

HISTORIC PRESERVATION PLANNING IN MUNICIPALITIES

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Background

Municipal planning for historic preservation is among the more recent fields of specialization in urban planning. We can trace its origins back to the early part of the 20th century, though in most communities it reached its most significant role in the 1970s. While not all local governments, nor their planning departments, have staff members to assist with historic preservation issues, almost all planning departments and commissions at some time face issues surrounding the preservation of historic properties in a community.

Some common responsibilities faced by planning and zoning commissioners include:

- to recommend to the city council or commission the designation of a property or district under a local preservation ordinance,
- to adopt a comprehensive or neighborhood plan that incorporates strategies for historic preservation,
- to comment on a local application for federal funding or permitting that involves a historic property,
- to review a zoning application for a historic property,
- to review a subdivision plat for an undeveloped acreage with archeological sites, or
- to comment on a commercial revitalization program in an urban corridor.

Though many citizens believe the goals of historic preservation to be seeking a static or "pickled" community, the field of historic preservation planning is dynamic and quite different from public perception. Historic preservation should seek coexistence in our communities where there is a balance between the preservation of significant historic properties and allowance for growth and development. The process of deciding where and how such coexistence is reached often provokes strong opinions on many levels. It is the role of elected officials, as well as appointed commissioners and board members, to determine how coexistence is reached and how our

communities will appear in the future. Planners who manage historic preservation programs rarely hold the power for complete decisions, but instead guide decision-makers and recommend appropriate preservation strategies.

What Does Historic Preservation Really Mean?

In a literal sense, "preservation" means the active intervention in the natural processes of a building, site, neighborhood, or community. Buildings and communities naturally deteriorate unless set on a deliberate schedule of maintenance, stabilization, or growth. Historic preservation strategies only step in to reverse the natural deterioration for properties or areas deemed historic and worthy of preservation. Historic preservation planning simply provides for a road map identifying significant properties and outlining appropriate programs and techniques for intervention.

What Is Historic? What Is Worthy of Preservation?

It is important to understand what historic preservation embraces before you can examine the planning processes addressing it. The typical purviews of historic preservation concerns include the buildings, structures, sites, objects, and districts that make up our built environment, and are at least 50 years of age. In other words, the built or human-made environment may best be viewed as the companion to the natural environment. Professionals often refer to these buildings, structures, sites, objects, and districts as *historic or cultural resources*. This means that the historic property should be seen as a resource or asset to a community. Archeological sites dating from our prehistory or early historic period also may fall into the category of historic or cultural resource depending on the age of a community. In recent years, the breadth of what is encompassed in the built environment has expanded to include cultural and historic landscapes (parks, rural areas), properties of our recent past or less than 50 years of age, and systems like roads, streets, and highways.

As the breadth of historic preservation has expanded, an equal expansion has occurred in the diversity of organizations and programs arising to spearhead or protect resources. New organizations and programs of all types now speak for specific issues, some very focused and narrow. This situation complicates the process for decision-making and places constraints on the effectiveness of historic preservation planning, particularly at the

municipal level where public participation and the need for strong programs is widely sought and required.

Public versus Private Sector Roles in Historic Preservation

Effective municipal programs in historic preservation require a combination of leadership, program development and cooperative elements. These elements stem from both the public and private sectors, and occur at the national, state, or local levels. Because the public and private sector roles in historic preservation may overlap or form partnerships between two levels or among all three levels at one time, it is imperative for municipal planning efforts to recognize some understanding of who the players are and what role they typically assert..

National Public and Private Involvement in Historic Preservation

Initial steps toward a national program of preserving historic properties began early in the 20th century with the designations of national parks and monuments. By the 1930s, federal agencies operating under the New Deal further advanced the nation's interests in historic properties. Despite these early initiatives, the *National Historic Preservation Act (NHPA)* of 1966 (as amended in 1980, 1992) is often cited as the omnibus legislation for historic preservation and one that emanated from the numerous environmental issues of the 1960s. The Act represents a long debate and struggle to protect and preserve historic properties but especially responded to the federal programs of urban renewal and interstate highway construction of the late 1950s and early 1960s. These two federal programs led to the removal of many historic buildings as well as neighborhoods and business districts that negatively impacted communities.

National Park Service as Public Lead

At the federal level, the *National Park Service* of the *US Department of the Interior* manages these programs through its external program offices. Once divided by regions across the country, they are now headquartered in Washington, DC, though they manage a full national program.

