, including a discussion of the National Environmental Policy Act and its relevance in protecting historic resources. Constitutional law and the issues of due process and takings are given an entire chapter. Had this handbook included information on the rehabilitation of buildings and a chapter on architectural styles it could have been called an encyclopedia. If the reader were to acquire this book only for the bibliography and appendices, he or she would be amply rewarded. Appendix A, "Recommended Model Provisions for a Preservation Ordinance, with Annotations" by Stephen N. Dennis, compares major components of historic preservation ordinances from different communities throughout the United States. Keeping in mind that a Pennsylvania municipality must adhere to state enabling law, there are still many excellent examples of historic preservation ordinances which can be incorporated into a local historic

preservation ordinance. And finally, he includes a list of landmark court cases related to historic preservation up to 1983 which will also be found useful. Although some of the information is dated, such as the section on federal tax incentives for historic rehabilitation, if one book had to be chosen as a comprehensive introduction to the subject of preservation, this would be it. There are 523 pages plus appendices.

Duerksen, Christopher J., and Roddewig, Richard J. *Takings Law in Plain English*. Washington, D.C.: American Resources Network, 1994.

The "takings" issue has fueled debates and created case law since local governments instituted land use and historic preservation ordinances. Disgruntled property owners and developers have accused local governments of violating their Fifth Amendment rights, asserting that these regulations have been tantamount to a taking of their property for public use without just compensation. Courts have rejected such arguments as long as government regulations have been promulgated in the public interest, and some "reasonable" economic use remains in an owner's property. Duerksen's and Roddewig's fifty page booklet discusses how taking law has evolved and why courts have arrived at this conclusion. Their exposition is uncharacteristically devoid of legalese, making an otherwise abstruse subject simple and clear. Nine taking-law principles with accompanying examples provide further clarification of the subject. This booklet should be part of the armament of all HARBs and historical commissions. Municipal solicitors will also find it quite useful. With a better understanding of taking law, HARBS and governing bodies can discern what constitutes empty threats and avoid the pitfalls of overly restrictive regulations.

Fehr, Steven F. *The Zoning Hearing Board*. Harrisburg: Pennsylvania Department of Community Affairs, 1990.

This thirty page booklet is available from the Commonwealth free of charge. It is intended to explain the function of the zoning hearing board, whose duties are authorized by the Municipalities Planning Code (MPC) Act 170 of 1988. Unlike all HARBs and most but not all historical commissions, the zoning hearing board has the authority to approve or deny, rather than merely recommend. All decisions of a zoning hearing board must be appealed to the Court of Common Pleas. Why would this booklet be of interest to HARBs? Because a zoning hearing board has adjudicatory responsibilities which require it to be procedurally correct, and a HARB can benefit from incorporating certain procedures which are not precluded by the Historic District Act of 1961. For a simple example, under Article 6 titled Hearings, section 6.13 (F): "No member of the board shall vote on the adjudication of any matter unless he has attended the public hearing thereon." This requirement is applicable to HARB meeting behavior as well. Section 6.6 Order of Hearing is another example which applies to HARB meeting procedures.

Freund, Charles P. and Gilbert, Frank B. *Preserving Historic Districts: A Training Manual for Historic Preservation Commissions and Boards of Architectural Review*. Washington, D.C.: National Trust for Historic Preservation, 1986.

More than ten years after its incarnation in a three-ring binder, this publication, specifically written as a training manual for use in workshops conducted by the National Trust and the National Alliance of Preservation Commissions, continues to provide the kind of instruction all HARB and historical commissions need to have to administer local historic district ordinances. This manual presents the legal foundation on which historical commissions depend, the role of the HARB/commission, the process of historic district designation, the application review process, and such administrative strategies as working with owners of historic buildings and local government officials. The authors also discuss the importance of public relations without which historic preserva-

tion policies are bound to fail. Throughout, the reader is given specific instruction on how to cope with typical problems faced by HARB or historical commission members.

Gary, Grace. *Organizing for Change*. Information Series No. 67. Washington D.C.: National Trust for Historic Preservation, 1992.

