

MAKING DEFENSIBLE DECISIONS

*A Manual for Local Historic
Preservation Commissions
-- and --
Design Review Boards*

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Revised
August, 2002

*Cities need old buildings so badly it is probably impossible for
vigorous streets and districts to grow without them.*

Jane Jacobs, 1961
“The Death and Life of Great American Cities”

*Never doubt that a group of thoughtful, committed citizens can
change the world; indeed, it is the only thing that ever has.*

Margaret Mead

CONTENTS

ACKNOWLEDGEMENTS	iv
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Chapter	Page
1. INTRODUCTION.....	5
Importance of Preservation at the Local Level	
Why Preserve?	
2. CREATING HISTORIC DISTRICTS IN VERMONT	8
State Enabling Legislation	
Design Control Districts	
Local Historic Districts	
3. THE PRESERVATION PARTNERSHIP	10
Select Board/City Council	
Preservation Commissions	
Planning Commissions	
Development Review Boards	
Local Government Staff	
Local Non-Profit Organizations	
State Organizations	
National Organizations	
4. IDENTIFYING HISTORIC RESOURCES	16
The Secretary of the Interior’s Standards for Identification	
Types of Surveys	
Selecting Surveyors	
Intensive Survey Effort	
Developmental History	
Organizing Survey Data	
5. INTEGRATING HISTORIC PRESERVATION & PLANNING	21
Comprehensive Plans	
Historic Preservation Element	
Other Planning Approaches	
Preservation Plan	
6. WRITING A LOCAL PRESERVATION ORDINANCE	24
Statement of Intent	
Definitions	
Commission Membership	
Qualifications	
Authority	
Applications for Certificates of Appropriateness (COAs)	

Chapter	Page
Staff Involvement	
Design Criteria and Guidelines	
Maintenance of Historic Properties	
Demolition Delays	
Economic Hardship	
Appeals	
Enforcement	
7. WRITING DESIGN GUIDELINES	29
Local Design Guidelines	
Role of the Design Guidelines	
The Secretary’s Standards	
Tailor Your Local Design Guidelines	
How to Write Design Guidelines	
Additional Information	
8. THE DESIGN REVIEW PROCESS	33
Efficient Process	
Consistency and Fairness	
User Friendliness	
Responsibilities of the Review Board Member	
Sample Steps for the Review Process	
Tips on How to Conduct a Design Review Meeting	
9. THE CERTIFIED LOCAL GOVERNMENT PROGRAM	39
Who Can Become A Member?	
Membership Has Its Privileges	
What Can CLG Grants Fund?	
What’s the Catch?	
Who’s a Member?	
APPENDIX A	43
The Secretary of the Interior’s Standards for Rehabilitation	
APPENDIX B	48
A Defensible Process (Building a Defensible Record)	

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INTRODUCTION

Importance of Preservation at the Local Level

Local governments throughout Vermont are using economic incentives and local planning and zoning tools to protect valuable historic resources and historic areas from threats, such as unplanned development (sprawl), inappropriate treatment, and neglect. The range of tools available has expanded in the past ten years as local governments discover the importance of historic fabric to a community's identity, economic development, and residents' quality of life. The most effective tool used to protect historic resources in Vermont is still the historic design control district ordinance, also referred to as a local preservation ordinance. However, other local tools, such as downtown and village center designation, design guidelines, state and federal financial incentives and even comprehensive plans, are becoming increasingly popular solutions to the protect and preserve historic and cultural resources.

This publication, entitled *Making Defensible Decisions: A Manual for Historic Preservation Commissions and Design Review Boards*, will assist communities with the local district designation, the design review process, and promote the use of other effective preservation tools like design guidelines. The name was changed to reflect a broader audience for this particular publication.

This publication, geared toward local preservation commission and other local government participants, reflects developments in modern preservation practice, including recent changes in the state regulations and the wide range of tools available today, especially the increasing integration of historic preservation in local planning. More specifically, the purpose of the revised manual is to enable local governments just entering the preservation arena to develop a local preservation program; to those with existing preservation or design review programs this manual will help increase the effectiveness of their on-going preservation efforts. This manual is also meant to increase awareness of historic preservation methods and tools among local planners and local government officials. This edition is more concise, contains updated information, and a new section was added on design guidelines. A total of nine chapters are included as well as 2 appendices.

Why Preserve?

This is an important question that people involved in historic preservation efforts at the local level frequently encounter. Understanding the numerous benefits associated with the preservation of historic resources, both tangible and intangible, and being able to articulate those reasons clearly and persuasively is the first step in establishing an effective local preservation program. First and foremost, it must be acknowledged that local preservation is really the only true source of protection for historic resources. Achieving designation on the State and the National Register of Historic Places is a worthy and prestigious effort that provides important advantages relating to tax credit eligibility and recognition. However, when it comes to preventing the demolition or insensitive alteration of historic buildings, these designations are accompanied by few protective measures. Establishing a local preservation program through the adoption of a well-drafted local preservation ordinance and adopting supplementary design guidelines can provide the kind of consistent, thorough protection that will ensure a community's historic resources survive for future generations.

Moreover, local governments, as well as residents of a community, are the most appropriate advocates for preservation since the historic resources involved belong to them and represent their history. This is especially true for towns and cities in Vermont that are experiencing an increased rate of development and even sprawl--the low-density development that devours open space and prime agricultural land, drains the life out of traditional downtowns, older neighborhoods and village centers, and creates inefficient land-use patterns that are enormously expensive to for local governments to serve.

Many real estate developers possess little appreciation for local historic resources, particularly if the resources present obstacles to major development projects and if preservation efforts translate into achieving less than the maximum financial gain. Tremendous pressure is placed on local governments to take the easiest and most direct route to rapid and unplanned development: demolition and rebuilding. These tactics are cost-effective for developers and require less planning, but result in the loss of mature trees, open space and historic resources for a community. If local government officials and citizens do not take proactive measures to identify and protect those resources that illustrate community history, the historic fabric will not survive; the financial and political pressures are simply too great.

Acknowledging that it is too late to take action once historic buildings and landscapes are destroyed is an important link in establishing a local preservation program. Timing is critical because after the historic resources are gone, no amount of reconstruction can ever replace them. Future generations will be deprived of the daily presence of the past and will not have the opportunity to appreciate the integration of historic resources into the modern landscape. Residents in the area will not have the sense of community identity and pride that results from associating a locality with its historic buildings and landscapes, nor will tourists desire to travel to a community that resembles their own hometowns. History will be relegated to the occasional museum visit, and only acknowledged by those residents or visitors interested enough to seek it out. However, by engaging in serious preservation efforts, community leaders can ensure that the past has a constant presence and is not forgotten.

After all, who is in a better position to make an effective argument for preservation than government officials and its community members? Recognizing and publicizing the important role many historic buildings and landscapes play in community identity also helps to build widespread support for preservation efforts. Every resident needs to understand that historic structures are not saved simply because they are old, but because they represent past people and events. They serve as tangible pieces of history and as constant reminders of the present generation's role in the time continuum. This day-to-day contact with the evidence of our past gives us confidence because it helps us know from where we came. It gives us a standard against which to measure our accomplishments and ourselves. And it confronts us with the realization--sometimes exhilarating, sometimes disturbing--that we, too, will be remembered and held accountable, that future generations will look at our work as the standard by which to measure their own performance

Developing an appreciation for architecture and culture is vital to the complete enrichment of any community. With this newfound knowledge and understanding, Vermonters will become more outspoken about the need to protect the unique resources of a community that relate directly to their own quality of life and are more likely to advocate the preservation of a two-hundred year old building over yet another mini-mart or other insensitive development. Put

even more simply, residents who care are residents who take action, whether it means attending town meeting day, writing letters to the editor of the local paper or voting for candidates that support preservation initiatives. While a handful of concerned community leaders can draw attention to preservation issues in a community, it will take widespread support to achieve the political clout that is necessary to make a local preservation program a continuing success.

Another way to build widespread support is to recognize that aesthetics and identity are not the only reasons to preserve. Increasingly, the field of historic preservation is being promoted as a vital contributor to local economic development programs. These programs frequently rely on initiatives, such as heritage tourism projects, that focus directly on historic resources. While the concept of heritage tourism is promoted nationwide, it should come as no surprise that heritage tourism translates into big business in Vermont. The influx of tourists into the state each year provides the main source of funding for a number of towns and villages. However, capitalizing on this important source of revenue should not come at the expense of the historic resources. Without proper planning and maintenance of historic tourist attractions, heritage tourism becomes a short-term solution to the ongoing problem of fiscal livelihood. Further, truly successful heritage tourism efforts must involve a diverse group of professionals with expertise in planning, economic development, public relations/marketing, and, most importantly, historic preservation. In many ways, the phenomenal success of heritage tourism in Vermont has proven to be both a blessing and a curse. In a quest to achieve the recognition and financial gain associated with heritage tourism, many local government officials and private developers leap headfirst into campaigns without the benefit of proper planning, preservation expertise or even a basic understanding of the very resources they are attempting to promote.

Additionally, heritage tourism can not be the answer for every community in Vermont. Local preservation activists, planners and business leaders should not overlook the effects of downtown revitalization on local commercial and real estate markets. Economic development efforts focused on traditional main street promotion and rehabilitation can provide rebirth and stability to localities that lack the resources or geographical advantages to become major heritage tourism destinations. Preservation is multi-faceted, and with respect to economic development, every community must create an approach that combines its own unique history with moneymaking potential. One tool available to assist in this process is the new downtown development law, which provides incentives to community-led revitalization efforts including state tax credits for property owners investing and rehabilitating historic downtowns and village centers.

Regardless of the reasons underlying the need for local historic preservation programs, whether they be linked to aesthetics, community identity or economic development, it must be acknowledged that the time to act is now. Preservation efforts are at a crucial juncture in terms of saving communities from the fate that awaits them if sprawl and its damaging effects are allowed to continue unchecked. If the current pace of development continues in some communities, five or ten years from now local preservation programs in Vermont will not be able to make much of a difference because too many precious historic resources will be lost. Local government officials, planners and citizens must not only understand what is happening to its historic resources in the state, but also accept responsibility to step forward, take action and inspire others to join the cause. By utilizing the various preservation tools available today and seizing the moment, true preservation success can be more than just a dream or inspiration, it can be the future of Vermont.

CHAPTER TWO

Creating Historic Districts In Vermont

In the United States, historic preservation efforts are primarily carried out at the local level through the adoption of a preservation ordinance. When it comes to preserving private property in a historic district, most people are surprised to learn that a local preservation ordinance is generally stronger than a state or federal law.

A local preservation ordinance is nothing more than local legislation enacted to protect buildings and neighborhoods from destruction or insensitive rehabilitation. Its superior legal strength is derived from the combined voice of residents. It means that the majority of a community--after appropriate discussion and debate--has agreed to create a local law to preserve the historic character of their residences, commercial businesses, and streetscapes for long-term public benefit.

After an ordinance is enacted, major exterior alterations, additions, and new construction made to designated landmarks and within districts must be reviewed by locally appointed historic preservation commission or design review board. Commission approval is in the form of a "certificate of appropriateness." To be approved, an application for must meet the design review criteria within the preservation ordinance that a community has adopted. Note that the terminology and process may vary somewhat, depending upon the preservation ordinance and planning and zoning structure a community has adopted.

