

APAPA 2010 Conference

Pennsylvania's State Enabling Laws
and Historic Preservation

American Planning Association PA Chapter

Michel R. Lefevre, AICP

www.phmc.state.pa.us



This session will discuss the following statutes and their relevance to historic preservation

- The PA Constitution
- The PA History Code
- The PA Historic District Act
- The PA Municipalities Planning Code
- The PA Uniform Construction Code

Pennsylvania Constitution:

Adoption of the “Environmental Rights” Amendment to the Pennsylvania Constitution by the voters guaranteeing the right of all citizens to clean air and pure water and to the preservation of the natural, scenic, **historic**, and aesthetic values of the environment.... (May 18, 1971).

United Artists’ continued

Referencing the 1973 Commonwealth v. National Gettysburg Battle Tower, Inc., the “a majority of this Court agreed that the Environmental Rights Amendment authorized the Commonwealth to act in matters of purely historic concerns.”

Pennsylvania Constitution: not to be sneezed at

Adoption of the
"Environmental Rights"
Amendment to the
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and aesthetic values of the
environment.... (May 18,
1971).



Referenced

- Supreme Court of Pennsylvania Eastern District: United Artists' Theater v. City of Philadelphia, Philadelphia Historical Commission (October 23, 1991) Reargued

The History Code Title 37Adoption May 26, 1988, P.L. 414,
No. 72
Historic Preservation Act, Chapter 5

❖ Defines the powers and duties of the Pennsylvania Historical and Museum Commission (PHMC)

- ❖ Provide information and advice on historic resources and appropriate preservation procedures to public officials, private individuals and organizations
- ❖ Advise public officials regarding the planning and implementation of undertakings affecting historic resources
- ❖ Coordinate & comment upon activities of public affecting historic resources and preservation activities

Interagency Cooperation

- Consult the PHMC before demolishing, altering or transferring any property under their ownership or control that is or may be of historical, architectural or archaeological significance



Interagency Cooperation

- Seek the advice of the commission on possible alternatives to the demolition, alteration or transfer of property under the ownership or control of the agency that is on or may be eligible for the Pennsylvania Register of Historic Places*

Pennsylvania Register of Historic Places

The policy and practice of the Commission is and has been that properties listed in or eligible for the National Register of Historic Places shall constitute the Pennsylvania Register of Historic Places.

The Commission's policy of maintaining a Pennsylvania Register of Historic Places parallels those listed in or eligible for the National Register of Historic Places. This policy was officially approved at its quarterly meeting on March 15, 2006 and recorded in the minutes of that meeting to confirm the existing practice.

Interagency Cooperation

- Initiate measures and procedures to provide for the maintenance by means of preservation, rehabilitation, or restoration of historic resources under their ownership or control that are listed on or are eligible for the Pennsylvania Register of Historic Places.

Typical reference in ER Correspondence

The BHP has reviewed the above named project under the authority of the Environmental Rights Amendment, Article 1, Section 27 of the PA Constitution and the Pennsylvania History Code, 37 Pa. Cons. Stat. Section 500 et seq. (1988)



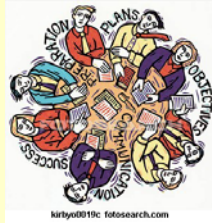
Oh, by the way....

- Nothing in this title shall be construed as conferring on the commission the authority to delay, deny, condition or limit or cause to be delayed, denied, conditioned or limited any permits which would otherwise be issued by a Commonwealth agency....



Many agencies do cooperate

- Conservation Natural Resources
- General Services
- Environmental Protection
- Pennsylvania Infrastructure Authority
- Fish and Boat
- PennDOT
- Education



PA Dept of Education

- School construction projects involving historic building have successfully received reimbursement from the Commonwealth through a process known as PlanCon. PlanCon, an acronym for Planning and Construction Workbook, is a set of forms and procedures used to apply for Commonwealth reimbursement.

PA Dept of Education

- School districts should take all reasonable efforts to preserve and protect school buildings that are on or eligible for local or national historic registers. If for safety, educational, economic, or other reasons, it is not feasible to renovate an existing school building, school districts are encouraged to develop an adaptive reuse plan for the building that incorporates a historic easement or covenant to avoid the building's abandonment or demolition."

Department of Education

- What triggers PHMC/BHP Project Review?
- A typical letter from the department:

“The Uniontown Area School District...is planning additions and alterations on the [high school]. Based on information provided by the school district in the PlanCon Part A submission, the project building on this site is more than fifty years old and therefore, may be of historical significance.”