Although it is not up to the HARB or the historical commission to fight political battles, someone in the community may, at some point, have to pick up the gauntlet. This means that citizens who care will eventually have to descend into the political arena and do battle with their opponents. Six case studies were chosen to illustrate how citizens organized to change public policy on such issues as demolition of historic properties, development of a historic preservation ordinance, and limitation of office building growth and heights downtown, and in each case successfully challenged city hall and powerful developers. While this is not exactly a how-to article, it may inspire you to develop your own strategies.

Georgia Department of Natural Resources. *Building the Future: A Resource Guide for Community Preservation in Georgia*. Atlanta: Historic Preservation Section, 1989.

It is my understanding that this publication, which was also produced in the form of a three ring-binder is in the process of being revised. It is divided into five sections, each containing articles from the Historic Preservation Section's *Preservation Helpline*, an information bulletin, and articles from numerous other publications. Subjects include the importance of establishing a preservation plan, identifying historic resources in the community, evaluating trends and influences on historic properties, developing consensus on goals and priorities, identifying the tools, strategies, and actions needed to achieve community goals, and finally a discussion of the action plan and its implementation. Visually this book is a hodgepodge and has a confused appearance. However, it is full of excellent articles and ideas. The experience is a little bit like walking through a flea market. There are a lot of interesting things but only some you can use.

Green, Mel. "Building Codes and Historic Preservation." *Preservation Forum*, 2, no. 1 Spring (1988): 51-52.

This two-page article introduces the reader to the different building codes used in various regions of the United States. Through efforts of the National Trust for Historic Preservation in 1974, historic preservationists have received important concessions from code officials, such as exempting historic buildings from levels of "performance" required of new buildings if they meet certain safety standards.

Guzzi, P. and Weslowski, P. L. *Establishing Local Historic Districts*. Boston: Massachusetts Historical Commission, 1966.

This forty-three page publication is interesting from the standpoint of comparing the process of establishing historic districts in Massachusetts with the process in Pennsylvania. There are twenty steps mandated by Massachusetts enabling law prior to enacting a historic district ordinance. A number of these steps are similar to those required in Pennsylvania; however in Massachusetts, governing bodies must first vote to establish a "study committee" (to study the potential for a historic district) before any other step can be taken. While in Pennsylvania the initial process of establishing a historic district often occurs outside of municipal oversight or participation, ultimately the municipality must be involved and fully supportive. Of further interest is what the State Historic Preservation Office was recommending review boards should omit from their review process in 1966 when this book was written. The list, titled "Categories Considered for Exclusion from Review," recommends excluding (a) temporary signs or structures..., (b) terraces, walks, driveways..., (c) walls, fences, either or both of

them, (d) storm doors and windows; screen doors and windows; window air conditioners, lighting fixtures..., (e) **COLOR OF PAINT**.... We likewise recommend avoiding review of paint colors, which does not preclude the HARB from giving advice if requested.

Hosmer, Charles B. Jr. *Preservation Comes of Age: From Williamsburg to the National Trust, 1926-1949*. Charlottesville: University Press of Virginia, 1981.

This is the classic history in two volumes of the historic preservation movement. The author, Jay P. Walker, professor of history at Principia College, is considered the expert in the field. This book is eminently readable and provides an in-depth understanding of how historic preservation developed from its early house museum phase, run by local amateurs, to the preeminence it has today in the political and private sectors. One of the great ironies of the growth of historic preservation is due, according to Hosmer, to the automobile. On the one hand it made travel to historic places feasible for the average person, making the preservation of historic buildings and structures worthwhile as an attraction to tourists. But on the other hand, it began the decline of the city by enabling suburban sprawl. These two volumes should be on the shelf of the professional as well as the amateur preservationist, for both need to know who their predecessors were and what they accomplished.

Houk, Shelley A. *A Guide to Borough Council Meetings*. Harrisburg: Pennsylvania State Association of Boroughs, 1996.

If a borough has a historic district regulated by a local historic district ordinance, it may be to the advantage of the HARB to become familiar with borough meeting procedures. There will be occasions when the chair of the HARB will have to represent the HARB decision in a public forum. In addition, anyone residing or doing business in a borough can benefit from understanding how borough council proceeds, and be better prepared to be an advocate for preservation policies. A copy of the current Sunshine Act, summaries of court cases on the law, sample committee rules, and the State Ethics Act complete this thirty-page publication.

