

**DESIGN REVIEW WITH LIMITED RESOURCES:
HOW LOCAL COMMISSIONS CAN GAIN THE RESOURCES
OF PROFESSIONAL PRESERVATIONISTS WITHOUT HIRING
FULL-TIME STAFF**



Introduction

There are thousands of design review commissions throughout the country. Although they are all working toward the same goal—preservation of historic resources—they vary greatly in how they reach that goal, whether it is through how they conduct design review or through the scope of additional services they provide. The commissions also vary greatly on the type and number of resources they have available to them. Among the varying resources is the amount and type of staff support provided by the local governing body. Some have no staff. Others have some staff assistance but it may not be professional preservation assistance. This document explores the pros and cons of methods that commissions without professional preservation staff use to experience the same type of resources that those with professional preservation staff enjoy. Design review commissions go by many names, such as historic architectural review board or preservation commission; for ease of discussion all will be called a “commission” in this document.

Who Should Read This?

This booklet is intended for preservation commissions without any staff or with limited professional preservation staff, but also for local government staff members in a position to act on behalf of a commission. It may also inform the elected officials who appoint commissions as well as the members of other appointed commissions and committees that may, from time to time, work with the preservation commission. Finally, it may serve as a useful tool for professional preservationists who currently work with or are considering serving as consulting staff to one or more preservation commissions.

This document will explore the pros and cons of using commission members as staff, committee members, and partnering with neighborhood groups, nonprofits and Main Streets, and preservation consultants.

Those commissions with part-time or full-time professional preservation staff have two main resources available to them that other commissions do not: application guidance for applicants and decision-making guidance for the commission. Professional preservation staff can do more than simply assure that all components of an application are present; they can also review the different documents to confirm that they are clear and adequate for review. Professional preservation staff can provide guidance for revisions that lead to an easy “yes” at the meeting, resulting in applicants who have less angst over the process. They can issue Certificates of Appropriateness (COAs) administratively resulting in quick decisions for applicants and shorter commission meetings. Professional preservation staff can also assist commissioners by researching issues such as new material requests or the history of the site, conducting an initial analysis of how the project meets the guidelines, or guiding the commission on

procedural issues during the meeting. A vitally important role of professional staff is that they serve as a liaison between the commission, the applicant, and the public—outside of the public hearing—thereby assisting the commission with avoiding ex-parte communications.

Common Models for Local Preservation Commissions

No Staff Support: The commission is responsible for all aspects of the local design review program, from applicant consultation to acceptance of Certificate of Appropriateness (COA) applications and supporting material, to preparing minutes and issuing notification documents.

Part-Time Administrative Staff: The commission benefits from the part-time support of a planning assistant, clerk, or other administrative position. While the commission liaison may be a full-time municipal employee, the amount of time given over to the preservation commission may be limited to compilation and distribution of COA application materials, attendance at meetings, preparation of minutes, and issuing notification documents.

Part-Time Professional Planning Staff: The commission benefits from the part-time support of a professional planner whose primary responsibilities may include review of subdivision and land development applications, providing staff support to other appointed commissions and committees, and/or zoning ordinance administration. The commission liaison may hold the title of Planner, Senior Planner, even Planning Director. While the planner may have experience in historic preservation, the available staff time is limited to application processing.

Part-Time Municipal Management Staff: The commission benefits from the support of a City Manager who may also serve as a department director. The commission liaison may also have the wide-ranging responsibilities of municipal budget administration, responding to human resources issues, balancing the needs of multiple departments, and coordinating with other local, regional, and state government agencies and nonprofit organizations. Due to the diverse and complex expectations of the staff liaison, his or her responsibilities to the preservation commission are severely limited. Nevertheless, the commission may benefit from the liaison's broad policy perspective.

Part-Time or Full Time Professional Preservation Staff: The commission benefits from the support of a staff liaison with an educational and professional background in historic preservation.

How can the many commissions without professional preservation staff enjoy some or all of these benefits? At the July 2016 National Alliance of Preservation Commissions (NAPC) Forum in Mobile, Alabama, commission members, state historic preservation office staffers, consultants, and others interested in the topic explored different solutions. Since then, the NAPC has researched these options in greater depth, the result being this document. Every commission is different so there is no single answer that will fulfill all needs; therefore, the pros and cons of multiple options are explored so each commission can decide what will work best for them.

The good news is that there are ways for commissions without professional preservation staff to find expertise. The reality is that many commissions will never have the funding or be large enough to justify the funding necessary for professional preservation staff. In addition, many are not able to regain staff lost to budget cuts, recessions, etc. Others may be in a situation where they cannot hire someone now but still require guidance. Some may not have qualified professionals in their community.

