MODERNIZING STATE ENABLING LEGISLATION
FOR LOCALLY DESIGNATED HISTORIC RESOURCES

A THESIS
SUBMITTED TO THE GRADUATE SCHOOL
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE
MASTER OF SCIENCE
BY
ANDREA SOWLE KERN
DR. MARY ANN HEIDEMANN - ADVISOR

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Committee Approval:

Dr. Mary Ann Heidemann, Committee Chairperson  Date

Susan M. Lankford, Committee Member  Date

Cory Kegerise, Committee Member  Date

Departmental Approval:

Andrea Swartz, Departmental Chairperson  Date

Dean of Graduate School  Date

BALL STATE UNIVERSITY
MUNCIE, INDIANA
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Chapter 1: Introduction

We shape our buildings, and afterwards our buildings shape us.
—Winston Churchill¹

1.1 Introduction

In 1931, concerned citizens in Charleston, South Carolina pioneered a revolutionary new way for communities across the country to legally protect their cherished historic places. Their adoption of a local historic district ordinance was entirely unprecedented, but quickly spread to numerous other historic communities, at first, the French Quarter in New Orleans and Boston’s Beacon Hill, and then to communities across the country. From their inception, locally regulated historic districts have always been about enriching the local community by preserving the past. Since 1931, local ordinances protecting historic resources have become a common land use tool not only for preservationists but also as a method for economic development and community revitalization. And, although the benefits of historic preservation regulations are well documented and frequently considered to be a powerful tool for creating vibrant places, advocates for historic preservation have consistently struggled to find common ground when it comes to striking a balance between preservation and property rights.

In particular, a number of recent legal challenges from the property rights movement are putting pressure on several state enabling acts that allow localities to adopt local laws protecting historic resources. In December of 2015 and January of 2016, bills were introduced in both the

Wisconsin and Michigan legislatures that were intended to weaken the state laws that exist to allow localities to protect their historic districts and landmarks through local historic district ordinances. Currently, these state enabling laws are integral to the long-term successes of historic preservation efforts. For example, local historic districts in Michigan currently protect approximately 20,000 historic resources. Although these state level challenges express just two of the most recent attempts to undermine the foundation for local historic preservation, such unprecedented challenges demand novel and innovative responses to continue protecting our historic resources. In the years to come, it will be critical for preservation advocates to hear the voices of its opposition, and find solutions that are both rooted in finding a common ground and that also respond to the pressures of our ever-changing environment. Further, it is within this setting that many state legislators and professional preservationists are beginning to critically assess the current legislative framework for historic preservation.

The Commonwealth of Pennsylvania was an early adopter of state level enabling legislation authorizing locally regulated historic districts, becoming the fourth state to do so in

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2 Wisconsin. Legislature. 2015 Assembly Bill 568. An Act to... limit the authority of historic properties.... 2015-2016 Reg. Sess. (December 4, 2015); Michigan. Legislature. House Bill 5232. A Bill to Amend 1970 PA 169, entitled “Local historic districts act.” 2015-2016 Reg. Sess. (January 26, 2016). http://www.legislature.mi.gov/documents/2015-2016/billintroduced/House/pdf/2016-HIB-5232.pdf. The most potentially devastating provisions of these bills includes the addition of a “sunset clause,” which would require the general electorate to vote on its local historic districts every ten years, the addition of an “owner consent” provision prohibiting localities from granting historic designation to a property without the consent of the owner, and a provision prohibiting localities from requiring the owner of a designated property to comply with any regulations related to the preservation of the historic or aesthetic characteristics of the property.

1961.\textsuperscript{4} While this law has been unmistakably successful at providing a structure for municipalities to create locally regulated historic districts,\textsuperscript{5} revisions that incorporate the lessons learned over the past fifty-five years are necessary to sustain the Commonwealth’s commitment to protecting its historic resources. Particularly since, as the following chart from the Pennsylvania State Historic Preservation Office (PA SHPO) shows, there is a declining trend in the number of municipalities utilizing the Historic District Act (HDA) since the 1980s.

![Graph of certification of local historic districts by decade (1961-2015)](image)

\textbf{Figure 1: Pennsylvania Historical and Museum Commission certification of local historic districts by decade (1961-2015).}

Source: Data provided by the Pennsylvania SHPO.


\textsuperscript{5} Under Act 167, the Historic District Act, the Pennsylvania Historical and Museum Commission is the appointed body responsible for certifying the boundaries of all proposed local historic districts to affirm the area’s historic merit. As of 2014, the Commission has certified the boundaries of 156 local historic districts in 94 municipalities located in 34 of the state’s 67 counties. (Information from the Pennsylvania State Historic Preservation Office within the Pennsylvania Historical and Museum Commission).
This data is just one indicator that localities across the state have unique circumstances that the provisions of the HDA currently do not adequately address. In addition to the Pennsylvania Historic District Act, some localities have begun adapting the provisions permitting the regulation of historic resources through zoning as granted in Act 247, the Municipalities Planning Code (MPC), when the HDA has been insufficient to meet local preservation needs. The problems of simultaneously operating under two separate enabling acts are fully explained in Chapter Three of this thesis. However, it is important to note here that by having a state law incapable of addressing the myriad of preservation needs at the local level, community preservationists are required to jump through a number of regulatory and administrative hoops, which ultimately discourages preservation at the absolutely critical local level.

Consequently, the intent of this thesis is to develop thoughtful suggestions for revisions to the Commonwealth of Pennsylvania’s various enabling laws permitting municipal level protections for historic resources. The thesis will analyze the strengths and weaknesses of the state’s current legislation and determine the opportunities for improved provisions. A final set of recommendations is largely based on three major case studies. These case studies will thoroughly explore the legal framework for historic preservation in three different states. Finally, the end of this thesis will also provide suggestions for the implementation of these recommendations.

While this thesis is largely intended to strengthen and improve the enabling laws that concern historic resources in Pennsylvania, the case studies, analysis, and recommendations may also be informative to other states considering making improvements to their own enabling acts. Proposals to weaken state laws, such as those made in Wisconsin and Michigan, too often come from a lack of understanding of the benefits that accompany local level preservation regulations,
but also result when there are real or perceived problems in the established framework that
dlocalities utilize to meet their preservation needs.

1.2 Methodology

The second chapter presents background information on state level historic preservation
legislation, as well as the historiography of such policies. This chapter provides a context for this
thesis by laying the necessary foundation to understand the role that states play in protecting
historic resources. In addition, the chapter explores the range of approaches states have taken to
achieve those ends. The research included in this chapter is based on thorough analysis of
historic preservation and planning literature, law review journals, legislation, and case law.

Chapter three, “Historic Resource Designation in Pennsylvania: A Legal Context,”
expands upon the information presented in this introduction by carefully dissecting the state’s
enabling laws permitting local regulation of historic resources, the HDA and the MPC. This
chapter also presents the reader with valuable information about the state’s local government
structure and its approach to municipal and regional planning. Examples from local ordinances
are also included to illustrate the manner in which conflicts at the state level have translated to
the local level when municipalities adopt ordinances to protect their historic resources through
regulations. This chapter also utilizes interviews with Pennsylvania’s SHPO staff, adding a
valuable professional perspective from those who are deeply familiar with these issues.

Chapter four presents a case study analysis of three states—New York, New Jersey, and
Indiana—to determine best practices and alternative methods for state level legislation. These
states were chosen because of their proximity to Pennsylvania, relatively similar governmental structure, and largely because each state has a very different approach to enabling their localities to regulate historic resources. All three case studies include a condensed history of the state’s preservation and planning practices, a critical evaluation of the state’s historic resource enabling laws, and interviews with preservation professionals in the state about the strengths and weaknesses of the current legislative framework. These case studies provide valuable models of the various ways a state could approach adapting its historic preservation enabling laws. The final chapter will conclude with a comprehensive review of the themes revealed through the case study analyses, which are then utilized to inform a final set of recommendations specific to solving the issues identified in Pennsylvania.
Chapter 2: Legislative Precedents for Local Historic Preservation

The role of historic preservation law in urban development is not itself fixed, but has range to grow toward new maturity. Legal research into its assumptions, methods, and goals should be a growing field.
—Peter Byrne

2.1 Introduction

Local preservation ordinances are the most valuable tool granting protection to historic resources — predominately because local ordinances are the only way to regulate private actions affecting these properties. In the United States, local governments “possess no inherent right of self-government.” A locality’s authority to regulate private property is derived from the states’ police powers, which are granted to the states by the Tenth Amendment to the United States Constitution. In short, this is historically because the framers of the Constitution intended that the powers of state and federal government should be separated into clearly defined terms, known as dual federalism. The system of dual federalism is often explained through political scientist Morton Grodzins’ “layer cake” analogy, in which the separated layers of the cake symbolize the distinct and separate spheres of powers accorded to the federal and state governments.

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8 Amendment 10 of the U.S. Constitution charges states with the regulatory responsibility to promote the health, safety, and general welfare (i.e. the police powers) of communities.
governments. The “layer cake” contrasts with the “marble cake,” a symbol of federalism’s evolution into our present system where the federal and state government roles are often swirling and overlapping. Under this federal system, the police powers granted to the states by the Tenth Amendment are “not delegated to the United States,” thus demonstrating why states and localities are able to regulate private property, while the federal government cannot.

Furthermore, local governments act as “creatures of the state,” restrained to govern only within the limits set by the individual states. Such grants of local authority are established by the State Constitution and/or various “enabling statutes” adopted by state legislatures. This structure emphasizes that one of the state’s most vital roles in historic preservation is its ability to delegate considerable authority to local governments through such enabling acts. However, the classification of historic preservation regulation as a valid exercise of police power was a formidable question prior to 1978.

During the twentieth-century, the Supreme Court had begun expanding the scope of the state’s police powers to include actions such as zoning and land use regulation, building code enforcement, and environmental protection. Three key Supreme Court decisions from this era have been crucial to shaping the modern regulatory framework for historic preservation. These cases, Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926), Berman v. Parker, 348 U.S. 26 (1954), and Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978), are outlined here to highlight the judicial decisions that support current historic district legislation.

In the early decades of the 1900s, regulating land use through the establishment of city zoning codes became popular practice across the country as a reaction to the problems associated with the rapid industrialization of the nineteenth-century. The resulting local and state land use regulations built upon the ideals of the Progressive Era and the City Beautiful Movement to create a more systematic approach to growing urban pressures. For all the good that zoning sought to bring cities, many remained wary about the constitutionality of such government restrictions on private property rights. These concerns were put to rest in 1926 with the landmark Supreme Court decision in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Through this case, the Court established the legal precedent for the practice of zoning land for specific uses and simultaneously detailed the constitutional justification for zoning regulations. In making its decision, the Supreme Court emphasized that all zoning ordinances must anchor their authority within the state’s police powers, dictating that zoning must have a public welfare purpose if it is to avoid the charge of being arbitrary and capricious. The Court also contended that such police power of local and state governments must be interpreted with a degree of flexibility to address a changing world. Delivering the majority opinion of the Court, Justice Sutherland opined that,

...for while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing

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10 Prior to *Euclid*, the response of state courts was mixed. For example, the Maryland Court of Appeals invalidated Baltimore’s zoning ordinance in Goldman v. Crowther, 147 Md. 282 (Md. 1925), while the Massachusetts Court of appeals upheld the City of Lowell’s zoning ordinance in Inspector of Buildings of Lowell v. Stoklosa, 250 Mass. 52 (Mass. 1924).

11 *Euclid*, 272 U.S. at 386-87, 47 S. Ct. at 118.
world, it is impossible that it should be otherwise.\textsuperscript{12}

Although some modern planning scholars are critical of the jurisprudence established in the \textit{Euclid} decision, the eventual acceptance of historic preservation as a valid exercise of the police power is a direct result of the acceptance of zoning ordinances as a valid exercise of police power.\textsuperscript{13}

The second landmark case, \textit{Berman v. Parker}, 348 U.S. 26 (1954), an urban renewal eminent domain case, supported the notion that the regulation of aesthetics was also considered part of the police powers. It is interesting to note that the Court’s decision in \textit{Berman} allowed the use of eminent domain to condemn a structurally sound building within an urban renewal area.

Supporting his decision, Justice Douglas stated:

\begin{quote}
The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.\textsuperscript{14}
\end{quote}

Prior to 1978, \textit{Euclid} and \textit{Berman} were the two cases legitimizing the historic preservation laws enacted at both the state and local levels. Within this framework, it logically follows that many of the early historic district laws are anchored within aesthetic regulations and zoning.

However, it was not until 1978 that the Supreme Court adjudicated that historic preservation regulations were a lawful exercise of the police power in the seminal case \textit{Penn}

\textsuperscript{12} Ibid.


\textsuperscript{14} \textit{Berman}, 348 U.S. at 33.
Central Transportation Co. v. City of New York, 438 U.S. 104 (1978). Through Penn Central, the Supreme Court conclusively settled that historic preservation regulations were similar to land use regulations, in that they advance an important public interest, thereby falling within the Constitutional grant of police powers. Additionally, Penn Central established that such regulation of private property did not justify a Constitutional “taking” so long as a property owner maintains a “reasonable beneficial use” of their property.15 Further, the Supreme Court determined that a property owner is not entitled to the highest and best use of their property, stating that, “the submission that [property owners] may establish a “taking” simply by showing that they have been denied the ability to exploit a property interest that they heretofore had believed was available for development is quite simply untenable.”16 The pivotal conclusions made in Penn Central overwhelmingly supported historic preservation programs across the country, spurring the expansion of local historic preservation ordinances from just 500 before Penn Central to well over 3,500 in place today.17 Since Penn Central, it is nearly impossible for protagonists to assert that state and local historic preservation regulations violate the Constitutional grant police power, and currently, there are no court decisions upholding such an argument.18

15 See Penn Cent. Transp. Co., 438 U.S. at page 104-105. The Court ruled that the New York City Landmarks Ordinance did not prohibit the owner from maintaining the same usage of the terminal as it had for the past sixty-five years.


17 This statistic is based on February 2007 number reported by the National Alliance of Preservation Commissions, reported in Michel R. Lefèvre, Historic District Designation in Pennsylvania, 5. This number is the highest number identified by the author. A more frequently cited number is 2,300.

18 Bronin and Rowberry, 217.
2.2 A Narrative on Historic Districts

During the twentieth century, the historic preservation movement evolved from conserving the structures associated with famous individuals or events, to a multi-faceted movement advocating for not only historic buildings but also for the preservation of community fabric. With some exceptions, the historic preservation movement had initially focused its attention on individual historic landmarks rather than on conserving whole neighborhoods as historic districts. However, during the mid-twentieth century, the expansion of the federal and state governments actions through vast urban renewal policies ravaged not only distinctive old buildings but entire neighborhoods and communities. Journalist and community preservation pioneer Jane Jacobs remarked that there "… [appears] to be good reasons why preservation-minded individuals and groups often regard the government…as the major enemy." The effects of urban renewal were so devastating to American cities that they elicited a passionate response from the broader community members of which ranged from neighborhood organizations and local governments to entrepreneurs and environmentalists. Preservation lawyer Carol Rose best summarized the consequential lessons preservationists derived from urban renewal, remarking that:

The history of urban renewal is an object lesson in the political choices entailed in architectural decisions and in the serious disruptions that may follow where architectural decisions go forth without procedural protection for countervailing community interests.

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Accordingly, Rose’s quote illustrates possibly one of the most valuable arguments in favor of locally regulated historic districts: that when implemented correctly, historic districts offer communities a mechanism to ensure that neighborhood concerns will be recognized.

Threats from the mid-century urban renewal policies encouraged communities to focus on establishing regulatory protections for historic districts—rather than just on protections for individual landmarks. Such emphasis is somewhat self-explanatory: historic districts inherently provided the opportunity to hold a larger shield against urban renewal’s demolition agenda. As preservation legislation spread across the country during the 1950s through the 1970s, this emphasis on the historic district is evident. Moreover, while federal and some state statutes do not differentiate between landmark and historic district regulations, the two raise significantly different regulatory concerns. Lynchpins of the built environment, landmark buildings are highly regarded for their ability to inspire and foster community cohesion. However, in spite of this and other proven benefits of landmark regulation, such regulation places a measurable burden on the owner, while the surrounding environment is left unregulated and unprotected from insensitive or inappropriate changes. In this regard, the regulation of individual historic landmarks “pits an individual against the larger community.”

Historic districts, however, apply the same regulations to all properties within the boundaries, similar to zoning, and arguably benefit and burden all owners equally. Indeed, prior to the *Penn Central* decision, many local governments worried that landmark regulation could be interpreted by the courts as a Constitutional taking without due compensation. In addition to the ways that historic districts could combat urban renewal policies, this may explain why many states, including Pennsylvania, only provided local

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21 Rose, 504.
2.3 Trends in State Enabling Acts for Historic Districts and Landmarks

This brief discussion on the rise of historic districts through the lens of urban renewal is necessary to understand the context for the legislative response made by state and local governments. At the federal level, key legislation was enacted to encourage local participation in the undertakings of any federal agency. First, the National Historic Preservation Act of 1966 set up the Section 106 process, which is a review-and-comment statute that requires consultation with interested parties (i.e. “consulting parties”) before any use of federal funds or before the granting of any federal permits may be approved. Within the same decade, provisions in the National Environmental Policy Act of 1969 (NEPA) and the 1966 and 1968 amendments made to the federal highway program, also established a structure for consultation with local citizens. In the latter example, the legislative history of the 1968 amendments “… cited past neglect of the ‘urban environment’ and suggested procedural means by which to overcome that neglect:

22 Pamela Thurber and Robert Moyer, *State Enabling Legislation for Local Preservation Commissions* (Washington, D.C.: National Trust for Historic Preservation, 1984), 80-81. In this survey of state legislation conducted by the Preservation Policy division of the National Trust for Historic Preservation, Thurber and Moyer found that twenty-two states granted authority only to designate historic districts and not landmarks, while only four states granted authority to designate landmarks and not historic districts, and twenty-four states had the authority to designate both landmarks and districts (including Washington D.C. and states that exercised authority under home rule powers and zoning powers).


namely, the inclusion of local governments in route selection decisions.”