Howard County Department of Planning and Zoning. *Rules of Procedure*. Baltimore: Howard County Historic District Commission, 1996.

Perhaps the reader will feel that including numerous examples of historical commission procedures is overkill, but a well-run, formalized HARB meeting will insure due process to applicants for building permits and certificates of appropriateness. It will also structure the meeting in such a way that HARB recommendations will be based on the facts of the case. Of interest to the reader may be the response of the Howard County Historic District Commission when a certificate of approval application is determined "incomplete":

- E. [T]he executive Secretary shall provide the applicant with a detailed list of all matters necessary to complete the application. Upon receipt of such notice, the applicant may complete the application in accordance with the detailed list, or if he deems the request improper, may request in writing that the Executive Secretary proceed to schedule the application without the requested material.
- F. At the scheduled public hearing on an application deemed incomplete by the Executive Secretary, the Commission shall first consider the completeness of the application. If the Commission upholds the position of the Executive Secretary that the application is incomplete, the application shall be considered as if it had never been filed and the forty-five (45) days after the public hearing within which the Commission must act shall be considered as not having started to run (5).

Kaplan, Marilyn E. "Working with the Code Official." *Preservation Forum*, 2, no. 1 Spring (1988): 53-54.

This two-page article should be attached to a memorandum addressed to the local building inspector and fire marshall asking them to meet with you to discuss the issue of preservation and building/fire codes. Kaplan believes that the objectives of safety and the preservation of original fabric need not conflict. She believes historic preservationists and code officials need to have a better understanding of each other's goals. Her article may be one way to break the ice.

Kitchen, Judith L. and Dewhirst, Scot E. *Historic Preservation Commissions and Design Review Boards Training Manual*. Columbus: Ohio Historic Preservation Office, 1996.

I wish I had written this training manual and you may also. Published in a three-ring binder, it is comprised of fifty pages of text written in clear, pithy paragraphs separated by bullet-punctuated lists. The remaining part of the book is devoted to appendices of sample ordinances and state enabling laws. This manual covers the essentials of establishing historic districts and the methodology of administering them. Leaving aside examples that are specific to Ohio, this manual is essentially applicable to all historical commissions and local government preservation programs. It is worth contacting the Ohio Historic Preservation Office to see if you can purchase a copy.

Lefèvre, Michel R. *Historic District Designation in Pennsylvania*. Harrisburg: Pennsylvania Historical and Museum Commission, 1997.

This is a rewritten and updated version of the formerly titled *Historic Districts in Pennsylvania* booklet by D. G. Schlosser. It is guide for creating historic districts in Pennsylvania and implementing local historic district ordinances, and has information on grant-funding opportunities. It is useful for its information on the process of designating historic districts in Pennsylvania, including strategies for avoiding typical pitfalls of overly eager preservationists. This publication also reviews and discusses Pennsylvania landmark preservation decisions and compares the effectiveness of preservation ordinances under the Historic District Act with the Municipalities Planning Code. Available for a modest price through the PHMC publications program (800) 747-7790.

Longstreet, Richard. "Taste Versus History." *Historic Preservation Forum*. National Trust for Historic Preservation, (1994, May/June).

Every HARB and historical commission member should read this six-page article. It goes to the heart of a most pernicious problem, the problem of considerations of taste rather than historical significance which dominates the HARB recommendation process. Longstreet says,

Yet however much lip service is paid to objectivity and professionalism, however profuse the jargon in which decisions are explained, taste lies just below the surface of numerous preservation activities. Taste—that is, individual preferences ... continues to exercise a profound influence on what we preserve and how we preserve it (p. 40).

Copies available free from the Bureau for Historic Preservation.

Morris, Marya. *Innovative Tools for Historic Preservation*. Chicago: American Planning Association, 1992.

A useful historic preservation plan should include a variety of economic, fiscal, and legal techniques that have been tried and found successful in other communities. Morris presents these in this forty-one page publication.

She discusses a variety of financial incentives some of which, depending on state enabling laws, could be offered to property owners rehabilitating historic buildings. While historic district ordinances are the right legislative tools to protect the historic built environment of many neighborhoods, they are not always the appropriate solution for every situation. The conservation district concept is an alternative means of preserving neighborhoods. It has found favor with urban planners and neighborhood activists because historic appropriateness is placed in the balance with a livable environment. Morris takes a look at this option for the reader's consideration.

