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Preservation of Historic Architecture in Pennsylvania: A Report and Recommendations

I. Introduction

A forgotten opera score may be discovered among the papers of Mozart and revived into a stunning performance. An art collector may find a Rembrandt under a painting he thought worthless. But when a building rich in art and history is torn down or materially altered, it is lost forever.¹

An early Victorian home covered by aluminum siding bears a striking similarity to the Rembrandt. Removing the worthless covering and exposing the original beauty is a transformation worthy of pursuit. In the difference, however, lies the difficulty. Often economic considerations and legal complexities² have made it more advantageous for the landowners to demolish and rebuild rather than renovate his structure. In contrast to other art forms, which may be renewable through dedicated private efforts, historical architecture cannot be preserved or restored on a large scale without public support and governmental involvement.³ This tension between private ownership and control of real property on the one hand and a growing public interest in historic preservation on the other, led to the creation of the National Register of Historic Places,⁴ the Pennsylvania Bureau for Historic Preservation,⁵ and municipal Historic Architectural Review Boards.⁶

This note will trace the development of historic preservation in

1. For example, by 1970 over half of 12,000 buildings listed by the federal government in its Historic American Buildings Survey begun in 1933, had been demolished. Conti, *Preserving the Past*, Wall St. J., Aug. 8, 1970, at 1, col. 1.

2. Bringing an historic structure into compliance with local building codes or health, fire and safety regulations is frequently an impossible task for the would-be preservationist-owner. See Section IV, B *infra*.

3. See Section III *infra* for analysis of constitutional issues raised by governmental involvement in this area.

4. See Section II, A *infra*.

5. The Pennsylvania Office of Historic Preservation was established by the Governor's Executive Order 1975-6 (May 6, 1975), 5 PA. BULL. 1339 (1975). Bureau status was officially approved by the Commonwealth's Executive Board on December 4, 1980. Bureau for Historic Preservation, Pennsylvania Historical and Museum Commission, Vol. 2. No. 2, Pennsylvania Preservation 1 (1981).

6. PA. STAT. ANN. tit. 53, § 8003 (Purdon 1972).

Pennsylvania, review present efforts in the field of preservation, and recommend possible future directions in this complex and evolving area of the law. Two appendices follow the text: Appendix I details the procedure to be followed in nominating an historic resource for inclusion in the National Register; and Appendix II outlines the steps required to establish an historic district pursuant to the Pennsylvania's Historic District Act.⁷

II. Historical Overview

A. *The Legislative Scheme*

1. *Federal Enactments.*—Americans first realized the need to preserve and protect our cultural resources late in the last century. Passage of the Antiquities Act of 1906⁸ by Congress initiated the federal involvement in architectural preservation. The Antiquities Act protected prehistoric and historic sites located on federal lands only; it authorized the President to designate nationally significant historic resources and gave appropriate Cabinet members the power to grant permits for archaeological work.

The Historic Sites Act of 1935⁹ heralded the first national policy of preserving historic resources for public use and inspiration. The mandate was extended by the National Historic Preservation Act of 1966¹⁰ which authorized the Secretary of the Interior to expand the National Register of Historic Places,¹¹ a listing of buildings and districts significant in American history, architecture, and culture. Prior to 1966 only buildings within the National Park System or properties that had been declared National Historic Landmarks were eligible for placement on the National Register. Listing in the National Register now makes private property owners eligible for federal grant programs administered through state agencies. Furthermore, listing allows owners who rehabilitate certified historic properties to take advantage of federal income tax benefits. Finally, placement on the Register provides a measure of protection for the property or structure since the Advisory Council on Historic Preservation is required to comment on the effect of federally assisted projects on these resources.

The vastly broadened scope of properties appropriate for inclu-

7. PA. STAT. ANN. tit. 53, §§ 8001-8004 (Purdon 1972).

8. Pub. L. No. 59-209, 34 Stat. 225 (codified at 16 U.S.C. §§ 431 (1976).)

9. Historical Sites Act of 1935, Pub. L. No. 74-292, 49 Stat. 666 (codified at 16 U.S.C. §§ 461 et seq. (1976)).

10. National Historic Preservation Act of 1966, Pub. L. No. 89-665, 80 Stat. 915 (codified at 16 U.S.C. §§ 470-470b; 470c to 470n (1976)).

11. 16 U.S.C. § 470a (a)(1). Authorization and Expansion of the National Register, 36 C.F.R. 1202.2(a) (1980). See Appendix I *infra*.

sion on the National Register¹² necessitated the establishment of State Historic Preservation Officers (SHPO) to act as liaison between the federal government and the states. The officers are responsible for implementing the National Register and grant-in-aid programs and for coordinating preservation planning within their jurisdictions.¹³

2. *State Legislation.*—Pennsylvania's legislative scheme originated in 1929. In that year, the General Assembly created the Pennsylvania Historical and Museum Commission (PHMC) to preserve public records, historic documents, objects, buildings and monuments, to investigate archaeological sites, and to operate the state museum.¹⁴ Later, the legislature recognized the need to enable municipalities to designate certain areas as historic and to regulate the architecture in those areas, so it enacted the Historic District Act¹⁵ in June 1961. The Act was designed to protect historic areas within the Commonwealth and to promote the general welfare, education and culture of the communities in which distinctive historical areas are located.¹⁶

Finally in 1978, the Pennsylvania General Assembly established the Historic Preservation Board, to serve the PHMC in an advisory capacity.¹⁷ The Board advises the PHMC on criteria for placement of historic resources on the Register of Historic Places, reviews nominations to the Register and assists in the development of the state comprehensive preservation plan for historic resources within the Commonwealth.¹⁸ The Board is composed of not less than nine members, with experts in each of the following fields: architecture, archeology, architectural history, history and historic preservation.¹⁹

12. See Appendix I. Nomination of an Historical Resource for the National Register.

13. Designation and Responsibilities of the State Historic Preservation Officer, 36 C.F.R. 1201.2(a) (1980).

14. Act of April 9, 1929, Pub. L. No. 177, PA. STAT. ANN. tit. 71, §§ 1047 (Purdon 1962). The Pennsylvania Historical and Museum Commission is authorized to preserve public records, historic documents and objects of historical interest; erect historical markers; preserve ancient or historic public buildings, military works or monuments; investigate archaeological sites; and operate the State museum. *Id.* § 716 to 718-3 (Purdon 1962), as amended (Purdon Supp. 1975).