Commission Member as Staff

Let's begin with one of the most obvious scenarios, which is using a commission member as a staff member. There is no doubt commission members care deeply about doing the right thing for their communities, and they often have specific expertise that is useful to the business of design review. But finding those experts in small communities can sometimes be a challenge. Catherine Barrier, Certified Local Government Coordinator with the Arkansas Preservation Program, reports that the small number of qualified preservation professionals in Arkansas' metropolitan areas—and fewer, if any, outside metropolitan areas—can leave local programs searching for support. The city of Donaldsonville, Louisiana, found a solution to that predicament by recruiting a commission member who lived about 50 miles away, specifically because of his expertise. The commissioner, Dan Brown, provided technical advice and met with applicants. He had a well-defined job description so that his role, beyond a typical commissioner, was clear. A potential concern with this scenario of having one commission member pulling double-duty means that the decisions the commission made could be legally challenged on the basis that one commission member had ex-parte communications with applicants outside of the public hearing. The public has a right to not only know what the commission's decision is, but also to hear its deliberations. When a commissioner discusses a project outside of a public hearing, there is the

possibility that not all of the commissioners are basing their decisions on the same information and the public is not aware of all the findings of fact. A solution to this issue is simply for the commissioner serving as staff not be a voting member; however, that could cause a quorum issue. If a commission struggles with making quorum each meeting, dedicating one member to serve as staff may be problematic. Your attorney may advise you that the non-voting member still counts toward a quorum even if he/she doesn't vote; however, this could create the perception of the non-voting member trying to influence fellow commissioners through looks and body language. Another solution is to have the member provide an overview at the meeting of his/her work and the discussions that took place outside of the public hearing. Fortunately, Donaldsonville's system was not challenged in court, at least during Brown's tenure. Brown, now historic preservation specialist for the Tennessee Historical Commission, agrees that although his services were needed by the small town, it would probably have been "cleaner" for the work he performed to have been accomplished by a non-commission member, to both avoid ex-parte communication and even just the appearance of biased decision-making. The best alternative is to hire a former commission member or one from another municipality, or recruit them as volunteers to provide their expertise to the commission.

This scenario could also make it more challenging for a municipality to find qualified candidates who are willing to serve on the commission.

Reviewing applications in advance and attending regular meetings is already a big commitment for many volunteers. Having to take their turn as the quasi-staff member may be more time than many are

willing to commit. Another drawback that the NAPC Forum group identified is the possible lack of consistency among commission members who are willing to take on the task. One commission member may be diligent about turning over records of the meeting to the city, for instance, and another may let them pile up



Consultant assists an applicant in Milan, Tennessee.

at home for months at a time. This is not to say the expertise of commissioners should not be taken advantage of; after all, their background and knowledge is part of why they were appointed, but there may be other ways to benefit from their skills such as a committee or commission work session. This scenario can also be a challenge for commissions that may not have many, or even any members with preservation expertise. Some may have been appointed for political reasons, and some cities may simply not have enough citizens with such expertise from which to choose.

Hint: If interested in this scenario, check your state and local ordinance to ensure it is a possibility. If interested in recruiting experts as commission members who may not live in your municipality, make sure that your ordinance does not have a “residency clause.”

Summary

Pros:

- Commissioners are volunteers, no additional charge to the municipality
- Commissioners are sometimes uniquely qualified for the task with professional qualifications or years of experience

Cons:

- Possibility of ex-parte communications
- Can be difficult to find qualified candidates
- Lack of consistency among commissioners serving in this capacity

Committees and Commission Work Sessions

Perhaps the most valuable role of staff is their ability to work with applicants to help them revise their applications to better meet the design guidelines, rendering a commission’s decision-making job easier and helping the applicants obtain an easy approval at the meeting. Some communities without professional preservation staff find that work sessions, meetings where applicants provide ideas and receive general feedback, are useful tools to fill this gap in their program. Even communities with professional staff find the practice to be helpful.

There are different ways a committee may be structured. It might be a regularly scheduled open-house type of scenario where applicants drop in without an appointment, or it can be scheduled upon request of an applicant. Some communities hold their committee meetings before or after their regularly scheduled public hearing. They can be informal

discussions or they can be more structured talks with a document that explains the roles of the different parties, procedures, expectations and expected outcomes.

The committee can be made up of commission members, experts who don't serve on the commission, or a combination of the two. In Little Rock, Arkansas (pop ~ 200K), the Capitol Zoning District Commission (CZDC) has a standing Design Review Committee (DRC) made up of architects and other design professionals appointed by the commission and with one of the commissioners serving as an ex-officio member of the DRC. The DRC members serve two-year terms and are nominated by professional and stakeholder organizations such as the American Institute of Architects, American Society of Landscape Architects, American Planning Association, the State Historic Preservation Office, and the local nonprofit preservation organization.