The compatibility of land use (zoning and subdivision ordinances) with historic preservation goals is crucial if the preservation of historic resources is to occur. Downzoning is a method which can prevent conflicts between maintaining historic and community character by preventing incompatible new construction. Lastly, Morris reviews the elements that constitute a historic preservation plan. All four of these topics have been treated independently and in greater depth by other authors; however, this book is a good introduction of each of these topics and is, therefore, recommended.

National Park Service and National Alliance of Preservation Commissions *Local Preservation II: A Compendium of Technical Assistance Material for Local Preservation*. Washington, D.C.: National Park Service and National Alliance of Preservation Commissions, 1989.

This book in the form of a three-ring binder (making it easier to copy material) is a good source of information and sample material. It is divided into six sections. Each entry is given a title page with an annotated explanation of the content. Section one provides sample articles about the rationale for a historic preservation approach to planning and maintaining community character. Section two deals with administering the historic preservation ordinance. How often have you wished you could put your hands on material like this? For example, application forms for certificates of appropriateness, historical commissions bylaws, a sample historic district ordinance, review procedures, a step-by-step guide to making a motion, and so on. Section three explains the basic concepts of a preservation plan. Section four explains successful public relations strategies and provides several samples of brochures, newsletters, and other public relations material. Section five suggests ways that historic preservation commissions can share information and coordinate their efforts; sample material from state historic preservation offices is provided. Lastly, section six is all about design guidelines. This compendium is not paginated.

National Park Service *Preservation Briefs*. Washington, D.C.: National Park Service Preservation Assistance Division, various dates.

There are approximately forty-one individually published *Briefs* on a whole gamut of technical matters relating to the historic rehabilitation and restoration of historic buildings and structures; each one is an invaluable source of information. Every HARB and historical commission should have at least one copy of relevant *Briefs* on its reference shelf. On the average *Briefs* are about 10 pages in length. Limited quantities are available free of charge from the PHMC's Bureau for Historic Preservation.

National Park Service *Preservation Planning Handbook*, Volume 1 and 2. Washington, DC: National Park Service Interagency Resource Division, 1988.

I have plagiarized a description which characterizes this publication from a cover letter which accompanied it. Although it is definitely a useful publication you may have difficulty obtaining a copy as it was published in 1988. This three-ring binder, multiple divider format publication "provides information, examples, and policy guidance on preservation planning in states, federal agencies, and local governments which meet the Secretary of the Interior's *Standards for Preservation Planning*. Volume 1 focuses on policy and on general background information and contains copies of the National Preservation Act, the secretary of the interior's *Standards and Guidelines*

for *Preservation Planning*, the *NPS Planning Questions* series, and other material of a policy or guidance nature promulgated by the National Park Service. Volume 2 is primarily a compendium of noteworthy or interesting examples of planning material or documents derived from state, local, and federal planning efforts which we believe explain or illustrate specific aspects of preservation planning. Each example is preceded by a summary, which highlights the material and explains why the document is being included in the *Planning Handbook*."

Pennsylvania Department of Community Affairs. *Municipalities Planning Code, Act of 1988, P.L., 1329, No. 170*. Harrisburg: Pennsylvania Department of Community Affairs, 1991.

This is Pennsylvania's land use legislation enabling local governments to establish comprehensive plans, subdivision and land development ordinances, zoning ordinances, and zoning hearing boards and planning commissions, and providing for appeals of decisions. Under the authorization of the Municipalities Planning Code (MPC), municipalities are able to regulate land use and protect the natural and historic built environment. The Historic District Act, on the other hand, is restricted to regulating the exterior changes to buildings in a historic district determined historically significant by the Pennsylvania Historical and Museum Commission. No such determination of historical significance is mandated by the MPC. Every zoning administrator, zoning hearing board member, and historic preservation advocate should become familiar with the MPC as it provides a municipality with broader powers than the Historic District Act alone.

Pfretzschner, Paul A. *Procedural Guide for Pennsylvania Planning Commissions*. Harrisburg: Pennsylvania Department of Community Affairs, 1990.