15. Act of June 13, 1961, P.L. 282 (codified at PA. STAT. ANN. tit. 53, §§ 8001-8004 (Purdon 1972). For discussion of the Act, see Section III, B and Appendix II *infra*.

16. 282 PA. STAT. ANN. tit. 53, § 8002 (Purdon 1972).

17. Act of November 22, 1978, P.L. 1160 (codified at PA. STAT. ANN. tit. 71 § 1047.1a-1o (Purdon Supp. 1979).

18. PA. STAT. ANN. tit. 71, § 1947.1g (Purdon Supp. 1979).

19. *Id.* § 1947.1f. The Historic Preservation Act also reserves to the Commonwealth the exclusive right to conduct archaeological field investigations on state-owned lands, and provides criminal penalties for any person who conducts field investigations on such lands without first obtaining permission from the PHMC, or who destroys any portion of such sites.

B. Constitutional Considerations: Affecting Private Ownership Rights for Historic Preservation Purposes

Because private preservation efforts are insufficient to achieve the goal of historic preservation on a community level, government involvement is essential. The local government may directly intervene to save a threatened structure through the use of its eminent domain²⁰ power or it may indirectly attempt to control privately owned property by establishing standards for exterior appearance through zoning ordinances.²¹ Any legislation that limits the uses to which a landowner may put his property is readily subject to constitutional challenge.²² Whether the fifth amendment prohibition against the taking of private property for public use without just compensation pertains to historic preservation laws is an issue commonly raised by the aggrieved landowner. In *Penn Central Transportation v. New York*,²³ the United States Supreme Court held that when land-use regulations are reasonably related to the promotion of the general welfare and the land owner is not subject to economic hardship, there has been no "taking" of private property so as to require just compensation.²⁴ The Court suggested, however, that if an unduly oppressive regulation of private property can be demonstrated, there would clearly be an unconstitutional taking.²⁵

The first Pennsylvania case challenging an historic district ordinance as an unconstitutional deprivation of property was *The First Presbyterian Church of York v. City Council of the City of York*,²⁶

20. Eminent domain is the power to take private property for public use by the State and municipalities, provided that just compensation is paid to the owners of the property that is taken. BLACK'S LAW DICTIONARY 470 (5th ed. 1979)

21. For example, local governments can adopt historic district ordinances to regulate building spacing, texture and type of materials that can be used in restoration work and architectural details. These controls are intended to preserve the over-all appearance of the historic district. MUNICIPAL INFORMATION CENTER, PA DEPT. OF COMMUNITY AFFAIRS, HISTORIC DISTRICTS IN PENNSYLVANIA 1 (2d ed. 1981).

22. See *Lindmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85 (1977) (ban on "For Sale" signs declared invalid); *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) (general zoning ordinance upheld); *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922) (coal mining statute declared invalid); *Welch v. Swasey*, 214 U.S. 91 (1909) (height of building regulation upheld); *Suffolk Outdoor Advertising Co., Inc. v. Holse*, 43 N.Y.2d 483, 373 N.E.2d 263 (1977), *appeal dismissed*, 439 U.S. 808 (1978) (billboard ordinance upheld); *People v. Stover*, 12 N.Y.2d 46, 191 N.E.2d 272, 240 N.Y. Supp. 2d 734 (1963), *appeal dismissed*, 375 U.S. 42 (1963) (aesthetic zoning upheld).

23. 438 U.S. 104 (1978).

24. *Id.* at 138. In this case developers wanted to build a fifty-story building on top of Grand Central Station. New York City refused to issue a building permit, relying on a statute making the Station an historic landmark. See Samuels, *After Penn Central: A Look Down the Track at Constitutional Taking*, 8 REAL EST. L.J. 230 (1980); Sackman, *Landmark Cases on Landmark Law*, 1979 PLAN. ZONING & E.D. INST. 241; Comment, *Constitutional Law - Historic Preservation by Means of Landmark Designation*, 30 S.C. L. REV. 825 (1979); Note, *Penn Central Transp. Co. v. City of New York*, 9 ENVIRON. L. 670 (1979).

25. *Penn Central Transp. v. N.Y.*, 438 U.S. 104, 138 (1978).

26. 25 Pa. Commw. Ct. 154, 360 A.2d 257 (1976). See also Comment, *Historic Zoning: The Test for An Unconstitutional Taking*, 81 DICK. L. REV., 136 (1976).

which was decided prior to the *Penn Central* case. The church contended that the city's refusal to permit it to demolish York House, a structure owned by the church and listed on the National Register, was confiscatory and a deprivation of its property rights without due process of law. The court ruled that the church had failed to meet its burden of proof on the economic issue and allowed the determination of the city to stand.²⁷

Recently the principles of *Penn Central* and *First Presbyterian* were applied in another Pennsylvania case, *Cleckner v. Harrisburg*.²⁸ Cleckner wanted to demolish two adjoining vacant houses within an historic district. The local Historical Architectural Review Board recommended that demolition not be permitted, and the city council concurred. On appeal in the Dauphin County Court of Common Pleas, Cleckner argued that the denial of the demolition permit was an unconstitutional taking of his property. The experts, a real estate broker, an architect, and a local historian, were divided over whether the houses were architecturally noteworthy or historically valuable. In reaching its decision, the court considered guidelines set forth by the National Register,²⁹ and found "when considering 'historic district' matters, *the emphasis is on linkage among buildings in the entire district, not . . . on the individual significance of a particular structure.*"³⁰