The DRC actually votes on a project, forwarding a recommendation to the CZDC, but the commission is not bound by that vote. The ex-officio member provides feedback at the committee meeting, but only votes at the CZDC meeting, to avoid voting on any application twice. He/she isn't obligated to specifically disclose prior involvement with the case at each CZDC meeting since that involvement is a regular course of business and all in the public eye. An advantage of this scenario is that the greater commission is able to utilize the advice of experts. A drawback is that in a small community these experts are more likely to be neighbors and friends of the applicants, and review of a project could pit neighbor against neighbor or involve representatives from a neighborhood association whose primary concerns are unrelated to historic preservation. But in a medium-size or larger community, it offers applicants free access to a wider breadth of professional knowledge and design expertise. Applicants often receive useful feedback from the DRC that they can incorporate into their plans before the commission meeting. This scenario works best when the type of applications that utilize this step are well defined. Typically, not all applications need this additional guidance.

Advisory committee members, like actual commissioners, are volunteers, so their time and expertise should always be acknowledged and respected. Providing beverages and snacks at meetings is a nice touch. Recognition at an annual get-together or holiday party is a way to acknowledge the expertise they donate.

Recommendations for committee meetings:

- Start each meeting with a disclaimer that the committee member(s) do not speak for the entire commission and the discussion does not guarantee a positive vote from the commission.
- End the discussion for each project with a summary of the issues that were identified, the position of the committee members, and a list of all recommendations for revisions.
- Make these meetings public, and give notice for the time, date, and location. The public notice can include instruction that the public is welcome to attend and observe, but not to participate, and that no binding decisions will be made by the committee.

The primary drawback to the committee approach is ensuring the committee represents all the different perspectives of the larger commission. Salt Lake City Corporation tried a subcommittee approach for several years. Initially it served to provide technical advice to applicants and staff. Over time it evolved into a resource for larger projects; however, the direction provided in the committee meeting did not always coincide with the discussion had by the full commission at the public hearing, leaving the applicant confused and frustrated and the project delayed. The Historic Landmark Commission (HLC) chose to cease using the committee concept and instead instigated “work sessions” at their regularly scheduled public hearings. In their “Work Session Expectation Template,” they define a work session in the following way:

“A work session is an informal, yet highly organized and structured, meeting with various players who have a stake in a given project with the purpose of “working” through issues, making decisions, and documenting results while moving toward the production of a final product. Further, a work session is a vehicle for addressing major issues or concerns more effectively. Presumably, they make future public hearings more productive, focusing in on whether a proposal meets standards and guidelines.”

The Salt Lake City template also includes characteristics of a work session; defines the role of staff, applicant and commissioners; lays out a typical work session structure; and identifies desired work session outcomes. Creating such a template can assure that a commission stays on track and that all parties understand the expectations and next steps.



Summary

Pros:

- Commission can fill gaps in design expertise
- Applicants receive free design advice
- Chances of receiving approvals the first time around is increased
- Great way to use former commissioners

Cons

- Extra meeting for applicants to attend
- Extra work for volunteer commissioners
- Can create expectation of automatic approval by commission

Nonprofit Partner

Some statewide and local nonprofit organizations offer staff-type services to their communities. In Connecticut and Indiana, for instance, the statewide preservation organizations provide circuit riders to serve as staff for multiple municipalities.

Indiana Landmarks has a team that, in addition to other duties, serves as staff for between one and five municipalities each. Staff is divided by region, which determines which municipalities they serve and how many. Each community signs a contract with Indiana Landmarks and pays a fee for services that ranged between \$2,500 and \$10,000 in 2016. The fees are based on what is affordable for the community rather than hours worked. Funding for Landmark's services is created by the fees themselves and greatly supplemented by the organization's general fundraising efforts. Laura Renwick has served four communities for the last 19 years as contracted staff. She also serves a fifth community as a non-contract advisor. The scope of work for each

contract is the same, but her workload varies between communities. That is due mainly to the number of applications received at any given time, but also based on the community's needs. As an example of her workload, her smallest community had just three applications in 2016 and her most active community had 80 applications.



Renwick says the partnership is a positive endeavor for both Indiana Landmarks and the communities it serves. Her advice to others is for the scope of work to be specific in order to manage expectations. Renwick also recommends that the city take on as many administrative duties as possible, such as creating the agenda or taking the minutes. This leaves the circuit rider more time to tackle those issues requiring her expertise.

In Connecticut, rather than individual contracts, the Connecticut Trust for Historic Preservation serves as a mentor and as-needed advisor, providing on-site, on-demand technical advice, professional assistance, and programmatic training to 169 cities and towns. Two staff members serve as dedicated circuit riders, and other staff fill in as needed. The Trust focuses on education, offering four to six regional training sessions per year and one-on-one training to Certified Local Governments and local historic district/local historic property commissions upon request, typically about 20 per year. In addition, they sponsor technical training for architects and contractors. Other

services are more akin to the circuit rider services provided by Indiana Landmarks and include conducting site visits, providing reviews of applications, drafting ordinances, and preparing grant applications. Services are free to municipalities so funding is primarily supported by a grant from the State Historic Preservation Office.