Such sweeping federal legislation gave a voice to local citizens, “[frustrating] central control of decision making and mega projects… [elevating] community and authenticity.”

States also took responsibility to enact historic preservation statutes in an effort to ensure the protection of their historic resources, as well as to empower citizens and local governments to protect the fabric of their own communities. While this thesis is only concerned with state enabling laws permitting local governments to regulate private actions impacting historic resources, states have also instituted a range of historic preservation laws including state historic preservation acts (“Little NHPA” laws), state tax incentives, and state environmental policy laws (“Little NEPA” laws), among a myriad of others. These other state historic preservation laws are essential to protecting historic resources, but their adoption and achievements range considerably from state to state.

Even before the Penn Central decision, all fifty states had enacted some form of legislation permitting local regulation of historic resources. However, the legislation varies substantially from state to state, each one tailored to reflect the interests of the individual state

25 Rose, 492.


28 States interpreted historic preservation to be a similar land use regulation as zoning, upheld by the Supreme Court as a form of the state’s police powers in Euclid v. Ambler.
and its people. A survey of these enabling laws reveals some recurring themes, but it should be noted that the laws developed by the vast majority of states are discretionary, not mandatory, setting up a structure for action if and when a locality chooses to exercise its discretionary authority. Beyond the expression of commitment to historic preservation, there can be no sweeping generalizations about these enabling laws, each one varying in the content and scope of regulatory authority granted.

Customarily, these enabling laws are granted in one of two ways, either through home rule authority or through a direct grant of power by the state legislature. “Home Rule States” give local governments the power to adopt laws relating to their local property, affairs, and government, so long as the local law remains within the boundaries of the state and federal constitutions. At its core, home rule authority is intended to create a buffer between local and state governments, discouraging state level intervention in local government’s operations. So

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31 Ibid., 332.

called, “strong home rule states,” such as Maine and Ohio, do not outline a specific process for local preservation regulation through state enabling legislation, but rather, the municipalities rely on the broad grant of police powers to designate historic districts and landmarks, usually through zoning overlays. Consequentially, in these states, municipalities have a great deal of latitude in the ways that they may implement legislation for historic resources.

In contrast, the vast majority of states have explicit historic district enabling acts, each demonstrating a range of different provisions, as noted earlier. For example, states may empower local governments to acquire and maintain historic property, to enact historic “overlay zones,” to create architectural review commissions, to regulate external features of historic buildings, to provide tax incentives for historic property owners, as well as an assortment of other related functions. Processes for special merit exceptions, economic hardship review, and demolition by neglect have also been added in some states as well. Some states, like Arkansas, may have intensely detailed legislation that includes reference to all of these provisions, while other states, like New York, have very concise legislation, that set up little to no framework for procedural uniformity throughout the state. In many of these states, the historic district or landmark


34 Other strong home rule states without explicit historic preservation enabling legislation include Kansas and Washington State.

35 Miller, 8.

36 ARK. CODE ANN. §§14-172-201 to -212 (2015); N.Y. GEN. MUN. LAW, Article 5k (Consol. 2015).
regulation is permitted as a type of zoning overlay, keeping land use (the fundamental concern of zoning) and historic district regulation separate (if overlapping).

However, many states have found that the “traditional” preservation laws adopted in the 1960s and 70s can be insufficient to protect historic resources, especially when “other government programs and policies such as zoning, transportation, and housing favor new development over rehabilitation alternatives.” Many states have responded to these challenges by incorporating preservation principles into general land use planning and comprehensive planning laws.

In the past twenty years, the trend among many states has been to restructure twentieth-century Euclidean land use regulations to facilitate balanced policies that enhance community living and combat the dangers of sprawl. Such growth management or “Smart Growth” policies encourage the protection of both the natural and cultural landscape as a primary goal of land use planning. Although there are many approaches to achieving Smart Growth, historic preservation is often, although not always, included in statewide growth management policies. Arguably, historic preservation is “one of the most important tools in the entire Smart Growth movement,”

37 Miller, 9.

38 The term “Euclidean land use” takes its name from *Euclid v. Ambler* and is used to describe conventional zoning schemes (i.e. adopting uniform building and use standards within various land use districts).

because local historic districts have proven to promote affordable housing, downtown revitalization, walkability, economic development, and numerous other Smart Growth goals.\textsuperscript{40}

Conversely, a number of states may not have adopted all of the sweeping provisions of Smart Growth land use reforms, but instead have begun requiring localities to pass comprehensive, or master plans. These comprehensive plans, or land management plans, generally “identify community development goals such as economic growth, environmental and cultural resource protection, and public safety in the context of land use, housing, and transportation.”\textsuperscript{41} Historic preservation is usually identified as an important community goal that localities may consider when developing their comprehensive plans.\textsuperscript{42} States such as Georgia and Rhode Island mandate that these comprehensive plans include a historic preservation component, while in other states, like Florida and New Jersey, they are encouraged but ultimately optional.\textsuperscript{43} In addition, the Coastal Zone Management Act mandates that the thirty-four states with coastal plans must include a preservation element.\textsuperscript{44} Comprehensive planning has been proven to be extremely beneficial to communities because it not only provides a legally defensible justification for planning and zoning decisions, but it also encourages communities to balance the

\begin{footnotesize}
\begin{enumerate}
\item Donovan Rypkema, “Historic Preservation is Smart Growth,” \textit{Planning Commissioners Journal} 52 (Fall 2003): 12.
\item McLamb, 476.
\item Miller, 11.
\item Coastal Zone Management Act of 1972. Public Law 92-583, 16 U.S.C., 1455.
\end{enumerate}
\end{footnotesize}
existing resources with growth and development.\textsuperscript{45} Further, comprehensive planning and Smart Growth principles encourage greater protection of historic resources by requiring local governments to identify where such resources are located and develop a plan to ensure their preservation.

Finally, because the level of protection afforded to historic resources at the local level depends on these enabling laws, it is critical that the state legislation provides a clear, comprehensive, yet flexible structure for localities. As previously discussed, localities may only act within the regulatory scope of the applicable state enabling legislation, and therefore, such an essential piece of legislation must strike a balance between too much and not enough power, as well as respond to each community’s unique circumstances.

Chapter 3: Historic Resource Designation in Pennsylvania: A Legal Context

3.1 Introduction

In 1961, Pennsylvania became the fourth state in the country to enact explicit statewide enabling legislation establishing requirements and a general process for the creation of local historic districts. Act 167, The Historic District Act (HDA), was passed by the General Assembly of Pennsylvania authorizing counties, cities, boroughs, incorporated towns and townships to designate and regulate areas as historic districts. As of 2015, ninety local governments have enacted local historic district ordinances regulating 156 historic districts. It should also be noted that Philadelphia, Pittsburgh, and Scranton do not designate historic districts under this law, but instead do so through their Home Rule Charters. Historic preservation legislation in these three cities accounts for the regulation of another twenty-eight historic districts and several hundreds of individual landmarks. The third form of state enabling legislation for local regulation of historic resources is granted through the Municipalities Planning Code, (MPC) Act 247 of 1968. Together, the MPC and HDA provide a broad foundation for local historic preservation regulations across the state, and both have been used by

46 Earlier state enabling acts were adopted in Rhode Island (1959), Massachusetts (1960), and Connecticut (1961). Pennsylvania Act 167 has been reprinted in Appendix A.

47 2015 data from Pennsylvania SHPO.

48 These numbers are based on 2015 figures from Pittsburgh Historic Review Commission (14 historic districts) and 2015 figures from Philadelphia Historical Commission (15 historic districts and 1 pending historic district). Scranton passed an “Architectural and Urban Design Review Commission” ordinance in 1996, however it has not been used to regulate historic resources in any geographic areas.
Pennsylvania localities to achieve a range of preservation objectives. For these reasons, the HDA and the MPC are the primary focus of this thesis. Accordingly, the subsequent sections of this chapter will scrutinize the provisions in both the HDA and the MPC, explaining how localities have applied both laws, and finally, enumerate those legislative provisions in these laws that hinder preservation at the local level. An abbreviated discussion of the state and local government structure in Pennsylvania is also included to facilitate a better understanding of the barriers to improved historic preservation throughout the state.

3.2 Act 167, The Historic District Act

The genesis of the Historic District Act is eloquently articulated in Section 2 of the Historic District Act, where the General Assembly declared that such an act was necessary to

... [protect] those historical areas within our great Commonwealth, which have a distinctive character recalling the rich architectural and historical heritage of Pennsylvania, and of making them a source of inspiration to our people by awakening interest in our historic past, and to promote the general welfare, education, and culture of the communities in which these distinctive historical areas are located...49

In effect, this statement reinforces the significance that the Commonwealth ascribes to historic preservation as put forth in the Commonwealth’s Constitution.50 Conceived before any federal legislative guidance, the HDA was created to facilitate local input and participation in regulating areas with concentrated historic resources, and does not afford the same process for individual

49 The Historic District Act (Act 167), 53 PA CONS. STAT. § 8001-8006 (2016).
50 PA CONST. ART. 1, § 27.
landmarks. Similarly, the HDA outlines very specific requirements for local historic districts. It is conceivable that this was a logical policy strategy both because of the limited scope of legislative models at the federal and state levels at that time, as well as the lack of a Supreme Court precedent on the constitutionality of such regulation.

One provision that appears to respond to the lack of precedents is the requirement that the historic district’s boundaries be certified as historic by the Pennsylvania Historical and Museum Commission (PHMC). Prior to NHPA’s creation of State Historic Preservation Offices, this provision developed out of a desire to verify that localities were using the Act for its intended purpose. However, the Act never specified the criteria for historical significance, creating a vacuum that from the mid-1970s to 2008 PHMC filled by requiring that the district also be eligible for inclusion on the National Register of Historic Places.\textsuperscript{51} However, blending the National Register with local historic district ordinances not only limited the scope of districts allowed for local regulation but also perpetuated the myth that National Register designation places regulations on a property owner. Recent policy changes by PHMC have rectified this problem by removing the association with the National Register, and by placing greater emphasis on the municipality’s preservation concerns, certifying districts that are included as part of a local comprehensive plan.\textsuperscript{52} This policy change created greater flexibility for municipalities to determine what is significant in their local areas, without having to fit within the Criteria

\textsuperscript{51} Cory Kegerise, email correspondence with author, March 17, 2016.

limitations of the National Register, while also encouraging greater coordination between local planning and preservation efforts.

Another mandate of the HDA requires local ordinances to create a Board of Historical Architectural Review (commonly referred to as a HARB) with quasi-judicial, advisory authority over all structures within the district’s boundaries. Thus, the HARB is only permitted to provide counsel to the local governing body, who ultimately can accept or reject the HARB opinion on Certificate of Appropriateness (COA) applications that affect resources within the district. Notably, the HDA does give some teeth to the consideration of the historic district by requiring the governing body to approve a COA application before any other permits are granted. However, there are several drawbacks with the HDA’s provisions related to HARBs. One of the most glaring issues is that under current HDA language, even municipalities without zoning regulations may still enact a historic district ordinance as a “special purpose” ordinance. While seemingly advantageous for more rural localities without existing zoning laws, segregating preservation ordinances from planning supports the perception that preservation is wholly separate from planning and other land use programs. On the contrary, both the planning and preservation fields have frequently recognized the critical link between historic preservation and municipal planning measures. The American Planning Association noted in a 1997 Policy Guide on Historic Preservation that as the field of planning has identified the importance of protecting community character and seen the success of Smart Growth in action, planners must collaborate with historic preservationists to find innovative solutions to housing, neighborhood and

53 A 2001 study reported that 10% of the State’s population lives in areas without zoning, and 50% of the State’s total land area lacks any zoning. Local Land Use Controls in Pennsylvania: Planning Series 1 (Harrisburg, PA: Governor’s Center for Local Government Services, 2001), 3.
commercial district revitalization, zoning and land use, and economic development. Similarly, President of the National Trust for Historic Preservation Stephanie K. Meeks recently reiterated this sentiment, stating that preservationists “are engaging new partners to bring preservation solutions to the problems of the 21st century, including affordable housing, community displacement, energy efficiency, and climate change.” If municipalities wish to achieve the full benefits of historic preservation in their communities, linking preservation with planning moves the conversation away from aesthetic elitism and toward using preservation as a strategy for creating a healthier community while at the same time, likely removing some of the opposition commonly directed at preservation from property rights advocates and others who are wary of increased regulation.

In addition, the HDA requires that the HARB be comprised of at least five members—including a registered architect, a licensed real estate broker, and a building inspector—and requires remaining members to have “knowledge of and interest in the preservation of historic districts.” These specific membership requirements have been particularly burdensome not only because members are essentially pro bono volunteers, but also because of the state’s rural

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56 53 PA. CONS. STAT § 8003 (2016).
character. Pennsylvania is largely a rural state, with 3.5 million people, or about 27% of the state’s 12.7 million residents, living in forty-eight of the state’s rural counties. Consequently, the daunting task of finding qualified and willing HARB members to appropriately administer a local historic district program is simply too formidable for many areas of the state. Andrea MacDonald, Pennsylvania’s Deputy State Historic Preservation Officer, noted in an interview with this author that the professional discipline requirements for HARB membership is the largest and most consistent complaint that their office hears from municipalities that want to create local preservation programs. Former Community Preservation Specialist at the Pennsylvania SHPO, Michel Lefevre also acknowledged this hardship, stating, “It is indeed a fortunate municipality that can find members with a combination of professional talent and ability willing to serve on such boards or commissions.”

After a municipality has successfully negotiated these provisions of the HDA, the Act then specifies that HARBs are only permitted to review work on repairs, alterations, and

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57 Thurber and Moyer noted that “New enabling legislation has recently been proposed in Pennsylvania that, among other things, redefines the membership section for boards of historical architectural review. The proposed legislation no longer requires specific professions for board members….” This indicates that the issue of professional qualifications has been a long standing issue, although there is no indication why the proposed amendment fixing this problem was not adopted. Thurber and Moyer, 10.


59 Andrea MacDonald, interview by author, March 6, 2016.

additions to existing buildings, demolition, new construction, and signs. While this type of work is commonly allowed in other enabling acts across the country, it sends the message that historic districts are truly only about regulating aesthetics, rather than about economic development, sense of place, or even community development. Further, the HDA continues to remove the links between preservation and planning by stipulating that the HARBand “shall not consider any matters not pertinent to the preservation of the historic aspect and nature of the district.” This is noteworthy because, over time, streetscape and environmental elements have been identified as integral parts of creating vibrant commercial and residential historic districts. Therefore, an HARBand that wishes to review proposals for street furniture, public art, “pop-up” parks, or any other environmental features would not be able to do so under the HDA, but instead could only do so under the municipality’s zoning ordinance. Commonly, this means that the municipality would have to add a historic district overlay on the zoning map, and then makearmendments to the zoning ordinance to accommodate these new requirements. Such administrative maneuvering complicates local preservation efforts, making historic districts appear more burdensome rather than as essential ingredients in community planning and development.

61 53 PA. CONS. STAT. § 8004(a) (2016). While some states do consider this “new construction,” the Historic District Act language is inconsistent in that it limits the review authority only to the “building” in a few places, but in others expands this authority to “buildings and structures.” Currently, this has not been challenged in PA courts, but remains a frequent question among municipalities who are unsure of their authority to regulate structures like fences.

62 53 PA. CONS. STAT. § 8004(b) (2016).

63 Local Design Guidelines emerged with the creation of the Secretary of the Interior Standards in the 1970’s alongside the implementation of Federal Historic Tax Credit program. Also, NPS notes that until fairly recently SOI Standards were commonly used for design guidelines in local historic districts, but now, locally tailored design guidelines are preferable.

64 Lefevre, Historic District Designation in Pennsylvania, 19.
revitalization efforts.

Finally, this discussion has shown that while the structure specified in the HDA responded to real concerns and preservation trends in the 1960s and 1970s, this legislation has proven unresponsive to the problems faced by Pennsylvania municipalities in the twenty-first century. While the Act has proven its worth over time, as it has withstood numerous legal challenges and has successfully made preservation headway in half of the state’s counties, the decreasing trend in localities utilizing the HDA to create local ordinances is evidence that the law simply does not provide the tools municipalities need to respond to modern development and planning challenges. Specifically, as localities look to protect neighborhoods that might not retain enough integrity to warrant the full weight of the regulations that accompany historic districts, neighborhood conservation districts (NCDs) are becoming an increasingly attractive alternative. These NCDs are frequently explained as “historic district lite,” because they are utilized to ensure compatibility in new development through enforceable design standards. As this tool becomes more popular to protect neighborhood character and promote compatible infill development, the limitations of the HDA does not easily facilitate the creation of NCDs.

3.3 Act 247, Pennsylvania Municipalities Planning Code

The second source of authority for local historic districts is located in Act 247, Pennsylvania Municipalities Planning Code (MPC). Adopted in 1968, the MPC is a

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compilation of the state’s planning and zoning laws. Prior to the year 2000, the MPC was not used for historic resource regulation, only mentioning the preservation of historic resources in a mere two sections of Article IV of the Code – Sections 604 and 605. Section 604 states that a purpose of zoning is to “promote, protect and facilitate... [the] preservation of the natural, scenic and historic values in the environment,” and Section 605 allows for the creation of specific zoning classifications permitting the “regulation, restriction or prohibition of uses and structures at, along or near: (vi) places having unique historical, architectural, or patriotic interest or value.”

Until the 2000 amendments, this language alone did not have any significant impact on how localities protected historic resources.

However, the provisions for historic preservation added to Article IV, Section 603 in 2000 created an alternative, nonspecific approach for localities to link historic preservation with local zoning laws. Section 603: Ordinance Provisions, mentions historic resources in three separate instances:

1. **Article IV, Section 603, (b):** “Zoning ordinances... may permit, prohibit, regulate, restrict and determine: (5) Protection and preservation of natural and historic resources and prime agricultural land and activities.”