Additionally, the court weighed the economic consequences of demolition and of renovation. One of the houses was in violation of safety regulations, and the estimated cost of repair of the properties was in excess of \$176,000. Cleckner argued that the excessive cost would make it impossible for him to realize a reasonable return of his investment. The court agreed, but refused to allow demolition because it had not been demonstrated that a sale of the properties was financially impracticable.³¹ Denial of the "best use" of the property did not constitute a "taking."³²

According to these cases, the property owner has the burden of proving that the particular historic preservation ordinance imposes

27. For other cases on this issue see *Lafayette Park Baptist Church v. Scott*, 553 S.W.2d 856 (Mo. App. 1977); *Dempsey v. Boys' Club of City of St. Louis*, 558 S.W.2d 262 (Mo. App. 1977); *Texas Antiquities Committee v. Dallas Community College District*, 554 S.W.2d 924 (Tex. 1977).

28. 101 Dauph. 134, 10 Pa. D. & C.3d 393 (1979).

29. NATIONAL REGISTER OF HISTORIC PLACES, HOW TO COMPLETE REGISTER FORMS 8 (1975).

30. 101 Dauph. at 136, 10 Pa. D. & C.3d at 400. The court refused to substitute its judgment after finding substantial support for the City Council's conclusions.

31. Two appraisals set the value of the properties at about \$65,000. Cleckner put the houses on the market at \$125,000, but did not hire a realtor, and no sale was effected. The court concluded that Cleckner had not met his burden since he did not proceed prudently in the sale, and did not demonstrate that the sale of the properties was impractical. *Id.* at 138, 10 Pa. D. & C.3d at 401.

32. *Id.* at 136, 10 Pa. D. & C.3d at 400.

too great an economic burden on him to maintain his property. If successful, the property owner should be permitted to reasonably adapt his property or to demolish it. The burden appears to be an extremely heavy one, however, and few owners will be able to meet it.

III. The Present Status of Architectural Preservation in Pennsylvania

A. *Efforts at the State Level*

The conservation of Pennsylvania's historic heritage and the preservation of public records, historic documents and objects of historic interest, and the identification, restoration and preservation of architecturally and historically significant sites and structures are duties vested primarily in the Pennsylvania Historical Museum Commission (PHMC).³³ The Bureau for Historic Preservation was established within the PHMC to encourage and coordinate the effort to preserve the state's historic and architectural resources.

The PHMC evaluates historic resources within the Commonwealth, utilizing an approach similar to that used by the National Register. It encourages local municipalities to conduct surveys in order to identify known historic resources, seeks detailed documentation of these resources, and makes the final decision regarding their registration. The Pennsylvania Inventory of Historic Resources, an informal listing, is maintained by the Bureau and is used as a tool to define local resources; produce data for planning purposes; locate sites for local rehabilitation and neighborhood improvement; identify the architectural personality of communities; educate the public to its cultural resources; and aid research and publication.³⁴ A landowner may nominate his property for inclusion on the Inventory by completing a form provided by the Bureau. The form is similar to the one used by the National Register of Historic Places and is maintained as permanent research material.

The Pennsylvania Register of Historic Resources, established in 1978,³⁵ is the official statewide listing of historic resources. The landowner, however, must consent to the inclusion of his property on the listing.³⁶ The requirement of written owner consent prior to inclusion of the property on the Register has prompted criticism from preservationists in Pennsylvania who argue that historically signifi-

33. PA. STAT. ANN. tit. 71, § 1047.1b(2) (Purdon Supp. 1979).

34. Bureau for Historic Preservation, Pennsylvania Historical and Museum Commission, Historic Resource Nomination Form Information Sheet 1 (1980).

35. Act of November 22, 1978, P. L. 1160, § 3 (codified at PA. STAT. ANN. tit. 71, § 1047.1c (Purdon Supp. 1979)).

36. PA. STAT. ANN. tit. 71, § 1047.1c(b).

cant properties could be lost unless they are protected under some form of mandatory regulation.³⁷

The PHMC also plans for the management of historic resources. Under the Historic Preservation Act of 1978³⁸ the Commission is given the specific duty of preparing a comprehensive plan for the preservation of historic resources within the Commonwealth.³⁹ The purpose of the plan is to develop a comprehensive historic resource management process that identifies and organizes information concerning the state's historic, archaeological, architectural and cultural resources. This process will enable the PHMC to make identifications, evaluations and recommendations regarding the protection of architectural resources⁴⁰ from a reliable data base. Significantly, the plan should ensure that preservation concerns are fully considered in any decision made by other state and federal agencies in pursuit of their programs.

The PHMC and other state and federal agencies coordinate their activities and cooperate in their efforts to protect historic resources. For example, on the federal level, the A-95 Review Process⁴¹ coordinates federal and federally assisted programs and projects with each other and with various state, regional and local plans, policies and programs. Through the use of a state clearinghouse system, potential conflicts or problems are detected that may need to be resolved before a program or project can be approved. Under A-95, the PHMC acts as a comment and review agency, determining whether a program or project will have any adverse effects on Pennsylvania's historical resources. The PHMC is also instrumental in the administration of federal grant programs⁴² that are available to local organizations, individuals and municipalities for historic preservation activities.

