

Operating an Effective Commission



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Panelists:

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Significant Federal Cultural Resources Laws

- National Historic Preservation Act of 1966
 - Sections 101, **106**, 110, 111
- Department of Transportation Act [Section 4(f)]
- National Environmental Policy Act (NEPA)
- Archaeological and Historic Preservation Act
- Archaeological Resources Protection Act
- American Indian Religious Freedom Act
- Native American Graves Protection and Repatriation Act.

State of Maine Historic Preservation Regulations

- Maine DEP Site Location of Development Law
- Maine DEP Natural Resources Protection Act (MHPC review is only triggered by concurrent federal US Army Corps of Engineers' permit)
- Maine Land Use Regulation Commission
- Archaeological Site Protection – Maine's Antiquities Law (Title 27 MRSA Chapter 13 Section 371-378)
- State regulations regarding burials and cemeteries
- Other Maine DEP regulations – e.g. hydropower licensing etc.

Local Historic Preservation Laws

- The only comprehensive protection for historic properties is legislation at the local level.
- Maine's Home Rule
- Local zoning or land use ordinances (sometimes incorporate a request for project review from MHPC)
- Local historic preservation ordinances
- Local demolition delay ordinances

CLG Eligibility Criteria: Five broad standards

**Pursuant to the National Historic Preservation Act [16 U.S.C. 470a(c)],
CLG communities must:**

- 1) enforce legislation for the designation & protection of historic properties**
- 2) establish an adequate & qualified historic preservation review commission**
- 3) maintain a system for survey & inventory of historic properties**
- 4) provide for adequate public participation in the local historic preservation program, including the process for evaluating properties for nomination to the National Register of Historic Places, which must include public participation.**
- 5) satisfactorily perform responsibilities delegated under the National Historic Preservation Act**

Commission Basics

- Be familiar with your ordinance.
- Know your authority and your limits.
- Establish written procedures and bylaws.
- Develop a Commission Work Plan.
- Participate in available training.
- Assist and train new Commission members.
- Develop a Commission budget.



Create Annual Work Plan

- Educate the public about the HPC and the benefits of historic preservation to the community.
- Educate the public about preservation topics and issues such as the evaluation of properties for historic significance, and incentive programs for rehabilitation.
- Initiate surveys of the community to identify significant historic properties and potential districts.
- Determine the criteria and procedures to be used for designation of local landmarks and districts, and set priorities for designation.
- Create design guidelines.
- Develop an awards program to recognize and honor local historic preservation efforts.

Operating an Effective Commission

- Staff and Lack of Staff Issues
- Conducting Successful Meetings
- Designating Historic Districts
- Defending Your Decisions
- Enforcing Your Decisions



Staff Issues

- What does your budget allow? At a minimum the commission will probably need clerical assistance.
- Shared staff with other departments is a viable option.
- Have one staff person with design and/or historic preservation training if possible.
- Hire additional temporary staff for long-term, labor-intensive projects.
- Utilize volunteers or consultants for preservation projects.

How to Conduct a Successful Meeting Prior to the Meeting:

- Be prepared –know your ordinance, applicable laws, and familiarize yourself with the properties under review
- Set an agenda and distribute it and any relative background materials in advance.
- Prepare the setting –arrange setting, procure necessary equipment, etc.

How to Conduct a Successful Meeting During the Meeting:

- Set the tone –begin on time and conduct the meeting in a businesslike manner.
- Ensure all participants have an opportunity to be heard.
- Thoroughly discuss items and ask questions to clarify issues.
- Try to reach a consensus prior to taking a vote.
- Clearly state decision and rationale used.
- At close of the meeting, summarize actions taken and thank participants.



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



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

INTRODUCTION TO PARLIAMENTARY PROCEDURE

What is Parliamentary Procedure?

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

Why is Parliamentary Procedure Important?

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

What Guide Should Be Used for Parliamentary Procedure?

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

What are Motions?

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

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

There are Four Basic Types of Motions:

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

How are Motions Presented?