2. **Article IV, Section 603, (c):** “Zoning ordinances may contain: (7) provisions to promote and preserve... areas of historic significance.”

3. **Article IV, Section 603, (g)(2):** “Zoning ordinances shall provide for protection of natural and historic features and resources.”

Aside from these mandates to include historic resources in local zoning ordinances, the MPC

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lacks any specific guidance clarifying the manner in which a municipality should proceed. This breadth of flexibility has led many municipalities to adopt a variety of strategies. Generally, municipalities across the nation have utilized “overlay” zones for historic resources that are placed over the “underlying” base zoning, which specifies the use and other related provisions including density, area, and bulk. Notably, an overlay zone can be added to both individual buildings and clusters of buildings. This is one commonly cited advantage of the MPC over the HDA, making it an attractive option for both high- and low-density areas that wish to regulate individual resources when clusters do not exist. For example, when Lower Merion Township in Montgomery County amended its zoning map to consider historic resources, they added a number of individual resources in addition to newly created historic districts under MPC authority.⁶⁸

Because the MPC language is so flexible, some municipalities have added a classification system to their zoning ordinance in which historic resources are sorted into classes based on some measure related to the building’s historic significance. The classification system varies widely from community to community, but such systems are intended to serve as a basis for applying different degrees of regulation. The classification system established in Chester County’s Schuylkill Township Zoning Ordinance illustrates a model that has become common practice in many municipalities:

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Such classification systems seemingly reduce administrative burdens by only requiring full review for the “highest tier” resources, potentially making local preservation seem more politically approachable. However, the wisdom behind such class systems is questionable. This is largely because the act of ranking historic resources in classes, rather than the conventionally used contributing/non-contributing language, establishes a triage system in which some could perceive anything less than Class 1 to be inferior and not as worthy of preservation. Additionally, the dependency on the National Register recognition echoes the same potential for problems that

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<tr>
<td><strong>D. Classifications.</strong> The <strong>Historic Properties Map</strong> shall delineate two classifications of historic properties in Schuylkill Township, Class I and Class II.</td>
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<tr>
<td>(1) A Class I property contains one or more of the following historic resources:</td>
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<tr>
<td>(a) A building, site, structure, or object listed individually in the National Register of Historic Places or designated a contributing resource within a National Register Historic District.</td>
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<tr>
<td>(b) A building, site, structure, or object that has received a determination of eligibility (DOE) for the National Register, as defined by this article, or is located within a district that has received a determination of eligibility (DOE) and is designated as a contributing resource within that district.</td>
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<tr>
<td>(c) Resources that are deemed by Chester County to meet substantially the National Register criteria under the Chester County certification program.</td>
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<tr>
<td>(2) A Class II property contains one or more of the following historic resources: buildings, sites, structures, and/or objects of significance to Schuylkill Township, as determined and documented by the Schuylkill Township Historical Commission. Such resources:</td>
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<tr>
<td>(a) Do not presently qualify under the criteria for designation as Class I;</td>
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<tr>
<td>(b) Are included in the Schuylkill Township Historic Resources Survey; and</td>
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<tr>
<td>(c) Represent sufficient historic significance as to warrant, in the judgment of the Historical Commission, the protections and incentives offered by this article.</td>
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Figure 2. Historic Resource Classifications in Schuylkill Township, §370-53

occurred when PHMC used National Register criteria for HDA district certifications. Further, while National Register eligibility and listing is based on both historic significance and integrity, it is feasible for a resource to be determined eligible but over time lose all historic integrity, subjecting it to Class 1 regulation levels without anything left to protect.

In addition, some municipalities have compromised their authority even more by making inclusion in a local historic preservation program voluntary, a practice that has left significant resources unprotected, and fundamentally goes against the foundations of zoning, a process through which uniform regulations are placed on geographic areas regardless of ownership. Since the core of the MPC is not concerned with establishing historic overlay districts, and because unlike the HDA, which does not specify any democratic approval process for designation, municipalities have opted to make regulation voluntary, seemingly in an attempt to increase political favor and reduce the risk of legal challenge. For example, Lower Merion Township uses a Class I and II system, allowing the property owners of designated buildings to choose whether to be Class I, which triggers full review for demolition, or Class II, which only subjects the owner to a 90-day demolition permit delay. Although the voluntary nature is not explicit in the Lower Merion Township ordinance, a recent news article noted that the township has never attempted to list a property without the expressed agreement of the owner.\textsuperscript{69}

Unsurprisingly, many property owners opted for less restrictive, Class II designation, while others opted out entirely. Unfortunately, this voluntary system has resulted in a serious

demolition threat to the 1799 Lancaster Turnpike Inn, and the demolition of a significant example of the Spanish Revival Style “La Ronda” Mansion for redevelopment in 2009.\textsuperscript{70} While the MPC offers greater flexibility to municipalities to respond to specific local political environments, situations like Lower Merion’s are worrisome because voluntary inclusion sends the message that something is only historic when the current steward of that property thinks it is.

Another concern with the MPC provisions for historic preservation is that it is simply too vague in what it actually allows municipalities to do, and there is currently no known case law providing additional guidance. Municipalities have drawn upon other provisions within the MPC to clarify exactly how a zoning law might regulate historic resources. For example, the exact functions of zoning are found in Article IV, Section 603(b)(2), which states that, “zoning ordinances... may permit, prohibit, regulate, restrict and determine: size, height, bulk, location, erection, construction, repair, maintenance, alteration, razing, removal, and use of structures.” Conversely, the MPC does not expressly permit or prohibit the regulation of aesthetics, although some municipalities such as Birmingham Township in Chester County have included provisions for aesthetic regulation.\textsuperscript{71} The more subjective, aesthetic decisions generally go beyond traditional zoning authority, despite the MPC mandate for historic resource protection. Current PA SHPO Community Preservation Coordinator Cory Kegerise opined that “[The MPC] can be a useful tool when the greatest preservation threat in a community is not the policing of window replacement, but rather use, setback, and other development pressures such as setting and

\textsuperscript{70} Ibid.

\textsuperscript{71} Birmingham Township, Chester County, Pennsylvania, Township Code §122-36.7. Changes to historical resources.
context.”72 Some municipalities have found that in the context of zoning, historic resource protection is best achieved when review procedures are linked to specific provisions of the MPC such as special exceptions or conditional use approval. Municipalities that wish to achieve greater site control may add to a historic district overlay a requirement for conditional use approval for certain uses otherwise allowed outright by the underlying zone.

In other ways, the flexibility and nonspecific nature of the MPC encourages localities to innovate new ways to promote historic preservation. The best example of this is the ability to provide “zoning incentives” to historic resources as a strategy to encourage adaptive reuse and rehabilitation of these buildings. Typically, municipalities provide such incentives by reducing bulk, area, and setback requirements, and allow for additional principal uses. In theory, these incentives encourage the use of historic buildings by allowing them to be used for functions not typically permitted in an area, and also discourages inappropriate alterations or additions. For example, non-residential buildings, like carriage houses or barns, can be changed to residential use, adding “free” density and encouraging adaptive reuse. However, a 2010 survey of municipal preservation practices conducted by the Lower Merion Conservancy noted that, at least in Lower Merion Township, the density and use incentives in place had not been widely used, with some owners expressing concerns over the types of uses that are allowed under the incentives, particularly home offices and bed-and-breakfasts.73 Also noteworthy, this same document found that in a survey of 191 Pennsylvania municipal planning codes, there were no other incentives

72 Cory Kegerise, email correspondence with author, February 1, 2016.

for historic preservation beyond density and use.\textsuperscript{74}

Generally, the authority over zoning decisions, as outlined in the MPC, rests with a municipal planning commission, which then makes a recommendation to the local governing body, or is submitted directly to a Zoning Hearing Board depending on what type of approval is sought. In an effort to bring preservation-minded voices into the conversation, many municipalities have created so-called “historic commissions” to provide expertise and guidance on historic preservation issues. While the MPC does not expressly establish these commissions or place any requirements on their composition, municipalities are empowered by the General Powers granted in the City, Borough, or Township Code to create any desired advisory board.\textsuperscript{75}

In this way, historical commissions are much the same as HDA mandated HARBs, but instead, provide greater freedom for municipalities to establish achievable membership requirements.

\section*{3.4 Comprehensive Planning under Act 247, Pennsylvania’s Municipalities Planning Code}

MPC revisions in 2000 added mandates for historic preservation planning as part of the requirements for county comprehensive plans. Article III § 301 (7) states, “in addition to any other requirements of this act, a county comprehensive plan shall identify a plan for historic preservation.”

\textsuperscript{74} Ibid, 7. Under current interpretations, the Commonwealth’s Constitution does not allow for the creation of local tax credits. However, Pennsylvania does have a 25\% state historic tax credit for qualified rehabilitation, separate from any designation on the local level.

\textsuperscript{75} Lefevre, \textit{Historic District Designation in Pennsylvania}, 14.
Comprehensive plans are an important part of historic preservation efforts because they serve as blueprints for future development within the county’s municipalities. Historic preservation plans are a critical means to ensure that preservation ordinances are not knee-jerk reactions to the loss of a locally significant building, but rather are part of a thoughtful process that responds to the needs of a community. Legally, comprehensive plans provide significant protection and are essential to avoiding challenges that a municipality’s ordinance is arbitrary and capricious. For example, if a land use decision is challenged, an ordinance must be able to show linkages between its purpose and constitutional police power objectives, and comprehensive plans are essential to providing that evidence.\textsuperscript{76} Their importance in this regard has been established in Supreme Court case law and even specifically reiterated about local historic preservation ordinances in the 1978 \textit{Penn Central} decision. Unfortunately, Pennsylvania’s mandate for historic preservation components in comprehensive planning is weak for two important reasons.

First, an adopted comprehensive plan does not have the same weight as local land use laws and is not legally enforceable like local ordinances. Further, while the MPC requires counties to have comprehensive plans, counties in Pennsylvania do not have the authority to pass ordinances.\textsuperscript{77} Local ordinance adoption is the primary mechanism to put goals and strategies from a comprehensive plan into action. What this lack of authority ultimately means is that if a

\textsuperscript{76} Nolon, 43; Miller, 11. Even when comprehensive plans are advisory, decisions and laws that can trace their foundation back to a comprehensive plan are more likely to be upheld by courts.

\textsuperscript{77} For insight into the fragmented nature of Pennsylvania’s local government system, see David Rusk, “Little Boxes- Limited Horizons: A Study of Fragmented Local Governance in Pennsylvania, its Scope, Consequences, and Reforms.” (Paper funded by the Brookings Institution Center on Urban and Metropolitan Policy, December 2003).
county establishes a preservation need for a resource in a municipality, the municipality may or may not respond to that need. A publication on the MPC published by the Governor’s Center for Local Government Services reiterates this fact, stating that, “plans depend on local laws (ordinances) and private actions and other activities to implement the concepts and recommendations set forth in them.” But if the county does not have the ability to enact such ordinances, it calls into question the entire merit of comprehensive planning when local ordinances cannot be borne out of the planning process.

Secondly, there is no accountability to consider historic resources in comprehensive plans, because there is no state agency or body tasked with enforcement. Despite the clear requirements in the MPC, counties may, and generally have, overlooked this requirement because there is no threat of enforcement. This is a non-starter for preservation because if the conversations are not being held, then by the same token, municipal action simply is not happening, or is not happening preemptively. Mindy Crawford, the director of the state’s preservation non-profit, observed in an interview that “while the law is clear on who is responsible for protecting historic places, municipalities are unlikely to commit limited time and money to such protection, short of being forced to do so.” When the state refuses to enforce the law, the responsibility to press local officials to fulfill their responsibilities as stewards of state and local law rests with the public.

78 Local Land Use Controls in Pennsylvania, 3.

3.5 Conclusion

In the most recent data available, a 2003 municipal survey conducted by the PA SHPO identified fifty municipalities with historic districts enacted under local zoning ordinances.\textsuperscript{80} The MPC is truly just an enabling law, making it an attractive option to many municipalities because it allows them to address some of the burdens intrinsic to the HDA. However, as the previous discussion has pointed out, there are a number of risks to this strategy. Until Pennsylvania Courts clarify the provisions of the MPC, municipalities are left to make their own interpretations.

As applied on a local scale, the differences between the authorities and governance of HDA historic districts and overlay historic districts have caused significant confusion for the public, and for good reason. Anecdotally, municipalities will frequently adopt multiple preservation ordinances within the same jurisdiction because neither law affords them the authority necessary to meet their needs. The most common reason for doing this is because of the need to protect both historic districts and individual historic resources. In order to do so, municipalities must either enact two ordinances, one for the historic district under the HDA and one for the individual properties under the MPC, subsequently creating two separate boards/commissions, or enact a single ordinance under the MPC. Cory Kegerise noted that in his experience, “few municipalities have been willing to use the MPC to regulate districts because it is untested in the courts and their solicitors are wary of such provisions. The lack of specificity

\textsuperscript{80} Lefevre, \textit{Historic District Designation in Pennsylvania}, 15. More current data is unavailable, since the PHMC does not certify these types of districts and there is no state agency tasked with enforcing the MPC.
in the MPC rarely inspires creativity on the part of local government attorneys.” For example, Birmingham Township currently has two local ordinances in place, Chapter 61 regulating Historic Districts under the authority and framework granted by the HDA, and Chapter 122, Article VIIIA, regulating individual historic resources under the authority granted by the MPC. Each law establishes separate reviewing bodies with different qualifications and establishes different forms of regulations. Such a system is frequently confusing to not only the general public in that locality but also to the commission members of each board, who may confuse the extent of their authority.

In summary, the current enabling laws have created a fragmented and confusing patchwork of local ordinances across the state. The HDA and the MPC complement each other, but neither is independently sufficient to protect historic resources. Andrea MacDonald acknowledged that the current system has resulted in greater divides between the western, central, and eastern regions of the state, with each trying to make lemonade out of lemons. MacDonald also explained that the lack of a common standard makes it difficult for SHPO staff to provide training to localities and find solutions to any problems they might be facing. A common standard should be flexible enough to be applied in a myriad of different localities, be legally defensible, provide some incentive for preservation, and respond to twenty-first-century challenges in historic preservation.

81 Cory Kegerise, email correspondence with author, March 17, 2016.

## Historic District Act

- May regulate the following work on buildings in geographically defined districts:
  - Exterior alterations and additions
  - New construction
  - Signs, (but no other environmental features)
  - Demolition

## Municipalities Planning Code

- May establish a zoning overlay to regulate individual resources and historic districts. Municipalities determine the scope of work subject to regulation, which may include setting and landscape features.

### Historic districts

- Historic districts must be certified as historic by the PHMC.

- No PHMC approval required. No standards for what qualifies as “historic”.

### Zoning overlay

- Establishes quasi-judicial, advisory HARBS to review work. HARBS review COA applications and advises the local governing body on decisions, who ultimately approves or denies the COA.

- Applications for changes to historic resources are reviewed by the municipal planning commission or Zoning Hearing Board. Governing Body or Zoning Hearing Board approves or denies variances, special exceptions, and/or conditional use permits.

- HARB members must meet specialized qualification standards and are appointed by the governing body.

- Does not establish any authority for a board knowledgeable in disciplines related to historic preservation to review variances, conditional approvals, and other applications for change on designated historic resources. Municipalities may create advisory historical commissions to fill this void as enabled by the City, Borough, or Township Code.

### Enforcement

- Municipalities may determine a system of enforcement, “in the same manner as in its enforcement of other building, zoning or planning legislation or regulations.”

- Zoning or Building Code enforcement issues the appropriate permit and is charged with enforcement.

### Ordinances

- Ordinances have withstood numerous challenges in State Courts, which have always been favorable to historic preservation ordinances as part of their general police powers.

- No challenges to the validity of an ordinance created under MPC.
Chapter 4: Analysis of Enabling Legislation in New Jersey, New York, and Indiana; A Case Study and Comparison

4.1 Introduction

The following chapter is intended to critically examine the enabling laws in the three states of New Jersey, New York, and Indiana. Each of these states has established different regulatory models for preservation, and thus each offers an alternative perspective on the best ways to protect historic resources at the local level. The character of states is hardly uniform across the country, with each in possession of their own unique constructs that have, in turn, unmistakably influenced their historic district laws. However, the overarching goal to promote protection for local historic resources remains in all. The best practices that each one provides offer examples that could be adapted universally. In any case, the three states are good comparative models for Pennsylvania, as they relate to one another in locational proximity and geography, population demographics, and local government structure. Even with these similarities, the unique character of each state will be brought into account throughout the analysis. Each case study is organized to include an overview of the state’s enabling law, highlighting the most relevant and notable provisions, followed in turn by a discussion of the strengths and weaknesses of the law’s practical application in the state’s localities. Finally, each case study ends with a conclusion that discusses the themes revealed in each state.
4.2 New Jersey

For many years, all local historic districts in New Jersey were created under the general grant of police powers to localities, without any explicit historic preservation enabling legislation. However, a challenge to the Middletown Township historic preservation ordinance in 1985 led the State Legislature to amend the state land use enabling law, the Municipal Land Use Law (MLUL), to include explicit authority for historic district ordinances. Inclusion in the MLUL integrated the identification and regulation of local historic sites and districts into the municipal planning and zoning process. Further, the MLUL structures historic preservation designation as an “overlay” to zoning, stating that historic site or district designation is “in addition to such designation and regulation as the zoning ordinance may otherwise require.”

Arguably, the New Jersey State Legislature had the advantage of being able to model their enabling language on twenty-five years of other state legislation, an advantage that has resulted in a remarkably clear and efficient enabling law for localities to implement. The most recent survey conducted by the NJ SHPO in 1999 found that 29% of all New Jersey municipalities, or 165 municipalities, had historic preservation commissions established by local ordinance.