State Enabling Legislation

In Vermont local governments derive their authority to enact local ordinances through state enabling legislation. This legislation specifies the type and content of permissible local ordinances in detail or grants local governing bodies varying degrees of discretion with respect to the type and content of local laws that are adopted.

Vermont communities are granted this authority in the Vermont Municipal and Regional Planning and Development Act, [24 V.S.A., Chapter 117]. This Act, more widely known as Chapter 117, provides two ways to protect historic resources: through either a design control district [section 4407(6)], or designating local historic districts and landmarks [section 4407(15)] through zoning. Communities must, however, adopt a municipal plan and create a planning commission before they can create either type of district.

Design Control Districts

Design control districts can be for areas of historic significance or other areas of importance to a community. A design control district is a type of overlay zoning technique, meaning the adoption of a local preservation ordinance will not affect the underlying zoning classifications regulating use, height, area and other factors. Rather, property owners in the designated historic district are subject to an additional set of restrictions that relate directly to the preservation of historic resources. More specifically, owners' private actions such as changes to the outside of buildings, demolitions, as well as new construction, are reviewed.

Before a Design Review District may be established, the local planning commission must prepare a report describing the planning and design issues that may affect the structures in the area designated in the district. This should include the planning and design criteria that will be used to evaluate proposed changes to buildings and land within the district. This report is approved by the selectboard after a public hearing and, as an added measure of protection, is incorporated into a city's Municipal Plan or a local Town Plan by amendment. The planning commission through by-laws can elect to adopt additional standards, such as design guidelines.

Illustrated design guidelines are "how-to" design books to help streamline local decision-making by offering guidance and direction to both the applicants designing projects and the commissions reviewing the projects. You can learn more about design guidelines and the design review process in Chapters 7 and 8.

Local Historic District

Alternatively a community may create a local historic district, or design review district, in their zoning regulations after a public hearing and approval by local elected officials.

Local historic district designation applies to a group of properties within a specified geographic area and controls the appearance of existing buildings, and on any new construction within its boundaries. A historic district designation creates its own zoning regulations, which are outlined in the ordinance or amendment establishing the district. The zoning guidelines describe what standards must be applied to the historic buildings. Under this approach a preservation commission is appointed to advise the town planning commission or development review board. The planning commission has final review and approval authority with projects in a local historic district.

The process to adopt zoning for the establishment of local historic districts and/or the designation of historic landmarks is similar to the designation of a design control district. However, to receive this designation, an area must have a concentration of properties that are historically, visually, or culturally related either by plan or physical development. It may include a variety of historic properties, but together, the majority of them must convey a unique identity.

Designating a local historic district requires that the planning commission prepare a report containing an analysis of the significance of the proposed area or landmark. The procedures are not unlike nominating a property for the State or National Register - investigate significance and integrity, set boundaries, make a report, talk to interested agencies, gather recommendations, and present the information to the appropriate governing board.

Once the district has been designated, property owners within its boundaries cannot demolish, move, or change exterior features of the structure without permission from the planning commission. In most instances, the commission cannot deny demolition or relocation, but it may delay either action for up to a year.

CHAPTER THREE

The Preservation Partnership

While it is important to understand both the purpose and authority for the designation process at the local level, it is also vital that preservation advocates have a basic understanding of the individuals or groups that play a crucial role in the establishment and administration of historic districts. The effectiveness of a local historic preservation program in a community is determined by the support and understanding of: (1) the public at large, and (2) local government staff and elected officials. Likewise, developing a good grasp of the functions and interactions of the following key players will enable interested persons in the community to anticipate steps in the designation process, to participate effectively, and to understand the parameters of local preservation efforts.

Select Board/City Council

Local governing bodies in Vermont play a central role in protecting local historic resources. A local governing body (either a Select Board/City Council) is responsible for a number of tasks that establish a design review program: (1) adopting the local preservation ordinance; (2) approving the designation of local historic district(s); and (3) appointing local planning and preservation commission members. Additionally, the local governing body participates actively in the administration of the district by approving the designation of additional local historic districts or district expansions, appointing replacement members local commissions, and reviewing appeals of the planning commission or development review board decisions (in some communities local appeals go to directly to the regional Environmental Court).

Because of the local governing body's authority over designation, it is critical that a good working relationship be maintained. Commissions in some communities have city council or select board liaisons, which is an excellent way to promote cooperation. Other commissions meet annually with the local governing body to report on recent activities and answer questions about controversial issues. A number of commissions submit annual reports to local government officials.

Preservation Commission

A preservation commission is the local body charged specifically with administering the local preservation ordinance, and is established pursuant to its provisions. In most communities, a specified number of commission members may be required to possess certain qualifications, such as expertise in architectural history or local history, in order to ensure that the commission members are sufficiently qualified to make decisions.

Local politics can fuel controversies; likewise, all commission members must strive to act objectively and competently. Relations between the commission may turn sour when the planning commission or development review board overturns recommendations made by the commission. On more than one occasion, a commission member has resigned because of a perceived lack of support from the local governing body. Commission members may avoid potential misunderstandings by maintaining active communication with local government officials and staff.

Additionally, compiling a track record of fair and objective decisions based upon a uniform set of standards or design guides will greatly enhance the reputation of the commission in the community and among council or select board members. All commission recommendations must be well documented so that the local governing body understands the reasoning behind a particular commission decision.

Because commission members are such key players in the process, it is crucial that they fully understand their powers and responsibilities. Training new commission members is an excellent way to ensure that every member of the commission participates effectively and consistently. Periodic planning or work sessions, held in addition to review hearings, can be used to educate all commission members about new preservation issues and developments in the community. In order for a community to maximize its preservation efforts, required training sessions should be mandated for new and continuing commission members at regular intervals. In support of this goal, the Vermont Division for Historic Preservation assists local governments by offering grants and tailored training and technical assistance to local governments with local preservation programs.

Planning Commissions:

In most Vermont communities, commission recommendations are advisory and pass through the local planning commission that makes the final decision. In communities without development review boards (see below), the planning commission serves as the quasi-judicial body that conducts development review of site plans pursuant to [24 V.S.A. 4407(5), Chapter 117] design review [section 4407(6)] and/or subdivision review [section 4413]. They are also responsible for the administration of the community's comprehensive plan, zoning and other land use planning issues. Likewise, many decisions made by a planning commission, such as revisions to the comprehensive plan or decisions regarding special/conditional use permits or rezoning requests, may affect local historic districts. For these reasons, it is important that the commission members and planning commission members maintain active communication either through staff or by meeting periodically. It is crucial that both understand how historic preservation fits into local planning. Some communities use a joint member, who sits on both the preservation commission and the planning commission, to ensure that the proper flow of information/interaction occurs between the two review bodies.

Development Review Boards

If the community elects to create a development review board, that board combines the quasi-judicial roles of the zoning board and planning commission into one body. With this structure, the development review board conducts the land development reviews in lieu of the planning commission (site plans, design review and/or subdivision reviews) as well as making the zoning decisions on conditional uses, variances and other appeals. With this structure, the recommendations of the preservation commission are forwarded to the development review board for the final decision.

Many communities have opted for this structure because the planning commission then is enabled more time to focus on developing and improving the town's plan, regulatory and non-regulatory approaches to managing change in the community—e.g. prompt and facilitate public discussion, investigate and gather background information about the town, educate the voters on the results of that information-gathering and then figure out ways to guide land use to meet the community's goals.

Local Government Staff

Most commissions in Vermont work closely with local government staff. Typically at least one member of the staff will be assigned to assist with administrative aspects of the commission. This staff member may be an employee of the local planning office. In many communities, commission responsibilities are just a part of the staff member's overall duties and the staff member may or may not have formal training in preservation issues. More and more frequently, however, local governments are recognizing the value of assigning full-time staff to the commission. As the discipline of historic preservation gains widespread recognition, preservation planning has emerged as an area of specialty. Ideally, full-time commission staff should possess preservation planning expertise, either through obtaining a masters degree in historic preservation or a preservation certificate as part of the degree requirements for a masters degree in planning. In any case, the commission staff should help facilitate the commission's involvement within the overall local government structure, including planning and code enforcement efforts.

Local Non-Profit Organizations

Many communities are fortunate enough to have a local historical society, a preservation organization, a conservation commission or neighborhood group. These organizations are non-profit entities whose main purpose may include promoting preservation efforts through advocacy initiatives, local programs, fund raising events and community involvement. Many of these organizations function mainly as the result of the dedicated involvement of community volunteers, although some have a small full-time staff. In terms of local preservation activity, members of local non-profit groups serve as excellent advocates of preservation by monitoring and participating in commission meetings as well as increasing residents' awareness of preservation standards. Because these organizations do not rely on government funding and are somewhat less affected by sensitive political issues, members have greater leeway to express pro-preservation positions without fear of reprisal.

State Organizations

State Historic Preservation Office (SHPO) - www.HistoricVermont.org

In Vermont, the SHPO is the Vermont Division for Historic Preservation (VDHP). The mission of VDHP is to foster, encourage, and support the stewardship of Vermont's significant historic, architectural, and cultural resources. VDHP administers a number of recognition and stewardship programs, including the Vermont Historic Sites and Structure Survey and the National Register of Historic Places, the Rehabilitation Tax Credit, and Downtown programs. The Division is also involved in various initiatives and educational programs and including the operation and interpretation of state-owned historic sites. Financial assistance is provided through state matching grant programs for barn owners and local non-profits and the Certified Local Government (CLG) program -- designed specifically to support local preservation commissions through grants, technical assistance and training. The Division maintains archives that house data on historic structures, historic districts and archaeological sites as well as a research library.

Vermont Division for Historic Preservation
National Life Building, Drawer 20,
Montpelier, VT 05620-0501
802.828.3211

Preservation Trust of Vermont - www.ptvermont.org.

The Preservation Trust is a non-profit, non-government organization that works with partnering organizations, local groups, businesses, local governments and interested citizens to preserve and use Vermont's historic architectural and cultural resources. Much of their work is focused on strengthening downtowns and village centers and protecting the character of Vermont.

The Trust facilitates communication about preservation issues; sponsors educational opportunities, including an annual Preservation Conference; and, in partnership with the Freeman Foundation, provides preservation grants up to \$50,000 to non-profit organizations and municipalities for bricks-and-mortar projects.

In partnership with the National Trust for Historic Preservation, PTV has two field service representatives who work directly with community organizations to provide technical assistance to local preservation projects. Through the Robert Sincerbeaux Fund, this program offers dollar-for-dollar matching grants up to \$500 that can be used to hire consultants for specialized assistance, including building conditions assessments, fundraising, and project development services. The Preservation Trust publishes an on-line preservation newsletter available upon request. E-mail meg@ptvt.org if you would like to subscribe.