The National Park Service administers most aspects of the NHPA of 1966. Programs resulting from the 1966 Act include:

- National Register of Historic Places
- Certified Local Government program
- Federal tax credits for certified rehabilitation of certified historic properties
- Historic American Building Survey (HABS)/Historic American Engineering Record (HAER) programs
- Native American tribal preservation programs

These programs and others are funded through the Historic Preservation Fund authorized by Congress to support the State Historic Preservation Offices and numerous other preservation programs. In addition, the staff of the National Park Service develop and oversee the interpretation of the *Secretary of the Interior's Standards* that govern among other things rehabilitation, restoration, professional qualifications, archeology, and -preservation planning. In 1992, Congress authorized a new division under the National Park Service, the National Center for Preservation Training and Technology (NCPTT), to fund and conduct special studies in historic preservation. Based in Natchitoches, Louisiana, the NCPTT administers annual grants across the country in a number of areas of specialized research.

Role of Advisory Council on Historic Preservation

Sections 106 and 110 of the NHPA of 1966 are managed by another federal agency, the *Advisory Council on Historic Preservation (ACHP)*. The ACEP represents the Executive Branch of government and intervenes in matters relating to federal undertakings (funding, permitting, licensing) and the effect of such undertakings on properties listed or eligible for listing in the National Register of Historic Places. Their principal role is to ensure compliance with the NHPA regulations by all federal agencies and departments. Municipal governments may be involved in such discussions involving Community Development Block Grants (CDBG), Economic Development Agency grants, military properties as well as many other areas of federal activity. A completed transaction with the Advisory Council typically would result in a memorandum of agreement or programmatic agreement with all parties involved.

National Trust for Historic Preservation as Private Sector Lead

At the national level, the National Trust for Historic Preservation represents the private sector interests in preserving historic properties. Chartered in 1949 by Congress, the National Trust is a not-for-profit that sponsors special programs, administers loans and grants, and manages a number of historic properties. The National Main Street Center is among its best known programs. The Center encourages the revitalization of central business districts and neighborhood commercial centers. The National Trust also incorporates active legal and public policy departments. The Trust operates through regional offices as well as its national headquarters in Washington, DC. In Texas, a Southwest Regional Office based in Fort Worth manages small grants and provides assistance to the states of Texas, New Mexico, Oklahoma, and Arkansas.

State Level Historic Preservation Organizations and Programs

In Texas, the Texas Historical Commission (THC) serves as the state agency for historic preservation. Established by the Texas Legislature in 1953 as the Texas State Historical Survey, the agency was renamed as the Texas Historical Commission in 1973. Among its programs and legislative mandates are administering the *Texas Antiquities Code*, state historical marker programs, archeological projects and reviews, the Texas county courthouse preservation project, Texas Main Street Project, County Historical Commissions (CHC) and the Certified Local Government (CLG) program. As a state agency, the National Park Service recognizes the THC as the State Historic Preservation Office and delegates certain functions, responsibilities and reviews to it. These functions and review include conducting surveys across the state, reviewing properties for listing in the National, Register of Historic Places, and reviewing federal projects or undertakings. In turn, the THC receives an annual apportionment from the Historic Preservation Fund (HPF) managed by the National Park Service. The HPF uses royalties from off-shore oil drilling much like its companion fund, the Land and Water Conservation Fund, is used for park and open space acquisition.

In the 1980s statewide leaders in historic preservation organized Preservation Texas as a statewide not-for-profit in conjunction with the National Trust for Historic Preservation. This organization provides support and training to communities across Texas and serves as the private sector leader for interests in historic preservation. A second statewide non-for-profit, the Texas Historical Foundation exists to fund special projects in communities and support preservation as well as general Texas history interests.

Local Level Historic Preservation Organizations and Programs

Public programs at the local level are based in some type of legislation, typically an ordinance. Preservation ordinances are generally found in local zoning or development codes. Such codes regulate property for exterior alterations or additions, demolitions or new construction of designated landmarks and districts. Some communities have preservation programs that do not regulate properties and are not part of land use or aesthetic codes. These groups may take a leadership role in public education or serve in an advisory capacity to an elected body in matters other than regulations. Such programs, however, can be effective preservation agents in some communities.

Municipal Preservation Ordinances

In Texas, municipalities may pass legislation to regulate alterations to historic properties or demolition under state enabling legislation, *Chapter 211* of the *Local Government Code*. This code which also grants a municipality the right to establish appropriate land uses and zone accordingly, simply acknowledges that municipalities may regulate "special areas of architectural significance."