Don't let the appearance of this state government publication with its plain cover dissuade you from reading it. It is well written, highly informative, and will reward the reader with valuable insights about the planning commission's role in local government. A large portion of the information is applicable to HARBs and historical commissions; for example, the chapter "Reporting to the Public" discusses the essentials of good public relations, tested public relations techniques, and excellent advice about working with the news media. Understanding the responsibilities and functions of the planning commission and its relationship to the governing body and municipal departments will help members of HARBs and historical commissions to perform their tasks more intelligently. There are numerous parallels between planning commissions and historical commissions: both plan, both serve in an advisory capacity, and both are dependent on professional staff or consultants for assistance. This seventy-six-page booklet is available free from the Pennsylvania Department of Community and Economic Development.

Pidot, Jeffrey. "Writing an Agency Permitting Decision." Paper presented before the staff of the Department of Environmental Protection. Maine: Office of the Attorney General, 1993.

This is possibly some of the best advice and guidance regarding writing HARB recommendations and governing body resolutions which has crossed my desk, ever! In addition, Pidot has a sense of humor and though he treats the subject matter in earnest he does so without lawyerly pomposity. What follows are the salient points:

- I. Use common sense, focus on the important issues.
- II. Use a simple writing style.
- III. Describe how you arrived at your decision.
- IV. Develop a working knowledge of the law, meaning develop a general awareness of the legal standards so that you can identify the principal issues.

- V. Your decision must contain a lucid explanation of why you came to the result you did; remember each decision becomes a precedent.
- VI. Base your decision on findings of fact and apply the law (the ordinance) to those facts.

At this juncture, I believe it is worth quoting Pidot in full, especially because there is confusion as to who ascertains what is or is not factual. He states that

the ultimate question is, drawing from the evidence in the record, what do you say are the facts—and why: If there is evidence or testimony that is in conflict, which version do you find to be more persuasive or credible — and why? The fact-finding buck stops on your agency's desk. You are responsible for finding the facts, especially when they are in dispute. You have an even greater fact-finding responsibility when there *remains* some uncertainty about the facts despite every effort to pin them down (p. 4).

- VII. Draw conclusions based upon the facts you found.... As to each criterion (design standards) you should explain whether and how you came to the legal conclusion which the law requires, drawing upon the facts set out in the fact finding part of your decision... [C]onclusions which are unsupported by facts in the record are a permit challenger's dream come true .

Pollard, Oliver A. III "Demolition by Neglect: Testing the Limits and Effectiveness of Local Historic Preservation Regulation." *Notes on Virginia* 32 (1988/1989 Winter), 31-35.

This brief article succinctly discusses the demolition by neglect dilemma faced by municipalities. Copies of this article should be made available to your code enforcement department, governing body, planning commission, and other agencies with the influence to shape public policy.

Rankin Gene R. *Historic Preservation Law in Wisconsin*. Madison: State Historical Society of Wisconsin, The Historic Preservation Division, 1982.

This ninety-three page publication is not entirely irrelevant to a Pennsylvanian, even if the Wisconsin historic preservation state enabling law differs from Pennsylvania's. The author compares a number of Wisconsin court cases which address the "takings" issues from various approaches, with *Penn Central* and land-use and historic preservation cases from other states. Especially useful is the inclusion of an annotated model ordinance which discusses each section and the validity of the specific measures and refers to a particular court case to support it.

Rhode Island Historical Preservation and Heritage Commission and City of Cranston *Communication Organization Review Essentials Workshops For Historic District Commissions: Workshop Handbook*. Cranston: Rhode Island Historical Preservation and Heritage Commission and City of Cranston, 1995.

What is special about this version of a historical commission handbook is a twenty-eight-page-long reprint of an article entitled "Historic Preservation in Rhode Island" by Antoinette Forrester Downing. This gives an excellent and very interesting overview of the history of preservation in Rhode Island and the United States. Awareness of the value and preservation of historical sites and buildings in Rhode Island begins as early as the 18th century. The historic preservation movement in Rhode Island parallels similar movements in the eastern and southeastern United States. A plethora of examples are provided to illustrate the growing support of preservation

from its initial stage of house museum to its present stage of protecting the built environment of neighborhoods and rural landscapes, including historic highways.