Determination of Eligibility (DOE): Ask Regis

- Check the PHMC’s Cultural Resource Geographical Information System (CRGIS); the resource has been determined eligible to the National Register of Historic Places



Project Description

- Uniontown Area School District, Fayette County
 - Uniontown Area High School
 - Original 1911 building and the 1955 addition is eligible to the National Register of Historic Places
 - Project description: demolish original 1911 building renovate 1955 and 1980 additions, and construct a new addition.

[illegible]



- Review of project by BHP: it does not meet the SIS Standards for the Treatment of Historic Properties
- Demolition of original portion of school is an adverse effect, likewise for later additions





The PA Sewage Facilities Act, Act 537

- Act 537 Sewage Facilities' planning is the duty of local municipalities.
- Planning exemptions provided in Act 537
- Sewage facilities planning module
- Complete planning modules are submitted to DEP or delegated agencies
- Minor subdivision: subdivision of 10 lots or less

- Under P.C.S.: Title 37, Section 507 relating to cooperation by public officials with the Pennsylvania Historical and Museum Commission. (Reference-Title 25, §71.21.a.5.i.K).
- Provide the department with a completed copy of a Cultural Resource Notice request of the Bureau of Historic Preservation (BHP) to provide a listing of known historical sites and potential impacts on known archaeological and historical sites. Also provide a copy of the response letter from the BHP.
- Appendix B, Section II.K of the Planning Guide.

<p style="text-align: center;">Preservice History of A Missouri Commission Bureau for Service Institutions</p> <p style="text-align: center;">Request to Submit Commission in Compliance with the State History Code and Section 108 of the National Historical Preservation Act</p>	<p>APP Form 200</p> <p>12.8.8</p>
<p>Applicant Information (print name): this will be used in the review process)</p> <p>Name of Person _____</p> <p>Street Address _____</p> <p>City _____ Phone Number _____</p> <p>State (ZIP) _____</p>	
<p>Contact Person to Receive Response of applicability (print name): this will be used for the review process)</p> <p>Name of Person _____</p> <p>Street Address _____</p> <p>City _____ Phone Number _____</p> <p>State (ZIP) _____</p>	
<p>Project Information</p> <p>Project Title _____</p> <p>Project Location and address _____</p> <p>Municipality _____ County Name _____</p> <p>If this project was not reviewed before, include previous ID # _____</p>	
<p>Project Type (check all that apply)</p> <p>Conventional Facility (segment in the Commission Code) _____</p> <p>1.3.1 Yes _____ 1.3.1a No _____ Specific Agency and/or Program Name Below _____</p> <p>State Agency _____ Local _____</p> <p>Federal Agency _____ Other _____</p> <p>Former or Apparent Recipient</p> <p>1.3.1 Yes _____ 1.3.1a No _____ Specific Agency and/or Program Name Below _____</p> <p>Designated Person:</p> <p>Name Agency _____ Program _____</p> <p>State Agency _____ Program _____</p>	
<p>Agency Office to Receive Response (check all that apply)</p> <p>Senior Corps of Engineers _____ Archaeology _____ Planning _____</p> <p>NEP Office _____ Cultural _____ Historic Preservation _____</p> <p>State Planning Office _____ Cultural Office _____ OLE & Gas Office _____</p> <p>Other (specify address) _____</p>	

“Know archaeological resources are located in your project area and others are likely to exist...A phase 1 archaeological survey of the project to verify the extent of known sites and to locate any other potentially significant archaeological resources...is recommended but *not required*.”



Cory Farm

Overlook Estate

The developer did not undertake a Phase 1 archaeological survey (no surprise) however he did supply a Pa Historic Resource Survey Form (minimal information); based on his submission the bureau determined the property was not eligible to the National Register of Historic Places

Towanda SR 187 Asylum Twp Bradford County



Project

- Construction of a 22,000 square feet warehouse building, bituminous access drive and parking area; on lot sewage system & water well. Project will disturb 10 acres

Towanda Project: Letter to engineering firm from PHMC

“Based on an evaluation by our staff, there is a high probability that significant archaeological sites are located in this project area. These resources could be adversely affected by project activities. Although there are no recorded archaeological sites within the project boundaries, the soil type, topographic setting, slope direction, and distance to waterare similar to the settings of known archaeological sites in the vicinity. A Phase 1 arch survey....is recommended but not required.”