Preservation Trust of Vermont
104 Church St.
Burlington, VT 05401
802.658.6447
e-mail: ptv@ptvermont.org

Preservation Education Institute - www.preservationworks.org

The Preservation Education Institute is a division of Historic Windsor, Inc. Formed in 1982 to provide training in historic preservation skills for building professionals, its mission has expanded to provide training for property owners, preservation professionals, and people who “love old buildings.” Most programs are offered in a workshop format, one to four days in length. Tuition rarely exceeds \$75 per day and usually includes lunch. Lodging and travel costs are separate. A Certificate in Preservation Skills and Technology is offered in cooperation with the Division of Architecture and Art at Norwich University, Northfield, Vermont. Eight required courses, five electives, and a community service project comprise this program for building tradespeople and other building professionals.

The Institute maintains a juried directory of building trades people and preservation professionals for project referrals and custom and in-house training programs are available.

The Preservation Education Institute
PO Box 1777
Windsor, VT 05089-0021
802.674.6752 (V/TTY)
e-mail: histwininc@valley.net

Vermont Historical Society - www.state.vt.us/vhs/

The Vermont Historical Society is a not-for-profit, membership-supported organization dedicated to the preservation and interpretation of Vermont history. It operates a library and museum, has active publishing and educational programs, and sponsors special events. Information about exhibits, teaching materials, library books, archival resources, and publications are all available at their website.

Vermont Historical Society Offices and Library

Spaulding Graded School,
60 Washington Street (Route 302)
Barre, VT 05641-4209
802.479.8500

VHS museum is located at the Pavilion Building, 109 State Street in Montpelier.
802.479.8500

e-mail: vhs@vhs.state.vt.us.

National Organizations

The National Park Service - www.cr.nps.gov

Heritage Preservation Services Division - www2.cr.nps.gov

The National Park Service (NPS) can serve as an invaluable source of information on a wide variety of preservation topics relevant to local preservation practice in Vermont. The NPS web site "Links to the Past" is an excellent source of material on subjects such as landscape and battlefield preservation, tax credits, National Register and National Historic Landmark listings, and technical assistance. More specifically, the work of the Heritage Preservation Services Division (HPS) is especially applicable to local preservation efforts. HPS assists citizens and communities in the protection and preservation of historic resources by offering a broad range of services, materials and guidance. Categories include Geographic Information Systems (GIS), Historic Preservation Planning, Technical Services for Historic Buildings (publications such as the *Preservation Briefs* series which addresses technical subjects involved in rehabilitation and restoration), the American Battlefield Protection Program, the Historic Landscape Initiative and the Historic Surplus Property Program. Heritage Preservation Service is currently developing new web page content in support of local preservation commissions. Check for it in late November.

The National Trust for Historic Preservation - www.nthp.org

A private nonprofit organization with more than a quarter million members, the National Trust for Historic Preservation operates in a capacity similar to the NPS in that it can provide general information, publications and technical assistance to communities. In addition to its magazine, *Preservation*, the National Trust's *Information Series* booklets are a good source of concise information for local preservationists. The booklets cover a wide variety of topics, including current preservation issues. Each booklet contains an introduction/discussion of the subject as well as case studies and lists of additional resources. Most of the booklets cost \$6 and can be ordered online through the Information Series Catalog www.infoseries.com/

The National Trust sponsors the National Preservation Conference each fall. This conference, held annually at different locations around the country, provides a unique experience for

preservationists from diverse backgrounds to interact with each other and to learn about current preservation issues. Many commission members, local government officials, preservation planners and interested citizens find this conference to be invaluable for grassroots networking and learning about alternative approaches to common preservation dilemmas.

The National Trust also provides technical support through its field offices. The Northeast Field Office is located in Boston, but Ann Cousin 802.434.5014 or ann@ptvermont.org and Doug Porter doug@ptvermont.org provides provide field services to Vermont communities. The contact in the Boson Office is Christina Prochilo, 617.523.0885, or email: Christina_Prochilo@nthp.org

National Alliance of Preservation Commissions - www.arches.uga.edu/~napc

The National Alliance of Preservation Commissions (NAPC), formed in 1983, is a national, non-profit organization created as a network of over 2000 local preservation commissions and architectural review boards. The NAPC facilitates the exchange of information, ideas and experiences of local communities working to protect historic districts and landmarks through local preservation ordinances. Additionally, the NAPC works closely with other national preservation organizations, including the National Park Service and the National Trust for Historic Preservation. Membership benefits include a subscription to *The Alliance Review* newsletter (contains practical information for staff and members of preservation commissions), seminars and workshops held in conjunction with the annual National Preservation Conference, and a resource center for preservation information. Membership categories are based on commission budgets, community population or level of operation (local, state or national) and range from \$15 to \$100. For more information contact Megan Bellue, at 706.542.4731, or napc@uga.edu

CHAPTER FOUR

Identifying Historic Resources

One of the first steps involved in implementing an effective local preservation program is the identification of historic resources. It is impossible to plan or make appropriate decisions if a community does not possess a comprehensive understanding of the number and quality of historic properties present. Even if the design review authority is established and well underway in your community, it is imperative that continuing efforts be made to update the identification of historic resources.

The method used in the field of historic preservation to identify resources is known as the “field survey” or “architectural survey” which is a physical search and recording of historic buildings, structures and landscapes. The information that is gathered as a result of a field survey should be utilized as a database by the commission as well as the local governing body and planning staff. Survey results can be used for local historic district designations, National Register nominations or even state or federal financial incentive packages. Further, subsequent decisions regarding preservation planning, general land-use planning, and even disaster preparation should reflect the content of the survey data. Because of the difficulty in anticipating exactly how long a survey will take and exactly what the effort will produce in terms of data and significance debates, a strict schedule is not advantageous to facilitating the project. Rather, general parameters and guidelines are advised with plenty of flexibility regarding specific details.

The Secretary of the Interior’s Standards for Identification

The National Park Service has issued *The Secretary of the Interior’s Standards for Identification*, which apply to survey projects. By following these three standards, local governments can ensure that survey efforts are organized and planned so that the data generated can be utilized effectively.

Standard #1 “Identification of historic properties is undertaken to the degree required to make decisions.”

Standard #2 “Results of identification activities are integrated into the preservation planning process.”

Standard #3 “Identification activities include explicit procedures for record-keeping and information distribution.”

Types of Surveys

There are two different types of surveys that can be conducted: (1) reconnaissance, and (2) intensive. The type of survey selected and the size of the survey area are decisions that should be made by the local governing body based on budgetary considerations, available expertise and planning requirements. A reconnaissance survey is used either as a preliminary step in the survey process or in situations where a general or surface assessment is all that is required. This kind of survey technique is also known as a “windshield survey” because it is usually conducted by automobile. Surveyors drive around the designated survey area in order to get a rough estimate of the number and condition of historic resources present. While there are several distinct disadvantages to this type of survey (it does not collect specific information

regarding building materials, date of construction, etc.), it can be very useful in the early stages of preservation planning. A local government might opt for a reconnaissance survey in order to use the information to decide where to focus future intensive survey efforts or how to proceed with the preparation of a preservation element or plan.

An intensive survey is much more detailed and; thus, a more beneficial approach in terms of producing useful and valuable data for local government planning purposes. This type of survey is conducted on foot and requires that surveyors document the physical aspects of historic resources by filling out survey forms and taking photographs (usually one survey form and one black/white photo for each resource). Information that is typically recorded includes the following: architectural style and type, descriptions of various features (windows, doors, porches, chimneys, decorative elements), building materials, overall condition, current and historic use, integrity, and estimated date of construction. The data collected yields not only valuable information about particular buildings, but also a profile of the overall character of a neighborhood or area with respect to common building materials, setback ratios, architectural styles and building proportions. This information should be utilized by the commission members in making decisions regarding proposed alterations, additions or new construction. However, reliance on survey data by the commission necessitates that the information be current. Intensive surveys should be updated periodically (every five years on average), particularly if historic resources are threatened or if a large number of resources have recently achieved the fifty year historic mark.

Selecting Surveyors

Once community leaders or planning staff have determined that an architectural survey needs to be conducted, priority must be given to selecting the individuals who will conduct the survey. Several choices are available, depending again upon budgetary considerations, staff expertise and volunteer base. If a local government has one or more planners on staff, logically they are the most qualified to oversee the project, particularly if the survey area is limited in scope. However, a local government may opt to hire a trained, professional consultant. There are a number of private consultants in Vermont and New England who will undertake architectural surveys, so the best course of action is for the local government to send out a request for proposals (RFP) and make a selection based on cost, availability and experience. A third option that may or may not be feasible is to use students enrolled at the University of Vermont's Historic Preservation program. This program is constantly seeking out fieldwork sites within reasonable driving distance. As long as the local government is working on a flexible schedule and is willing to cover photography and copying costs, students can often provide a cost-effective means of completing a survey project. For more information about UVM's preservation services—contact Architectural Conservation & Education Service Wheeler House, University of Vermont, Burlington, VT 05405 email: histpres@zoo.uvm.edu

Many local governments working with a limited budget and limited preservation expertise may choose a fourth option, using volunteers to complete survey projects. While this method can be effective, it is imperative that the local government understand the importance of adequate training and supervision in order to ensure accurate and useful survey data. Sources for volunteers include local non-profit preservation organizations or historical societies as well as neighborhood associations and civic groups. Because few if any of these volunteers will have prior knowledge concerning architectural styles, building materials and construction methods, several training sessions and fieldwork exercises must be conducted prior to the survey. The

training sessions should be mandatory and taught by trained professionals with current knowledge of preservation techniques and experience in surveying.

Intensive Survey Effort

With respect to an intensive survey effort, one of first steps to be completed after the surveyors are selected is to complete a reconnaissance survey and develop a standard survey form to be used in the field. There is some debate among surveyors as to the advantages of a primarily fill-in-the-blank or checkbox format for survey forms. Because fill-in-the-blank forms are time consuming in that they require a surveyor to write in every observation and to have detailed knowledge of all applicable terminology, typically the best approach is to use checkboxes for standard categories, such as architectural styles and types, building materials, and features, in order to facilitate rapid progress and then to allow spaces on the form where specific information or comments can be written. But it should be noted that many State Historic Preservation Offices have standard survey forms that are recommended or required if the data is being submitted to the SHPO, and they vary in format. The Vermont Division of Historic Preservation is no exception and has both standard reconnaissance and intensive survey forms as well as individual district forms.

In the event the format of the Division's standard survey form does not fit a particular surveyor's preferences or contains information not relevant to the survey area, it may prove more beneficial to develop and use a survey form that is formulated specifically for the historic resources present in the survey area. This survey form will contain only architectural styles, building materials and other features found in the survey area, as opposed to a survey form which is more general and thorough in scope. Using this approach can expedite the survey process by making the survey form more efficient and shorter which means that the survey form is easier to use, particularly for volunteers.

In conducting the intensive architectural survey, surveyors should work in pairs or in teams of three or four if possible. One surveyor should be designated as the photographer. The photographer will not only take black and white images of every historic resource surveyed, but also maintain a photo log. The photo log identifies each frame on a roll of film with a specific address and is used to correlate the photos with the survey forms. The remaining surveyors complete the survey forms, making sure to include the appropriate frame/film roll number on each form. Surveyors should feel free to write down impressions, questions, or even aspects of a building that need further research. Each survey form must be signed and dated so that the surveyor can be identified if questions should arise later and to ensure that the date of the survey effort is recorded for future planning. All surveyors, including the photographer, are strongly advised to wear appropriate identification and carry a letter from the local governing body explaining the purpose of the survey effort. Many citizens are understandably suspicious about strangers standing in front of buildings making notes and taking pictures. But once the survey process is explained and proof of identification shown, residents often prove to be curious and extremely helpful in supplying information. Surveyors should always take the time to answer residents' questions and record dates and other information that is shared.