Some other valuable information worth reviewing is the section titled "Conflict of Interest and Recusal." The Rhode Island requirements are worth considering for their inclusiveness. As the question of conflict of interest does arise and there continues to be confusion on this matter, it is worth quoting the most relevant part of this section.

To avoid any activity which would create a conflict between your public interests and the private interests of you, your family or your business associates. Originally, interest was defined as financial benefit. Now it is defined more generally as "benefit." Specifically, you must identify any interest which you, your family, or a business associate may have in a specific case, and recuse from discussion and voting on the case. You must put the recusal in writing, stating what that interest is. The recusal becomes part of the record of the meeting and a copy must be sent to the Ethics Commission (Chapter 3, no page number).

Finally, the sections on the Providence Historic District Commission procedures are useful as a comparison with your own, as are their standards and guidelines. Note especially "Items that are Exempt from PHDC Review," and specific position papers on in-kind replacement and repairs; storm windows and doors; fences and gates; chillers and condensing units; roof, gutters, and downspouts; new construction and additions and alterations and minor modifications. The appendices include sample certificates of appropriateness, historical commission certificate of appropriateness resolutions, even a sketch of the ideal room arrangement for a commission meeting and much more.

Robert, Sarah Corbin. *Robert's Rules of Order*. Chicago: Scott, Foresman and Company.

There was a time when owning a copy of this American parliamentary classic would have never entered my mind. Now, I can't imagine not having this book on my reference shelf. What appears, at first, to be both arcane and archaic turns out to be an invaluable methodology for running meetings. Take from it what you need. If you are an insomniac and you need a soporific, try reading it from beginning to end.

Roddewig, Richard J. *Preparing a Historic Preservation Ordinance*. Chicago: American Planning Association, 1983.

In composing a historic district/preservation ordinance, you can only regulate that which state enabling law authorizes. Keeping this in mind, Roddewig's forty-six page overview, discussion, and guidance will assist you in drafting a professional ordinance. The book covers the history of historic preservation ordinances in the United States, highlighting preservation successes and events which spread historic preservation policies throughout the nation. It establishes the legal basis on which historic district ordinances have been passed and emphasizes that each state has its own substantive and procedural points which must be addressed.

The reader must keep in mind that because this book was written in the early 1980s, at a time when the U.S. Supreme Court land use decisions appeared unfavorable to historic preservation, the author had a less than sanguine perspective on the future of preservation law. His concern was the "inverse condemnation" decision in *San Diego Gas and Electric v. City of San Diego* (1981), which resulted in a money payment to the owner due to "overly stringent" zoning regulations which constituted a "taking" of private property for public use without compensation. The decision, at the time, set off a number of suits against local governments. Since then, it is clear that the *Penn Central* decision still stands and though it's foundation may have been shaken, the edifice of preservation law remains.

Because of this and subsequent similar cases, Roddewig appeals to the reader to develop a historic ordinance which will withstand legal challenges and defuse potential problems. To this end, the rest of the book provides excellent recommendations and examples culled from numerous communities. He includes sample ordinances and design guidelines. Highly recommended.

Roddewig, Richard J. and Duerksen, Christopher J. *Responding to the Takings Challenge: A Guide for Officials and Planners*. Chicago: American Planning Association, 1989.

For a more in-depth analysis of violations of the Fifth Amendment to the U.S. Constitution, specifically the so-called takings clause which reads, "nor shall private property be taken for public use without just compensation," this exposition, though more intellectually challenging than *Takings Law in Plain English*, is required reading. Six relatively recent U.S. Supreme Court takings cases triggered by government regulations are discussed and their results analyzed. Having established the legal historical context of takings jurisprudence, the authors proceed to explain how the courts have dealt with the property interest question, the highest-and-best-use concept, and the reasonable return and investment-backed expectations criteria with which courts have determined whether a taking has or has not occurred. In addition, historic preservation consultants and preservation planners will find the authors' chapter on "The Proper Administrative Response to the Takings Challenge" a highly practical guide which should significantly assist municipalities in avoiding court, or prepare them for that eventuality.