When the MLUL was amended in 1985, historic preservation was made an express

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83 Thurber and Moyer, 59. Before the 1985 amendments to the MLUL, thirty-eight New Jersey localities had established reviewing historic preservation commissions under their general police powers granted by home rule.


purpose of the law, the text of which states:

It is the intent and purpose of this act... (7) To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land.\textsuperscript{87}

The basic framework for historic preservation as laid out in the MLUL revolves around the enactment of a historic preservation plan element. As a growth management state, New Jersey requires all municipalities with zoning to have comprehensive “master plans” that serve as the foundation for all local zoning ordinances. Additionally, municipalities that wish to have historic preservation ordinances must include a historic preservation element within their master plan. While the historic preservation plan elements are not mandatory, without such inclusions, municipalities may not enact historic preservation ordinances.\textsuperscript{88} As established in \textit{Estate of Neuberger v. Middletown Twp.}, 215 N.J. Super. 375 (App. Div. 1987), the provisions outlined in the MLUL are the only way for municipalities to create any regulatory ordinances for historic preservation.

The MLUL requires that historic preservation plan elements should meet three criteria:

A. indicate the location and significance of historic sites and historic districts;

B. identify the standards used to assess worthiness for historic site or district identification; and

C. analyze the impact of each component and element of the master plan on the preservation of historic sites and districts.\textsuperscript{89}


The inclusion of such robust historic preservation plan requirements as part of the master planning process is a substantial asset for historic preservationists. Preservation Planner Marya Morris further articulates this point in her 1992 report *Innovative Tools for Historic Preservation,* in which Morris explains that preservation plans “bring preservation concerns to the forefront of local public policy” and create “clearly defined strategies for implementing goals and policies.”

Morris also contends that preservation plans are one of the best ways to make preservation less reactionary by providing a “forum for inter- and intra-governmental cooperation.” In this way, New Jersey recognizes the importance of historic preservation in community development and provides a solid foundation to introduce historic preservation concepts into local planning.

In addition, the MLUL also includes a requirement that the master plan and all of its elements should be reexamined once every six years. While there is no agency tasked with the enforcement of this provision, the MLUL states that failure to comply would create a “rebuttable presumption” that the plan and any municipal development regulations are no longer reasonable. This requirement keeps localities accountable without requiring the state to create an enforcement agency, and keeps municipal master plans and preservation plans responsive to an ever-changing environment.

After a municipality has established a historic preservation plan, the governing body may enact a historic preservation ordinance. Local ordinances should outline the criteria and

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91 Ibid., 33.

procedures for designation and the standards and guidelines used in project review, as well as establish a historic preservation commission (HPC) and the HPC review procedures. The HPC is comprised of five, seven, or nine members appointed by either the mayor or planning board chair. In accordance with the MLUL, the HPC must include at least one “Class A” and one “Class B” member with the following qualifications:

Class A--a person who is knowledgeable in building design and construction or architectural history and who may reside outside the municipality; and

Class B--a person who is knowledgeable or with a demonstrated interest in local history and who may reside outside the municipality.

All other regular members, “Class C” members, must be municipal residents and hold no other municipal office or employment (except for membership on the Planning Board or Zoning Board of Adjustment). Additionally, the MLUL states that in the more rural municipalities with populations of less than 2,500, the planning board may act as a historic preservation commission if one member meets the criteria of Class A and one meets the criteria of Class B.

The scope of authority granted to the HPC to regulate historic sites or districts depends on whether or not the structure is listed in the municipality’s master plan or if it is designated by local ordinance. If the structure is identified in any component element of the master plan or designated by local ordinance, any permit applications will trigger an advisory review process by the HPC. In these instances, the MLUL requires that the HPC review the application and may

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then either file a written report or testify at the application hearing.\textsuperscript{96} If the structure is designated by local ordinance, the authority of the HPC hinges on the structure of the local zoning ordinance, which may either establish a “strong” HPC or a “weak” HPC.\textsuperscript{97} A strong HPC has binding authority over such permit applications, making decisions that go directly to the administrative permitting official. On the other hand, a weak HPC only has advisory authority, making referrals to the Planning Board, who then makes a final decision that is conveyed to the administrative permitting official. As specified by the MLUL, regardless of the HPC’s scope of authority, permitting decisions must be made within forty-five days. Failure to respond within this timeframe results in the automatic grant of an unconditional permit. The following flowcharts were developed by the author to help clarify the two forms of HPCs.


Although not extensively reviewed for this thesis, it is worthwhile to note that in 1997 a thirty-member committee of code and fire officials, architects, historic preservations, ADA advocates, and government representatives developed the Rehabilitation Subcode, a set of “common sense rules for the restoration and re-use of existing buildings in New Jersey.”\footnote{“Rehabilitation Subcode,” New Jersey Department of Community Affairs, accessed February 26, 2016, http://www.state.nj.us/dca/divisions/codes/offices/rehab.html.} Recognizing that New Jersey has an old housing stock, estimating that over half of the state’s 3.1
million houses were built before 1959, the Rehabilitation Subcode is a technical sub-code to the Uniform Construction Code intended to promote adaptive re-use and historic preservation by relaxing code requirements in order to preserve historic value and the integrity of historic buildings. The New Jersey SHPO notes that “rehabilitation work in New Jersey's sixteen largest cities has increased 62.5 percent since 1997 [when] the code was adopted. Renovation accounts for forty-three cents of every construction dollar for projects authorized with building permits in New Jersey.” The Rehabilitation Subcode was the first building code of its kind in the nation and has revitalized communities across the state by stimulating economic development and creative adaptive re-use. While jurisdiction over building code varies across the country between the local versus state level, Pennsylvania uses a state standard Uniform Building Code and could encourage greater adaptive re-use and economic development by adopting a similar rehabilitation based code for existing buildings.101


100 For more information on the importance of integrating preservation with building code requirements, see Marilyn Kaplan, “Adopting 21st Century Codes for Historic Buildings,” National Trust Forum Journal (May/June 2007).

101 More states, including Pennsylvania, have adopted the International Existing Building Code that has relaxed standards for existing buildings, and even more relaxed standards for “historic” buildings. Code adapting bodies can add their own definition of what qualifies as “historic.” There sometimes remains an issue of training local code enforcement officers, so having an historic sub-code like New Jersey’s takes it one step further.
4.2.1 Assessing the MLUL in New Jersey

Local historic preservation ordinances adopted under the structure of the MLUL have withstood numerous legal challenges with courts unanimously upholding the authority and decisions of local HPCs. The historic preservation provisions of the MLUL establish a clear framework for localities by allowing them enough authoritative flexibility to encourage adoption in a range of political environments. Senior Historic Preservation Specialist and Certified Local Government Coordinator, Jonathan Kinney, and current member of the Frenchtown Planning Board and Historic Preservation Assistant at the New Jersey SHPO, Sarah Scott, have provided the author with the following practical insight into how the MLUL structure currently functions for New Jersey municipalities.

Kinney affirmed that the MLUL is working effectively throughout the state, noting that the greatest asset to the MLUL is the flexibility in the structure that the law establishes. However, Kinney expressed that many municipalities struggle with the MLUL’s language, often confusing the required and optional provisions of the law. A frequent confusion lies in the interpretation of the MLUL’s mandate for a historic preservation plan in order to have a historic preservation ordinance. Kinney noted that the NJ SHPO always recommends that a municipality adopt a historic preservation plan not only for protection in the event of a legal challenge but also because the plan can act as a “PR pitch” for what preservation can do for a community. Other

provisions that frequently cause confusion are Sections 40:55D-110 and 111, outlining the final
decision-making authority of the HPC. Kinney noted that there is a spectrum to interpretation,
with some municipal ordinances making express mention of whether or not the HPC has strong
or weak authority, whereas other communities might not acknowledge it in their ordinances at
all.

While the MLUL may be mired in legal jargon, the basic outline established by the
MLUL offers several provisions that could address many of the issues in Pennsylvania. First, the
HPC member qualifications establishes reasonable requirements that both rural and urban
municipalities could meet with relative ease while also guarantying a level of expertise that
ensures procedural due process. Second, the importance of the historic preservation plan as
combined with the plan review requirements that do not add any real enforcement from a state
agency, are excellent provisions that allow municipalities to essentially test the political waters
for historic preservation. Third, the MLUL integrates preservation and municipal planning in a
way that shows how intricately the two are linked by requiring that regulatory historic
preservation ordinances must be derived from the municipality’s larger master plan and rooted in
local zoning. Finally, the MLUL creates a straightforward system for municipalities to implement
that is flexible in scope of regulation, how much authority the HPC is given, and even facilitates
coordination between the different local government administrative departments.
4.3 New York

New York State boasts its history of pioneering historic preservation laws, tracing the first governmental action to preserve historic resources to the state’s acquisition of the General George Washington’s headquarters, the Hansbrouck House, in 1850. Numerous state statutes exist to encourage the protection of historic resources, and to date over 250 New York municipalities have adopted some form of historic preservation ordinance. Prior to the adoption of Article 5k in 1980, New York municipalities enacted historic district ordinances in one of two ways. The first was under the authority granted by Section 10 [1](a)(11) of the Municipal Home Rule Law. This section of the Home Rule Law empowered counties, cities, towns, and villages to adopt local laws for the “protection of its physical and visual environment,” which the New York Appellate Court has upheld to include historic preservation ordinances. The first municipal historic district ordinance in the state was adopted in 1962 by the City of Schenectady under this general grant of power.


The second state enabling law, Section 96-a, was adopted as part of the New York General Municipal Law in 1968. Colloquially referred to as “96-a,” this law authorized the governing board or local legislative body in any of the state’s villages, towns, cities, and counties “to provide by regulation, special conditions and restrictions for the protection, enhancement, perpetuation, and use of places, districts, sites, buildings, structures, works of art, and other objects having a special character or special historical or aesthetic interest or value.” 96-a also clarified that localities were empowered to reasonably control “the use or appearance of neighboring private property within public view, or both.” This unique provision to “reasonably control” the public view of neighboring private property was intended to be useful to municipalities without zoning controls. Although both 96-a and Section 10 of the Home Rule Law are very succinct and provide little guidance to the state’s municipalities on what should be included in a preservation ordinance, both laws provided a wide breadth of authority for the early preservation ordinances adopted throughout the state until 1980.

In that year, the Historic Preservation Act (HPA) was added to the New York State General Municipal Law, and many of the provisions of this legislation were structured similarly to the 1966 federal NHPA law. In a letter from Executive Director Diana S. Waite of the Preservation League of New York State urging Governor Carey to sign the bill into law, Waite

107 N.Y. GEN. MUN. LAW §96-a (Consol. 2015).

108 Id.


110 Marsh and Simon, 417.
emphasized that one of the purposes of the bill was to:

... encourage and support preservation projects undertaken by local governments and by private individuals and organizations... The bill does not regulate what owners may do with their properties. The bill is consistent with the Preservation League's belief that legislation controlling an owner's actions is most effectively administered at the local level by local government, not by state government.111

The 1980 HPA establishes some expected programs, such as the “state historical register” and a project review process similar to Section 106 of NHPA, as well as some creative provisions, such as the mandate to house state agencies in historic buildings whenever possible. Additionally, the HPA sought to encourage local government preservation programs through amendments to the General Municipal Law that “clarified and amplified existing authority and provided necessary tools for such purpose.”112

The HPA essentially re-codified 96-a into Article 5k of the General Municipal Law, as well as added provisions under Section 119. Article 5k, Section 119 added some necessary clarification relating to historic preservation districts, but the additions were quite narrow due to political pressures at the time.113 A memorandum from the New York State Assembly noted that these additions "would not affect existing local authority but would draw together and provide a consolidated restatement of existing authority for localities to develop and implement a historic


112 N.Y. GEN. MUN. LAW §119-aa (Consol. 2015).

113 Marsh and Simon, 424. Governor Carey felt that it was very important that all of the additional provisions for historic resource protection be permissive rather than mandatory.
preservation program." The additional 1980 provisions were simply enacted in an effort to make it easier for localities to adopt preservation ordinances, primarily because 96-a was already considered to be “the broadest and most important source of authority for local preservation controls.”

Section 119-cc asked local governments to submit an informational report to the Commissioner of the Office of Parks and Recreation on the current state of preservation within their jurisdiction. This section asked for information on any local landmarks commissions, planning board or other agency, proposals for historic properties, and any other issues relating to the effectiveness of local development or administration of historic preservation plans and programs. This section was structured off of the 36 C.F.R. § 61.7(c) of the NHPA, which required satisfactory state historic preservation plans to be submitted to the Secretary of the Interior in order to be eligible for participation in the National Register and grants programs. Unlike the federal law, Section 119-cc is entirely voluntary, and there are no incentives to encourage localities to submit a local preservation plan to the state.

Section 119-dd empowered municipalities to establish a landmark or historic preservation board or commission “with such powers as are necessary to carry out all or any of the authority


115 Address by James Coon, Principal Attorney, New York State Department of State, "Historic Preservation for Local Government" conference at the Government Law Center of Albany Law School of Union University (Mar. 7-8, 1980), quoted in Marsh and Simon, 425.

116 N.Y. GEN. MUN. LAW §119-cc (Consol. 2015).

117 Marsh and Simon, 425.
possessed by the municipality for a historic preservation program, as the local legislative body
deems appropriate.”118 This provision truly enables localities to determine the extent of authority
granted to a preservation board. Before the 1980 provisions were adopted, several localities
throughout the state had already established historic preservation commissions that administered
a local preservation ordinance, surveyed and inventoried historic resources, and established and
enforced design guidelines.119 The addition of this authority to create preservation commissions
merely clarified the localities ability to create preservation commissions and clarified their role
in the decision-making process. Furthermore, Section 119-dd also empowers municipalities to
purchase, restore, lease and sell historic structures as well as the fee or any lesser interest,
development right, easement, covenant, or other contractual right necessary to achieve their
historic preservation goals. Finally, Section 119-dd also authorizes municipalities to provide for
the transfer of development rights.120

Sections 96-a and 119 are considered supplementary to local zoning laws but remain
separate from zoning because ordinances adopted under this grant of authority are considered

118 N.Y. GEN. MUN. LAW §119-dd(2) (Consol. 2015).

119 An Appellate Division Judge determined in Zartman v. Reisem, 59 A.D. 2d 237, 399 N.Y.S.
2d 506 (1977), that 96-a permits vesting a discretionary power in a local historic preservation
review body. Robinson, 19; Marsh and Simon, 428.

120 “Development rights are the rights granted under a zoning ordinance or local law respecting
permissible use, area, bulk or height of improvements. The transfer of development rights is the
process by which development rights are passed from one lot or parcel to another. This device
already has been used to foster preservation goals by allowing the owner of an historic resource
to sell unused development rights to another parcel within a specified area, thereby making it
economically feasible for the historic resource to be maintained by removing pressure to develop
it.” Marsh and Simon, 426-27; N.Y. GEN. MUN. LAW §119-dd (4-5) (Consol. 2015).
preservation ordinances, unconcerned with zoning.\textsuperscript{121} However, municipalities have also used their zoning powers to protect historic resources through “overlay zones” and through site plan review laws.\textsuperscript{122} Interestingly, the criteria for “overlay zones” is not specifically treated in any New York enabling law, but the State Courts have considered the practice to be lawful within the general statutory grants of zoning power.\textsuperscript{123} The New York State Department of State advises that this is because zoning districts are considered legislative acts, which “have a reasonable relationship to a legitimate governmental objective [and] enjoy a presumption of constitutionality,” and because courts have found historic preservation to be a legitimate governmental objective.\textsuperscript{124} Therefore, the only inquiry into local preservation ordinances adopted through zoning powers is if the ordinance is reasonable. Similarly, courts have upheld zoning ordinances that seek to protect historic resources through regulation of new construction and alterations to be “sufficiently precise and verifiable” and to “provide minimal guidelines to safeguard against arbitrary or discriminatory enforcement.”\textsuperscript{125}

The enabling legislation for site plan review ordinances allows local governments to enact legislation that specifies the uses which must obtain site plan approval, as well as the

\textsuperscript{121} Legal Aspects of Municipal Historic Preservation, 4.

\textsuperscript{122} Ibid.

\textsuperscript{123} Overlay zones are often employed in conjunction with special use permits. Local Government Handbook (Albany, NY: New York State Department of State, 2011), 151.

\textsuperscript{124} Legal Aspects of Municipal Historic Preservation, 5.

\textsuperscript{125} Salvatore v. City of Schenectady, 139 A.D.2d 87 (N.Y. App. Div. 1988).
elements to be included in plans submitted for approval.\textsuperscript{126} Site plan review laws are intended to ensure that “the development of individual parcels of land does not have an adverse impact on adjacent properties or the surrounding neighborhood.”\textsuperscript{127} The state’s enabling laws allow localities to determine what should be included in site plan review, but identifies that site plan review ordinances may consider:

- parking, means of access, screening, signs, landscaping, architectural features, location and dimensions of buildings, adjacent land uses and physical features meant to protect adjacent land uses as well as any additional elements specified by the legislative body in such zoning ordinance or local law.\textsuperscript{128}

These laws also do not specify a governing body tasked with enforcing site plan review. Further, the Appellate Court set a precedent for delegating this authority to a “historic review board” by upholding a town ordinance delegating site plan review to an “Architecture and Community Appearance Board of Review” in \textit{Teachers Insurance and Annuity Ass’n. of America Inc. v. City of New York} in 1993.\textsuperscript{129} Therefore, localities can adopt a local site plan review law that empowers a historic review board to review projects in historic areas and establish required guidelines for review and enforcement.

Beginning in 1993 the New York legislature adopted new legislation mandating that zoning in towns, villages and cities must be enacted in accordance with a “comprehensive plan”

\textsuperscript{126} \textsc{N.Y. Gen. City Law} § 27-a (Consol. 2015); \textsc{N.Y. Town Law} § 274-a (Consol. 2015); \textsc{N.Y. Village Law} § 7-725-a (Consol. 2015).

\textsuperscript{127} Nolon, 123.

\textsuperscript{128} \textsc{N.Y. Gen. City Law} § 27-a (Consol. 2015).