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

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

Voting on a Motion

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

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

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

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

Making Parliamentary Procedure Work

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

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

Most importantly, *BE COURTEOUS.*

PARLIAMENTARY PROCEDURE AT A GLANCE

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

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

Notes:

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

HOW TO FRAME A MOTION

First things first, a few definitions:

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

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

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

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

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

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

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



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

Example Motion

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

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

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

Finding of Fact

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

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

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

Sample Motion Worksheet

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

Finding of Fact:

I find that _____

Motion to Grant/Deny COA:

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

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

of our design guidelines.

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

How to Conduct a Successful Meeting After the Meeting:

- Produce detailed minutes and make them available to the public in a timely fashion.
- Follow up on any necessary action.
- Keep the public informed.
- Critique the Commission's performance

Designating Historic Properties

- Have set procedures for nominating properties and established criteria for judging nominations.
- Launch an educational and advocacy campaign early to gain support.
- Justify districts based on ordinance criteria.
- The nomination process must be open to the public.

Defending Your Decisions

- Adhere to set policies and procedures, including regulations regarding public notice.
- Be impartial –base decisions on evidence presented.
- Be consistent in your decision making and base decisions on established guidelines.
- Explain decisions and the rationale behind them. Note the standards that apply.
- Keep good records.

How to Enforce Your Decisions

- Clearly state the consequences of noncompliance or violations within the local preservation ordinance and design guidelines.
-
- Maintain a good working relationship with your Code Enforcement Officer.
- Issue a stop work order.
- Apply penalties and fines.

The following are excerpts from:

**Procedural Due Process
in Plain English**

*A Guide for Preservation
Commissions*

by Bradford J. White and
Paul W. Edmondson

Published by the National Trust for Historic Preservation
with funding assistance from the National Park Service

Definition:

The term “**Procedural Due Process**” is short-hand for a set of legal and practical principles, derived from the Constitution, court decisions, and state and local statutory provisions, intended to ensure that government agencies at all levels act fairly in making decisions affecting the interests of individual citizens.

Source: Procedural Due Process in Plain English

In the preservation context...

Procedural due process includes:

- the need for **notice** of a commission action
- the need for and type of **hearing** required, and
- the procedures necessary for **fair and informed decision making**.

Source: Procedural Due Process in Plain English

Procedural Due Process: An Overview

- Understand **baseline** procedural requirements
- Establish your own **rules of procedure** that meet the statutory baseline and go beyond as necessary to provide additional detail to satisfy constitutional and fairness requirements (work with your municipal attorney)

Source: Procedural Due Process in Plain English

Procedural Due Process: An Overview



- Property owners, neighbors, and interested members of the general **public must be provided a reasonable opportunity to be heard** on any matter considered by a preservation commission that affects their interests.
- Reasonable **notice** must be provided (in some variety): **mailed, published and/or posted**

Source: Procedural Due Process in Plain English

Procedural Due Process: An Overview



- **Public hearing/meeting** should be held prior to a commission action.
- Exception: **Interim controls** (temporary restrictions pending final action)

Source: Procedural Due Process in Plain English

Procedural Due Process: An Overview

- Public hearings must be carried out in a **business-like manner**, but need not have the formality of a trial-like hearing. Should be open to the public.
- ⌚ **Reasonable time limits** may be used (*apply evenhandedly to all parties.*)

Source: Procedural Due Process in Plain English

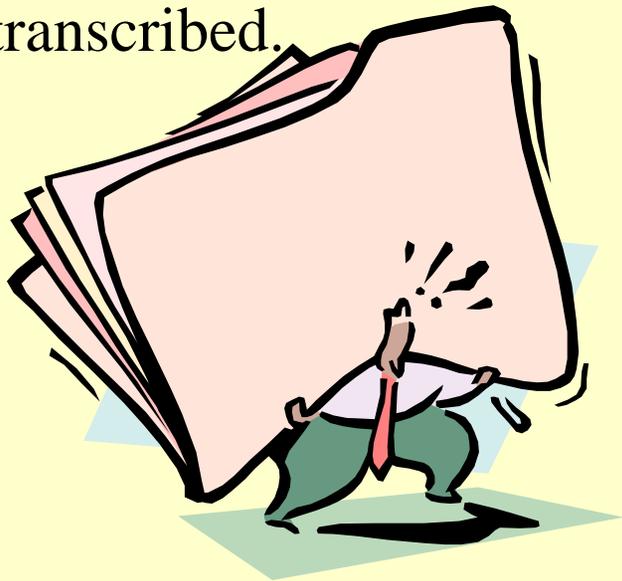
Procedural Due Process: An Overview

- Commission's decision should adequately explain the **basis of the decision**, with specific reference to information in **the record** and the relevant **standards and criteria** included in the preservation ordinance.