Rypekema, Donovan D. *The Economics of Historic Preservation: A Community Leaders's Guide*. Washington, D.C.: National Trust for Historic Preservation, 1994.

A "feel good" book of testimonials assembled by Rypekema, along with his commentary which the reader can use to spice his or her speeches or newsletter articles. This is not a how-to book or an economic development study based on statistical methodology and research. Rypekema refers to the same historic district successes, i.e., Charleston, South Carolina, Boston's Back Bay, Galveston, Texas, and Fredericksburg, Virginia, used by other National Trust authors to demonstrate the viability of historic preservation to improve property values and generate reinvestment. For historic preservationists living in cities which have faced decades of disinvestment and are surrounded by successful "edge cities," this book reads more like a fairy tale than an actual description of real life. Even where historic rehabilitation of commercial and residential buildings have occurred, the long-awaited social and economic revitalization — the turn around — has not always taken place. That preservation strategies can work in resurgent economies can hardly be denied; however, the impact of similar strategies on communities suffering a depressed economy, a large, unemployed population, and a major outmigration of middle class families may simply not be enough.

Rypkema, Donovan D. *The Economics of Rehabilitation*. Information Series, No. 53. Washington, D.C.: National Trust for Historic Preservation, 1991.

Most HARB and historical commission members have no knowledge of the economics of real estate and, therefore, are at a great disadvantage in arguing, negotiating, or assessing the feasibility of rehabilitation versus demolition and new construction. And while historic district ordinances under the Historic District Act mandate the appointment of a real estate broker on the assumption that his or her expertise will contribute to an understanding of the economics of real estate, the complexity of substantial real estate development often strains the limit of knowledge of such individuals. This twenty-four-page *Information* booklet is a valuable tool in introducing important concepts about the economic viability of real estate development. A first reading will certainly not transform the neophyte into real estate analyst, but it can introduce important real estate development concepts which will help in understanding the viability of new construction versus rehabilitation of an existing historic

building. Also valuable are suggestions of ways to make historic rehabilitation more attractive to developers. This publication is a good starting point in gaining a better understanding of real estate investment. This is a must-have publication for all HARBs and historical commissions faced with real estate development projects in their commercial historic district.

Stipe, Robert E. "A Letter to George: How to Keep the Preservation Commission Out of Court and Avoid Being Sued." *The Alliance Review*. (1995) 1-22.

Robert E. Stipe is Emeritus Professor of Design, School of Design, of the University of North Carolina, and the former North Carolina State Historic Preservation Officer. With a planning and a law degree he knows whereof he speaks when it comes to giving good advice. His "Letter to George" should probably be read by all persons considering volunteering as members of historical commissions or Historical Architectural Review Boards. Stipe is honest and realistic about the demands made on board and commission members. Although Pennsylvania local governments navigate under a different state enabling law than does North Carolina, Stipe's advice is generally quite applicable. He advises boards and commissions to err on the side of caution. The style of the "Letter to George" is very informal and digressive; those who find discussion of HARB procedure too "dry" will enjoy his style.

U.S. Department of the Interior. *Economics of Revitalization: A Decisionmaking Guide for Local Officials*. Washington, D.C.: Heritage Conservation and Recreation Service, U.S. Department of the Interior, 1981.

In spite of numerous changes in the availability of federal grants (Urban Development Action Grant), or their drastic reduction (Community Development Block Grant), and adverse changes in benefits accruing from federal income tax incentives for rehabilitating historic income-producing buildings, this ninety-four-page publication remains a useful introduction to economic revitalization. The authors represented by the Real Estate Research Corporation lay out the major factors that are necessary to assess the viability of development proposals, whether for new construction or historic rehabilitation or a combination of both. This book is about more than just real estate development. It is about identifying opportunities, analyzing market dynamics and the investment climate, and screening various development options and their impact on the social and economic life of the community, and it provides an evaluation system to help select the right proposal for the specific needs and capabilities of a community. Most large-city economic and planning departments have employees with the requisite knowledge or ability to administer large development projects with the assistance of hired specialists in the field of financing and real estate development. HARBs and historical commission members tend to be at a great disadvantage without, at the very least, a general understanding of the real estate economic development process. This book will not make you an expert, but it will introduce basic economic revitalization concepts which you will need in assessing development proposals. At the very least you will be able to ask the right questions.