\textsuperscript{129} Teachers Ins. and Annuity Ass’n. of Am. Inc. v. City of New York, 603 N.Y.S.2d 399 (1993).
or “well-considered plan.”130 The enabling laws mandating the adoption of comprehensive plans does not specify requirements for the plan, but do suggest that they may include “consideration of agricultural uses, historic and cultural resources, coastal and natural resources and sensitive environmental areas.”131 Within the purpose clauses for the comprehensive planning enabling laws, the New York State legislature acknowledged that the requirements for comprehensive plans were largely permissive because of the “great diversity of resources and conditions that exist within and among [cities/villages/towns] of the state.”132 Further, New York State courts have consistently placed importance on requiring that zoning laws stem from a comprehensive plan, but in the absence of one, will use other evidence to determine the validity of a zoning ordinance.133

One last additional stimulus for preservation in New York is the tax abatement enabling law for historic properties. Under Section 444-a of New York’s Real Property Tax Law, taxing jurisdictions may abate property taxes on improvements to all locally designated historic properties for up to ten years.134 This law does not reduce taxes on a property, but rather defers

130 N.Y. GEN. CITY LAW §28-a (Consol. 2015); N.Y. TOWN LAW § 272-a (Consol. 2015); N.Y. VILLAGE LAW § 7-722 (Consol. 2015).

131 N.Y. GEN. CITY LAW §28-a (4)(d) (Consol. 2015); N.Y. TOWN LAW § 272-a (3)(d) (Consol. 2015); N.Y. VILLAGE LAW § 7-722 (3)(d) (Consol. 2015).

132 N.Y. GEN. CITY LAW §28-a (1)(d) (Consol. 2015); N.Y. TOWN LAW § 272-a (1)(d) (Consol. 2015); N.Y. VILLAGE LAW § 7-722 (1)(d) (Consol. 2015).


134 N.Y. Real Property Tax Law §444-a.
any potential increases in taxes due to a higher assessed value because of improvements.135 This strategy was implemented in an effort to promote the adaptive re-use of historic buildings and has the added benefit of potentially encouraging additional municipalities to participate in the local designation process. The implementation of this program in 1997 has added an “enticing carrot” for the state’s municipalities to adopt historic preservation ordinance, by rewarding historic property owners for positively investing in their properties.136

4.3.1 Assessing the State Enabling Authority for Local Historic Resource Protection in New York

The previous discussion has laid out four different methods for New York municipalities to protect historic resources through local ordinances: the Municipal Home Rule Law, Article 5k of the General Municipal Law, overlay zoning, and site plan review. Julian Adams, the Director of NY SHPO’s Community Preservation Services Bureau, clarified in an interview with the author that New York municipalities could feasibly enact ordinances through both zoning and the historic preservation laws, requiring an owner to comply with both laws.137 Adams also


136 New York State also has a Commercial and Homeowner Tax Credit Program that provides 20% of qualified expenditures up to $50,000 in credits. To qualify, the property must be listed on the State or National Register, rather than have local designation.

137 Julian Adams, interview by author, February 9, 2016.
expressed that New York’s enabling laws are truly just enabling laws, leaving the responsibility to the localities to determine what to regulate and to what extent.\textsuperscript{138} This is problematic, because, in many ways, the issue of coordinating planning and preservation that Pennsylvania faces also persists in New York. Undeniably, such an array of loose enabling laws that lack real guidance seems to be an ineffectual model for Pennsylvania, most likely perpetuating the problems that Pennsylvania currently grapples with, rather than offering any solutions towards solving them. Despite this legitimate criticism, New York preservation professionals have been constrained to work within this tangled framework and, as a result, they have developed functional education tools and methods to deal with the problems uncovered over the past thirty-six years.

One tool that the NY SHPO pioneered to help communities establish effective preservation programs was “the Model Law.” The Model Law was first published in 1980, but was recently updated in 2014 “to reflect legal developments and approaches and over three decades of community-based experience with this form of municipal law.”\textsuperscript{139} The Model Law is a “baseline ordinance” for communities to adopt, containing core elements and components necessary for a successful and functional preservation program. The NY SHPO utilized the expertise and experience of the Preservation League of New York State, preservation lawyers, and CLG preservation commissions to produce a document that not only establishes a solid

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\textsuperscript{138} Julian Adams, interview by author, February 9, 2016. It is also interesting that the NY SHPO expressed a similar sentiment to the National Trust for Historic Preservation in a 1984 survey of state legislation, in which the staff is quoted stating that “this level of detail is perhaps properly the prerogative of the locality to determine to meet its own unique needs.” Thurber and Moyer, 61.

\textsuperscript{139} Mackay, 2.
\end{flushleft}
foundation for municipalities but is also legally defensible.\textsuperscript{140} The Preservation League of New York State also published an accompanying reference guide, \textit{So Our Past Has a Future}, which explains in greater detail each section of the Model Law, and what questions municipalities should be asking themselves when adapting the Model Law for their community.\textsuperscript{141}

Thus, the Model Law is purely an educational device, intended to help communities draft ordinances that address problems they may not have considered, meet the guidelines to become a CLG if they desire, and foster greater coordination with other municipal offices. This strategy allows municipalities the flexibility to create achievable preservation programs, and has the added benefit of reducing the amount of time SHPO staff spends on assisting communities to tailor preservation ordinances to their needs. For example, one of Pennsylvania’s most common problem is finding preservation commission staff with qualifications that satisfy the enabling laws requirements, but since the enabling legislation allows municipalities to develop qualifications for any municipal officers, the Model Law and the Preservation League’s guide help direct municipalities towards drafting ordinances with requirements that are actually obtainable. The Guide also stresses the importance of coordinating local preservation with other municipal departments, and provides some examples of proven methods used in other communities as potential templates for other municipalities. Overall, the Model Law and Guide address important discrepancies in the state’s preservation enabling legislation, in effect

\textsuperscript{140} Julian Adams, interview by author, February 9, 2016. The Model Law was also vetted to the New York State Department of State for constitutionality.

providing municipalities with a very effective and powerful tool.

To summarize, the purely enabling authority granted by Article 5k and the provisions of the zoning enabling law is beneficial to a certain degree because it provides municipalities with a wide umbrella under which to adopt preservation ordinances. It also provides municipalities the ability to regulate a variety of resources “having character or special historical or aesthetic interest or value,” giving them the freedom to determine what types of resources should be included in a local preservation ordinance.\(^\text{142}\) Moreover, a municipality could adopt an ordinance that only has demolition provisions or one that implements a wide scope of regulations for existing buildings and new construction. Upholding a local preservation ordinance against claims of arbitrariness, a New York Supreme Court Appellate Judge affirmed the validity of such an approach, stating that, “What might be an appropriate improvement in one preservation district may be wholly inappropriate in another.”\(^\text{143}\) Under this method, preservation is truly local. Additionally, this approach to State enabling law is consistent with other State statutes for land use, as the State Legislature has developed a pattern of expanding the authority of local governments to control their destinies, allowing them “an impressive array of land use strategies.”\(^\text{144}\) On the other hand, the risk for ineffective and even unconstitutional ordinances is greater when the state legislation provides only minimal guidance, necessitating increased preservation education and tools such as the Model Law. Also, by granting such wide authority to protect a variety of historic resources preservation is more regional, and less cohesive across

\[^{142}\text{N.Y. GEN. MUN. LAW §96-a (Consol. 2015).}\]


\[^{144}\text{Nolon, 5.}\]
the state, a problem that Pennsylvania also faces.

Finally, at first look, New York’s multiple enabling laws for historic resources seems to have problems that are consistent with Pennsylvania, perhaps even worse in New York than in Pennsylvania. However, the tools developed in New York to tackle these challenges should not be undervalued. If Pennsylvania found that changes to both the HDA and the MPC were unattainable, the detailed and functional education tool created by New York’s Model Law is an attractive option for PA SHPO staff to pursue. Additionally, the financial incentives that New York provides to municipalities is also a valuable asset. These incentives are vital to encouraging communities to adopt preservation programs, evidenced by the more than 250 municipalities throughout the state utilizing just Article 5k to create preservation programs. Overall, the Model Law, the accompanying guide, and the tax incentives for local historic resources are undeniable strengths to the local preservation framework in New York, and should be considered as Pennsylvania searches for solutions.

4.4 Indiana

The enabling law for local historic resource protection in Indiana was codified as IC 36-7-11 in 1977 and has led to the establishment of approximately fifty-seven preservation commissions in cities and counties across the state. The legislative intent of the enabling law

145 See note 104.

146 2013 Indiana Landmarks Historic Districts in Indiana file, courtesy of Indiana Landmarks staff.
explains how inclusive the law was intended to be, stating that the law’s purpose is to “preserve and protect the historic or architecturally worthy buildings, structures, sites, monuments, streetscapes, squares and neighborhoods of historic districts.”147 Also in this opening statement of intent, the legislature included a unique provision to clarify exactly how preservation should coordinate with local zoning. This provision states that property owners in historic districts must comply with both the laws of the historic district and local zoning and, in the event that the two laws have conflicting requirements, “the more restrictive requirements apply.”148 Overall, because of this and other provisions of the law, Indiana’s enabling law is very comprehensive. It is also distinct from other states’ enabling laws because of the emphasis it places on “visual compatibility” factors. According to Thurber and Moyer, such an emphasis was derived from a section of the U.S. Department of Housing and Urban Development plan for Savannah, Georgia.149 This unique approach to historic district controls makes it a worthy state for consideration.

In order to establish historic districts in Indiana, the enabling law sets up a two-phase system: first, a city or county must enact an ordinance establishing the Historic Preservation Commission, then, districts are enacted through the passage of additional local ordinances.150

147 Ind. Code § 36-7-11-3.
148 Id.
149 Thurber and Moyer, 28.
150 Ind. Code § 36-7-11-4. Preservation Commissions may only be established in cities and counties, not townships or “consolidated cities.” Counties may not regulate within municipalities. Also, Indianapolis in Marion County has a separate enabling act not considered for this thesis.
Commission members are appointed by the executive unit of the governing body and then approved by the local legislative body. Section 4 also clarifies that local ordinances can establish additional qualifications for membership, but the three- to nine-member commission, requires members to reside within the boundaries of the political jurisdiction. Additionally, commission members should also include professionals from the fields of architectural history, planning, and fields related to historic preservation “to the extent that those professionals are available in the community.” If a community is unable to elect members from within the community with these professional requirements, Indiana Landmarks, the statewide non-profit for Historic Preservation, has developed a “Community Assistance Program” (CAP) that supplies staff with the professional qualifications unlikely to be found in many smaller communities.

After a commission is established, they are permitted to survey and map historic buildings within their jurisdiction and then submit those boundaries to the local governing body to adopt in the form of a local ordinance. While the enabling law language is only concerned with “historic districts,” Section 6 widens the definition of districts to be as limited as the boundaries of the property of a single building, site, or structure. Further, the law establishes a classification with differing regulations depending on classification. When submitting a historic district map to the local governing body to adopt, the map should indicate all historic and non-historic buildings/sites/structures. Optionally, the enabling act allows cities and counties also to

151 Ibid.


153 IND. CODE § 36-7-11-6 (a).
further classify anything designated as “historic” as “outstanding,” “notable,” or “contributing,” and may also establish primary and secondary areas. If the district is divided into primary and secondary areas, the enabling act establishes different levels of review for the secondary areas. The enabling law does not provide any definitions for Historic or Non-Historic designations, but communities in Indiana frequently adopt the National Register Criteria for Evaluation to measure significance and integrity.

After a map has been submitted to the local governing body for consideration, the proposed district is placed under interim protection. In all cities and counties with local preservation ordinances, the interim protection guarantees that while the local governing body is considering the historic district ordinance, all resources within the district boundaries are not to be demolished, relocated, or “conspicuously changed” by addition, reconstruction, or alteration. Further, the enabling act does not require any referendum requirement for designation, only requiring the commission to notify the respective property owner by certified mail of the designation. Once the designation is granted by local ordinance, the historic district is then established in two phases. During the first phase, beginning immediately after the ordinance is granted and lasting for three years, COAs may only be required for the demolition or relocation of any building within the district boundaries, and any new construction of accessory or principal buildings visible from a public way. After three years, the district becomes “fully established,” allowing the commission a wider scope of actions requiring COA review. However, if a majority of property owners submit letters to the Commission stating their objection to a

154 IND. CODE § 36-7-11-8.5 (d).

155 IND. CODE § 36-7-11-19 (a).
“fully established” district, then the district will remain in the first phase.

Additionally, in 2013, the Indiana State Legislature added a provision establishing a course of action for removal of a local historic designation. The need for this provision developed after the Laporte City Council unilaterally removed a historic designation at the request of a homeowner, without involving the local historic preservation commission in the process. Recognizing that the enabling law was silent on the issue of de-designation, the amendment ensures that such a process involves the local historic preservation commission in the process.

Under the 2013 amendment, an owner seeking to de-designate a single resource is first required to submit a petition to the legislative body, which will then immediately forward the petition to the historic preservation commission. The preservation commission is then required to hold a public hearing on the petition within sixty days, during which, the commission will take public comments and receive evidence related to the petition, and then establish findings. The commission’s findings and subsequent recommendation should be based upon whether or not the resource in question still retains enough integrity to merit designation, whether the designation denies the owner reasonable use of the property or prevents reasonable economic return, and whether the removal of the designation would have an adverse effect on the historic resource and district. Within forty-five days of submitting the commission’s findings and recommendations to

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157 Ind. Code § 36-7-11-23. To de-designate a historic district containing two or more parcels, at least 60% of owners within the district must file a petition to de-designate.
the local governing body, the governing body must approve the recommendations with a majority vote, or override the recommendation with a two-thirds vote.\textsuperscript{158} If the local governing body fails to act within the time frame, the commission’s recommendations will apply by default. The first case of de-designation under the new amendment is currently in process at the time of the writing of this thesis concerning a Frank Lloyd Wright Usonian house in Fort Wayne.\textsuperscript{159}

The scope of reviewable work by commissions is quite broad, as it allows for the regulation of the exterior of buildings, streetscapes, public squares, and neighborhood in an effort to prevent any “incongruous” development. Like many other states’ enabling laws, Indiana sets up a Certificate of Appropriateness (COA) process and requires that all property owners within a district apply for a COA for demolition, relocating a building, any “conspicuous change” in exterior appearance, and for any new construction visible from a public way.\textsuperscript{160} A COA must be approved by the preservation commission before any work permits are issued, or work is begun. For districts that choose to establish primary and secondary areas, commissions may also consider changes in walls or fences along public ways and any “conspicuous [exterior] changes” in non-historic buildings.\textsuperscript{161} The commission is also required to act on a COA application within

\textsuperscript{158} \textit{Ind. Code} § 36-7-11-23 (e)(2).


\textsuperscript{160} \textit{Ind. Code} § 36-7-11-10 (1).

\textsuperscript{161} \textit{Ind. Code} § 36-7-11-10 (2).
thirty days of its submittal. Further, if the commission fails to act within this time frame, a COA is granted by default. This provision adds a level of accountability to the preservation commission and appeals to the developer community and property owner by ensuring predictability, consistency, and timeliness in commission reviews.

The provisions for the visual compatibility of new construction and non-historic buildings are very inclusive. Based on the U.S. Department of Housing and Urban development’s guidelines, Indiana establishes explicit design factors that a commission should consider when reviewing applications for these kinds of structures. Namely, Section 17 lays out the following compatibility factors to be considered:

1. **Height**: The height of proposed buildings must be visually compatible with adjacent buildings.

2. **Proportion of building’s front façade**: The relationship of the width of a building to the height of the front elevation must be visually compatible to buildings, squares, and places to which it is visually related.

3. **Proportion of openings within the facility**: The relationship of the width of the windows to the height of windows in a building must be visually compatible with buildings, squares, and places to which it is visually related.

4. **Rhythm of solids to voids in front facades**: The relationship of solids to voids in the front facade of a building must be visually compatible with buildings, squares, and places to which it is visually related.

5. **Rhythm of spacing of buildings on streets**: The relationship of a building to the open space between it and adjoining buildings must be visually compatible to the buildings, squares, and places to which it is visually related.

6. **Rhythm of entrances and porch projections**: The relationship of entrances and porch projections to sidewalks of a building must be visually compatible to the buildings, squares, and places to which it is visually related.

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162 IND. CODE § 36-7-11-12 (b)(2).
7. **Relationship of materials, texture, and color:** The relationship of the materials, texture, and color of the facade of a building must be visually compatible with the predominant materials used in the buildings to which it is visually related.

8. **Roof shapes:** The roof shape of a building must be visually compatible with the buildings to which it is visually related.

9. **Walls of continuity:** Appurtenances of a building, such as walls, wrought iron fences, evergreen landscape masses, and building facades, must form cohesive walls of enclosure along the street if necessary to ensure visual compatibility of the building to the buildings, squares, and places to which it is visually related.

10. **Scale of a building:** The size of a building and the building mass of a building in relation to open spaces, windows, door openings, porches, and balconies must be visually compatible with the buildings, squares, and places to which it is visually related.

11. **Directional expression of front elevation:** A building must be visually compatible with the buildings, squares, and places to which it is visually related in its directional character, including vertical character, horizontal character, or nondirectional character.\(^{163}\)

Based on such specific “visual compatibility” factors it is interesting to note that the law also prohibits a local commission from requiring “detailed drawings, plans, or specifications.” However, they may require applicants to submit “sketches, drawings, photographs, descriptions, or other information showing the proposed exterior alterations, additions, changes, or new construction.”\(^{164}\) Such a contradictory restriction is problematic because the commission cannot adequately review all of the visual compatibility factors that it allegedly should be considering when making a decision.

\(^{163}\) **IND. CODE §36-7-11-17 (1) - (11).**

\(^{164}\) **IND. CODE § 36-7-11-11.**
The enabling law also includes additional provisions for meeting requirement rules, commission term limits, approval and denials of COA applications, demolition, and violations, enforcement and the rights of interested parties. In summary, the law provides extensive guidance to communities on the extent of their authority as well as the process for creating historic preservation commissions and districts.