Interagency cooperation at the state level is mandated by the Historic Preservation Act of 1978.⁴³ Consequently, before any struc-

37. This "owner consent" issue has appeared recently on the federal level as well. The National Historic Preservation Act now provides that:

[i]f the owner or owners of any privately owned property or a majority of the owners of such properties within the district in the case of an historic district, object to such inclusion or designation, such property shall not be included on the National Register or designated as a National Historic Landmark until such objection is withdrawn.

Act of December 12, 1980, Pub. L. No. 96-515, § 201(a). The resolution of this issue will no doubt have a profound effect on future directions of historic preservation efforts in all states.

38. PA. STAT. ANN. tit. 71, § 1047.1a-1047.10 (Purdon Supp. 1979).

39. *Id.* § 1047.e(4).

40. HERITAGE CONSERVATION AND RECREATION SERVICES, DEPARTMENT OF INTERIOR RESOURCE, PRESERVATION PLANNING SERIES, PROTECTION PLANNING PROCESS I (September, 1980).

41. The A-95 Review Process was formulated by the Office of Management and Budget. 33 Fed. Reg. 16,487 (1968).

42. For example, matching Historic Preservation Fund Grants may be transferred by a State Historic Preservation Officer to private organizations, individuals or municipalities.

43. PA. STAT. ANN. tit. 71, § 1047.1m (Purdon Supp. 1979).

ture of potential historical significance is demolished by any subdivision of the state government, the PHMC must be consulted. The interagency cooperation does not stop there. Recently, the Department of Community Affairs and the PHMC appointed six regional historic preservation specialists⁴⁴ who will evaluate the economic development opportunities in which historic preservation will play a significant role.⁴⁵

B. Local Response

1. *Municipal Programs.*—Under the Historic District Act,⁴⁶ municipalities are authorized to establish historic districts⁴⁷ and to name a Historical Architectural Review Board to review changes within the district. The HARB acts as counsel to the local governing body “regarding the advisability of issuing any certificate which the governing body may issue.”⁴⁸ The governing body, however, is not bound by the advice of the Board. Further, the HARB has no power to force a property owner to make changes even if such changes would enhance the district.

Any property owner—residential or commercial—who wishes to make exterior changes must present a proposal to the HARB.⁴⁹ Using the broad statutory guidelines, the local review board determines whether a proposal is appropriate.⁵⁰ Because of the vagueness of these guidelines, the PHMC has begun to develop standards, using the Secretary of the Interior’s Standards for Rehabilitation,⁵¹ to assist the HARB’s in their decision-making process.

2. *Private Efforts.*—Numerous private, non-profit organizations have taken an active interest in historic preservation. The largest of these organizations is the National Trust for Historic

44. BUREAU FOR HISTORIC PRESERVATION, PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION, Vol. 2, No. 1, PENNSYLVANIA PRESERVATION 6 (1981).

45. BUREAU FOR HISTORIC PRESERVATION, PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION, Vol. 2, No. 2 PENNSYLVANIA PRESERVATION 2 (1980). Also, the PHMC is one of the reviewing agencies for the Department of Environmental Resources’ Environmental Assessment Process Procedure. In another recent development, the PHMC received a grant through the Office of Coastal Zone Management of the Pennsylvania Department of Environmental Resources to prepare a resource protection plan for the Delaware River Coastal zone.

46. PA. STAT. ANN. tit. 53, §§ 8001-8004 (Purdon 1972). See also Appendix II.

47. There are presently thirty-seven historic districts in the Commonwealth.

48. PA. STAT. ANN. tit. 53, § 8003 (Purdon 1972). Certificates include, but are not limited to, building, demolition and sign permits.

49. Since the public purpose of historic zoning is preservation of the neighborhood’s external appearance, the historic district ordinances cannot regulate other areas. P. ROHAN, 2 ZONING AND LAND USE CONTROLS, § 7.01(3) (1978).

50. PA. STAT. ANN. tit. 53, § 8004(b) (Purdon 1972).

51. HERITAGE CONSERVATION AND RECREATION SERVICE, U.S. DEPARTMENT OF THE INTERIOR, STANDARDS FOR HISTORIC PRESERVATION PROJECTS (1979). Included are suggestions for building sites, exterior features, building materials, and new construction projects in historic areas.

Preservation. It was chartered by Congress in 1949,⁵² and is funded by membership dues, donations and certain federal grants. To stimulate local public participation in historic preservation, the Trust publishes informational pamphlets and booklets, offers consultation services, and sponsors conferences and seminars on a wide range of preservation topics.⁵³

On the local level, three types of organizations are concerned with historic preservation. The first type is the organization that was founded for the purpose of protecting a particular landmark. Pittsburgh History and Landmarks, Washington County Landmarks, and Historic York, Inc. are included in this category. A second type of organization is primarily concerned with environmental issues, but has recognized the utility of historic preservation. Included in this group are the Berks County Conservancy and the Bucks County Conservancy. Finally, local historical societies, such as the Cumberland County Historical Society, have become involved in historic preservation activities. These local groups have cooperated with the PHMC on surveys of historic resources and have been instrumental in the establishment of historic districts. Additionally, they have initiated their own technical assistance, education and loan programs.⁵⁴

V. Future Directions

Pennsylvania has taken initial steps toward the conservation of the irreplaceable historical, architectural and archaeological resources of the Commonwealth. However, in comparison with the major historic preservation enactments of its sister states, it is clear that there is much more that Pennsylvania can do.

A. Landmark Legislation

1. In General.—At least twelve other states and the District of Columbia have passed enabling legislation⁵⁵ by which local munic-

52. Pub. L No. 81-408, 63 Stat. 927 (codified at 16 U.S.C. §§ 468-468(c) (1976)).

53. NATIONAL REGISTER OF HISTORIC PLACES, U.S. DEPARTMENT OF THE INTERIOR, GUIDELINES FOR LOCAL SURVEYS: A BASIS FOR PRESERVATION PLANNING 13 (1977).