The NAPC Forum discussion group expressed concern about these types of partnerships due to the fact that the nonprofit takes on the dual role of “enforcer” and “supporter” thereby running the risk of watering down, or even eliminating, the non-profit’s ability to serve as a neutral advocate. One of the great benefits of governmental and nonprofit partnerships is their unique abilities to fill in where the other cannot. For instance, in the case of a local preservation emergency, it would be appropriate for the commission to provide information and research to elected officials and decision-makers but not necessarily to be an advocate. That is where the nonprofit can step in. They are the ones to stand in the way of the bulldozer, so to speak. When the role of the nonprofit becomes uncertain or multi-faceted—part government and part nonprofit—then the nonprofit can lose its effectiveness as an advocate. Gregory Farmer, with the Connecticut Trust for Historic Preservation, has not found this to be the case for its program because the Trust does not have regulatory authority. However, Renwick, with Indiana Landmarks, agrees with the Forum group that it is a “delicate dance.” She worries that the organization is sometimes not as vocal regarding criticisms of city decisions as they might otherwise be because of concern of a contract not being renewed. The fear is not unfounded as one contract was canceled for this reason. The Connecticut Trust for Historic Preservation’s experience is different. Its staff report that they are unafraid to push the boundaries of their relationships with municipalities and with the SHPO. Tensions do arise from time to time, but they have managed to maintain a spirit of mutual respect and partnership.

Summary

Pros:

- Obtain high level of expertise at affordable rate or even at no cost

Cons

- Can water down the nonprofit’s ability to serve as neutral advocate

Neighborhoods

Many communities are lucky enough to have strong nonprofit partners in their neighborhood associations, those groups made up of residents or property owners who advocate for or organize activities within a neighborhood. These organizations can fulfill a variety of roles such as neighborhood education, promotion of preservation practices, and advocacy. Some go a step further and use their neighborhood association



The Redmont Local Historic Advisory Committee provides recommendations for the Red Mountain Suburbs Local Historic District in Birmingham. Photo courtesy of City of Birmingham

or a committee of the association to assist with design review; however, this tool is often used in conjunction with the commission's staff.

Birmingham, Alabama, has professional preservation staff; however, the preservation ordinance allows for members of each neighborhood to participate in the design review process. The neighborhood association in which all or a majority of the local historic district is located appoints members to a Local Historic Advisory Committee (LHAC). The historic preservation ordinance requires that the LHAC be composed of three to seven members and that, whenever practicable, at least one member of each LHAC shall be a representative from the following professional groups: architect, building trades, civil engineer, real estate broker, or developer.

All members of the LHAC are trained on the design guidelines and Secretary of Interior's Standards. Birmingham has professional preservation staff who provide the training so communities without such staff may need to put together a training team using experts from the state historic preservation office, the city's legal counsel, former committee members, and a preservation consultant. Birmingham's training includes the history and purpose of the LHAC, duties and procedural guidelines, the standards of review for cases, and special considerations in reviewing cases and applying design guidelines. Committee members must attend at least four meetings of the City's Design Review Committee as a part of their training. Each month, staff provides the LHAC with the cases and a form on which to record each recommendation. The committee actually votes and forwards its recommendation to the Design Review Committee. The Design Review Committee may overturn or modify the Local Historic Advisory Committee's recommendation with a vote of at least a two-thirds majority of the members present.

A disadvantage of this system may be that the Design Review Committee relinquishes its decision-making role to others. In the case of Birmingham, this may happen if there is not a two-thirds majority of members present to overturn a recommendation by the Local Historic Advisory Committee. It also creates the potential of decisions being politically based rather than based on the design guidelines or based on concerns about traffic and other issues unrelated to historic preservation and design. Karla Calvert, Historic Preservation Manager for the City of Birmingham, on the other hand, finds the process keeps neighborhoods intimately involved in the process. They have the opportunity to regularly voice their concerns regarding proposed changes to historic buildings and have direct buy-in with the process.

Another disadvantage is that a neighborhood association sometimes has one leader who appears to speak for the entire neighborhood but actually does not.

In Muncie, Indiana, a neighborhood development committee provides direction to the commission, rather than formal recommendation, but also doesn't fully take the place of staff. The ordinance states that the commission may "aid, assist and encourage the formation of neighborhood development committees. These committees will advise the commission in matters relating to the preservation and rehabilitation or restoration of the neighborhood." The committee provides initial review of all applications with the duties of ensuring that the application is complete and consistent with the guidelines. They then send their recommendation to the commission.