4.4.1 Assessing IND. CODE 36-7-11 in Indiana for Local Historic Resource Protection

The above analysis reveals several strengths within the current enabling law in Indiana. One those is the opening provision that clarifies the relationship between planning and preservation. Recognizing both of their roles in land use regulation, Indiana’s law clarifies that in the event that a zoning law and a preservation law have conflicting provisions, the stronger, or stricter, law will apply. Since the Indiana model keeps preservation ordinances separate from zoning, this provision seemingly ensures that the two laws will work in harmony with one another, rather than in conflict. Additionally, the commission membership qualifications simultaneously ensures procedural due process by mandating professional qualifications, while also guaranteeing that community interests are represented by requiring that the commission to be comprised of local constituents. Recognizing that the professional qualifications may be burdensome to the smaller, rural areas that make up the majority of the state, the legislation allows for loose interpretation of these requirements if these professionals cannot be found within the political jurisdiction’s boundaries. The additional service provided by the state’s non-profit preservation organization is an important partnership that works to ensure the
commission’s actions remain legally defensible, balancing the professional and more academic side of the field, with community values.

One of the most interesting and distinctive features of Indiana’s law is the emphasis on the visual quality features. However, as noted above, the contradictions between what a commission should be able to regulate, especially in terms of new construction, is hindered by the lack of authority to require detailed drawings beyond sketches and descriptions of work. This can be beneficial for homeowners who might not be able to hire an architect to provide detailed drawings of things like porch alterations and new garages, but could be an impairment with large-scale development typical to commercial historic districts. In an interview with the author, City of Fort Wayne Preservation Planner Creager Smith noted that on a practical basis this distinction between detailed drawing and sketches is not usually a problem.\textsuperscript{165} He stressed that while their office approaches every situation on a case-by-case basis, they have always intended for the COA process to be accommodating for the property owner. Additionally, their practice is never to ask for more than they need to make a decision, and often times even a simple napkin drawing may suffice. Smith acknowledged that he could see how the enabling language could be problematic in large-scale projects with a less than forthcoming developer, but in his more than twenty-year tenure with the City, he has not run into an issue, notable as Fort Wayne is the second-largest city in the state and the largest city in the state utilizing the state’s enabling legislation.

A more troubling aspect of Indiana’s law are the recently added provisions for owner de-
designation. While this is perhaps a beneficial addition for homeowners who might not want to be “saddled” with a designation, the ability to de-designate individual houses, especially in historic districts with concentrated resources, is concerning for many reasons. In “Historic Preservation and Its Cultured Despisers: Reflections on the Contemporary Role of Preservation Law in Urban Development,” renowned preservation lawyer Peter Byrne warns that

An individual owner of property in a historic district can reap a windfall if he is exempted from restrictions while surrounding buildings remain bound. He could build large buildings, which would benefit from the attractive context of older smaller buildings, without contributing to the preservation of that context. But his lucrative, inappropriate development would diminish the attractions of the ensemble, reducing the value of his neighbor's properties. While one exceptional tall building may impose only marginal harm on the ensemble, repeated exceptions eventually would destroy whatever value the historic district itself conferred on individual properties.\(^{166}\)

In the same piece, Byrne also notes that safety valves, such as Indiana’s, are important when private property rights are being regulated, however, “the challenge is to prevent it from becoming a loophole that undermines preservation.”\(^{167}\) Because the new provision has only been in effect since 2013, the real effects of its addition have yet to be felt. Certainly, the first case of a property going through the de-designation process and its effects are to be carefully monitored in the coming months.

On the other hand, the phased designation process does make the process of becoming a locally regulated historic district more friendly to property owners. By layering on the different aspects of designation, it helps owners see how the process is going to work before committing

\(^{166}\) Byrne, “Historic Preservation and its Cultured Despisers...,” 676.

\(^{167}\) Ibid, 673.
to the entirety of the regulations. At the same time, it ensures that at its most basic level, the regulations protect historic resources from inappropriate alterations, relocation, and demolition. In the same interview, Smith noted that in his experience, no locally designated district had ever petitioned not to adopt the full designation.\textsuperscript{168} Regardless, for states that are seeking to bring more of a democratic process to their historic district designation process, this model promises to find middle ground between property rights advocates and historic preservationists.

\textsuperscript{168} Creager Smith, interview by author, April 1, 2016.
Chapter 5: Conclusions and Implementation

5.1 Conclusions

The three states studied in this thesis present just a small sample of the wide range of approaches that states have taken to enable localities to create locally regulated and protected historic districts and landmarks. To clarify the best practices Pennsylvania could adopt from the above case studies, it is perhaps most beneficial first to reiterate and summarize the issues Pennsylvania currently faces:

1. The HDA does not permit local designation for individual historic resources. The HDA is also unclear on the extent of what “environmental features” localities may regulate through design guidelines.

2. The HDA professional qualifications for preservation commission membership has consistently proven to be largely unachievable in many areas of the state; the MPC does not expressly allow or give qualifications for preservation commissions.

3. The final decision-making authority of commissions established through both the HPC and the MPC are strictly advisory for any action within the historic district/resource’s boundary lines.

4. The MPC lacks any language related to the criteria for designation determinations.

5. Having two enabling laws is burdensome on SHPO staff since the lack of common standards results in numerous hours of staff time helping localities draft local ordinances.

6. Pennsylvania lacks any financial incentives for local preservation; The MPC provides for localities to create “zoning incentives” however this authority is largely under-utilized.

7. The divide between the HDA and the MPC is largely arbitrary since local regulation of historic resources is undeniably related to land use through both practical application and court decisions. This divide is confusing for municipalities, who have, in practice, adopted multiple preservation
ordinances to meet their needs.

Neither New Jersey, New York, nor Indiana have an all-encompassing legislative model that could solve all seven of these issues, but each of these three states can offer reasonable solutions to each one of the problems summarized in these bullet points.

In reference to the first point, it is notable that all three states explicitly empower localities to designate both historic districts containing two or more resources as well as individual “landmark” resources. New Jersey allows for the regulation of both sites, districts, and environmental features; New York expressly enables localities to regulate a wide range of historic resources from sites to districts to works of art, placing no limitations on regulation by stating that regulation can even include any “other objects having a special character or special historical or aesthetic interest or value”; and Indiana, while only using the terminology of “historic district,” includes a provision that defines that term to also include individual sites and other environmental features. Seemingly, there is no valid reason a state would allow only the regulation of concentrated, historic districts and not individual landmarks. As pointed out in Chapter Two, this may have been because Pennsylvania’s law was adopted at the height of urban renewal practices in America—when historic districts were seen as a method of community control over public and private development threatening older, historic neighborhoods. It may also have been because the state sought to minimize the risk of judicial challenge, since historic districts are closer to traditional use districts in zoning, rather than individual landmark regulations which put limitations on the rights of individual property owners. Since *Penn Central*, however, these concerns are void. Furthermore, it is illogical that the state would permit local regulation of individual landmarks under the loose language of the zoning enabling
legislation, but not the Historic District Act, the legislation expressly created to establish a procedure for local regulation of historic resources. Further, Pennsylvania could either adopt a provision that defines “historic districts” similarly to Indiana’s definition, or it could expand the expressed regulations to include the variety of resources and features articulated in both New York and New Jersey.

The second issue most pressing in Pennsylvania are the restrictive professional qualifications of preservation commission members outlined in the HDA, and the lack of any authority or guidance for a preservation commission in the MPC. In New Jersey, the MLUL balances the need for both professional and community voices in the decision-making process, and also recognizes that these professional members may need to come from outside of the political jurisdictional boundaries, but requires that all other members come from within the community. New Jersey also considers the limitations that rural areas might have, allowing these areas to substitute the traditional preservation commission with the planning board, as long as the board includes one member with the building design or architectural history qualifications and one member with the local history requirements. Similarly, Indiana also requires communities to balance professional and community voices and also allows members to come from outside the municipality. Notably, both states have rather flexible professional requirements; New Jersey only requires the professional to be knowledgeable in the areas of building design and construction, or architectural history or to be knowledgeable or show a demonstrated interest in local history, and Indiana states that professionals should come from the disciplines of architectural history, planning or other related historic preservation fields. In contrast, Pennsylvania localities are often impeded by the membership requirements laid out in the HDA,
which interestingly, does not prohibit membership from outside the jurisdictional boundaries, but does require the very specific professional disciplines of registered architect, licensed real estate broker, and building inspector. A more efficient and effective state law would more adequately balance attainable and flexible professional requirements and require local representation on the HARB. Preservation lawyer Carol Rose articulated the importance of creating this balance in local commissions, stressing that “Architects and other professionals may play an important role in the educational process, but the focus on community-building requires a retreat from architectural imperialism and an acceptance of community definition by community residents.” The enabling law should be flexible enough to apply to the individual and unique circumstances of any municipality that wishes to develop a local preservation program, and further, should be inclusive enough to balance both professional and community voices.

As outlined in the third point, the final decision-making authority of commissions established through both the HDA and the MPC are strictly advisory for any action within the historic district/resource’s boundary lines. Under the framework of the HDA and the MPC, all decisions, even maintenance decisions, must be approved by the local governing body, presumably based on the HARB’s or the preservation commission’s recommendations. However, it is contradictory that the HDA requires such rigorous professional qualifications for HARB members, but does not afford them the authority to make final decisions. The advisory nature of these bodies makes their decisions and influence open to the political influences that come with local governing bodies. Peter Byrne notes that preservation commission members, with interest or expertise in local history, planning, or preservation, serve as appointed volunteers and unlike

169 Rose, 492.
the elected, political officials, “can be expected to favor preservation rather than the incidental interests of well-heeled neighbors.”\textsuperscript{170} Additionally, the advisory nature of HARBs and similar preservation commissions in the state extends the process of simple actions like roof replacements into a series of administrative hoops for property owners to navigate. Undoubtedly, such a lengthy process not only undermines the authority of the commission but also makes the commission seem more burdensome than anything else. However, the case studies provide notable contrasts with the structure established in Pennsylvania. In both New York and New Jersey, localities may determine, based on the political climate for preservation and other circumstantial factors, whether to grant commissions with final decision-making authority, or whether to make them advisory to the local governing body or planning commission (as in New Jersey). Additionally, it is worth mentioning that even when the commission has final decision-making authority, the property owner still has the right to appeal the commission’s decisions. Indiana grants commissions with the authority to approve or deny COA applications for everything, with an appeals process, and only undermines the body’s decision in cases of demolition if “the property owner shows that a historic building is incapable of earning an economic return on its value, as appraised by a qualified real estate appraiser…”\textsuperscript{171} All three of these methods balance preservation, property rights, and political control. Allowing a commission to have final decision-making authority, but also providing a system for property owners to appeal its decisions, streamlines the process and prevents property owners from being mired in procedures every time they want to make changes to their property.

\textsuperscript{170} Byrne, 673.

\textsuperscript{171} IND. CODE 36-7-11-14.
The fourth point pertains to the complications surrounding the classification systems for designation that municipalities have created as a result of the non-specific language in the MPC about this issue. Because the MPC language is so imprecise, municipalities have created classification systems that rank resources based on “how historically important” the resource is, effectively creating a triage system with a range of interpretations. Some localities hinge local designation on National Register Criteria, which can remove a municipality’s ability to fully apply its regulatory authority to a property that may be widely perceived as locally important if the SHPO or County do not concur. Notably, in all three case studies, the authority to decide the criteria for local designation is largely left up to the localities. Indiana does allow localities to set their own criteria for designation but also permits the creation of primary and secondary areas, presumably as a way to create buffer areas with less stringent design guidelines around historic districts. However, Indiana still requires the use of “contributing/non-contributing” language in historic districts, but also allows for the optional additional survey designations of “outstanding” and “notable.” This sets up somewhat of a similar triage system as the Pennsylvania classification systems, but unlike in Pennsylvania, Indiana’s enabling law does not expressly permit differential treatment based on the “outstanding” or “notable” nomenclature. This language was most likely only included in Indiana’s enabling law due to the strong county survey program conducted in Indiana.172

The fifth point is concerned with the administrative and logistical issues that having two

172 In 2011, Indiana achieved a major milestone by becoming the first state in the country to complete surveys of all structures 50 years or older that met survey criteria in all of the state’s 92 counties. “The Indiana Historic Sites and Structures Inventory,” The National Conference of State Historic Preservation Officers, accessed 7 March 2016, http://ncshpo.org/news/shpo-spotlight/the-indiana-historic-sites-and-structures-inventory/.
enabling laws with either limited or confusing language has produced, particularly for Pennsylvania SHPO staff. In the case studies, only New York grapples with multiple imprecise enabling laws concerning local preservation. Forced to work within such a web of legislation, New York has developed a “Model Law” as an educational tool to ease the administrative burdens that Pennsylvania currently juggles. New York’s Model Law, as well as the guide produced by the statewide preservation non-profit, were developed to answer common questions across the state. While the Model Law does structure an actual ordinance for municipalities to adopt, it does not presume that such a one-size-fits-all approach will work universally across the state. To resolve this concern, the Preservation League of New York’s guide goes through each section of the Model Law, explaining the range of options localities should consider when creating their own local ordinance. This type of educational tool could be particularly beneficial for Pennsylvania, and one that would be the most expedient to solve some of the State’s issues. Additionally, a model law and guidance document could also address the issue of designation criteria explained in the fourth point. Finally, since the MPC has now been in place for almost sixteen years, Pennsylvania could draw on those years of experience and identify the best practices that localities have pioneered to then draft a model ordinance for other communities seeking to benefit from the broad grant of authority permitted by the MPC.

The sixth issue concerns the lack of any enticing incentives for local preservation in Pennsylvania. It is imperative that states that truly want to make a commitment to preservation provide incentives to encourage preservation and adaptive reuse. Incentives help to offset additional expenditures that may be necessary to comply with a historic preservation ordinance,
and have even been proven to be a catalyst for neighborhood revitalization and rehabilitation.\textsuperscript{173} New York has adopted a separate enabling law that allows historic property owners to receive a tax abatement for up to ten years based on increases to assessed property values from rehabilitation improvements. By providing the carrot, New York allows localities to encourage property owners to purchase and renovate historic resources by offering them a significant incentive to do so. Alternatively, neither New Jersey nor Indiana allows for any state-sponsored incentives for property owners of locally designated properties. Lacking additional examples from these two case study states, Pennsylvania could also pursue adopting enabling legislation promoted by the National Park Service, which suggests four different incentives proven to encourage preservation:

1. Tax credits or deductions on State income or property taxes for rehabilitation and maintenance of historic properties or for donations of easements for preservation purposes.

2. Tax credits or deductions on local property taxes.

3. Abatement or partial abatement of property taxes, i.e., partial or complete exemptions on qualified properties.

4. Alternate methods of valuation, i.e., assessment of property value on the basis of existing use or other than fair market value.\textsuperscript{174}

Former director of State and Local Policy of the National Trust for Historic Preservation,


Constance E. Beaumont, has also compiled examples of innovative incentives from across the country. Some notable examples from Beaumont’s report are Alabama’s “Property Tax Incentive,” in which commercial historic buildings can be assessed at 10% of their appraised value, rather than at 20% for other commercial properties, and North Carolina’s “Landmark Property Tax Reduction,” where locally designated historic structures are assessed at one-half of their market value as long as the owner maintains the key historic features while the tax relief plan is in effect. While Pennsylvania’s MPC provides for the creation of zoning incentives, any additional financial incentives for property owners will undoubtedly work to promote additional preservation programs at the local level.

Finally, the last, and perhaps the greatest concern, is the arbitrary distinction between the HDA and the MPC. The New Jersey and Indiana case studies included in this thesis have presented two different methodologies to approach the conjunction between preservation controls and local planning. Indiana provides perhaps the simplest solution to minimizing conflict between preservation and existing zoning laws by requiring that in situations of conflict, the stricter law will always apply. This simple technical provision keeps preservation and zoning ordinances compatible but separate. On the opposite end of the spectrum, New Jersey has completely integrated the structure for historic resource designation in the statewide planning and zoning enabling legislation. By requiring communities to root historic preservation ordinances in the municipality’s comprehensive plan, New Jersey ensures that preservation is consistent with all other zoning and land use laws. Additionally, by making preservation a part of

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the planning process, the MLUL has created a system in which local preservation commissions are given the opportunity to be consulted when other land use decisions could affect historic resources. With these two approaches in mind, it cannot be understated that planning and preservation should be coordinated in some logical fashion to ensure that the objectives of both areas do not undermine one another. The best way to do this is to address the role of the preservation commission in other areas of land use directly in the enabling legislation. That said, Pennsylvania will have to determine what the most achievable and beneficial solution will be: either integrating preservation into the MPC through the addition of numerous provisions, or by “muddling through”—keeping the HDA and MPC separate.

5.2 Implementation

From the above conclusion logically follows some final clarifications concerning the implementation options to modify the current enabling laws for historic resource protection. Before any conclusive decisions are made concerning an approach to modifying the enabling laws, more in-depth research into how the enabling laws function at the local level should be conducted. Further, this research should also investigate how any proposed changes to the enabling laws might impact the existing local ordinances. This level of research should inform and influence which course of action the Commonwealth pursues to remedy the seven key issues with the current structure.

The conclusion also clearly uncovers three different courses Pennsylvania could work
towards in their efforts to remedy these problems:

1. Create a model ordinance and/or guidance document based on the provisions of the MPC and the best practices of existing local ordinances utilizing the MPC.

2. Amend the HDA to remedy the problems outlined in points 1, 2, and 3 in the conclusion. Advocate for the creation of some financial incentive based on local designation to encourage adoption. Limit the use of the MPC’s provisions to the creation of NCDs, and provide guidance on how localities can use the authority granted by the MPC to create these types of districts.

3. Fully integrate the local enabling law for historic resources into the structure of the MPC, removing the divide between preservation and planning.