Developmental History

A developmental history, simply put, is a history of how the survey area developed over time and consists of events, people, trends, and influences that guided the evolution of the built environment. Becoming familiar with the developmental history prior to conducting an

intensive architectural survey will allow surveyors to understand the background of the survey area and recognize the importance of historic resources. This is particularly true if the survey area possesses resources that are not noteworthy examples of architectural styles or types. A surveyor standing on the sidewalk in front of a poorly maintained, non-descript house will not automatically know that an important local figure lived in the house or that the house was part of an entire neighborhood built for workers of a furniture manufacturing plant without the advantage of a developmental history.

A carefully researched and drafted developmental history usually illustrates one or more historic themes or patterns evident in the area. These themes or patterns are called *historic contexts* and are vital links to documenting the significance or importance of related categories historic resources. The significance of a survey area explains and justifies why preservation activities are appropriate and why protective measures should be instituted to save the resources present. Historic contexts identify certain groups or types of related historic resources. A historic context should be defined not only by a subject, but also by a time frame and geographic area. For example, in Vermont common historic categories may include the Revolutionary War, agriculture, transportation, or industry. In order to match existing historic resources to one of these categories for a specific community or region, a specific historic context, such as the Granite Industry in Hardwick, must be identified. All of the historic resources identified within a community that can be linked substantially to the historic context through research and documentation fit into this context and are therefore significant.

On the local level, less obvious, but just as important, historic contexts may be developed that relate to prominent local figures or important social, religious or ethnic groups. Each historic context will have a number of historic resources that relate to that specific category, some may be located in close proximity, but others will be located throughout a community or even a region. It may be that an isolated mill or other industrial structure does not appear particularly important by itself. But in compiling a developmental history or comparing several such histories, it may be discovered that the mill or other structure fits into a regional context and that as a group, these resources are highly significant.

Local governments in Vermont should be aware that the Vermont Division of Historic Preservation has developed a system of statewide historic contexts as part of its comprehensive planning process for the State. The system identifies a sequence of defined time periods as well as thematic contexts that should be used for all VDHP survey projects. The thematic contexts relate closely to the National Register nomination process and, likewise, assist greatly in the preparation of nominations. More information concerning guidelines for conducting architectural surveys generally and using the VDHP historic contexts are available from the VDHP.

The developmental history of a survey area does not have to be completed by the surveyors, particularly if they are community volunteers, although that is always advantageous. However, the surveyors should be familiar with the developmental history and be aware that additional historic contexts may become evident during the course of the survey project and must be documented accordingly. It is not unusual for further research to be conducted after the completion of a survey effort when additional contexts appear to be present. Similarly, it is not uncommon for surveyors to visit a survey area numerous times in order to provide the most accurate assessment of the historic resources.

A variety of research resources should be utilized for developmental histories. Traditional secondary research resources available at the Vermont Historical Society or the local library or preservation society, are a good starting point. Eventually, primary resources at a variety of locations should be consulted. These include: deeds and chain of title information, newspapers, business records, census records, property tax records, church records, cemetery records, estate and inventory records, family records (letters, diaries), insurance records, maps/plats, historic photographs, city directories, and oral histories.

Organizing Survey Data

Once the field survey is complete, the data gathered must be organized and put into a user-friendly format. Film needs to be developed and the photographs correlated with the survey forms. Rarely are the survey forms actually completed out in the field used as final products of the survey project. Typically, after the survey is completed, the data gathered is then entered into Division forms available on disk.

If the local government does not have the budget to make the survey data available via the web or a computer database, some type of file system, such as vertical files organized by street address, should be set up in the town or planning office or local library. The information gathered as a result of the field survey must be easily accessible. Storing the data in the basement or other out of the way location will not encourage planning staff, commission members, residents or other researchers to utilize the information.

CHAPTER FIVE

Integrating Historic Preservation and Planning

One of the most significant recent trends in the field of historic preservation has been the emergence of an area of specialization in preservation planning. Preservation is an extremely diverse field, incorporating elements of architectural history and conservation, archaeology, economics, museums, landscape architecture, law, and, of course, planning. For too many years, historic preservation issues were treated as secondary within the wider realm of local planning; something a local governing body might address after all of its priority items were completed. Categorizing preservation as a minor, aesthetic concern seriously undermined the role historic resources play in various aspects of community life and paved the way for these resources to be neglected or demolished. Fortunately that attitude is changing as preservationists, planners and local government officials realize that the diverse nature of preservation means that it cannot be characterized as a completely separate topic. Preservation concerns touch upon transportation, housing, economic development and environmental issues. In order for communities to be able to plan effectively for these vital subjects, historic resources must be considered. That's where preservation planning comes into play and helps integrate preservation into the larger planning framework.

Comprehensive Plans

All governing bodies in Vermont prepare and adopt a comprehensive plan on a voluntary basis. Generally, a comprehensive plan contains a set of goals and objectives regarding the future development of a community and is used as a guide for future land use decisions. The plan consists of both text and maps which show where and in what manner development should or should not occur. Although a plan should be long range (covering five years or more) and comprehensive (in that it addresses all aspects of a community), it must be updated periodically to ensure that the content of the plan is relevant to the changing circumstances of the area. Traditionally, most comprehensive plans have a separate section or element devoted to the following subjects: (1) transportation/circulation; (2) community development; (3) housing; (4) capital improvements; (5) economic development; and (6) environmental/natural resources.

Historic Preservation Element

The introduction of historic preservation to the planning field has resulted in the inclusion of a preservation element in many comprehensive plans as well. The majority of states have state enabling legislation which specifies that historic preservation may be included as an optional element of a comprehensive plan. However, in some states, such as Georgia, the enabling legislation mandates that a preservation element be included in every comprehensive plan.

Why is this inclusion of historic preservation so beneficial and why should local government officials give strong consideration to adding a preservation element if it is not currently present in the comprehensive plan? The primary reason is that it allows preservation to become a "major player" in local government decision making. By maintaining a presence in the comprehensive plan, historic preservation must receive equal consideration and cannot be pushed aside as trivial or minor. A preservation element gives historic resources a certain legitimacy they otherwise lack and ensures that they are integrated into larger planning issues. For example, if a local road is going to be widened in a location where historic buildings or

landscapes are present, those resources should be considered throughout the transportation planning process and not as an afterthought when the plans are already finalized.

Other Planning Approaches

However, if the support does not exist in a community for the adoption of a separate preservation element in the comprehensive plan, there are other avenues to explore. While these are not the ideal way to integrate preservation issues and planning, they can be effective measures to pursue without relinquishing the eventual goal of adopting a separate preservation element. The first method is to ensure that preservation issues are addressed in all other appropriate comprehensive plan elements, such as economic development, transportation and housing components. The idea is that while there may not be a separate preservation category in the plan, historic resources will still be considered. To address historic preservation in these components, preservation advocates should identify the relevant issues and propose appropriate changes when revisions to a comprehensive plan are being undertaken. For example, if a comprehensive plan recommends downtown revitalization or heritage tourism as an economic development strategy, the plan component should address proper maintenance practices as well as adaptive use and design issues. Similarly, if a community lacks affordable housing, the plan component should explore the option of rehabilitating existing housing stock, rather than constructing new public housing units, including the feasibility of complying with *The Secretary of the Interior's Standards for Rehabilitation*. By ignoring preservation issues in planning components where historic resources play an integral role, a local government will, over time, help defeat the very initiatives it wants to promote.

In some communities, it may be likely these ideas are already addressed indirectly in the comprehensive plan and they just need more emphasis. In other localities, historic resources have not been a readily identifiable part of economic development, transportation and housing plan elements. What is often lacking is education on the part of government officials and planners about the benefits historic resources can bring to comprehensive planning. By educating key players about the advantages historic resources have to offer and the increasing role these cultural resources are playing in the local planning process, preservation advocates will expand the awareness of government officials and planners and; thus, empower them to both promote and preserve historic resources by integrating preservation and planning.

Preservation Plan

Another approach which has been used with some success in communities is the formulation of a stand alone preservation plan. This document exists distinct from the comprehensive plan and is devoted completely to addressing the preservation of historic resources in a community. Consultants are often used to compile a stand alone preservation plan and are hired on a contractual basis to conduct both the research and writing needed to produce the plan. The advantage with this type of plan is that the content can be more exhaustive. Well-drafted preservation plans address not only traditional comprehensive planning topics, but are more likely to include other vital subjects such as heritage education, past preservation efforts, financial incentives, and the care and maintenance of publicly owned historic resources. Traditionally, these issues have not been addressed in preservation elements of comprehensive plans in the interest of keeping the comprehensive plan from becoming a treatise size document. The disadvantage is that the stand alone preservation plan can be forgotten or ignored in the planning process. Because it was not compiled as an official part of the comprehensive planning process, many key players may not be aware of its existence or may

not fully support it. Once completed, the stand alone preservation plan has the potential to sit on a shelf in the planning office and not be fully utilized unless its presence is consistently referenced or pointed out to government officials.

Finally, for communities that have already had the insight to integrate preservation into the local planning process, an ideal situation is to have both a preservation element in the comprehensive plan as well as a stand alone preservation plan that are coordinated and work in tandem with each other. This ensures a legitimate, yet exhaustive, approach to preservation planning because the preservation element can concisely address the current status of historic resources as they relate to other comprehensive planning subjects while the stand alone plan contains a detailed description and documentation of how preservation has been handled in the past, and what tools are available to promote it (surveying, ordinances, local property tax incentives, etc.).

CHAPTER SIX

Writing A Local Ordinance

Possessing a well-drafted local preservation or design review ordinance can mean the difference between success and failure for any preservation minded community, even one with the most dedicated preservation professionals and volunteer activists. Working to promote and adopt (or amend) a thorough, carefully drafted preservation ordinance should be the top priority of every local preservation effort. While it is crucial for each commission member to be cognizant of every aspect of the preservation ordinance, all local government officials and owners of designated properties should also be familiar with the major provisions of the ordinance (what it does and does not do) and know who to approach with more specific questions when a situation occurs.

This is particularly true for many of the communities in the state that rely on historic attractions for economic development. In these areas, a working knowledge of local preservation laws and practice cannot be relegated to the commission members and one or two local government employees. Because historic resources are such a vital part of the community's existence, every local government official and employee whose job interacts with historic resources must understand the basic elements of the local preservation ordinance, not only to perform their jobs, but to communicate effectively with other community leaders, residents and tourists. It makes no sense to be promoting a product about which a person has no knowledge nor any direct contact with the local expertise now available in historic preservation. All parties must work together and the design review ordinance, which directs both the scope of projects as well as the legality of preservation practice, is an excellent point to start a collaborative effort.