Some Observations

- While there is a lot of paper shuffling associated with the History Code several critical state agencies are sympathetic to historic preservation values and comply with the SIS for the Treatment of Historic Properties.
- Because archaeological sites are out of sight they are easier to ignore
- Nov. 28, 1995, P.L.647, No.70, essentially made protection of archaeological sites of privately funded development projects voluntary

More observations

- Even with non compliant agencies a historic record contributes to an understanding and appreciation of Pennsylvania's cultural heritage
- A toothless tiger is better than no tiger at all
- Lastly, the stick and the carrot of preservation is in the hands of local governments

The Historic District Act

Act of June 13, 1961, P.L. 282, No. 167 as amended, 53 P.S. § 8001, et. seq.

The PA Historic District Act,

- Authorizing counties, cities, boroughs, incorporated towns and townships to create historic districts within their geographic boundaries providing for the appointment of Boards of Historical Architectural Review; empowering governing bodies of political subdivisions to protect the distinctive historical character of these districts and to regulate the erection, reconstruction, alteration, restoration, demolition or razing of buildings within the historic districts.

Home Rule: First and Second Class Cities

- City of Philadelphia 9 historic districts
- City of Pittsburgh 12 historic districts
- Regulated by home rule historic preservation regulations not by the Historic District Act

A Pennsylvania Borough



Historic Districts Authorized by the Historic District Act

- Ninety-two municipalities
- One Hundred and twenty-four districts
- Approximately 640 members of Boards of Historical Architectural Review
- Protecting thousands of historic buildings within areas designated as historic districts

Historic District Act

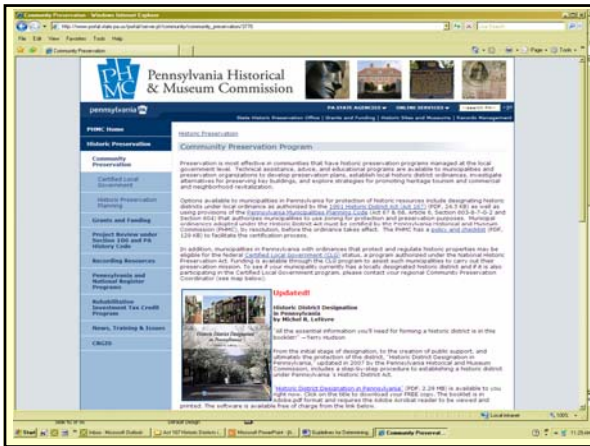
No historic district ordinance shall take effect until the Pennsylvania Historical and Museum Commission has been notified, in writing, of the ordinance and has certified, by resolution, to the historical significance of the district or districts within the limits defined in the ordinance, which resolution shall be transmitted to the executive authority of the political subdivision.

Carlisle Borough



Historic District Act Certification Application

- Download a certification application from the Bureau for Historic Preservation Web Page, click on the “Community Preservation” heading/link, and scroll down the page to “Community Forms” under which you will find the “Local Historic District Certification Policy and Checklist” form and instructions (www.phmc.state.pa.us)



Guidelines for Determining Historical Significance of Local Historic Districts and Boundary Justification

- Complete a Pennsylvania Resource Survey Form and present evidence to substantiate that the district has achieved significance within the past fifty years, and continues to reflect the cultural, economic, social, or historical heritage of the community
- Reflects a unique location or physical characteristic; is distinguished from other areas by, for example, the presence of a particular industry such as Bethlehem Steel in South Bethlehem, or Steelton, or an oil refinery in Marcus Hook.

Historic Survey Form

The Seven Aspects of Integrity

Location
Design
Setting
Materials
Workmanship
Feeling
Association



Does the municipality require property owner approval?

- Unlike the National Register of Historic Places designating a property as a historic resource does not require the property owner's consent

United Artists' Decision

“Analysis of our case law and related case law from other jurisdiction, the texts of the constitutional provisions and policy concerns of this Commonwealth compels us to conclude that the designation of a privately owned building as historic without the consent of the owner is not a taking under the Constitution of this Commonwealth.”

To regulate or not to regulate





But don't over regulate



Regulate according to your objectives

- What is to be achieved and why?
 - This should dictate degree of regulation
- Socio/economic factors are critical
- Consider the percentage of owner vs renter
- Is it a grass root initiative?
- Don't promise more than you can deliver
- Does the municipality have the capacity to properly administer historic preservation regulations?

The Board of Historical Architectural Review or "HARB"

The board shall be composed of not less than five members. One member of the board shall be a registered architect, one member shall be a licensed real estate broker, one member shall be a building inspector, and the remaining members shall be persons with knowledge of and interest in the preservation of historic districts.