54. For example, the Historic Preservation Trust of Lancaster County is in the process of implementing an "architectural parts bank" for property owners who are restoring or rehabilitating structures. The architectural parts will come from the demolition of deteriorated buildings that still have valuable ornamentation, doors, hardware, and fixtures. In establishing an architectural parts bank, Lancaster will be one of the few cities in the United States to have a service of this kind. BUREAU FOR HISTORIC PRESERVATION, PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION, VOL. 2, NO. 2, PENNSYLVANIA PRESERVATION 2 (1981).

55. Cal. Gov't Code §§ 25373, 37361 (West 1968); D.C. CODE ENCYCL. § 5-410 (West 1966). Historic Landmark and Historic District Protection Act of 1978, 2-367 (1978); ILL. ANN. STAT. ch. 24, § 11-48.2-2 (Smith-Hurd Supp. 1979); LA. REV. STAT. ANN. §§ 25:751-767 (West 1975 and Supp. 1979); MASS. GEN. LAWS ANN. ch. 9, § 27 (West 1976); MINN. STAT. ANN. §§ 471.193 (West 1977); MISS. CODE ANN. § 39-13-1 - 5 (Supp. 1978); N.Y. GEN. MUNIC. LAW § 96-a (McKinney 1977); N.Y. TOWN LAW § 64-17-a (McKinney Supp. 1978); N.Y.

palties may protect individual landmarks within their area by establishing local landmark commissions. These statutes are invaluable to communities that do not have a specific historical area within their territorial jurisdictions, but nonetheless want to protect the isolated individual properties under their control that are significant. Any historic preservation law, however, should be tailored to meet the needs of the particular state. State constitutional restrictions should be kept in mind along with common law requirements, the existing state historic preservation laws, the interrelationships of the political subdivisions, and the special historic preservation problems of the state.⁵⁶

Establishing the appropriate role for the local landmark commission in the decision-making process is crucial. Conceivably, the landmark commission could function as an advisory board to the local governing body.⁵⁷ Some states⁵⁸ that have enacted landmark legislation permit the landmark commission to operate in a quasi-judicial capacity. In these states, the landmark commission not only has the responsibility of recommending to the local governing body those properties that should be designated as landmarks, but also has the power to rule on alteration and demolition proposals. The decision of the commission would be reviewable by the local governing body so that the property owner is guaranteed a right to appeal.

Landmark designation procedures may be general or detailed. For example, some states have enacted enabling statutes that provide little guidance to local municipalities with regard to the manner in which a landmark is to be designated, or to the manner in which the alteration or demolition of a landmark is to be approved.⁵⁹ The better approach, however, appears to be specifying the required procedures in the enabling statute,⁶⁰ so that the landmark owner's

VILLAGE LAW § 7-700 (McKinney 1973); N.C. GEN. STAT. § 160A-399.1 399.13 (1976), *as amended*, (Supp. 1970, *as amended*, 1979); N.C. SESS. LAW ch. 644 (1979); OHIO REV. CODE ANN. § 713.02 (Anderson 1976); S.D. CODIFIED LAWS ANN. §§ 1-19B-13 - 31 (1974); VA. CODE §§ 10-138(c)-(d) (1978); § 15.1-503.2 (Supp. 1979).

56. Advisory Counsel on Historic Preservation. *Foreward to GUIDELINES FOR STATE HISTORIC PRESERVATION LEGISLATION* (Historic Preservation Workshop, National Symposium on State Environmental Legislation, March 15-18, 1972) [hereinafter cited as *PRESERVATION GUIDELINES*].

57. The commission then would be similar to the HARB's established under the Historic District Act of 1961, PA. STAT. ANN. tit. 53, § 8003 (Purdon 1972). Appropriate recommendations would be made by the landmark commission to the local municipality concerning the alteration or the demolition of a designated landmark.

58. *E.g.*, LA. REV. STAT. ANN. §§ 25:751 - 767 (West 1975 and Supp. 1979); N.C. GEN. STAT. §§ 160A-399.1 - 399.13 (1976), *as amended*, (Supp. 1977), *as amended*, 1979 N.C. SESS. LAW ch. 644 (1979); S.D. CODIFIED LAWS ANN. §§ 1-19B-13 - 31 (1974).

59. *See, e.g.*, MINN. STAT. ANN. § 471.193 (West 1977).

60. North Carolina has enacted both historic district and landmark legislation acts prescribing detailed procedures for local municipalities. N.C. GEN. STAT. §§ 160A-395 - 399 (1976), *as amended*, 1979 N.C. SESS. LAW ch. 646 (1979) (historic districts); N.C. GEN. STAT. 160A-399.13 (Supp. 1977), *as amended* 1979 N.C. SESS. LAW ch. 644 (1979) (historic landmarks).

procedural rights are clearly defined and the risk of constitutional challenge is minimal.⁶¹

2. *Economic Hardship*.—In order to further protect the landmark owner's property rights, legislation should allow for the relaxation of certain requirements if it is demonstrated by the applicant that the refusal to permit alteration or demolition of a landmark would create severe economic hardship.⁶²

The recent case of *Penn Central Transportation Co. v. New York*⁶³ sets forth standards for establishing economic hardship. The New York City ordinance upheld by the United States Supreme Court provided that approval for exterior alterations should be granted if the property owner could show that the landmark designation would result in undue economic hardship. Since Penn Central failed to make the requisite showing of economic hardship, the Court found that this landmark regulation did not constitute a taking of property in violation of the fourteenth amendment.⁶⁴