In the 1930s, San Antonio became the first municipality in Texas to designate and review historic properties when it recognized La Villita as a historic district. By the 1970s, most of the state's largest cities passed ordinances with an even larger number doing so in the 1980s and early 1990s. More than 75 municipalities now sponsor some type of historic preservation program and operate under the authority of a preservation ordinance. These 75 municipalities are included in the more than 2,000 programs across the country.

Role of County Governments in Historic Preservation

Ordinances to regulate historic properties are limited to municipalities in Texas. County governments are not authorized under State law to do similar designations. Instead, most county historic preservation programs are developed in assistance with the Texas Historical Commission's authority of establishing a County Historical Commission (CHC). A county commissioner's court appoints members to a CHC and in some cases provides funding out of the county general fund. The most critical function of the CHC is to review and recommend properties for state designations (i.e., the Recorded Texas Historic Landmark).

Steps in Historic Preservation Planning

A. Identification of Historic Properties

Determining what is historic in your community is the first step in preservation planning. Generally, identification of historic properties includes the development of a methodology or approach to locate and record all properties (buildings, structures, objects, sites) that have historic or architectural significance. This is often referred to as a *survey*. The survey typically involves a professional in history, architecture, architectural history or related discipline who drives or walks each street in a community. A standard survey form allows for recording the physical aspects of a property (e.g., two-story, wood frame, house), its estimated date of construction (e.g., 1890s), and important historical information (e.g., architect/builder, original owners).

The survey usually includes all properties at *least 50 years of age*, though some methodologies also call for the identification of properties 25 or 30 years of age if they are believed to be exceptional. It is worthy of note that a historic property may be significant for its architecture, but properties that appear less interesting for architecture may still be important in telling the story of the community. For example, the residence of the first mayor may not be an architectural gem, but may be important for its association with a person who influenced the direction of the community.

All survey projects should incorporate a photographic image, generally black/white images and color slides. Today, the photography may include a digital image recorded in an electronic

format. New technologies for survey work are being employed that continue to improve documentation techniques.

B. Evaluation of Identified Properties

A successful survey allows for a professional to evaluate identified properties for preservation strategies. Not all properties that meet the age criterion of 50 years are worthy of preservation, some properties require additional research and discussion before assessing significance. Most survey projects will present a final evaluation of identified properties in relation to other similar properties. In essence, this amounts to a ranking of properties or assignment of priority status, i.e., high, medium, low. High priority properties may be the first to recommend for designation or protective measures, low the last. The process of evaluation is critical to setting an agenda for preservation activities in a community.

The completed survey becomes an inventory of historic properties in a community maintained in a hard copy (i.e., notebook or note card fashion, or in an electronic database format. The latter format is often used today to integrate within the other functions of a municipality like building permits and in particular within the Geographic Information Systems (GIS) programs that are increasingly incorporated into local government management. The inventory may be added to or updated regularly, but should be completely revisited at least every ten years.

Conducting a survey and maintaining an inventory may be costly items. Given the size of a survey area (e.g., city limits, neighborhood, etc.), this work also may take a number of years to accomplish. This makes the methodology and a consistent recordation process essential. For now, most surveys average about \$20 to \$25 per site.

C. Designation of Historic Properties

Historic properties may be designated at several different levels of government or a combination of levels. Each type of designation carries with it its own set of review procedures and sometimes regulations. It also should be noted that every city or county and every state has its own procedures and laws.

Municipal governments with home rule status in Texas may designate historic properties under Texas Local Government Code *Chapter 211*. A process for designating and criteria for designation will be found in the local government's preservation ordinance or

chapter of the development code dealing with historic preservation. These designations typically are zoning changes and must adhere to all legal requirements for zoning in a municipality. Thus, letters of notification must be sent out to property owners within 200 feet of a property or district under review. In addition, a zoning board or commission in addition to the local historic preservation board must review all applications and make a recommendation to the elected body. A public hearing is required at most of these steps. In Texas, the elected body of a municipality may designate a property or district over the objections of a property owner, though they rarely do that unless extenuating circumstances exist. All designations are usually denoted with a note or mark on the zoning map.

Some state governments also follow a designation process to recognize historic properties and districts. The Texas Historical Commission only designates individual buildings, structures, or sites through its *Recorded Texas Historic Landmark (RTHL)*. An RTHL designation requires property owner support and involves an application form that documents significance and a fee to pay for the maker. Any property with an RTHL designation requires the property owner, even if not the original applicant, to notify the Texas Historical Commission regarding exterior alterations/additions, and allow .60 days for approval.