The Emily Kimbrough Historic District in Muncie, Indiana, uses a neighborhood committee to assist the commission with decisions. Photo by Andrew Bissonnette

The neighborhood committee also advises, educates, and supports neighborhood property owners. The process creates a partnership between the commission and the neighborhood; nonetheless it may not be a complete answer for commissions. Muncie guides this process with professional staff, a Historic Preservation Officer. It may not work as well without that direction and guidance.

Summary

Pros:

- Creates a strong partnership between a commission and the neighborhoods they serve

Cons:

- May mean that commission yields legal authority to make decisions, which may not meet the ordinance
- May result in politically-based decisions rather than those based on the design guidelines

Hint: Check your ordinances and consult with the city attorney to make sure the ordinance allows the commission to delegate its duties to a non-profit. Also, explore less formal ways to ensure that neighborhoods have an opportunity to participate in the process.

Main Street America

Established in 1980 as a program of the National Trust for Historic Preservation, Main Street communities use a historic preservation-based program to revitalize communities. Main Street America is a national network of 2,000 historic downtowns and neighborhood commercial districts. Often Main Street organizations are nonprofits, and sometimes they are part of an economic development organization. They work to improve the economy of the district through a four-point approach that includes design, organization, promotion, and economic restructuring.

In some communities and states, such as Kentucky, the local Main Street program serves as the design review commission in addition to its many other duties related to economic development. Vickie Birenberg, with the Kentucky Heritage Council, says that Kentucky Main Streets have been serving both as preservation cheerleaders and as design reviewers; however, she warns that by taking on both roles, the “ownership” of preservation is placed outside of the municipality, resulting in less support and coordination with other government departments. “It’s too difficult,” Birenberg

claims, “for Main Streets to juggle their role as economic developers with a regulatory role.” The result has been weak execution of procedural due process and ex-parte communications, which have called into question the legitimacy of certain projects. The Kentucky state historic preservation office is working with Main Street organizations that have been playing this role to end the practice.



Donna Logsdon (third from left) serves as Main Street Manager and staff for Campbellsville, Kentucky, as well as staff for Horse Cave, Kentucky. She is pictured here with the Horse Cave Commission of Architectural Review and with Vicki Birenberg (fourth from left), Certified Local Government Program and Planning Coordinator.

Summary

Pros

- Free and sometimes qualified assistance

Cons:

- Administration of preservation is outside of the municipality
- Weakens procedural due process
- May create ex-parte conflicts

Hint: If you choose this route, think carefully about the ramifications of whatever duties are given to a Main Street organization and solidify the relationship with a Memorandum of Agreement.

Regional Development Organizations (RDO)

Every state is divided into administrative regions for the purpose of implementing regional planning and economic development initiatives. Mostly organized as Regional Development Organizations, but also as Councils of Government, Regional Advisory Committees, Regional Planning Commissions, and Development Districts, these organizations are quasi-governmental bodies that include elected and appointed officials representing the counties and municipalities served by the organization. In this booklet, all such organizations will be referred to as RDOs.

The services provided by the 540 RDOs nationwide vary from region to region based on the available resources and priorities of the RDO's constituent communities. In some states, the services of an RDO are limited to local and regional transportation planning, administration of federal grant and loan programs, and workforce development. In other states, RDOs have a planning department or community development department that responds to local planning needs. Some provide "circuit rider" planners for their constituent communities. Annie McDonald, in North Carolina, informed the Forum group that some of its RDOs provide detailed planning services to their member towns. It may be unusual that RDOs have the resources to provide regular staff assistance, but they could be called upon to assist with controversial cases or projects that the commission may not deal with frequently.

The state of Georgia has twelve regional commissions that provide comprehensive assistance to local governments. Eleven commissions employ historic preservation planners who provide preservation planning services in coordination with the Historic Preservation Division of the Department of Natural Resources on either a full or part-time basis. The Historic Preservation Division administers the program with matching funds from the Department of Natural Resources. Georgia based the program on a model that was in place in the planning regions of South Carolina.

Summary

Pros:

- Professional and free assistance

Cons:

- May not be available to provide regular assistance

Hint: If you choose this route, expectations should be clearly defined and written out to assure as much consistency between projects as possible and the policy should be reviewed by the commission's legal counsel.

Private Consultant as a Circuit Rider

A private consultant is a way for a municipality to obtain professional services. That may be consistent services for each regularly scheduled meeting, or on an as-needed basis for difficult or controversial issues. Consultants may live in the community or work remotely. They may work full time for the municipality or they may have multiple clients. They may work in the municipal offices or in their own office. In fact, there are so many options that if choosing this route, a municipality must carefully consider their specific needs and what type of relationship will work best.