Language for an economic test for future Pennsylvania landmark legislation is suggested by *First Presbyterian Church of York v. City Council of the City of York*.⁶⁵ Thus, the landmark commission should approve the demolition of a landmark in whole or in part only if it determines from evidence presented by the landmark owner "that a sale of the property was impractical, that commercial rental could not provide a reasonable rate of return or that other potential uses of the property were foreclosed."⁶⁶

3. *Penalty Provisions*.—Provisions that would allow the local governing body to impose penalties on an owner who alters or destroys his property while landmark designation is pending or who deliberately fails to maintain his property that has been designated as a landmark should be included in the landmark enabling legislation for Pennsylvania. Such provisions would ensure maximum protection for irreplaceable historic resources.⁶⁷

61. See notes 23 and 24 and accompanying text *supra*.

62. In Virginia, for example, the statute provides that if the owner of a designated landmark applies to the governing body for permission to demolish it and, following a denial, has offered the property for sale for a time specified in the statute depending on the offering price with no purchase resulting, then the owner may demolish it. VA. CODE ANN. § 15.1-503.2 (Supp. 1979).

63. 438 U.S. 104 (1978).

64. *Id.* at 138.

65. 25 Pa. Commw. Ct. 154, 360 A.2d 257 (1976). See note 26 and accompanying text *supra*.

66. *Id.* at 161-62, 360 A.2d at 261.

67. See, e.g., S.D. CODIFIED LAWS ANN. § 1-19B-52 (1974). A local ordinance drafted pursuant to this provision should apply only to willful neglect to avoid penalizing persons financially unable to maintain their property. See PRESERVATION GUIDELINES, *supra* note 56, at 49.

B. Exemption from Building Standards

Building codes are the means by which state and local governments regulate the construction of new buildings and the rehabilitation of old ones, thus ensuring the public safety.⁶⁸ Building codes and regulations, however, present a special problem when applied to historic structures. Characteristically, the codes require the use of certain materials that are incompatible with the historic character of the building and set forth construction techniques that do not conform to those originally employed in the construction of the historic property.⁶⁹

To alleviate these problems, five states have enacted legislation regarding the applicability of building codes to historic structures. Pennsylvania should consider the merits of each for possible implementation of similar programs. Massachusetts⁷⁰ and Connecticut⁷¹ have written provisions into their respective state building codes to accommodate the preservation of the integrity of an historic structure and still meet public safety requirements. In California,⁷² the State Historical Buildings Code Advisory Board is charged with the formulation of alternative building standards for historic buildings. Local officials have broad discretion in applying the regular building standards and regulations, the alternative regulations, or any combination of the two.

South Dakota and Idaho have adopted the following provisions exempting historic properties from health and building codes:

The governing body of any county or municipality, in order to promote the preservation and restoration of historic properties within its jurisdiction, may exempt an historic property from the application of such standards contained in the county or municipal health or building codes, or both, as the governing body, upon the recommendation of the local historic preservation commission, shall determine would otherwise prevent or seriously hinder the preservation or restoration of said historic property.⁷³

C. Tax Incentives

In order to carry out an effective historic preservation program, it is essential that preservation of historic properties be made eco-

68. Policy Analysis Division, Governor's Office of Policy and Planning, *An Analysis of the State Fire and Panic Act 1* (Sept. 1980).

69. A striking example of this incompatibility is the Capitol Building in Harrisburg, Pennsylvania. Dedicated in 1906 by President Theodore Roosevelt, the large central rotunda is out of compliance with several safety regulations. Presently, a solution is being sought which will make the building safe without materially defacing its grandeur.

70. MASS. GEN. LAWS ANN. ch. 143, § 3A (West Supp. 1979); ch. 144, § 1, 1975 Mass. Acts 108.

71. CONN. GEN. STAT. ANN. §§ 19-395, 403(c), (g) (West Supp 1979).

72. CAL. HEALTH AND SAFETY CODE §§ 18950-60 (West Supp. 1979).

73. IDAHO CODE § 67-4618 (Supp. 1978); S.D. CODIFIED LAWS ANN. § 1-10B-54 (1974).

nominally feasible. Congress has passed tax legislation to encourage property owners to preserve historic structures,⁷⁴ and the state and local tax systems should also be utilized to further preservation goals.

At the state level, Pennsylvania might consider allowing owners of historic properties to deduct all or part of the documented and approved restoration expenditures from the state income tax with a provision for a five year or more carry-over of this deduction. Eligibility would be determined by being listed on the Pennsylvania Register and any other qualifications deemed suitable by the State Historic Preservation Officer.⁷⁵

Further, property tax abatements,⁷⁶ exemptions,⁷⁷ or reductions⁷⁸ could be employed as incentives for the preservation of historic properties on the local level. Unlike an income tax exemption, which makes the use of retained income for preservation discretionary, local tax provisions can provide direct economic incentives to owners to restore historic properties.⁷⁹

D. State Revolving Fund

Another means for preserving historic properties is through the establishment of a state revolving preservation fund.⁸⁰ Low interest loans could be made by the state to local municipalities or preserva-

74. A detailed discussion of federal tax law is beyond the scope of this paper. Generally, the Tax Reform Act of 1976, P.L. No. 94-455, and the Revenue Act of 1978, Pub. L. No. 95-600, provide federal tax incentives to encourage the rehabilitation of commercial or business related buildings. To be eligible, the structure must be listed on the National Register or, if located within an Historic District, must be certified by the Secretary of the Interior as contribution to the significance of the district. Additionally, the rehabilitation itself must be certified by the Secretary. Heritage Conservation and Recreation Service, U.S. Department of the Interior, Historic Preservation (HCRS Publication #12). By the end of March 1980, 102 projects, totalling more than 45 million in rehabilitation costs, were being renovated by private property owners in Pennsylvania because of the federal tax incentives. BUREAU FOR HISTORIC PRESERVATION, PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION, VOL. 1, NO. 3, PENNSYLVANIA PRESERVATION 3 (1980).