The first of these options is the most expedient, and could solve some of the more immediate issues. As mentioned previously, the model ordinance should be based on additional research into the local ordinances already in place, and should not attempt to be a one-size-fits-all document, but should place considerable emphasis on the variety of options localities can take under the broad enabling umbrella of the MPC. The second and third options both require legislative changes, although the scope of change differs greatly between the two. That said, the second option is most likely to be more attainable than the third, as some may argue that the changes needed to integrate preservation fully into the MPC would be too vast to be practical. This is also where more in-depth local research will be helpful, which will help inform how changes to the MPC will actually impact communities across Pennsylvania with existing preservation ordinances. Nevertheless, the importance of integrating local preservation more fully with local planning should not be ignored simply because of the difficulty amending the MPC might seem at first. Further, blending preservation with the state’s planning legislation is undeniably the best way to ensure local preservation goals are part of the comprehensive land use strategies. Architect and urban planner Carl Feiss perhaps best articulated the importance of
Preservationists and planners have been calling for greater integration of the two fields for decades now, and keeping the two separate does a disservice to all parties involved.

Finally, it is ultimately the property owner who can guarantee that historic resources are preserved, but the state laws play an indispensable role in providing the tools individuals need to take action. The best state enabling laws for local preservation will not only provide guidance related to how these local programs should be established, while remaining flexible enough to apply to a myriad of different local circumstances, but will also provide meaningful guidance on the relationship between preservation and local planning.

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Appendix A: State Enabling Acts

The Historic District Act

An 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.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The term “governing body” as used in this act, shall mean the board of commissioners of any county, the council of any city, except cities of the first or second class, the council of any borough or incorporated town, the board of commissioners of any township of the first class and the board of supervisors of any township of the second class. The term “executive authority,” as used in this act, shall mean the chairman of the board of commissioners of any county, the mayor of any city, except cities of the first and second class, the president of council of any borough or incorporated town, the president of the board of commissioners of any township of the first class and the chairman of the board of supervisors of any township of the second class. (As amended 1980 P.L.257, No. 74, (53 P.S.§ 8001 et seq.).

Section 2. For the purpose of protecting those historical areas within our great Commonwealth, which have a distinctive character recalling the rich architectural and historical heritage of Pennsylvania, and of making them a source of inspiration to our people by awakening interest in our historic past, and to promote the general welfare, education, and culture of the communities in which these distinctive historical areas are located, all counties, cities, except cities of the first and second class, boroughs, incorporated towns and townships, are hereby authorized to create and define, by ordinance, a historical district or districts within the geographic limits of such political subdivisions. No such 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. (P.L. 282, No. 167 as amended, 53 P.S. §8001, et. seq.).

Section 3. The governing body of the political subdivision is authorized to appoint a Board of Historical Architectural Review upon receipt of the certifying resolution of the Pennsylvania Historical and Museum Commission. 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. A majority of the board shall constitute a quorum and action taken at any meeting shall require the affirmative vote of a majority of the board. The board shall give counsel to the governing body of the county, city, borough, town, or township, regarding the advisability of issuing any certificate which the governing body may issue pursuant to this act. (As amended 1963 P.L. 27, No. 24.)

Section 4. (a) Any governing body shall have the power and duty to certify to the appropriateness of the erection, reconstruction, alteration, restoration, demolition or razing of any building, in whole or in part, within the historic district or districts within the political subdivision. Any agency charged by law or by local ordinance with the issuance of permits for the erection, demolition or alteration of buildings within the historic district shall issue no permit for any such building changes until a certificate of appropriateness has been received from the governing body.

(b) Any governing body in determining whether or not to certify to the appropriateness of the erection, reconstruction, alteration, restoration, demolition or razing of a building, in whole or in part, shall consider the effect which the proposed change will have upon the general historic and architectural nature of the district. The governing body shall pass upon the appropriateness of exterior architectural features which can be seen from a public street or way, only, and shall consider the general design, arrangement, texture, material and color of the building or structure and the relation of such factors to similar features of buildings and structures in the district. The governing body shall not consider any matters not pertinent to the preservation of the historic aspect and nature of the district. Upon giving approval, the governing body shall issue a certificate of appropriateness authorizing a permit for the erection, reconstruction, demolition, or razing of a building in whole or in part. Disapproval of the governing body shall be in writing, giving reasons therefore, and a copy thereof shall be given to the applicant, to the agency issuing permits, and to the Pennsylvania Historical and Museum Commission.

(c) Any person applying for a building permit within a historic district shall be given notice of the meeting of the Board of Historical Architectural Review which is to counsel the governing body, and of the meeting of the governing body which is to consider the granting of a certificate of appropriateness for the said permit, and may appear before the said meetings to explain his reasons therefore. In the event of a failure to recommend, the board, and, in the event of its disapproval, the governing body shall also indicate what changes in his plans and specifications would meet its conditions for protecting the distinctive historical character of the historic district.

(d) Any person aggrieved by failure of the agency charged by law or by local ordinance to issue a permit for such building changes by reason of the disapproval of the governing body may
appeal therefrom in the same manner as appeals from decisions of the agency charged by law or local ordinance with the issuance of permits for such building changes.

**Section 5.** The agency charged by law or by local ordinance with the issuance of permits for the erection, demolition or alteration of buildings within the historic district shall have power to institute any proceedings, at law or in equity, necessary for the enforcement of this act or of any ordinance adopted pursuant thereto, in the same manner as in its enforcement of other building, zoning or planning legislation or regulations.

**Section 6.** The provisions of this act are severable and, if any of its provisions shall be held unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this act.

It is hereby declared to be the legislative intent this act would have been adopted had such unconstitutional provisions not been included herein. The provisions of this act shall not be construed to limit the powers and duties assigned to the Pennsylvania Historical and Museum Commission.

**Section 7.** This act shall take effect immediately.
Article III. Comprehensive Plan [excerpts]

Section 301. Preparation of Comprehensive Plan.
(a) The municipal, multimunicipal or county comprehensive plan, consisting of maps, charts and textual matter, shall include, but need not be limited to, the following related basic elements:

   (1) A statement of objectives of the municipality concerning its future development, including, but not limited to, the location, character and timing of future development, that may also serve as a statement of community development objectives as provided in section 606.

   (2) A plan for land use, which may include provisions for the amount, intensity, character and timing of land use proposed for residence, industry, business, agriculture, major traffic and transit facilities, utilities, community facilities, public grounds, parks and recreation, preservation of prime agricultural lands, flood plains and other areas of special hazards and other similar uses.

   (2.1) A plan to meet the housing needs of present residents and of those individuals and families anticipated to reside in the municipality, which may include conservation of presently sound housing, rehabilitation of housing in declining neighborhoods and the accommodation of expected new housing in different dwelling types and at appropriate densities for households of all income levels.

   (3) A plan for movement of people and goods, which may include expressways, highways, local street systems, parking facilities, pedestrian and bikeway systems, public transit routes, terminals, airfields, port facilities, railroad facilities and other similar facilities or uses.

   (4) A plan for community facilities and utilities, which may include public and private education, recreation, municipal buildings, fire and police stations, libraries, hospitals, water supply and distribution, sewerage and waste treatment, solid waste management, storm drainage, and flood plain management, utility corridors and associated facilities, and other similar facilities or uses.

   (4.1) A statement of the interrelationships among the various plan components, which may include an estimate of the environmental, energy conservation, fiscal, economic development and social consequences on the municipality.

   (4.2) A discussion of short- and long-range plan implementation strategies, which may include implications for capital improvements programming, new or updated development regulations, and identification of public funds potentially available.

   (5) A statement indicating that the existing and proposed development of the municipality is compatible with the existing and proposed development and plans in contiguous portions of neighboring municipalities, or a statement indicating measures which have been taken to provide buffers or other transitional devices between
disparate uses, and a statement indicating that the existing and proposed development of the municipality is generally consistent with the objectives and plans of the county comprehensive plan.

(6) A plan for the protection of natural and historic resources to the extent not preempted by federal or state law. This clause includes, but is not limited to, wetlands and aquifer recharge zones, woodlands, steep slopes, prime agricultural land, flood plains, unique natural areas and historic sites. The plan shall be consistent with and may not exceed those requirements imposed under the following:

(ii) Act of May 31, 1945 (P.L.1198, No.418), known as the “Surface Mining Conservation and Reclamation Act”.
(iv) Act of September 24, 1968 (P.L.1040, No.318), known as the “Coal Refuse Disposal Control Act”.
(v) Act of December 19, 1984 (P.L.1140, No.223), known as the “Oil and Gas Act”.
(vi) Act of December 19, 1984 (P.L.1093, No.219), known as the “Noncoal Surface Mining Conservation and Reclamation Act”.
(ix) Act of May 20, 1993 (P.L.12, No.6), known as the “Nutrient Management Act,” regardless of whether any agricultural operation within the area to be affected by the plan is a concentrated animal operation as defined under the act.

(7) In addition to any other requirements of this act, a county comprehensive plan shall:

(i) Identify land uses as they relate to important natural resources and appropriate utilization of existing minerals.
(ii) Identify current and proposed land uses which have a regional impact and significance, such as large shopping centers, major industrial parks, mines and related activities, office parks, storage facilities, large residential developments, regional entertainment and recreational complexes, hospitals, airports and port facilities.
(iii) Identify a plan for the preservation and enhancement of prime agricultural land and encourage the compatibility of land use regulation with existing agricultural operations.
(iv) Identify a plan for historic preservation.
(a) When a municipality having a comprehensive plan is located in a county which has adopted a comprehensive plan, both the county and the municipality shall each give the plan of the other consideration in order that the objectives of each plan can be protected to the greatest extent possible.

(b) Within 30 days after adoption, the governing body of a municipality, other than a county, shall forward a certified copy of the comprehensive plan, or part thereof or amendment thereto, to the county planning agency or, in counties where no planning agency exists, to the governing body of the county in which the municipality is located.

(c) Counties shall consult with municipalities and solicit comment from school districts, municipal authorities, the Center for Local Government Services, for information purposes, and public utilities during the process of preparing or upgrading a county comprehensive plan in order to determine future growth needs.

Article VI. Zoning [excerpted]

Section 601. General Powers. The governing body of each municipality, in accordance with the conditions and procedures set forth in this act, may enact, amend and repeal zoning ordinances to implement comprehensive plans and to accomplish any of the purposes of this act.

Section 603. Ordinance Provisions.
(a) Zoning ordinances should reflect the policy goals of the statement of community development objectives required in section 606, and give consideration to the character of the municipality, the needs of the citizens and the suitabilities and special nature of particular parts of the municipality.

(b) Zoning ordinances, except to the extent that those regulations of mineral extraction by local ordinances and enactments have heretofore been superseded and preempted by the act of May 31, 1945 (P.L.1198, No.418), known as the “Surface Mining Conservation and Reclamation Act,” the act of December 19, 1984 (P.L.1093, No.219), known as the “Noncoal Surface Mining Conservation and Reclamation Act,” and the act of December 19, 1984 (P.L.1140, No.223), known as the “Oil and Gas Act,” and to the extent that the subsidence impacts of coal extraction are regulated by the act of April 27, 1966 (1ST Sp.Sess,. P.L.31, No.1), known as “The Bituminous Mine Subsidence and Land Conservation Act,” and that regulation of activities related to commercial agricultural production would exceed the requirements imposed under the act of May 20, 1993 (P.L.12, No.6), known as the “Nutrient Management Act,” regardless of whether any agricultural operation within the area to be affected by the ordinance would be a concentrated animal operation as defined by the “Nutrient Management Act,” the act of June 30, 1981 (P.L.128, No.43), known as the “Agricultural Area Security Law,” or the act of June 10, 1982 (P.L.454, No.133), entitled “An Act Protecting Agricultural Operations from Nuisance Suits and Ordinances Under Certain Circumstances,” or that regulation of other activities are preempted by other federal or state laws may permit, prohibit, regulate, restrict and determine:
(1) Uses of land, watercourses and other bodies of water.
(2) Size, height, bulk, location, erection, construction, repair, maintenance, alteration, razing, removal and use of structures.
(3) Areas and dimensions of land and bodies of water to be occupied by uses and structures, as well as areas, courts, yards, and other open spaces and distances to be left unoccupied by uses and structures.
(4) Density of population and intensity of use.
(5) Protection and preservation of natural and historic resources and prime agricultural land and activities.

(c) Zoning ordinances may contain:
(1) provisions for special exceptions and variances administered by the zoning hearing board, which provisions shall be in accordance with this act;
(2) provisions for conditional uses to be allowed or denied by the governing body after recommendations by the planning agency and hearing, pursuant to express standards and criteria set forth in the zoning ordinance. Notice of hearings on conditional uses shall be provided in accordance with section 908(1), and notice of the decision shall be provided in accordance with section 908(10). In allowing a conditional use, the governing body may attach such reasonable conditions and safeguards, other than those related to off-site transportation or road improvements, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act and the zoning ordinance;
(2.1) ((2.1) deleted by amendment June 22, 2000, P.L.495, No. 68)
(2.2) provisions for regulating transferable development rights, on a voluntary basis, including provisions for the protection of persons acquiring the same, in accordance with express standards and criteria set forth in the ordinance and section 619.1;
(3) provisions for the administration and enforcement of such ordinances;
(4) such other provisions as may be necessary to implement the purposes of this act;
(5) provisions to encourage innovation and to promote flexibility, economy and ingenuity in development, including subdivisions and land developments as defined in this act;
(6) provisions authorizing increases in the permissible density of population or intensity of a particular use based upon expressed standards and criteria set forth in the zoning ordinance; and
(7) provisions to promote and preserve prime agricultural land, environmentally sensitive areas and areas of historic significance.
(c) amended July 4, 2008, P.L.319, No.39)

(d) Zoning ordinances may include provisions regulating the siting, density and design of residential, commercial, industrial and other developments in order to assure the availability of
reliable, safe and adequate water supplies to support the intended land uses within the capacity of available water resources.

(e) Zoning ordinances may not unduly restrict the display of religious symbols on property being used for religious purposes.

(f) Zoning ordinances may not unreasonably restrict forestry activities. To encourage maintenance and management of forested or wooded open space and promote the conduct of forestry as a sound and economically viable use of forested land throughout this commonwealth, forestry activities, including, but not limited to, timber harvesting, shall be a permitted use by right in all zoning districts in every municipality.

(g) (1) zoning ordinances shall protect prime agricultural land and may promote the establishment of agricultural security areas.

   (2) zoning ordinances shall provide for protection of natural and historic features and resources.

(h) Zoning ordinances shall encourage the continuity, development and viability of agricultural operations. Zoning ordinances may not restrict agricultural operations or changes to or expansions of agricultural operations in geographic areas where agriculture has traditionally been present, unless the agricultural operation will have a direct adverse effect on the public health and safety. Nothing in this subsection shall require a municipality to adopt a zoning ordinance that violates or exceeds the provisions of the act of May 20, 1993 (P.L.12, No.6), known as the “Nutrient Management Act,” the act of June 30, 1981 (P.L.128, No.43), known as the “Agricultural Area Security Law,” or the act of June 10, 1982 (P.L.454, No.133), entitled “An Act Protecting Agricultural Operations from Nuisance Suits and Ordinances Under Certain Circumstances.”

(i) Zoning ordinances shall provide for the reasonable development of minerals in each municipality.

(j) Zoning ordinances adopted by municipalities shall be generally consistent with the municipal or multimunicipal comprehensive plan or, where none exists, with the municipal statement of community development objectives and the county comprehensive plan. If a municipality amends its zoning ordinance in a manner not generally consistent with its comprehensive plan, it shall concurrently amend its comprehensive plan in accordance with Article III.

(k) A municipality may amend its comprehensive plan at any time, provided that the comprehensive plan remains generally consistent with the county comprehensive plan and compatible with the comprehensive plans of abutting municipalities.

(l) Zoning ordinances shall permit no-impact home-based businesses in all residential zones of the municipality as a use permitted by right, except that such permission shall not supersede
any deed restriction, covenant or agreement restricting the use of land, nor any master deed, bylaw or other document applicable to a common interest ownership community.

**Section 603.1. Interpretation of Ordinance Provisions.** In interpreting the language of zoning ordinances to determine the extent of the restriction upon the use of the property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction.

**Section 604. Zoning Purposes.** The provisions of zoning ordinances shall be designed:

1. To promote, protect and facilitate any or all of the following: the public health, safety, morals, and the general welfare; coordinated and practical community development and proper density of population; emergency management preparedness and operations, airports, and national defense facilities, the provisions of adequate light and air, access to incident solar energy, police protection, vehicle parking and loading space, transportation, water, sewerage, schools, recreational facilities, public grounds, the provision of a safe, reliable and adequate water supply for domestic, commercial, agricultural or industrial use, and other public requirements; as well as preservation of the natural, scenic and historic values in the environment and preservation of forests, wetlands, aquifers and floodplains.

2. To prevent one or more of the following: overcrowding of land, blight, danger and congestion in travel and transportation, loss of health, life or property from fire, flood, panic or other dangers.

3. To preserve prime agriculture and farmland considering topography, soil type and classification, and present use.

4. To provide for the use of land within the municipality for residential housing of various dwelling types encompassing all basic forms of housing, including single-family and two-family dwellings, and a reasonable range of multifamily dwellings in various arrangements, mobile homes and mobile home parks, provided, however, that no zoning ordinance shall be deemed invalid for the failure to provide for any other specific dwelling type.

5. To accommodate reasonable overall community growth, including population and employment growth, and opportunities for development of a variety of residential dwelling types and nonresidential uses.