Hiring Process

How do you find a consultant that is the best fit for your municipality? You may want to start by sending a Request for Proposals to potential consultants. (Your source of funding will likely require this competitive process.) Most State Historic Preservation Offices (SHPOs) provide a directory of consultants. HistoricPreservation.com is another option. The request for proposals should include an overview of the scope of work, budget, and an estimated date of when a decision will be made. Keep in mind that if you are using SHPO funding for the position, your consultant will need to meet the Secretary of Interior's Professional Qualification Standards so those standards should be a part of your request (nps.gov/history/local-law/arch_stnds_9.htm).

Once you receive proposals, pick the three to five best candidates for in-person interviews and follow up on references.

Some suggestions on interview questions:

- Tell us a little bit about your relevant experience.
- Are you familiar with federal preservation laws as they relate to regulatory oversight and evaluating significance (many local laws incorporate references to federal laws)?
- Do you have experience working with municipal agencies (either internally or as a consultant)? Can you tell us what your role was?
- Do you have experience or knowledge with applying the local law in regard to a designation, COA enforcement, or an appeal? Tell us how you resolved your most challenging issue?
- Are you familiar with the Certified Local Government program? Tell us about how you have worked with the CLG program?
- Has your writing background included local designation reports or commission reports?
- What existing tools and resources do you think could assist our local program?
- Are you familiar with studies that reveal the economic benefits of preservation? How might you use that information to sell preservation locally?

Conclude interviews by letting interviewees know when you plan to make a decision. Washington State's Department of Archaeology and Historic Preservation suggests that you base your decision on your confidence in the firm, comments from references, and the firm's preservation knowledge, technical competence, and professional service.

Contract Writing

Next, or even before you begin the interview process, you will need to write a contract that includes a specific scope of work and expectations for both parties. Being clear about all aspects of the relationship between the municipality and the consultant is key to creating a positive experience for all and to assure that the municipality receives the assistance and guidance needed.

Some considerations for a strong contract:

- **Defined roles:** Clearly delineate the roles of the municipality and the consultant. For instance; the municipality may provide administrative services such as accepting applications and relaying them to the consultant in a specified format, creation of agendas, and typing up minutes. The consultant may provide advice to applicants, as well as research and reports to the commission.
- **Role of consultant at public hearings:** Is the consultant an advisor or simply a provider of information? Are staff reports required for each application? If so, are they an analysis of the project in regard to the design guidelines or should they also include a recommendation of action?
- **Payment and reimbursements:** Is pay hourly or tied to specific actions? Are progress reports required and, if so, when are they due? Is travel reimbursed? If so, what documentation is needed for reimbursement and what is the budget for travel? Specify when bills should arrive and when payment can be expected. Does your city require insurance for errors and omissions?
- **Schedule:** Is the consultant required to attend certain meetings? When and where are they held? Is the consultant required to host "office hours"? When? What is the format and process for communication? How will information be shared back and forth? For instance, are hard copies of reports needed or can they be sent electronically? Should they be sent directly to commissioners or should they be sent to a specific municipal contact?
- **Defined contacts:** Specify the municipal contact who should receive regular updates from the consultant. Who is the source for local information if the consultant needs information that is not available online? Who can make decisions about revisions to the contract or an extension of the budget? Can the consultant contact the municipality's legal counsel at any time, or does that need to be controlled because legal counsel charges by the hour or

project? Who can approve conversations or meetings with legal counsel? What are the grounds for terminating a contract?

- **Recurring timeline:** Specify the application deadline, when the municipality will send applications to the consultant, when reports for each application are due from the consultant, and meeting and work-day dates.
- **Supporting information:** What documents does the municipality have that can be shared with the consultant such as architectural resource surveys, records of past decisions and meetings, local ordinance, design guidelines, local histories, rules of order and procedure or bylaws, and local and regional planning documents and photographs? How will this information be made available to the consultant? This may be in the form of passwords for online resources, virtual access to Portions of the city's server, sending the consultant hard copies, or access to a municipal employee who can conduct local research as requested.
- **Communication:** There should be a defined email policy since all emails are subject to open records requests. Are emails between the consultant and commission members considered a "meeting"?
- **Office/meeting space:** Will the municipality provide local office space for the consultant? If specified work days are a part of the contract, is there meeting space available for consultants to meet with applicants?

Making the Most of Your Consultant

Although it may not be defined in the contract, consultants should always be apprised of the political realities of the community. This applies to "circuit riders," as well as consultants on large projects. Steph McDougal sometimes consults with municipal governments on an ongoing, as-needed basis. She says that understanding what's



Neighborhood residents work with consultant Steph McDougal. Photo courtesy of City of Houston

happening locally is especially critical for consultants who are not in the community regularly or who are working virtually. She also recommends following up with the consultant after decisions are made or projects completed. This can aid the consultant in providing the most realistic advice and direction on future projects.