Because Vermont is classified as a "Dillon's Rule" state, most local preservation ordinances are derived from the state enabling legislation discussed in Chapter 2 and share similar features and elements. This chapter contains a sample of the basic provisions or elements that should commonly found in a local ordinance. However, it should be noted that since no two communities are identical, a local government looking to adopt a local preservation ordinance should not simply copy verbatim the preservation ordinance of its closest neighboring jurisdiction, even if preservation efforts have proven successful in that locality. Some towns or cities may be working under provisions that are not applicable to another community or the language contained in the ordinance may be outdated.

It is important to remember that a typical preservation ordinance does a number of these things: it states a public purpose; creates a local preservation commission; designates historic or design control districts; sets out design criteria that govern commission design review; establishes a process for enforcing design review; and also establishes an appeal process for owners who are denied a "certificate of appropriateness." These components have been summarized below. Note that there are special rules for a Certified Local Government's or CLG ordinance. You can learn more about the CLG program in Chapter 9.

Statement of Intent (Purpose Clause)

The statement of intent, also known as a purpose clause, should give the reader a good understanding of the reasons why the local preservation ordinance is being adopted and what local preservation efforts hope to accomplish. The statement can be compared to a mission statement for a non-profit corporation; that is, it declares the purpose or mission of the ordinance.

The ordinance generally lists the public purposes served by the adoption of the preservation ordinance, including the promotion of aesthetic and architectural values, civic-mindedness or cultural education; the safeguarding of historical and cultural heritage; the improvement or stabilizing of property values; the enhancement of tourism or other types of business; the strengthening of the local economy; the provision of recreational amenities. The purposes section is important because it provides general direction for the implementation of the law. When an unforeseen situation arises and specific requirements do not exist or do not seem applicable, look to the purpose section for general guidance

Definitions

All well-drafted ordinances, whether pertaining to preservation or not, contain definition sections in order to clarify the terminology used within provisions. Legal arguments often hinge upon the interpretation or differing interpretations of key words used in an ordinance. For this reason, the definition section is one of the most crucial aspects of any successful ordinance. Too many communities do not take the time to define terminology clearly or maintain the false belief that this section is expendable. Not only should the definition section define words, but these definitions should be commonly referred to during public meetings and in communications with property owners. Using the definition element of a local preservation ordinance effectively can avoid time-consuming and costly misunderstandings that often result in negative publicity and ill will towards the commission and local preservation efforts. Examples of words that should be defined include: alteration, building, certificate of appropriateness, contributing property, demolition, maintenance and structure.

Board Membership

All local preservation ordinances contain at least one provision establishing a review body (design review board, preservation commission, or similar body) to administer the ordinance. Usually this board or commission is appointed by the local governing body and operates as an arm of the planing commission. In other situations, the development review board may function in this capacity. The number of members and the length of terms served on a commission vary by locality. In any case, a set number of members or a range (5-7) as well specifications governing terms of office and eligibility for reappointment, especially in small towns where the pool of qualified candidates is limited, should be clearly stated in the local preservation ordinance.

Qualifications

Most preservation ordinances in Vermont mandate that at least some of the commission members possess certain professional qualifications. Requiring a number of members to possess demonstrated knowledge in the fields of architecture, architectural history, landscape architecture, local history, law, planning, and/or real estate ensures that the commission members have sufficient expertise to make decisions. Some require that other municipal bodies be included, such as a member of the planning commission or representative of the planning

and zoning department, to ensure coordination of the boards. Residency requirements are also typical in larger jurisdictions; either that a member be a resident of the town or city and/or a resident of the historic district. When vacancies occur in membership on a board, efforts should be made to identify replacements with similar expertise so that a wide range of expertise is represented at all times. It's important to note that in smaller communities with a limited pool of eligible or willing potential commission members, residency restrictions and qualifications specified in the local preservation ordinance should not be too stringent or the local governing body will have trouble meeting the specifications of the ordinance. Often a more generalized requirement that an applicant be able to demonstrate an interest in local history and/or preservation is set forth in the ordinance or used in conjunction with more specific professional qualifications.

Authority

In this provision, the local preservation ordinance should set forth the powers or authority given to the commission. As with other elements, this section should be straightforward and detailed so that in the event of a future conflict, it is clear exactly what matters are within the commission's purview or jurisdiction. Commission members should be very familiar with this provision so that there is no question during public meetings as to whether recommendations on an application is appropriate. Additionally, the language in this section should relate directly to the goals set forth in the statement of intent. In other words, there should be a correlation between the purpose of the ordinance and the powers granted to the commission members. Powers that are commonly granted in this element include the authority to: (1) conduct or oversee architectural surveys of historic resources; (2) designate historic districts and/or landmarks; (3) review applications for certificates of appropriateness (COAs) relating to construction, remodeling, alteration and demolition of any building or structure located in a historic district; (4) advise residents and local government officials on preservation issues; (5) adopt and utilize design guidelines; (6) consult with or hire professional experts when warranted; and (7) promote preservation within the community.

Applications for Certificates of Appropriateness (COAs)

The authority section of the local preservation ordinance should charge the commission with the authority to make recommendations to the planning commission with respect to alterations, remodeling. The commission should have the authority to comment if new construction is appropriate to the scale and setting of an individual building or structure as well as whether the proposed work is compatible with the character and context of the local historic district. The applications that are required to be submitted for review by the commission members are referred to as Certificates of Appropriateness (COAs). The local preservation ordinance should specify not only the procedure for submitting a COA, but also list any and all materials that must be submitted in conjunction with the application. These materials may include plans, elevations, photographs, samples of construction materials, and other information deemed necessary for the commission to make an informed and objective decision. Finally, the ordinance should specify a time period for action by the commission to ensure that applicants receive a response within a reasonable length of time. If the time limit passes without action on the part of the commission, the application is passed on the planning commission without comment. Recognizing and abiding by this time limit is critical for the efficient work of the commission as well as for its public credibility.

Design Criteria and Guidelines

The standards by which the commission makes its decisions should be described in the ordinance. The ordinance should establish if additional design guidelines and procedures “shall be adopted,” or “may be adopted.” A few communities use the *Secretary of the Interior’s Standards for Rehabilitation* by themselves as a general guideline, without creating a specific local design guideline. It can be confusing. The ordinance should remove confusion by specifying which categories of information must be used (e.g., review criteria) and which are only advisory (e.g., guidelines).

Staff Involvement

As mentioned in Chapter 3, most commissions are provided with some type of local government staff support, but not all staff members work on preservation-related matters full-time. Successful commission members know how to use their staff’s role effectively. Many staff members serve as the initial contact with residents seeking certificates of appropriateness or simply more information about the local preservation program. Staff support in providing information, answering questions, and promoting preservation is crucial in assisting the commission carry out its charter. For this reason, ensuring that staff is knowledgeable about preservation issues and sending the correct message to residents is an issue that must be addressed consistently. Staff members responsible for providing commission support should attend the Statewide Preservation Conference annually. The conference often has a Commission Track where sessions and speakers focus specifically on issues and new developments that are likely to come before staff and the commission. Staff and commission members should also attend periodic training sessions and make every effort to keep current with modern preservation practice. Staff problems, such as slack or overzealous enforcement, can damage the delicate political balance in a community. Additionally, if an untrained staff member substitutes his/her own judgement or interpretation of preservation standards rather than using commonly accepted definitions and interpretations, it can send conflicting messages to residents and put commission members in a difficult position when reviewing applications.

Maintenance of Historic Properties

Maintenance issues pose one of the most serious threats to the effectiveness of local preservation efforts. Increasing numbers of communities located throughout the nation possess well-administered local historic districts as well as effective commission members and staff, but are often at a loss when it comes to handling the issue of “demolition by neglect”. The term demolition by neglect refers to the increasingly common scenario of a property owner who refuses to perform routine maintenance on a historic building or structure. Over time, neglect leads to disrepair, encourages vandalism and ultimately poses a health threat that necessitates the demolition of the historic resource. Culprits of this practice, some deliberate, run the gamut from absentee landlords to prominent local real estate owners. Frustrated commission members and staff often find themselves at a loss to deal effectively with this serious threat because the local preservation ordinance does not address the problem.

Most ordinances will also contain a routine maintenance exclusion outlining work that may be conducted without applying for a certificate of appropriateness. This work does not require review because of its minor impact on historic integrity or the fact it is considered to be reversible in nature. The objective of the local preservation ordinance is not to make owning a designated property so burdensome that no resident wants to work or live in a historic district. If a property owner had to apply for a certificate of appropriateness every time he or she needed

to clean the gutters, the purpose of the preservation ordinance would be defeated. That is why the routine maintenance exclusion needs to be present and clearly articulated. Additionally, staff may be delegated discretionary authority to review routine maintenance questions. This helps lessen the burden on commission members in terms of workload and also streamlines the review process to make it more efficient for property owners.

Demolition Delays

The objective of this provision is to require a period of time during which, ideally, a prospective purchaser will be located who is willing to preserve the property. Demolition delay provisions also provides an “escape hatch” in the local preservation ordinance. This provision avoids a takings challenge in situations where the owner of a structure may be facing economic hardship and buys time for the community to negotiate an alternative solution to demolition.

Economic Hardship

Here the ordinance establishes a process and standard for evaluating a property owner’s claim that historic preservation requirements may result in a true “economic hardship.” While many commission actions will have an economic impact on a property owner, relief is generally afforded only when a property owner has been denied “all reasonable or beneficial use” of his or her property, the constitutional standard of determining whether a taking has occurred.

This section should explain the process for obtaining a hardship finding, spell out what information the commission needs to review hardship claims, and define the timing of the reviews. Generally, hardship claims should be considered only after an application to alter or demolish has been denied, not when properties are still being considered for historic designation or before applications for alterations are reviewed.

Appeals

A citizen always has the right to challenge a commission’s decision in court. In addition to specifying the process for appeal to the Environmental Courts [24 V.S.A., Chapter 117 section 4471-4476], some ordinances also provide an administrative appeal process, to a board of adjustment or a development review board [section 4461 et seq.]. If an administrative appeal process is chosen, it is important to ensure that the decisions made upon appeal are based on the same criteria used by the historic preservation commission. Otherwise the appeal may be decided on the basis of political considerations or unproven assertions of economic hardship or the part of the property owner. In considering whether a decision was made arbitrarily or capriciously, the appeal board should limit its review to the record developed by the preservation commission.

Enforcement

A local preservation ordinance is only as effective as its enforcement. Even the most well-drafted provisions are useless when not utilized effectively and consistently. Penalties for violating the ordinance may include fines (usually levied for each day a violation continues), requirements to restore or pay for willfully damaged properties, and a denial of permission to rebuild on sites where historic buildings were demolished illegally. The stiffness of the penalty should correspond with the likelihood of non-compliance and the nature of the offense.

CHAPTER SEVEN

Writing Design Guidelines

Local Design Guidelines

Once a community has a local preservation program in place through the adoption of a local preservation ordinance, the establishment of a preservation commission, and the survey and designation of a historic or design review district, local supporters may take a moment to reflect and congratulate themselves on their accomplishment. Once this framework is in place, work begins on the day-to-day administration of the local design review or historic district.