Source: Procedural Due Process in Plain English

Procedural Due Process: An Overview

- Record actions through **written minutes**; advisable also to maintain an **audio or video recording** which can be transcribed.



Source: Procedural Due Process in Plain English

Procedural Due Process: An Overview

- The tenets of procedural due process require decision making by a **fair and unbiased tribunal**.
- Commission members **should avoid even the perception of bias or prejudice** in their conduct, particularly by avoiding extraneous commentary during - or outside of - commission meetings.



Source: Procedural Due Process in Plain English

Procedural Due Process: An Overview

- *Avoid **conflicts of interest***, or even the appearance of a conflict, due to a personal, financial, or professional interest in the subject matter of a proceeding.
- **Ex parte contacts** (private communications between an interested party and a commission on an issue before the commission) *should be prohibited*.
- *Source: Procedural Due Process in Plain English*



Procedural Due Process: An Overview

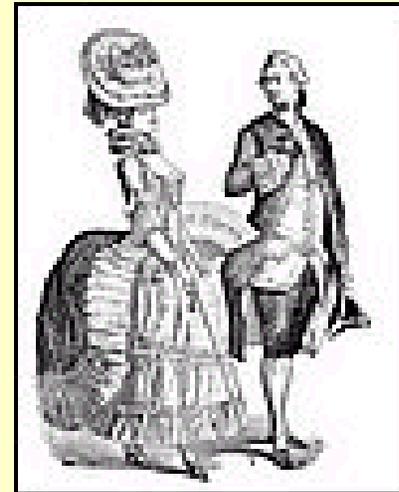
- **Public hearing/meeting** should be held prior to a commission action. **Interim controls** is one exception (i.e., temporary restrictions pending final action)
- Public hearings must be carried out in a **business-like manner**, but need not have the formality of a trial-like hearing.

Source: Procedural Due Process in Plain English

10 Practical Tips

1. Create and follow your own Rules of Procedure
2. Treat every person fairly and impartially
3. Always maintain control and decorum

Source: Procedural Due Process in Plain English



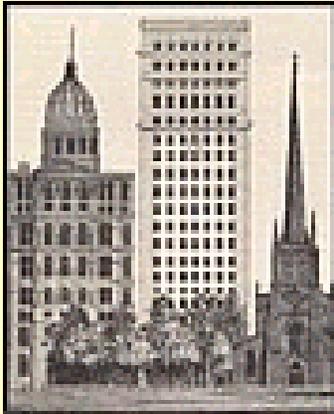
10 Practical Tips

4. Do not delay or compromise decision making unnecessarily
5. Remember Mrs. McGillicuddy (the unknown public)
6. Avoid surprises



Source: Procedural Due Process in Plain English

10 Practical Tips



7. Record, record, record
8. Listen to your legal counsel
9. Explain your decisions
10. Follow your criteria

Source: Procedural Due Process in Plain English

Cultural Resources PARTNERSHIP NOTES

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

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

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



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

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

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

Putting Due Process Principles to Work

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

Adequate Notice

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

Opportunity to Be Heard

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

Impartiality

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

Informed Decision Making

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

Prompt Decision Making

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

Preparing for Challenges

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

TIPS FROM THE EXPERTS # 1
Effectively Addressing DEMOLITION BY NEGLECT
in Local Ordinances and Procedures

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

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

TIPS FROM THE EXPERTS # 2
Effectively Addressing ECONOMIC HARDSHIP
in Local Ordinances and Procedures

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

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

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

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

Seeking Legal Advice

Seeking Legal Advice

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

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

Panelists:
Describe your experience
on your local
historic preservation
commission...