Mindy Crawford assists communities through Preservation Pennsylvania's circuit rider program and has several pieces of advice to assure that a municipality receives the most for their contract, no matter how the consultant is funded or contracted. She recommends that whenever the consultant travels to a city, the municipality schedule as many site visits and meetings as possible, to make the most out of the visit and the travel funds expended. Stick to the application deadline given to the community, she advises. It is tempting to accept applications late; however, this can cause the consultant to spend more time on an application than he/she might have otherwise, meaning that he/she doesn't have time left on the contract for more critical projects. It can be challenging at first if a municipality is known for accepting applications after the deadline; however, eventually applicants will get used to it, if strictly enforced. She also recommends sending applications to the consultant as soon as they are received rather than waiting for the deadline and sending all at once. This provides the consultant time to obtain additional information from the applicant, if needed, or suggest alterations to the plans.

Image M: Mindy Gulden Crawford, from Preservation Pennsylvania, and Derek Stoy, Zoning Officer and Assistant Manager of the Borough of Mercersburg, worked together to analyze the potential of window replacement for this building.



Mindy Gulden Crawford, from Preservation Pennsylvania, and Derek Stoy, Zoning Officer and Assistant Manager of the Borough of Mercersburg, worked together to analyze the potential of window replacement for this building.

Consultant Sharing

Most municipalities hire a consultant on their own. Others may want to join forces with nearby cities to hire a consultant together. The level of collaboration between municipalities depends on the requirements and needs of each. Sharing a staff consultant requires some coordination in terms of scheduling, determining scope of work, and definitely funding. All the municipalities involved should schedule their meeting dates at different times so there is the option for the consultant to attend each meeting, if necessary.

Virtual Consultant

Some communities may find that there isn't a professional consultant within a reasonable driving distance of them and so may choose to hire a consultant who works virtually. McDougal recommends that even virtual relationships should start with at least one visit to the community. Crawford recommends that for each application, the municipality needs to provide the consultant with superior photographs showing the area of proposed work from all sides, context photographs, and close-ups of the area in question.

Hint: If you are a certified Local Government (CLG), you are required to have a municipal staff person as a contact for the State Historic Preservation Office. You may want to make sure that your consultant is also included as a contact so that they receive relevant information. Talk to your consultant about helping you with the application to become a CLG if your city is not already, so that you can take advantage of the benefits offered.

Summary

Pros

- Less of a financial commitment than an employee, especially a full-time position that includes benefits
- Gain high level of professional expertise that may not be feasible otherwise
- Good “stop-gap” option when there is not the will or funding to hire a full-time person immediately

Cons

- Consultant is not always familiar with local politics and issues
- Consultant may not be readily available to troubleshoot issues

- Does not encourage a commission to acquire their own critical thinking and evaluation skills that will be needed when the consultant is unavailable or when funding runs out
- Communities fail to build their own capacity, such as funding a full-time position or focusing on big-picture tasks such as strategic planning

Education of Existing Staff

Existing staff who may not have any professional preservation expertise may be interested in learning new skills so that they can assist a commission. Municipalities can use Certified Local Government funding or other resources to send staff to state/national conferences, workshops, National Alliance of Preservation Commission's Commissioner Assistance and Mentoring Program, and memberships in regional/national preservation organizations. We can also all learn from each other. Consider partnering with neighboring commissions to attend their meetings or tour projects to learn how they handled different challenges. Another idea is to explore using students from academic preservation programs as interns.

Compliance: Enforcement and Inspections

At the end of the day, design guidelines and decisions of the commission do not mean much if they are not enforced. Commissions that do not have professional assistance on the front end are not likely to have preservation-specific assistance on the back end either. To fully understand the options, the issue of violations need to be broken up into three different components. Whether the violation is work done without a COA or work done differently than specified, there are three main steps to handling violations: proactive prevention, identification, and compliance.

Proactive prevention is just reminding people that the overlay and process exist and that the protected buildings and sites are important and meaningful to the community. This can be done in a number of ways. One is by simply noting the boundaries of the district with historic neighborhood street signs or commercial areas with educational plaques or markers. Some neighborhoods have used small yard signs with the year of construction, and some commercial areas have used window stickers proclaiming the building as a proud contribution to the historic district.

Events are a fun way to remind people of the history and decision process associated with a neighborhood and often have much bigger consequences as they can educate, build community pride, and reinforce appreciation of historic properties. Partnering with a local nonprofit is key as they can be the recipients of any funds raised, assist with organizing the event, and provide volunteers. Old house fairs, events with lectures, hands-on demonstrations, and an exhibitor area illustrate that a local government can be a resource as well as just a regulator. Home tours in residential areas or

behind-the-scenes tours of commercial areas or landmark buildings show the importance of historic buildings and often raise a little money. Annual award programs honor those who have done a great job with rehabilitation or infill and encourage others to follow preservation practices. In terms of events, there are endless options so a community should consider carefully what makes the most sense for them. What do they have the capacity to accomplish, and what will be of interest to those who live with and work with old buildings, such as property owners, business owners, real estate agents, developers, architects, designers, contractors?