As preservation commissions begin the local design review process in earnest, many involved in the review process quickly realize the broad design criteria outlined in the ordinance is ideal from a technical standpoint, but falls short when used to evaluate real world projects. Likewise, creating supplementary design guidelines that articulate the design goals of the community are the important next step in the process. These guidelines are more detailed standards that help the board evaluate the appropriateness of proposed changes in the district. They also serve an educational function and help inform the applicants and the community in advance about the important characteristics of the district and explain how changes in the district will be judged and evaluated. Depending on the powers outlined in the ordinance and the particular needs of the district, design guidelines can range from recommended design approaches to compulsory standards.

Communities should understand the usefulness and limitations of guidelines at the outset.

Guidelines Can

- Explain, expand, and interpret general design criteria in the local preservation ordinance.
- Help reinforce the character of a historic area and protect its visual aspects.
- Protect the value of public and private investment, which might otherwise be threatened by the undesirable consequences of poorly managed growth.
- Indicate which approaches to design a community encourages, as well as which it discourages.
- Serve as a tool for designers and their clients to use in making preliminary design decisions.
- Increase public awareness of design issues and options.

Guidelines Cannot

- Serve the same legal purpose as the design review provisions of the ordinance. An ordinance is a law, but local design guidelines are typically not laws.
- Limit growth, or regulate where growth takes place. Guidelines address only the visual impact of individual work projects on the character district. Growth itself is a separate issue that must be separately addressed through zoning ordinances and preservation planning.
- Control how space within a building is used. They usually deal only with the exterior, publicly visible portions of buildings, not with how interior space is laid out or used.
- Guarantee that all new construction will be compatible with a historic area or the guarantee creativity that is essential to the best sorts of sensitive design.
- Guarantee “high quality” construction. Since materials are generally not specified in the design guidelines, the final visual results, again, cannot be guaranteed

Role of Design Guidelines

The topic of local design guidelines always needs to be understood within its relationship to the local preservation ordinance. The ordinance is a law and the design review criteria are part of the law. Design guidelines are not the law and should not be confused with the ordinance. However, because guidelines are not law, they need not be written in legalese. In most cases, guidelines are helpful, interpretive, explanatory recommendations noting the common design elements and features that should be reinforced in the districts and many show examples of unsightly features that are discouraged. Most are consumer oriented and user-friendly consisting of written and graphic information (photos, drawings, etc) in a printed, book format. As such, they are key support materials for administering design review and may be used to advantage by commissions, design review boards, and applicants alike in the review process.

Note that preservation commissions and design review boards should conduct design review before the guidelines are finished because the experience in reviewing local projects plays an important role in fine-tuning the guidelines.

The Secretary's Standards

Until fairly recently, historic district commissions and design review boards adopted the *Secretary of the Interior's Standards for Rehabilitation* to administer the local preservation ordinance without local design guidelines. See Appendix A for more information about the Secretary's Standards or check out the National Park Service website).

The philosophical principles in the *Secretary of the Interior's Standards* can play an important part in the successful administration of historic districts and are frequently cited within a preservation ordinance as part of the design review criteria. Sometimes they are referenced in the ordinance as the required basis for development of a local design guideline.

Tailor Your Design Guidelines.

The *Secretary's Standards for Rehabilitation* are very broad, general philosophical principles developed by the federal government for reviewing project work on individual buildings receiving federal grant funds and tax credits. But a historic district is a collection of buildings, sites, and settings that share a common history, appearance and special meaning in time and place. Typical work projects in historic districts have a visual impact on the distinctive character of adjacent structures, streetscapes, and the larger setting. It makes better administrative sense to create locally tailored design guideline based on principles of the Standards than use the Standards by themselves to review a work proposal for a Certificate of Appropriateness. In fact, most preservation commissions have found local design guidelines to be a more effective tool to administer the local preservation ordinance.

How to Write Design Guides

The first order of business is to put together a team or steering committee to create design guidelines. Be sure to engage knowledgeable and committed people in your guidelines work group, e.g., preservationists, district residents, and local government officials. Architects, preservation consultants, urban planners, lawyers, and other professionals should be consulted and can provide invaluable ideas on the substance and effect of the proposed language. Cast the net wide as guidelines without broad community support are frequently difficult to enforce.

- **Committees cannot write good design guidelines.** Committees provide excellent support, suggestions, and feedback, but having one writer is the only way to ensure coherence and consistency in tone. Many communities use CLG funding or Municipal Planning Grants to hire professionals to assist with the development and writing process (See Chapter 9 for information about CLG grants). Having a writer who does this work professionally almost always results in a more efficient development process and better and more useable final product at the end.
- **Analyze your district's character.** It is essential to have a clear understanding of the history of the district and how that history is reflected by its physical characteristics, such as the architecture, landscape, and street plan. Ideally, the buildings, streetscapes, and setting should be identified in the district's national register nomination package. The committee should decide if the district evolved over time or does it represent one period in time? They should decide what type of new development is wanted and exactly what it is that needs to be protected.
- **Identify historic preservation goals and district needs.** Ask yourselves: Will buildings in the district be preserved, as is; or rehabilitated for new uses? Communities seeking to encourage development and growth may be less restrictive in their regulations than areas trying to limit development. Communities that wish to encourage new, creative architectural design should allow for wider flexibility in the design of new construction.
- **Review other district guidelines.** While it's important to custom-tailored guidelines to the particular history and characteristics of the district, the committee should take a look at communities of similar size and see how other preservation commissions have developed design guidelines. At their core, most guidelines are similar and there is no need to reinvent the wheel. Choose basic elements that apply to your own historic district and adapt them to yours. Especially note successful methods of illustrating preservation concepts.
- **Write specific guidelines for your district.** Design guidelines should address the special character of your district and the work needed to protect it. Guidelines should reinforce the unique physical characteristics of that differentiate this district from other areas: the buildings—style, materials scale; the landscape--fences, plantings, open space and pavement; as well as topography and the spatial relationship of features like buildings and public infrastructure. The use of photos and drawings throughout to reinforce key points is strongly recommended. Information on materials maintenance, repair and replacement should be included, as well as guidance on new construction in the district. Make guidance on the treatment of streetscape (including signage) and landscape features an integral part of the publication. Note that many larger communities have more than one historic district with its own unique feel, appearance, and function (residential, industrial, commercial); likewise, the goals, approach, and kinds of work needed to protect should be different as well. In these instances, each unique district should have its own specific set of guidelines.
- **Review your design guidelines.** While in final draft, review the guidelines, asking a number of questions: Are they consistent with the provisions of the local ordinance? Do they achieve the original goals? Are there administrative problems? Do they conflict with the ordinance and other codes? If the *Secretary of the Interior's Standards* are used as criteria in the ordinance, do your guidelines agree with the principles in the Standards? Are

they consistent with the particular needs of the district? Will the guidelines meet with community support? How do we want to use the guidelines? Are they truly advisory in nature or should we call them “standards” or “criteria” because we want to make them requirements? Answering questions like these can prevent problems that might otherwise arise later

Additional Information

Please call the Division 802.828.3047 if you would like a copy of the *Design Review Resource Guide* which provides more detailed information about Vermont’s enabling legislation, the designation process, and the creation of design guidelines.

CHAPTER EIGHT

The Design Review Process

There are a number of objectives that must be followed during the review process. These objectives relate to: (1) promoting an understanding of the historic district review process within the community; (2) establishing a working atmosphere of recognized mutual benefit with property owners and local government officials; and (3) satisfying review standards which ensure that commissions recommendations are consistent over time.

Efficient Process

Everyone's time is valuable: the somewhat disgruntled property owner waiting for permission to rebuild a porch, the concerned citizen waiting to voice an opinion about an agenda item, or the frazzled commission member with a multitude of professional and personal demands unrelated to his or her duties. Each and every participant in the historic district process is an individual with a finite amount of time to devote to public meetings, applications and, for most residents, preservation itself. But that doesn't mean that the review process needs to be unduly burdensome. By establishing and operating an efficient mechanism for the administration of the local historic district, commission members and staff can avoid frustration, negative publicity and inconvenience. The commission should strive to educate property owners by helping them understand the requirements and how the design review process work. Educating the public avoids misconceptions and encourages compliance with the requirements of the preservation ordinance.

It takes work and vigilance to create an efficient design review process. Holding programs and disseminating information that educates property owners, building contractors, architects and officials about district requirements and procedures is invaluable. Providing procedural guidelines and design guidelines at easily accessible locations, such as the public library, planning office or the clerk's office, is another way to promote a more efficient review process.

Additionally, early consultation with applicants is a key component to efficiency. Informal discussions with property owners seeking advice can take place with staff at the local planning office or even during commission meetings. A number of commissions in Vermont encourage prospective applicants to attend meetings in order to engage in conceptual discussions regarding future projects. This occurs before a formal application is filed and assists property owners with feasibility issues as well as suggestions for design considerations that meet preservation standards. Because no official plans are reviewed, no commitments are made on the part of the commission, but the owner comes away from the meeting with valuable feedback which can make review of the project more efficient when it eventually takes place. However, this approach does add to already lengthy public meetings. An alternative is to require a consultation step in the application process itself. This method mandates a meeting between an applicant and staff prior to the filing of an application, takes the burden off of the commission members, and utilizes staff expertise more efficiently.

Consistency and Fairness

The consistency and fairness is closely related to efficiency and, in fact, promotes it. The review process should be based on a set of w 33 procedures which are followed during all

aspects of the review process, especially meetings. The procedures should also clearly define commission and staff roles. By utilizing these standards, the review process will be consistent and fair. After all, local preservation efforts are accomplished through a legal process that guarantees all participants fair and equitable treatment.

Consistency relates to the treatment of property owners and interested individuals who come before the commission or attend meetings. All applicants should be addressed courteously regardless of their demeanor or behavior. While most commission members are aware of this in theory, their body language, tone and facial expressions don't always convey this practice. Consistency in treatment is more difficult than it appears and involves more than mere words.

The decisions themselves should also be consistent. This involves the concept of precedent and is crucial to the requirement of equal treatment. For example, if a property owner is denied permission to replace the siding on a residence or the shingles on a roof with a certain material because the commission members consider it to be inappropriate, a similar application filed six months later should be handled in accordance with that prior decision (or precedent) unless clear distinctions are present which necessitate different treatment. Permitting one property owner to use the replacement material simply because he has financial clout, political connections or is a "good guy" is not fair nor consistent. Commission members and staff must possess knowledge concerning past actions or have that information readily accessible. They should also understand that while everyone should strive to make the review process as pleasant as possible, circumstances may require adherence to precedent that does not necessarily satisfy the applicant in order to achieve consistency. If a commission member feels that he or she has a conflict of interest that prevents objectivity (such as a business or personal relationship), the appropriate action is for the board member to abstain, or recuse themselves, from voting on the application. Further, commission members must understand that they are not free to gather informally to have discussions about applications. This practice is not only inappropriate, it violates state laws governing public meetings and, therefore, must be avoided.

Preservation commissions and design review boards should also be aware that Vermont State law [1 V.S.A. Sections 310 et seq.] requires that all meetings of public bodies be open to the public, that adequate notice must be provided, and that minutes of the meeting must be taken. Moreover, The Public Documents Law [1 V.S.A. Sections 315 et seq.] requires that records of all decisions must be maintained and it allows any person to inspect or copy any public records during regular business days and hours.