HARB Review and Design Criteria

- Applying the Secretary of the Interior's "Standards for the Treatment of Historic Properties and Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings"







**Adolphe
Napoleon Didron**
archaeologist, medievalist
1806-1867



"it is better to preserve than to restore, and
better to restore than to reconstruct."

Penn Municipalities Planning Code
Act of 1968, P.L. 805, No. 247 as reenacted and
amended

- Article III – Comprehensive Plan (iv) Identify a plan for historic preservation
- Article VI – Zoning Section 603 (b) (5) **Protection** of preservation of natural and historic resources....
- Article VI – Zoning Section 603 (g) (1) zoning ordinances **shall** provide for protection of natural and historic features and resources.
- Article VI – Zoning Section 604. Zoning Purposes. (1) To promote, **protect**, and facilitate any or all of the following...as well as the preservation of the natural, scenic, historic values in the environment...

Historic Preservation Regulations

- Undertake a historic resource survey
- Develop a criteria for inclusion of historic resources
- Create a historic resource list
- Determine what your goals are
- Public support?

Protection of historic resources

- Zoning regulations ARE NOT VOLUNTARY, don't fall into the political expediency of listing resource based on a property owner's approval
- The tendency to set up a classification system complicates rather than simplifies the regulatory process

A typical historic resource classification system

- Class I eligible to or listed on the National Register of Historic Places
- Class II locally significant for its historical and architectural attributes
- Class III 50 years and older without historical or architectural significance

Do the benefits of classifying historic resources outweigh the disadvantages?

- Could it be that classifying buildings and structures based on historic designation criteria will lead to a system of triage which, over time, will eradicate the historical context in which the remaining buildings exist? How does this fit in with the "tout ensemble" concept of preservation?

How do we prioritize?

In 1941 the City of New Orleans v. Pergament decision formulated the "tout ensemble" doctrine. In this decision the court dismissed the defendant's petition to install an oversized sign adjacent to a modern service station and consequently established the commission's authority over the quarter's non-historic or non-architecturally significant structures on the grounds that such structures contribute to the tout ensemble or overall character of the district.

The Historic Preservation Plan

- MPC
- Article III, § 301 Comprehensive Plan
 - (7) (iv) Identify a historic preservation plan
- PHMC/BHP Historic Preservation Guidelines
 - (A) evaluation of the county's or municipality's developmental history;
 - (B) inventory of existing conditions;
 - (C) assessment of current and future needs;
 - (D) articulation of community goals, objectives, and strategies;
 - (E) implementation program/action plan;
 - (F) identified funding sources, tools, and methods to implement historic resources plan; and
 - (G) establishing the legal basis for historic preservation.

Assessment of Current and Future Needs:

- (1) consider how inappropriate land uses or other activities that affect historical/cultural properties, determine whether local governments or the county adequately manages and protects those resources;

Assessment of Current and Future Needs:

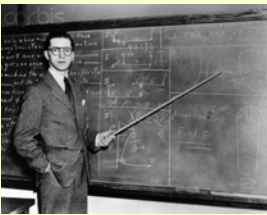
- (2) identify policies or activities in the county or municipal comprehensive plan that result in adverse impacts on historical/cultural resources;
- (3) identify conflicts, inconsistencies, competing priorities, or conversely opportunities and coordination that are evident in the resource management plans of the various local governments in the county.

Assessment of Current and Future Needs

Once the municipality's goals and objectives are clarified through the assessment process a historic preservation strategy consistent with those goals and objectives will indicate which resources should be preserved and regulated and the appropriate method.



PA Uniform Construction Code Act:



Does not preempt historic district ordinances or historic preservation zoning regulations

PA Uniform Construction Code Act

§ 403.21. Uniform Construction Code.

(a) The Department adopts and incorporates by reference the following codes the Uniform Construction Code, the International Existing Building Code

UCC, IBC, IEBC

- As the UCC adopted several International Codes including but not limited to the International Building Code, and the International Existing Building Code each code has very specific definition as to what constitutes a historic building. Many code requirements for the construction of new buildings do not apply to existing and historic buildings, with several critical exceptions.

34 Pa Code §403.24

A building code official may exclude an entire historic building or structure or part of the building or structure from compliance with the Uniform Construction Code if it meets all of the following conditions under section 902 of the act (35 P.S. § 7210.902):

(1) The building or structure is an existing building or structure, or a new building or structure that is not intended for residential use on an historic site.

(2) The building or structure is identified and classified by Federal or local government authority or the Historical and Museum Commission as an historic building or site.