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

In twenty-eight pages the authors explain in simple and direct terms what could be a rather arcane subject: the difference between substantive and procedural due process. This is a booklet which every preservation commission member should read and refer to on a regular basis. White and Edmondson explain the general principles on which due process rests, beginning with the legal framework of the U.S. Constitution, Fifth and Fourteenth Amendments, and give practical advice on establishing the appropriate procedures. This will greatly enhance the chances of a municipality in avoiding court, or if it cannot be avoided, in receiving a favorable decision.

White, Bradford J. and Roddewig, Richard J. *Preparing a Historic Preservation Plan*. Washington, D.C.: American Planning Association, 1994.

A traveler without a destination can never know if he has arrived or departed. In the area of historic preservation we often find a similar situation. A historic preservation ordinance may have been hastily enacted due to circumstances such as the demolition of a beloved historic landmark, or the reaction to decades of neglect of a residential or commercial neighborhood, but a crucial element is missing — there is no plan, there are no clear goals. The result is confusion, lack of coordination between zoning and historic district ordinances, contradictory HARB or historical commission decisions, and conflicting goals between development and preservation.

This fifty-eight page publication aims to convince the reader of the need for a historic preservation plan and discusses the elements which constitute the plan. Although HARB or historical commission members may not actually compose their community's historic preservation plan themselves, they can, by becoming familiar with what a historic preservation plan should be, contribute to it and respond to its preparation and final draft. In addition to covering the elements of a good preservation plan, the book provides case studies of cities that have prepared and implemented their plans. Lastly, the appendices provide actual examples of the various components of a preservation plan from a number of cities.

Wisconsin Historic Preservation Office. "A Valuable Inheritance: Building Support for Historic Preservation." *Wisconsin Preservation*, (1995, July-August), 10-12.

A three-page article which appeared in Wisconsin's Division of Historic Preservation newsletter. I chose this particular article for its clear, cogent, and articulate exposition of the value of historic preservation for a livable community. It can be distributed to busy members of governing bodies as an "executive summary" as it explains both the benefits and the strategies necessary to implement a preservation program. Copies are available free from the Bureau for Historic Preservation, Harrisburg.



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"I just wanted to let you know what a great help I have found your *Manual* for conducting HARB meetings.

Glenn D. Koch, Chairman, HARB, City of Allentown

"[The] *Manual* is a fine piece of work..."

Robert E. Stipe, Emeritus Professor of Design, School of Design, North Carolina State University

"After reading many documents, the committee members agreed that [the *Manual*] was invaluable. It is the most comprehensive work we could locate and will be referred to again and again... besides being comprehensive, the manual is easy to read..."

Maryalice Hagan, Newtown Borough Focus Committee

"The City [of Harrisburg] has found this manual useful to staff as well as to our members."

Dan C. Leppo, Deputy Director for Planning, City of Harrisburg

"I am very impressed with the *Manual* for HARB and Historical Commissions—a valuable resource!"

Brent D. Glass, Executive Director, Pennsylvania Historical and Museum Commission

"An important reference tool not only for Pennsylvania commissions but useful, too, for commissions nationally..."

The Alliance Review, National Alliance of Preservation Commissions, December 1997

"[The *Manual*] is comprehensive (of course) but very well done... For the individual who wants to know everything there is about historic preservation, it's probably better that anything you can find. [The] writing is wonderful..."

Thomas Hylton, Pulitzer Prize-winning journalist and author of *Save Our Land, Save Our Towns*

"[I] am very impressed with the amount of information [the *Manual*] contains. I think you have succeeded in your aim to create a manual that avoids bureaucratic language with good advice to local commissions."

Richard Wagner, Director and professor of Master of Arts in Historic Preservation, Goucher College, Baltimore, Maryland

"[The HARB members] felt that the *Manual* was well prepared... it will help answer many questions that come before them during the course of the year. They especially appreciated the review of the approval process required for certificates of appropriateness."

Borough of Mercersburg, HARB meeting minutes

"[The *Manual*] is very helpful for historical commissions in making decisions and developing procedures. I am quite impressed...it's great."

Professor Thomas D. Visser, Director, Historic Preservation Program, Department of History, University of Vermont