Operating Style of the Review Committee

The user-friendly operating style helps to ensure that property owners understand what is occurring during the review process. Intimidating applicants through the use of long, complicated forms and conversations full of complex terms does not promote preservation in the long run. Further, ensuring that decisions and actions taken as part of the review process are fully understood is extremely important. Just checking to see if the acoustics of the meeting room and audio system permit meeting dialogue to be heard clearly is a good first step. Moreover, during public meetings, commission members and staff should make every effort to fully explain all decisions and their reasoning for the benefit of the applicant and audience. When preservation terminology is used it should be defined, particularly if words have other meanings outside of the preservation context. Commission members and staff should also make sure that what they believe to be a clear explanation is actually understood. This can be

done by paying close attention to the applicant. Does he or she appear to comprehend suggestions for revising an application or the reasons why a project is being denied? Would it be helpful to re-word the explanation for the sake of clarity and confirmation? In other words, every effort should be made to avoid the scenario where the applicant returns to her seat, leans over to an acquaintance and asks, “Does that mean I have to come back?”

Responsibilities of the Review Board Member

When selected to serve on a commission, each member takes on certain responsibilities that play an integral role in making the review process effective. Commission members should always remember that they are responsible for their decisions and act accordingly. The following actions, when undertaken diligently and consistently, will help each member to carry out his/her duties:

- **Review Meeting Agendas and Applications** - In other words, give yourself adequate time to prepare for each and every public meeting, especially for complex or controversial issues. Applications should not be decided solely on the basis of public presentations and all commission members have an obligation to present themselves to the public in an informed and effective fashion.
- **Make Site Inspections** - In order to truly understand the scope of a project and the context in which it is proposed, commission members need to see a three-dimensional image of the site as well as the surrounding landscape. Photographs, slides, drawings and video tapes cannot convey the complete picture.
- **Learn Basic Skills** - First and foremost, commission members should understand and grasp the various provisions and requirements of the local preservation ordinance, including design criteria and applicable standards. Additionally, commission members should know how to read architectural plans and specifications as well as possess a working knowledge of other local agency requirements.
- **Work with Staff Effectively** - Strong staff support can be invaluable to commission members, but each member should still make his/her own informed decisions. Turning over review responsibility to staff defeats one of the purposes of the public review process, namely involving citizens with applicable expertise as community leaders; allowing the collective community (through representatives) to guide the preservation of its historic resources. Conversely, be sure to involve staff in the review process. Administrative review provisions are an excellent tool to include staff in the review process while making it more efficient.
- **Avoid Conflict of Interest** - Vermont law is very clear about personal or financial conflict of interest. Each commission member should understand his/her legal obligations and abstain from participating in a project when a conflict exists.
- **Review, Don't Design** - The design review process was established to *review* proposals and to prevent inappropriate designs that do not meet certain standards. Commission members should review projects and suggest appropriate modifications, if necessary, but they should not design projects.

Sample Steps for the Review Process

While every community will develop its own particular review process, the following steps should serve as a guide:

1. Meeting with Local Government Staff - The property owner meets with staff, if available, to informally discuss design concepts and compatibility, to obtain printed material regarding meeting dates, design guidelines and submission requirements.
2. Compliance with Local Agencies - The property owner checks with applicable local agencies to determine compliance with local zoning and planning regulations.
3. Commission Planning Session - The property owner attends a regularly scheduled planning session of the commission to present proposed project details and receive informal feedback and suggestions.
4. Formal Application - The property owner files an application for a certificate of appropriateness (COA).
5. Staff Review - commission staff reviews the application for a COA in order to determine if: (a) the application is complete; (b) the project can be handled under administrative review; and (c) other local government agencies need to review the material.
6. Public Notice - Once complete, the application is scheduled for a public meeting of the commission and appropriate public notices are made to the applicant and other property owners.
7. Preparation for Meeting - commission members prepare for the public meeting by reading the agenda and application, studying supporting material, reviewing staff recommendations, and inspecting the project site.
8. Public Meeting - The application is presented at the public meeting and discussion takes place between the applicant (and/or a representative), the commission members and interested citizens or experts.
9. Decision - The commission decides whether the application: (a) is approved; (b) is denied; (c) needs additional information; or (d) is tabled pending modifications.
10. Upon Approval - The property owner obtains all required permits and completes the project in conformance with the certificate of appropriateness. Final review is completed by the commission staff before a certificate of occupancy is issued.
11. If Denied - The property owner has the option of appealing to the local governing body, and then to the local circuit court. If the applicant is denied permission to demolish a building or structure, the property can be placed on the market for the period of time specified in the local preservation ordinance (see Chapter 6).

Design Review Meeting Tips

Within that framework, here are some excellent tips adapted from *Making Judgments in the Review Process* by Noré Winter for making sure the meeting is clearly presented and that the design criteria are precisely followed

1. **Remember that the purpose of the meeting is to make a decision.** Keep this objective paramount. Not only that, the decision should be made in a timely manner, and it should be stated clearly. The commission or review board should enter the review meeting with a willingness to discuss, but always within the context of the design review criteria and guidelines.
2. **Focus on the big issues, not on personal biases or petty details.** This means that reviewers must distinguish between a design concept that they may dislike personally, but that meets the design criteria and guidelines, and a design that is objectively inappropriate because it clearly violates the design criteria and guidelines.
3. **Decisions should be consistent with the guidelines.** Remember that the ordinance and guidelines that were adopted represent a consensus of residents, professionals, and political leaders, and that the commission's role is to administer them, not to draft new guidelines at every meeting.
4. **Listen to the presentation by the applicant and his representatives.** This provides the applicant with the opportunity to describe the project objectives and to show the intended design.
5. **Ask for clarity of presentation content.** Determine that everyone understands what has been presented. Ask questions about what the drawings mean, if necessary. Don't be embarrassed if technical information is not clear. It is your responsibility to be certain that you understand what is presented.
6. **Check to see that documentation for the proposal is complete.** If important drawings or photographs are missing that are essential for the commission to make a determination, cut the review short before getting into design criticism. Reviewing an incomplete application is a waste of time for everyone. It may also be a disservice to an applicant if a proposal is denied, simply because it is misunderstood.
7. **If the documentation is complete, critique the proposal following the design criteria and guidelines.** Use a checklist to see that you covered all the items, and ask for public comments as well. You should allow open discussion among the commission, applicant, and public, but keep it on track and avoid tangential issues that may be emotionally charged, but do not have direct bearing on the appropriateness of the design in terms of the criteria and guidelines.
8. **When the discussions seem to be over, ask these questions of yourselves, (but not out loud!)** First: Have the criteria and guidelines been sufficiently met to merit an approval? You have two choices for an answer: Yes or No. Second: Which criteria and guidelines give you the basis for making this decision? An approval or disapproval

should be based on specific criteria in the ordinance, and you should be able to identify the critical ones. If you can answer these questions, you are ready for a vote.

9. **Once you have voted, summarize the outcome clearly.** Remember, you are not finished until you have a summary. Do not let the applicant leave without understanding what you have decided-approval, denial, a conditional approval, re-submission of a new design, etc.
10. **Finally, thank the applicant for participating in the process.** A successful design review meeting means that you have treated the applicant fairly by basing your decision-either way-squarely on the ordinance's design criteria and the design guidelines written and adopted by your community.

CHAPTER EIGHT

The Certified Local Government Program

Any historic resource is important to the history of a particular community. State law requires that preservation activity associated with historic resources occur first at the local level. Which makes sense because a local community is in the best position to identify and protect the historic resources they value. The Certified Local Government (CLG) program provides an opportunity to help local governments integrate historic preservation concerns with local planning decisions. Joining the CLG program is an important and effective way to preserve Vermont's historic places.

The CLG program extends the federal and state preservation partnership to the local level. It enhances the local government role in preservation by strengthening a community's preservation program and its link with the state historic preservation office (the Vermont Division Historic Preservation). In Vermont, the CLG program builds upon the longstanding working relationship between the Division for Historic Preservation and the local governments by expanding the scope of local responsibilities and opportunities for preservation.

Who can Become a Member?

Any city, town, or village or planning consortia which has enacted a historic preservation ordinance, enforces that ordinance through a local preservation commission, and has met requirements outlined in the Procedures for Vermont's Certified Local Government Program is eligible to become a CLG.

Membership Has It's Privileges

- Once certified, a local government becomes eligible to apply for federal historic preservation grant money that is available only to CLGs.
- Certified Local Governments participate directly in the National Register of Historic Places program by reviewing local nominations prior to their consideration by the Advisory Council for Historic Preservation.
- Opportunities for technical assistance in historic preservation are available in the form of training sessions, information material, statewide meetings, workshops and conferences.
- Communication and coordination are increased among local, state, and federal preservation activities, as well as with other Certified Local Governments.

What Can CLG Grants Fund?

While CLG grants generally represent a relatively small amount of money (\$5-10,000), they have often been used as seed money to attract funding from local government or other sources like Vermont's Downtown and Village Center Program. Also, in many cases, the products generated by CLG grants have provided credibility and visibility for Vermont's local historic preservation program.

CLG matching grants can be used to fund a wide variety of local preservation projects, including the following:

- architectural, historical, archeological surveys, and oral histories that help identify significant properties;
- preparation of nominations to the National Register of Historic Places;
- research and development of historic context information;
- staff work for historic preservation commissions, including designation of properties under local landmarks ordinances;
- writing or amending preservation ordinances;
- preparation of preservation plans;
- public information and education activities;
- publication of historic sites inventories;
- development and publication of design guidelines;
- preparation of zoning studies;
- development and publication of walking/driving tours;
- development of slide/tape shows, videotapes;
- training for commission members and staff;
- development of architectural drawings and specifications;
- preparation of streetscape, facade studies or condition assessments; and
- in some years, rehabilitation or restoration of properties individually listed in the National Register of Historic Places or contributing to a National Register historic district.

What's the Catch?

There are five broad standards that must be met by a local government in order to become a Certified Local Government.

1. Create and enforce appropriate local legislation for the designation and protection of historic properties. A local government must adopt a preservation ordinance which complies with the Vermont Municipal and Regional Planning and Development Act, [24 V.S.A., Chapter 117, 4407(6), or 4407(15)], the state's enabling legislation for designating and protecting historic buildings, sites, and districts.
2. Establish an adequate and qualified historic preservation review commission with local legislation. A preservation review commission is a locally appointed board that reviews

design changes in designated historic districts in order to maintain the district's special and irreplaceable qualities.

3. Maintain a system for survey and inventory of historic properties that furthers the purpose of the National Historic Preservation Act. A survey identifies properties that have historic significance and are therefore worthy of protection. The survey is the basis for the identification, designation, and protection of local historic districts and properties.
4. Provide for adequate public participation in the local historic preservation program, including the process for recommending properties for nomination to the National Register of Historic Places. A local government must encourage the public's participation in its preservation efforts by having meetings that are open to all local residents, by sponsoring community-wide information and education activities and by encouraging National Register nominations.
5. Satisfactorily perform the responsibilities delegated to it under the National Historic Preservation Act. The Vermont Division for Historic Preservation works closely with a CLG to help it meet local needs and interests and to fully participate in the Certified Local Government program.