75. PRESERVATION GUIDELINES, *supra* note 56, at Annex 54.

76. Connecticut permits abatement of local property taxes where hardship is indicated, allowing partial or total abatement when the existence of a building is threatened. *See* CONN. GEN. STAT. ANN. § 12-127a (1969).

77. New Mexico allows property tax exemptions to the extent of maintenance and restoration expenses for historic properties listed on its state register and made available for education purposes. If the property is removed from the state register, any unused credit lapses. N.M. STAT. ANN. § 4-27-13 (1974).

78. In some states, local tax assessors must consider the reduction in property value caused by restrictions placed on the historic property's use when making valuation of the property for tax assessments. *See, e.g.*, ILL. ANN. STAT. ch. 24, § 11-48.2-6 Hurd 1075-76; N.Y. GEN. MUN. LAW § 247(3) (McKinney 1965); VA. CODE § 10-139 (1973).

79. Beckwith, SIGNIFICANT STATE HISTORIC PRESERVATION STATUTES 13, NATIONAL TRUST FOR HISTORIC PRESERVATION, Information Sheet No. Z1 (1979).

80. South Dakota and Alaska have established revolving funds administered on the state level. In South Dakota, the loans are made available for the purchase, restoration, or development of properties on or eligible for listing on the National Register. The structure can be used for either residential or commercial use. Also, a covenant running with the land to pro-

tion organizations so that historic properties either worthy of preservation or threatened with demolition due to economic hardship might be saved. Properties could be restored, facade easements or other restrictions that run with the land could be placed on them, and they could be resold or leased to persons or organizations that would agree to maintain them. Conceivably, transfer of property could be made to a new owner with specific restoration requirements as a condition of the sale. The money from the original sale would return to a revolving fund for use in restoring other historic buildings.⁸¹

In addition to saving the individual property and increasing its value, the resurrection of the structure is likely to provide an impetus for restoration of surrounding buildings. As restoration activity spreads, the increase in property values will strengthen the community tax base.⁸²

VI. Conclusion

Coordinated legislation on the federal, state and local levels is crucial to preservation of Pennsylvania's rich architectural heritage. Preservation efforts in inner-city areas—where historically and culturally significant properties are often located—has the additional benefit of stemming the tide of urban decline. As properties regain their past dignity and worth, the community as a whole is strengthened.

Passage of more protective legislation and allocation of additional resources are needed to maintain the momentum of historical preservation efforts. The revitalization of historically important properties allows present and future generations to appreciate—and use—the architectural legacy that belongs to Pennsylvania.

tect the property's restored features must be placed on the property. S.D. CODIFIED LAWS ANN. §§ 1-19A-13.1 - 13.5 (Supp. 1978).

In Alaska, loans may be made to properties located within a historic district established pursuant to the state enabling statute, deemed important in state or national history or located within a historic district and suitable for modification to conform to the style of the surrounding buildings in the district. ALASKA STAT. § 41.35.040 (1977); §§ 45.98.010-.070 (Supp. 1978).

On the local level, the borough of Carlisle, Pennsylvania has recently used federal grant money to set up a revolving loan program of its own for use within its historic district, which is included on the National Register. The program, still in its infancy, will provide low-interest loans to property owners for half the cost of any historic rehabilitation. The loans are to be repaid over a one to five year period.

81. National Register for Historic Places, U.S. Department of the Interior, Guidelines for Local Surveys: A Basis for Preservation Planning 58 (1977). Such revolving loan programs have definite advantages given present budget-trimming trends, since the program need be funded only once.

82. *Id.* at 58.

He who loves an old house
Never loves in vain.
How can an old house
Used to sun and rain,
To lilac and larkspur,
And an elm above
Ever fail to answer
The heart that gives it love?⁸³

DAVID R. GETZ
KATHLEEN K. SHAULIS

83. Isabel Fiske Conant, *Old House*, Stanza 1 *reprinted in* THE SHORTER BARTLETT'S FAMILIAR QUOTATIONS 83 (C. Mortey ed. 1964).

APPENDIX I. NOMINATION OF AN HISTORICAL RESOURCE FOR THE NATIONAL REGISTER*

I. Preliminary Determination of Eligibility.

The quality of significance in American history, architecture, archaeology, and culture is present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association and:

A. that are associated with events that have made a significant contribution to the broad patterns of our history; or

B. that are associated with the lives of persons significant in our past; or

C. that embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represents a significant and distinguishable entity whose components may lack individual distinction; or

D. that have yielded, or may be likely to yield, information important in prehistory or history.

As a general rule, cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structure that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past fifty years shall not be considered eligible for the National Register. Such properties will qualify if they are integral parts of districts that do meet the criteria or if they qualify otherwise as exceptions.

II. Application—Filling Out the Nomination Form

An application for the nomination of an historic resource to the National Register can be obtained from the State Historic Preservation Officer.

* This Appendix was developed by the authors.

Sources:

BUREAU FOR HISTORIC PRESERVATION, PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION, GUIDELINES FOR DOCUMENTATIONS OF REQUEST FOR DETERMINATION OF ELIGIBILITY (1981).

BUREAU FOR HISTORIC PRESERVATION, PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION, Historic Resource Nomination Form Information Sheet (1981).

Secretary of Interior's Criteria for Evaluation of Historic Resources, 36 C.F.R. 1202.6 (1980) U.S. DEPT. OF THE INTERIOR, HERITAGE CONSERVATION AND RECREATION SERVICE, THE NATIONAL REGISTER OF HISTORIC PLACES (1980).

Although there are other sections on the nomination form, the following items require an expanded explanation:

A. Description

The physical description of the property and its condition should be detailed including such information as:

1. construction date(s)
2. kind of structure
3. shape (plan) and size (number of floors)
4. building materials
5. location and appearance of exterior features, important interior features, related out-buildings, alterations and dates of any alterations.