The *National Register of Historic Places* is the most common federal designation. Listing in the National Register requires property owner notification. If more than 51% of the property owners object to listing a district, the nomination may not be submitted to the National Park Service. If a property owner other than a public entity objects to listing an individual property, the property may be determined eligible by the National Park Service but not officially listed. The property owner may later remove this objection. The National Register does not protect a building or structure from demolition or alteration/addition, nor is there a requirement for notification to the federal or state entity of proposed work. This is a common misunderstanding that often confuses the federal designation with that of the local government. The National Register designation is essentially honorific.

D. Management of Historic Properties in Municipalities

Municipal ordinances establishing a historic preservation program typically set up a board or commission to review applications and issue certificates of appropriateness for alterations, additions or demolitions. These boards or commissions may be referred to as a

Historic Preservation Commission, Landmarks Commission, Historic and Design Review Commission, Board of Architectural Review or something similar. In large communities, a staff person, usually in the planning department, will be assigned the responsibilities of supporting the board or commission. This means setting a meeting and an agenda, preparing applications for presentation, and overseeing the functions of the commission. In small communities, the chairperson or a volunteer may agree to manage the administrative functions of the board.

The authority of a preservation board varies in each municipality. Some boards have final review and make recommendations to the elected body. In other communities, the board makes recommendations to the planning director or to another municipal board. Whatever the authority, the decisions may be appealed and that process will be outlined in the local ordinance.

Preservation boards or commissions rarely interact with other municipal boards. This separation may lead to conflicts in understanding the parameters of decision-making and which municipal board reviews what level of a project. The planning director or elected body should encourage members of preservation boards/commissions to coordinate with related boards and ultimately seek a clear understanding of each role.

The Certified Local Government (CLG) program is a federal initiative originating in the 1980 amendments to the National Historic Preservation Act of 1966. As implemented in Texas in the 1990s, the program recognizes local governments with historic preservation ordinances that carry specific sections. In addition, the Texas Historical Commission must pass through ten percent of its federal funding to the participating local governments.

Preservation Law in Relation to Preservation Planning

Two important court cases influence the work of historic preservation and are important for municipal planning departments or planning and zoning commissioners to note:

Penn Central v. New York City Landmarks Commission. This case established the constitutionality of local government designation of historic properties and their ability to regulate alterations, additions, or demolitions. A principal test that emerged from this case

was the question of whether or not all economic return was diminished by the designation. The majority opinion determined that a property owner is not entitled to the highest and best use of a property just to reasonable economic return.

City of Boerne v. Flores: This case tested the authority of a local government to designate and regulate property used for a religious purpose. Archbishop Flores of the Catholic Diocese of San Antonio challenged the City of Boerne's authority to prevent demolition of a church within the local historic district. The Archbishop claimed under the *Religious Freedom and Restoration Act* (RFRA) that such local government authority was unconstitutional. The decision left the authority in place as well as deemed RFRA essentially unconstitutional.

Other preservation laws that may affect municipal preservation programs:

- Antiquities Act of 1906

- Historic Sites Act of 1935

- Section 4(f) of the Department of Transportation Act of 1966

- Executive Order 11593

- Executive Order 12372

- Archeological Resources Protection Act of 1979

- Tax Reform Act of 1986

- Americans with Disabilities Act of 1990

Incentives for Historic Preservation

In recent years, local governments in Texas have included incentives for encouraging compliance with preservation ordinances. The most common incentive is financial, or rather some type of property tax relief. Established in 1979 as Section 11.25 (Historic Sites) of the Texas Property Tax Code, local taxing authorities may grant relief from property taxes those "deemed historically significant in need of tax relief." This type of incentive may be allowed as a flat amount of money, e.g., \$200, or a percentage of the amount of invested in rehabilitating a property. Some communities "freeze" an appraised value for a certain number of years or phase in a new appraised value. The property tax

relief typically applies only to city taxes, though in some communities county or other entities have similar programs.

Municipal governments also have issued small grants to assist property owners. These typically include direct payments to a property owner to facilitate facade improvements. Such grants may or may not require a deed restriction or covenant to protect the public investment. • Increasingly, local governments are seeking ways to strengthen the local preservation program and in particular encourage compliance. The "tool box" of incentives continues to grow with new ideas and programs.

In 1999 the Texas Historical Commission and a number of local preservation commissions and not-for-profits released a study of the economic impacts of historic preservation. The report stated the impact on jobs, state and national economies, and result of heritage tourism programs. One of its most important findings was to state that designation of historic districts positively influenced property values, thus establishing the long-term benefits of historic preservation programs for revitalization.