Who's a Member?

If you would like more information on how the CLG program has helped maintain Vermont cities, towns, and villages as special places, feel free to contact any of Vermont's CLG coordinators

Bennington Historic Preservation Commission
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 Town of Bennington
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Brandon Historic Preservation Commission
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 Brandon, VT 05733
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Burlington Historic Preservation Review
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Hartford Historic Preservation Commission
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Mad River Valley Rural Resource Commission
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Windsor Historic Preservation Commission
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APPENDIX A

The Secretary of the Interior's Standards for Rehabilitation

Originally written in 1976 (revised in 1983 and 1990) *The Secretary of the Interior's Standards for Rehabilitation*, published by the National Park Service, are widely quoted or paraphrased in local preservation ordinances in order to provide standards which are used by commission members and staff during the review process to assess and make determinations about the appropriateness and compatibility of projects. The benefits of utilizing nationally recognized standards for this purpose are numerous, but it is imperative that commission members and staff interpret the Standards as they are intended. Developing a working knowledge of both the Standards and how they are applied should be the objective of both introductory training and continuing educational sessions.

Anyone owning property in a historic district has heard at least passing reference made to *The Secretary of the Interior's Standards for Rehabilitation*. Property owners going through the process of applying for a certificate of appropriateness or those attending meetings of the local design review board or preservation commission, have certainly been made aware of the importance of these standards which were developed by the Department of the Interior to ensure the sensitive treatment of historic buildings. Many local historic preservation ordinances mandate use of the Standards by commissions as criteria for making certificate of appropriateness decisions.

There are ten standards that can be applied to rehabilitation projects. The language of the Standards is fairly simple. However, because every rehabilitation project is somewhat different, misunderstandings often arise in the application of the Standards by commissions to specific historic properties. Much confusion and frustration can be avoided if historic property owners become familiar with the ten standards prior to applying for a certification of appropriateness. Understanding the purpose behind the various standards and how they relate to a specific historic structure as well as a historic district is crucial to making rehabilitation projects a cooperative effort.

First and foremost it should be stated that the purpose of the commission in making certificate of appropriateness decisions is not to make a project more difficult or more expensive for the historic property owner. The overall objective of the commission is to retain the cohesiveness and compatibility of the entire historic district in accordance with the Standards. A property owner comes to the process with specific goals in mind for his/her historic structure as a single unit. It is the job of the commission to find a happy medium between satisfying the property owner, complying with the Standards and treating every property owner in the district in an equitable manner.

Standard #1 "A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment."

Standard #2 "The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided."

An award-winning example of the application of Standards #1 and #2 is located in Athens, Georgia. A Greek Revival mansion there was converted into a bank, but the rehabilitation effort retained the original room configurations and decorative features. Modern conveniences, such as a drive-thru structure, were sensitively added to the back of the building. Although the structure is currently used for commercial operations, its residential character is still quite evident. To the passing motorist, the bank's sign in front of the building is really the most obvious indication of the building's adaptive use.

Standard #3 "Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken."

This standard attempts to prevent a property owner from changing a historic structure in such a manner as to make it appear to be something that it isn't. Let's say a property owner today purchases a vernacular, two-story historic home built in the 1880s that has not been extensively altered, meaning all of the original exterior features (porch, windows, doors, etc.) remain intact. Because the house is an example of vernacular architecture, it is not, and was never meant to be, high style. The property owner, however, has always loved the Queen Anne style (what many people refer to as "Victorian"). He thinks his house is very plain and wants to convert the historic home into his own "painted lady". He applies to the local commission for a certificate of appropriateness to replace the existing front porch with an elaborate wrap-around porch, to replace the original siding with patterned wood shingles and also to add a round wooden tower. If all of these changes were permitted, the house might appear to the untrained eye to be a high style Queen Anne residence and not a representative example of late 19th century vernacular architecture or, in the alternative, the house might appear to be a vernacular residence that was later modified, perhaps around the turn of the century, to reflect the popularity of the Queen Anne style. In either case, there would be a false sense of the true evolution of the house and its time, place and use up to 1998 would not be honestly reflected.

Standard #4 "Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved."

This standard refers to changes and adaptations that took place 50+ years ago (the standard definition of "historic"). Standard #4 points out that although buildings can be historic, so can the modifications that were made to them over time. Thus, if a property owner lives in a historic house that was built in 1790, but the front door and its surround date to 1840, the owner should not attempt to replace the 1840 door with one appropriate to 1790 just because that was the original date of construction. The 1840 door is historic and represents a true picture of the evolution of the house (as opposed to the earlier example of a 1998 version of a Queen Anne porch and tower added to a house that never possessed those features). The crucial point to remember in following Standards #3 and #4 is honesty; being true to the history of historic buildings. Every historic structure has a story to tell and making changes that contradict that story or create a false story is misleading.

Standard #5 "Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved."

The objective of this standard is fairly self-explanatory. There are numerous aspects of a historic house, such as windows, woodwork and decorative features, that need to be retained in order to preserve the character of the structure. Owners of historic properties must be cognizant of the craftsmanship that is an integral part of their homes and make every attempt to preserve it.

Standard #6 “Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.”

This standard flows logically from Standard #5. If distinctive features and examples of craftsmanship characterize a historic house, every effort should be made to repair those original features. Standard #6 recognizes a hierarchy in rehabilitation efforts: (1) repair; or (2) if repair is not feasible, replace. Too often today, home owners want to replace rather than attempt repairs. Perhaps it is part of our disposable and convenience-oriented lifestyle, but when it comes to historic material, replacement is a last resort. Standard #6 also mandates the kind of replacement that is necessary in the event a feature is too deteriorated to repair or is simply missing. Because the object is to reflect the true history of the structure, replacements should replicate original features and be based on evidence not conjecture. Using replacements to substitute an owner’s personal “taste” is not appropriate.

Standard #7 “Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.”

Many of us have seen first-hand the damage caused to historic fabric because of the use of harsh chemicals or abrasive cleaning methods. Brick surfaces that appear pockmarked or pitted bear the scars of sandblasting (a method that was widely used to remove paint or to clean surfaces). The damage allows moisture to penetrate the hard outer surface of the brick, leading to further deterioration and damage. Historic materials frequently require different cleaning methods than those used on modern structures. Additionally, every owner of a historic house should be aware that modern cleaning agents can also have different effects. What works wonders on your sister’s suburban ranch, may cause damage to your own historic house. If you are at all unclear as to how to approach a paint removal or cleaning problem, please consult an expert. In the long run, asking for advice can save a great deal of time and money.

Standard #8 “Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.”

This standard reminds all of us that buildings alone are not the only kind of historic resource that must be considered in a rehabilitation project. Many existing historic buildings were constructed upon sites of previous structures or activities. In most cases, archaeological resources will be present. If significant in either quantity or quality, the handling of these resources is best left to a trained professional.

Standard #9 “New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.”

This standard seems to provoke a great deal of debate among historic property owners and practicing preservation professionals. The issues included in Standard #9 commonly surface during commission meetings and can cause a great deal of confusion if not explained clearly. Frequently, applications for certificates of appropriateness relate to plans for new additions and/or exterior alterations. Most historic property owners understand why these additions or alterations should not destroy historic materials, particularly in light of Standard #5. But when it comes to the portion of Standard #9 specifying that new work must be differentiated from old, widespread bewilderment results.

If asked, the majority of people residing in a historic district would probably tell you that they are sensitive to the unique character of the neighborhood. Further, these property owners often feel that they have a good grasp of basic preservation principles. They understand that historic buildings must be treated with care and that historic materials should be retained. So when it comes time to construct an addition to a historic building, any one of them might confidently explain to the commission, “The addition will be identical to the original house, you won’t even be able to tell.” This statement is meant to provide assurance to the commission that this particular property owner is one of the “good guys”. However well-intended, this plan of action directly contradicts Standard #9 and, much to his or her dismay, the property owner quickly discovers that the commission members are not at all in favor of this proposed addition. Let’s discover why....

Creating a false sense of the true evolution of a historic building is not appropriate. As stated previously, every historic structure has a story to tell and making changes that contradict that story or create a false story is misleading. But isn’t that what a property owner is attempting to do by proposing to construct an addition that will be identical to the original structure? The new addition might be mistaken for part of the original house or even characterized as a historic addition. That is not to say that the new addition must stick out like a sore thumb. Standard #9 also states that the new work must be compatible in massing, size, scale and architectural features. The commission (and planning staff) can provide assistance in identifying distinguishing features so that an addition meets the criteria of Standard #9.

Standard #10 “New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.”

This standard addresses the reversibility of new additions or new construction. It may be that at some point a future property owner will want to remove an addition. Standard #10 ensures that such removal will not damage the form or integrity of the original structure. In many instances, a rear addition can be connected by a hyphen. An existing doorway is utilized for access to the addition, thereby alleviating the need to tear down a large portion of the back facade. This was the method used on the Greek Revival mansion located in Athens, Georgia when it was converted into a bank. That way, fifty years from now, the mansion can easily be re-adapted to residential use and the existing drive-thru structure removed.

Remember that it behooves all historic property owners to possess some understanding of the Standards, particularly in the event you need to file an application for a certificate of appropriateness. In the meantime, property owners are encouraged to attend meetings of the local commission. Listen to the questions and suggestions made by the commission members. In doing so, you will see how the Standards are applied in modern preservation practice.

APPENDIX B

A Defensible Process

The following article will be of interest to commission members. Although the National Center for Preservation Law is no longer in existence, the advice given by former Executive Director, Stephen Dennis is still very appropriate for ensuring the efficiency and legality of the review process.

BUILDING A DEFENSIBLE RECORD

Stephen Neal Dennis

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— ONE —

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

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

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

— TWO —

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

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

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

— THREE —

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

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

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

— FOUR —

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

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

The passage of a resolution containing your commission's decision is always a splendid opportunity to refer tellingly to criteria, standards or guidelines contained in your preservation ordinance. It is especially crucial to leave members of the press with the sense that the commission is operating so methodically that its public hearings do not constitute news, though the fate of individual applications may be of some interest to a newspapers' readers.

— FIVE —

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

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

— SIX —

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

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

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

— SEVEN —

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

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

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

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

— EIGHT —

Establish and maintain adequate working files for your commission.

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

commission had not followed basic due process procedures would have been much more compelling.

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

— NINE —

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

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

— TEN —

Avoid any appearance of having been arbitrary or capricious.

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

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

Over time, most local historic preservation commissions develop a secure sense of their own powers. If the occasional commission betrays timidity and fears exercising the full range of its stated powers, one can hope that eventually this commission will gain new members with a surer understanding of the commission’s potential as a regulatory agency. In Vermont, where municipalities are subject to the often criticized Dillon Rule which requires that local governments exercise only those powers expressly delegated to them, it is going to be

necessary to amend the state enabling legislation for commissions to clarify the role that local historic preservation commissions can play. But this will take time, and meanwhile you need to be certain that your commissions have a fighting chance if they are challenged on appeal.

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