B. Location

The local address of the property should be provided; location may be indicated by the distance and direction from the nearest intersection.

C. Significance

This section should include a summary of qualities which make the nominated resource significant based on National Register criteria. Local historical societies and history departments of colleges and universities might provide information on historic and archaeological properties useful in filling out the nomination form.

D. Geographical Data

Required in this section are the exact acreage of the property nominated, map location, verbal boundary description, and justification of boundary and site map if more than one building is included in the nomination. A United States Coastal and Geodetic Survey Map 7.5 minute series should be included with the exact location of the property marked on it. If the property is over one acre the actual property lines should be drawn on the map. A photocopied portion of a map is acceptable if the quadrant name and date of the map are listed on the reverse. Although not required by the form, photographs showing important features of the nominated resource in detail and the relationship of the resource to the surrounding features and buildings should be included.

III. Application Submitted to State Agency

Before submission to the National Register, all nominations must be approved by a State review board whose membership includes professionals in the fields of architecture, architectural history, history and archaeology. If the property meets the National Register criteria, the board recommends it for nomination. The

nomination form is then signed by the State Historic Preservation Officer.

IV. Application Approved by State Historic Preservation Officer Submitted to National Register

The nomination form approved by the State Historic Preservation Officer is forwarded to the National Register. The application is reviewed by the National Register's professional staff in accordance with the established set of criteria and is placed on the Register with the Secretary of Interior's approval provided that the criteria are met.

APPENDIX II. CREATION OF AN HISTORICAL DISTRICT**

I. Survey Historic Sites and Structures Within Chosen Areas

A survey refers to a comprehensive gathering of detailed data on the historical and physical character of a community or region through field work and historical research and will be used to define the boundaries of those areas of the local municipality which would be most properly designated as an historic district. This survey could be done by a local historical society or a local planning commission.

In defining the boundaries of the proposed district, the following guidelines applied by the Bureau for Historic Preservation of the Pennsylvania Historical and Museum Commission (PHMC) should be considered:

A. The area should possess a high degree of integrity and architectural quality with a minimum of non-architecturally significant intrusions.

B. The area should possess a sense of cohesiveness through characteristics of architectural style such as height, proportion, scale, rhythm and detail.

C. The area should possess a special character, special historical or aesthetic atmosphere which distinguishes it from the surrounding area.

D. The area should be readily definable by either man-made or natural boundaries with a major focal point or points within it.

E. The area should be significant in the historical or cultural life of the locality, the state or the nation.

F. The district need not represent a particular architectural style and may, in fact, contain a wide variety of styles, providing they are in a harmonious relationship.

At the time the survey is taken, all property owners in the proposed district should be informed of the purpose of the survey, the economic as well as the aesthetic reasons for the establishment of the district, the restrictions that will be placed on the exteriors of the individual properties and the procedures that will be utilized to make the district operate properly once it is established.

** This Appendix was developed by the authors.

Sources:

MUNICIPAL INFORMATION CENTER, PA DEPT. OF COMMUNITY AFFAIRS, HISTORIC DISTRICTS IN PENNSYLVANIA (2d ed. 1981).

Historic District Act of 1961, PA. STAT. ANN. tit. 53, §§ 8001-8004 (Purdon 1972).

II. Adoption of the Ordinance by Local Municipality

The Historic District Act basically sets forth a framework to be used in the writing of the local ordinance. The ordinance must contain the following provisions:

A. The area to be controlled must be defined through the use of a map and a verbal boundary description. PA. STAT. ANN. tit. 53, § 8002 (Purdon 1972).

B. A Historical and Architectural Review Board (HARB) must be established. The HARB must have at least five members: one member must be a registered architect, one must be a licensed real estate broker, one must be a building inspector and the remaining members must be persons with knowledge of and interest in the preservation of historic districts. PA. STAT. ANN. tit. 53, § 8003 (Purdon 1972).

C. A procedure by which the governing body issues or denies a certificate of appropriateness for building permits that are requested must be set forth.

D. The local governing body of the municipality, using the HARB's recommendations, makes the final decision on the issuance of a building permit. PA. STAT. ANN. tit. 53, § 8004(a) (Purdon 1972).

E. The reasons for the denial of an applicant's request for a certificate of appropriateness must be given and those changes in the plans and specifications that would meet the conditions for protecting the historic character of the district must be indicated. PA. STAT. ANN. tit. 53, § 8004(c) (Purdon 1972).

F. In the event that an application for a certificate of appropriateness is denied, a copy of this denial must be sent to the applicant, to the agency issuing the building permits, and to the Pennsylvania Historical and Museum Commission (PHMC). PA. STAT. ANN. tit. 53, § 8004(b) (Purdon 1972).

III. Certification of the Ordinance by the PHMC

In order for an historic district ordinance to become effective, it must be certified by the PHMC. PA. STAT. ANN. tit. 53, § 8002 (Purdon 1972). Accordingly, the historic survey and the certified copy of the ordinance passed by the governing body of the local municipality should be sent to the PHMC. Also, the boundaries of the historic district should be shown on either a United States Coast and Geodetic Survey 7.5 minute map or a city street map and a written legal description of the boundaries should be included.

The survey data and ordinance are reviewed by the PHMC staff, focusing on the historical significance of the district and that

data supporting its significance. The boundaries of the proposed districts are also reviewed in relation to the historical character of the district.

The ordinance, survey, and staff recommendations are submitted to the Executive Director of the PHMC for placement on the agenda of the Commission's monthly meeting. The Commission must then certify, by resolution, the historical significance of the proposed district and the result is communicated to the executive authority of the local governing body.