Historic Preservation Plans

Texas municipalities are not mandated to complete and update comprehensive plans. In states like Florida and Oregon, comprehensive planning with a historic preservation component is required by the state legislature. Today, most local governments in Texas do little long-range planning of any type.

In spite of the lack of planning occurring, a few historic preservation plans are now in place in Texas and, if starting one is under consideration, they may be handled in two or three ways. First, a historic preservation element may be included as part of an overall comprehensive plan. This places preservation on a somewhat equal basis to other issues like transportation, land use, and economic development.

A second way to complete a preservation plan is to draft and adopt an independent historic preservation plan for a community. Though popular in the 1970s and early 1980s, there are fewer examples of separate preservation plans because of the costs and length of time to complete. Finally, historic preservation elements may be incorporated within neighborhood and community plans to address real grass roots issues. This approach

places historic preservation issues at the center of housing and economic development issues. It also encourages implementation at the level most affected by decisions.

Current Issues in Historic Preservation Planning

Planning for historic properties remains a dynamic enterprise. Local programs are often challenged through the courts, budgeting, and municipal management. In order stay abreast these trends, municipal planners and appointed commissioners must maintain links to other communities in order to stay in tune to current thought and ideas. Several issues have remained at the forefront of historic preservation over the last decade.

A. Financing Historic Preservation. Financial assistance from the federal and state government is increasingly problematic. While the costs of maintaining or rehabilitating historic properties has increased, the government apportionment has decreased. Thus, compliance with federal and state law does not carry with it much financial reward. In 2000, Congress introduced the most far-reaching legislation in years, the Conservation and Reinvestment Act (CARA). If passed, CARA could greatly increase the amount of funding passed to each state historic preservation office and include additional dollars for local governments through the Certified Local Government program.

B. Mitigating Gentrification. Local preservation programs are increasingly interested in the preservation and conservation of neighborhoods. Because historic designations are often accused of removing long-time residents, techniques for stabilizing neighborhoods or lessening gentrification are being sought. Another federal program under consideration would grant a tax credit to the homeowner who rehabilitates his historic home. If adopted, the Historic Homeowner Assistance Act, as it is now called, would provide a direct financial credit to the homeowner who wants to stay in his neighborhood. Economic incentives or programmatic initiatives to retain residents of mixed income and ethnicity provide special challenges and will continue to do so as urban development changes. Municipal planners and planning commissions will be asked to address these issues in the future.

C. Broadening the Definition of Historic. As the demographics of the nation change, ethnic diversity that recognized the value of all segments of the population on our history will become more important. Historic preservation is often matched with upper income populations and a predominant Anglo male history. Planning and zoning commissions in the near future will be asked to recommend for designations a range of properties from modest houses to sites associated with controversial historical events. The decisions on these designations will determine much of the future appearance and interpretive history of our communities.

Conclusion

The framework for historic preservation planning continues to expand. Each year additional initiatives present themselves to extend the capability of municipal preservation planning. Planning and zoning commissioners will be expected to know critical aspects of these initiatives as they are incorporated into routine planning functions. The incorporation will not always be smooth and easy. In fact, it is expected that many difficult decisions will be required as the facts are weighed in the preservation of historic properties. Pressures for strong economic development with no barriers may at times overcome the need to retain properties. Likewise, if the emphasis on compactness and density remain key to Smart Growth, the value of some types of historic properties will be tested in this new urban scenario. It also follows that as community design and character become more important as urban areas grow the place for historic buildings and sites will be critical. The decisions that are made in all these areas will involve many of the public and private sector players mentioned here as well as a plethora of programs.

Nore' Winter, a national trainer for preservation boards and planning commissions, lists six items for planning and zoning commissioners to know as it relates to historic preservation planning and related commissions:

- (1) The jurisdiction of planning and preservation commissions overlap as both address community issues.
- (2) Work efforts of planning and preservation commissions can sometimes be combined as in neighborhood planning.

- (3) Neighborhood conservation goals are typically the same for both types of commissions.
- (4) Planning for historic properties sometimes may be the purview of planning commissions, especially in small communities.
- (5) The planning and preservation commissions share common constitutional provisions and are based in the same land use law.
- (6) Since some issues may seem to be opposing for the commissions, the planning and preservation commissions may have to work together to resolve a conflict through policy development. (*Planning Commissioners News*, American Planning Association, Summer 1997.)

These items are still relevant and may be an important guide to conducting the business of planning and zoning commissions now as well as in the future.