Despite best prevention efforts, violations are bound to happen and the first step is identifying them, hopefully as early in the project as possible. Early detection means that they are often easier to rectify than when they are complete. Identification of violations, whether work done without a COA or work done differently than the COA, requires eyes—someone to notice that something does not look quite right. Building inspectors, trained in assuring that a building is safe and properly constructed, are unaware of details in historic districts. In these cases, consider asking a commission's partners to assist. Consider an informal agreement with a civic organization like a Main Street, a business group, or a neighborhood association. Even when there is an inspector, this type of relationship can be invaluable as no one can be everywhere at once. It's important to create these relationships from a positive viewpoint as you don't want neighbors to feel as though their friends or business competition are spying on them. These organizations should not give the impression of having any authority but rather as someone that wants to help a property owner avoid a costly violation. Remind your partners that compliance isn't just about following rules, but is about assuring that everyone is treated equally and that the character of the district, a valuable asset to the entire community, is maintained. Arrange to have a specific person (maybe a staff member in the planning or codes departments) identified to accept calls regarding violations anonymously and pass them on to the appropriate person for inspection and follow-up.

The real work begins after the violation is identified. Who is going to work with the property owner to negotiate a solution to the work already done or advise the property owner on applying for a COA? It is important for every commission to remember that enforcement is not about punishment and blind enforcement of rules. It is about maintaining the character of historic resources; therefore, any good enforcement program will make it a goal to provide helpful customer service to property owners by working toward solutions rather than punishments. The vast majority of violations are innocent mistakes by property owners who did not know better or did not communicate the commission's approval to their contractor. To maintain a positive working



Inspector Fred Zahn, in Nashville, Tennessee, checks the reframing of a window during a major rehab.

relationship with those who care for and maintain the city's important historic properties, enforcement should be viewed as another tool the municipality provides.

It may be that the commission can provide additional training for the general building inspector. Certainly the building inspector can stop work underway and require a property owner to obtain a COA without any additional training, but some violations need more work. The commission needs someone who can recognize a solution that may not exactly meet the COA issued but still meets the design guidelines and requires the least amount of effort and additional expense from the property owner. A partnership between the chair and inspector might be a good solution for the negotiation phase of a violation. An inspector has construction expertise and the commission chair knows the design guidelines, so together the two can work toward solutions that keep costs as low as possible for the property owner, do not hold the project up for an inordinate amount of time, and still meet the design guidelines. A commission may also turn to outside volunteer expertise, in the same manner as they might for the application review process. A committee of local volunteers could provide recommendations to the commission for the more complicated violations.

For any commission, the best choice to administer a historic preservation program is likely to be professional preservation staff; however, there are not always resources available, and some communities will just never be big enough to justify the expense. The creative solutions crafted by other communities must each be weighed based on their pros and cons, against the realities of your community and resources. The programs discussed here may spark ideas of your own, or you may find a combination of these options works best for your municipality. Whatever you choose, be sure to check that the planned solution is in adherence with your local ordinances and state code.

Glossary

By-laws: Rules made by the commission to control their actions and define meeting procedures.

Certificate of Appropriateness (COA): After a commission has made a decision, the decision is typically memorialized in a document that many municipalities call a “Certificate of Appropriateness.” Other names such as “permit,” or “preservation permit” are also used.

Certified Local Government (CLG): A partnership between local, state, and federal governments to help communities save irreplaceable historic character of places. Benefits include funding, technical services, and sustainability.

Ex-officio: Member of a commission by virtue of holding another office or appointment. Sometimes the ex-officio member doesn’t vote but serves to provide information and a collaboration between commissions.

Ex-parte: Communications that may benefit one side and may violate open hearing laws, such as applicants outside of the public hearing

Procedural Due Process: A legal doctrine that requires government officials to follow fair procedures.

Quorum: the minimum number of members of the commission that must be present at any of its meetings in order to make decisions. Quorum may be specified in the ordinance or in the by-laws.

Recuse: A commissioner may, due to a conflict of interest or a perceived conflict of interest, decide not to vote, or “recuse” herself/himself from a vote regarding a specific application. Typically, this information should be provided at the beginning of the case and the commissioner should not take part in the discussion and leave the hearing room.

Residency Clause: Some ordinances require the commission members live within the city limits or in a specific geographical area.

Rules of Order and Procedure: See By-Laws

State Historic Preservation Office (SHPO): The agency authorized to carry out the responsibilities of the National Historic Preservation Act of 1966.

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In addition to educational resources like this booklet, NAPC offers training specific for design review commissions. The Commission Assistance and Mentoring Program (CAMP®) is the signature training offered by the NAPC.



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