**Section 605. Classifications.** In any municipality, other than a county, which enacts a zoning ordinance, no part of such municipality shall be left unzoned. The provisions of all zoning ordinances may be classified so that different provisions may be applied to different classes of situations, uses and structures and to such various districts of the municipality as shall be described by a map made part of the zoning ordinance. Where zoning districts are created, all provisions shall be uniform for each class of uses or structures, within each district, except that additional classifications may be made within any district:
(1) For the purpose of making transitional provisions at and near the boundaries of districts.
(1.1) For the purpose of regulating nonconforming uses and structures.
(2) For the regulation, restriction or prohibition of uses and structures at, along or near:
   (i) major thoroughfares, their intersections and interchanges, transportation arteries and rail or transit terminals;
   (ii) natural or artificial bodies of water, boat docks and related facilities;
   (iii) places of relatively steep slope or grade, or other areas of hazardous geological or topographic features;
   (iv) public buildings and public grounds;
   (v) aircraft, helicopter, rocket, and spacecraft facilities;
   (vi) places having unique historical, architectural or patriotic interest or value; or
   (vii) flood plain areas, agricultural areas, sanitary landfills, and other places having a special character or use affecting and affected by their surroundings.
As among several classes of zoning districts, the provisions for permitted uses may be mutually exclusive, in whole or in part.
(3) For the purpose of encouraging innovation and the promotion of flexibility, economy and ingenuity in development, including subdivisions and land developments as defined in this act, and for the purpose of authorizing increases in the permissible density of population or intensity of a particular use based upon expressed standards and criteria set forth in the zoning ordinance.
(4) For the purpose of regulating transferable development rights on a voluntary basis.

a. The planning board shall follow the provisions of this act and shall accordingly exercise its power in regard to:
   (1) The master plan pursuant to article 3;
   (2) Subdivision control and site plan review pursuant to article 6;
   (3) The official map pursuant to article 5;
   (4) The zoning ordinance including conditional uses pursuant to article 8;
   (5) The capital improvement program pursuant to article 4;
   (6) Variances and certain building permits in conjunction with subdivision, site plan and conditional use approval pursuant to article 7.

b. The planning board may:
   (1) Participate in the preparation and review of programs or plans required by State or federal law or regulation;
   (2) Assemble data on a continuing basis as part of a continuous planning process; and
   (3) Perform such other advisory duties as are assigned to it by ordinance or resolution of the governing body for the aid and assistance of the governing body or other agencies or officers.

c. (1) In a municipality having a population of 15,000 or less, a nine-member planning board, if so provided by ordinance, shall exercise, to the same extent and subject to the same restrictions, all the powers of a board of adjustment; but the Class I and the Class III members shall not participate in the consideration of applications for development which involve relief pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70).

   (2) In any municipality, a nine-member planning board, if so provided by ordinance, subject to voter referendum, shall exercise, to the same extent and subject to the same restrictions, all the powers of a board of adjustment; but the Class I and the Class III members shall not participate in the consideration of applications for development which involve relief pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70).

d. In a municipality having a population of 2,500 or less, the planning board, if so provided by ordinance, shall exercise, to the same extent and subject to the same restrictions, all of the powers of an historic preservation commission, provided that at least one planning board member meets the qualifications of a Class A member of an historic preservation commission and at least one member meets the qualifications of a Class B member of that commission.
e. In any municipality in which the planning board exercises the power of a zoning board of adjustment pursuant to subsection c. of this section, a zoning board of adjustment may be appointed pursuant to law, subject to voter referendum permitting reconstitution of the board. The public question shall be initiated through an ordinance adopted by the governing body. L.1975, c.291, s.16; amended 1985, c.516, s.8; 1991, c.199, s.2; 1994, c.186; 1996, c.113, s.8; 1999, c.27.

40:55D-28 Preparation; contents; modification.
a. The planning board may prepare and, after public hearing, adopt or amend a master plan or component parts thereof, to guide the use of lands within the municipality in a manner which protects public health and safety and promotes the general welfare.

b. The master plan shall generally comprise a report or statement and land use and development proposals, with maps, diagrams and text, presenting, at least the following elements (1) and (2) and, where appropriate, the following elements (3) through (15):

(1) A statement of objectives, principles, assumptions, policies and standards upon which the constituent proposals for the physical, economic and social development of the municipality are based;

(2) A land use plan element (a) taking into account and stating its relationship to the statement provided for in paragraph (1) hereof, and other master plan elements provided for in paragraphs (3) through (14) hereof and natural conditions, including, but not necessarily limited to, topography, soil conditions, water supply, drainage, flood plain areas, marshes, and woodlands; (b) showing the existing and proposed location, extent and intensity of development of land to be used in the future for varying types of residential, commercial, industrial, agricultural, recreational, educational and other public and private purposes or combination of purposes; and stating the relationship thereof to the existing and any proposed zone plan and zoning ordinance; and (c) showing the existing and proposed location of any airports and the boundaries of any airport safety zones delineated pursuant to the "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.); and (d) including a statement of the standards of population density and development intensity recommended for the municipality;

(3) A housing plan element pursuant to section 10 of P.L.1985, c.222 (C.52:27D-310), including, but not limited to, residential standards and proposals for the construction and improvement of housing;

(4) A circulation plan element showing the location and types of facilities for all modes of transportation required for the efficient movement of people and goods into, about, and through the municipality, taking into account the functional highway classification system of the Federal Highway Administration and the types, locations, conditions and availability of existing and proposed transportation facilities, including air, water, road and rail;

(5) A utility service plan element analyzing the need for and showing the future general location of water supply and distribution facilities, drainage and flood control facilities,
sewerage and waste treatment, solid waste disposal and provision for other related utilities, and including any storm water management plan required pursuant to the provisions of P.L.1981, c.32 (C.40:55D-93 et al.). If a municipality prepares a utility service plan element as a condition for adopting a development transfer ordinance pursuant to subsection c. of section 4 of P.L.2004, c.2 (C.40:55D-140), the plan element shall address the provision of utilities in the receiving zone as provided thereunder;

(6) A community facilities plan element showing the existing and proposed location and type of educational or cultural facilities, historic sites, libraries, hospitals, firehouses, police stations and other related facilities, including their relation to the surrounding areas;

(7) A recreation plan element showing a comprehensive system of areas and public sites for recreation;

(8) A conservation plan element providing for the preservation, conservation, and utilization of natural resources, including, to the extent appropriate, energy, open space, water supply, forests, soil, marshes, wetlands, harbors, rivers and other waters, fisheries, endangered or threatened species wildlife and other resources, and which systemically analyzes the impact of each other component and element of the master plan on the present and future preservation, conservation and utilization of those resources;

(9) An economic plan element considering all aspects of economic development and sustained economic vitality, including (a) a comparison of the types of employment expected to be provided by the economic development to be promoted with the characteristics of the labor pool resident in the municipality and nearby areas and (b) an analysis of the stability and diversity of the economic development to be promoted;

(10) An historic preservation plan element: (a) indicating the location and significance of historic sites and historic districts; (b) identifying the standards used to assess worthiness for historic site or district identification; and (c) analyzing the impact of each component and element of the master plan on the preservation of historic sites and districts;

(11) Appendices or separate reports containing the technical foundation for the master plan and its constituent elements;

(12) A recycling plan element which incorporates the State Recycling Plan goals, including provisions for the collection, disposition and recycling of recyclable materials designated in the municipal recycling ordinance, and for the collection, disposition and recycling of recyclable materials within any development proposal for the construction of 50 or more units of single-family residential housing or 25 or more units of multi-family residential housing and any commercial or industrial development proposal for the utilization of 1,000 square feet or more of land;

(13) A farmland preservation plan element, which shall include: an inventory of farm properties and a map illustrating significant areas of agricultural land; a statement showing that municipal ordinances support and promote agriculture as a business; and a plan for preserving as much farmland as possible in the short term by leveraging moneys made available by P.L.1999, c.152 (C.13:8C-1 et al.) through a variety of
mechanisms including, but not limited to, utilizing option agreements, installment purchases, and encouraging donations of permanent development easements;

(14) A development transfer plan element which sets forth the public purposes, the locations of sending and receiving zones and the technical details of a development transfer program based on the provisions of section 5 of P.L.2004, c.2 (C.40:55D-141); and

(15) An educational facilities plan element which incorporates the purposes and goals of the "long-range facilities plan" required to be submitted to the Commissioner of Education by a school district pursuant to section 4 of P.L.2000, c.72 (C.18A:7G-4).

c. The master plan and its plan elements may be divided into subplans and subplan elements projected according to periods of time or staging sequences.

d. The master plan shall include a specific policy statement indicating the relationship of the proposed development of the municipality, as developed in the master plan to (1) the master plans of contiguous municipalities, (2) the master plan of the county in which the municipality is located, (3) the State Development and Redevelopment Plan adopted pursuant to the "State Planning Act," sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and (4) the district solid waste management plan required pursuant to the provisions of the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) of the county in which the municipality is located.

In the case of a municipality situated within the Highlands Region, as defined in section 3 of P.L.2004, c.120 (C.13:20-3), the master plan shall include a specific policy statement indicating the relationship of the proposed development of the municipality, as developed in the master plan, to the Highlands regional master plan adopted pursuant to section 8 of P.L.2004, c.120 (C.13:20-8).

L.1975, c.291, s.19; mended 1980, c.146, s.2; 1983, c.260, s.10; 1985, c.222, s.29; 1985, c.398, s.16; 1985, c.516, s.11; 1987, c.102, s.26; 1991, c.199, s.3; 1991, c.445, s.7; 1999, c.180, s.2; 2004, c.2, s.37; 2004, c.120, s.60; 2007, c.137, s.59.

40:55D-65 Contents of zoning ordinance. A zoning ordinance may:

a. Limit and restrict buildings and structures to specified districts and regulate buildings and structures according to their type and the nature and extent of their use, and regulate the nature and extent of the use of land for trade, industry, residence, open space or other purposes.

b. Regulate the bulk, height, number of stories, orientation, and size of buildings and the other structures; the percentage of lot or development area that may be occupied by structures; lot sizes and dimensions; and for these purposes may specify floor area ratios and other ratios and regulatory techniques governing the intensity of land use and the provision of adequate light and air, including, but not limited to the potential for utilization of renewable energy sources.
c. Provide districts for planned developments; provided that an ordinance providing for approval of subdivisions and site plans by the planning board has been adopted and incorporates therein the provisions for such planned developments in a manner consistent with article 6 of P.L.1975, c.291 (C.40:55D-37 et seq.). The zoning ordinance shall establish standards governing the type and density, or intensity of land use, in a planned development. Said standards shall take into account that the density, or intensity of land use, otherwise allowable may not be appropriate for a planned development. The standards may vary the type and density, or intensity of land use, otherwise applicable to the land within a planned development in consideration of the amount, location and proposed use of open space; the location and physical characteristics of the site of the proposed planned development; and the location, design and type of dwelling units and other uses. Such standards may provide for the clustering of development between noncontiguous parcels and may, in order to encourage the flexibility of density, intensity of land uses, design and type, authorize a deviation in various clusters from the density, or intensity of use, established for an entire planned development. The standards and criteria by which the design, bulk and location of buildings are to be evaluated shall be set forth in the zoning ordinance and all standards and criteria for any feature of a planned development shall be set forth in such ordinance with sufficient certainty to provide reasonable criteria by which specific proposals for planned development can be evaluated.

d. Establish, for particular uses or classes of uses, reasonable standards of performance and standards for the provision of adequate physical improvements including, but not limited to, off-street parking and loading areas, marginal access roads and roadways, other circulation facilities and water, sewerage and drainage facilities; provided that section 41 of P.L.1975, c.291 (C.40:55D-53) shall apply to such improvements.

e. Designate and regulate areas subject to flooding (1) pursuant to P.L.1972, c.185 (C.58:16A-55 et seq.) or (2) as otherwise necessary in the absence of appropriate flood hazard area designations pursuant to P.L.1962, c.19 (C.58:16A-50 et seq.) or floodway regulations pursuant to P.L.1972, c.185 or minimum standards for local flood fringe area regulation pursuant to P.L.1972, c.185.


g. Provide for senior citizen community housing.

h. Require as a condition for any approval which is required pursuant to such ordinance and the provisions of this chapter, that no taxes or assessments for local improvements are due or delinquent on the property for which any application is made.


j. Provide for sending and receiving zones for a development transfer program established pursuant to P.L.2004, c.2 (C.40:55D-137 et al.).

A zoning ordinance may designate and regulate historic sites or historic districts and provide design criteria and guidelines therefor. Designation and regulation pursuant to this section shall be in addition to such designation and regulation as the zoning ordinance may otherwise require. Except as provided hereunder, after July 1, 1994, all historic sites and historic districts designated in the zoning ordinance shall be based on identifications in the historic preservation plan element of the master plan. Until July 1, 1994, any such designation may be based on identifications in the historic preservation plan element, the land use plan element or community facilities plan element of the master plan. The governing body may, at any time, adopt, by affirmative vote of a majority of its authorized membership, a zoning ordinance designating one or more historic sites or historic districts that are not based on identifications in the historic preservation plan element, the land use plan element or community facilities plan element, provided the reasons for the action of the governing body are set forth in a resolution and recorded in the minutes of the governing body.


a. The governing body may by ordinance provide for a historic preservation commission.

b. Every historic preservation commission shall include, in designating the category of appointment, at least one member of each of the following classes:
       Class A—A person who is knowledgeable in building design and construction or architectural history and who may reside outside the municipality; and
       Class B—A person who is knowledgeable or with a demonstrated interest in local history and who may reside outside the municipality.

c. A historic preservation commission shall consist of five, seven or nine regular members and may have not more than two alternate members. Of the regular members a total of at least one less than a majority shall be of Classes A and B. Those regular members who are not designated as Class A or B shall be designated as Class C. Class C members shall be citizens of the municipality who shall hold no other municipal office, position or employment except for membership on the planning board or board of adjustment. Alternate members shall meet the qualifications of Class C members. The mayor or, if so specified by ordinance, the chairman of the planning board shall appoint all members of the commission and shall designate at the time of appointment the regular members by class and the alternate members as "Alternate No. 1" and "Alternate No. 2." The terms of the members first appointed under this act shall be so determined that to the greatest practicable extent, the expiration of the terms shall be distributed, in the case of regular members, evenly over the first four years after their appointment, and in the case of alternate members, evenly over the first two years after their
appointment; provided that the initial term of no regular member shall exceed four years and that the initial term of no alternate member shall exceed two years. Thereafter, the term of a regular member shall be four years, and the term of an alternate member shall be two years. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term only. Notwithstanding any other provision herein, the term of any member common to the historic preservation commission and the planning board shall be for the term of membership on the planning board; and the term of any member common to the historic preservation commission and the board of adjustment shall be for the term of membership on the board of adjustment. The historic preservation commission shall elect a chairman and vice-chairman from its members and select a secretary, who may or may not be a member of the historic preservation commission or a municipal employee.

Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

d. No member of any historic preservation commission shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest.

e. A member of a historic preservation body may, after public hearing if he requests it, be removed by the governing body for cause.

L. 1985, c. 516, s. 21.


a. The governing body shall make provision in its budget and appropriate funds for the expenses of the historic preservation commission.

b. The historic preservation commission may employ, contract for, and fix the compensation of experts and other staff and services as it shall deem necessary. The commission shall obtain its legal counsel from the municipal attorney at the rate of compensation determined by the governing body, unless the governing body, by appropriation, provides for separate legal counsel for the commission. Expenditures pursuant to this subsection shall not exceed, exclusive of gifts or grants, the amount appropriated by the governing body for the commission’s use.

L.1985,c.516,c.22; amended 1991,c.199,s.7.

40:55D-109. Responsibilities of commission

The historic preservation commission shall have the responsibility to:

a. Prepare a survey of historic sites of the municipality pursuant to criteria identified in the survey report;
b. Make recommendations to the planning board on the historic preservation plan element of the master plan and on the implications for preservation of historic sites of any other master plan elements;

c. Advise the planning board on the inclusion of historic sites in the recommended capital improvement program;
d. Advise the planning board and board of adjustment on applications for development pursuant to section 24 of this amendatory and supplementary act;

e. Provide written reports pursuant to section 25 of this amendatory and supplementary act on the application of the zoning ordinance provisions concerning historic preservation; and

f. Carry out such other advisory, educational and informational functions as will promote historic preservation in the municipality.

L. 1985, c. 516, s. 23.

40:55D-110. Applications for development referred to historic preservation commission.
The planning board and board of adjustment shall refer to the historic preservation commission every application for development submitted to either board for development in historic zoning districts or on historic sites designated on the zoning or official map or identified in any component element of the master plan. This referral shall be made when the application for development is deemed complete or is scheduled for a hearing, whichever occurs sooner. Failure to refer the application as required shall not invalidate any hearing or proceeding. The historic preservation commission may provide its advice, which shall be conveyed through its delegation of one of its members or staff to testify orally at the hearing on the application and to explain any written report which may have been submitted.

L.1985,c.516,s.24; amended 1991,c.199,s.8.

40:55D-111. Issuance of permits pertaining to historic sites referred to historic preservation commission.
If the zoning ordinance designates and regulates historic sites or districts pursuant to subsection i. of section 52 of P.L.1975, c.291 (C.40:55D-65), the governing body shall by ordinance provide for referral of applications for issuance of permits pertaining to historic sites or property in historic districts to the historic preservation commission for a written report on the application of the zoning ordinance provisions concerning historic preservation to any of those aspects of the change proposed, which aspects were not determined by approval of an application for development by a municipal agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.). The historic preservation commission shall submit its report either to the administrative officer or the planning board, as specified by ordinance. If
the ordinance specifies the submission of the historic preservation commission's report to the planning board, the planning board shall report to the administrative officer.

In the case of a referral by the administrative officer of a minor application for the issuance of a permit pertaining to historic sites or property in historic districts, as defined in the zoning ordinance, the chairman of the historic preservation commission may act in the place of the full commission for purposes of this section; and, if the ordinance specifies the submission to the planning board of a commission report on a minor application, the ordinance may authorize the chairman or a subcommittee of the planning board to act in place of the full board.
The historic preservation commission or the planning board, as the case may be, shall report to the administrative officer within 45 days of his referral of the application to the historic preservation commission. If within the 45-day period the historic preservation commission or the planning board, as the case may be, recommends to the administrative officer against the issuance of a permit or recommends conditions to the permit to be issued, the administrative officer shall deny issuance of the permit or include the conditions in the permit, as the case may be. Failure to report within the 45-day period shall be deemed to constitute a report in favor of issuance of the permit and without the recommendation of conditions to the permit.

L.1985,c.516,s.25; amended 1991,c.199,s.9.

The word "landmark" may substitute, in any ordinance, resolution, determination or official action pursuant to the "Municipal Land Use Law" (C. 40:55D-1 et seq.) and this amendatory and supplementary act, for "historic," "historic preservation" and "historic site."

L. 1985, c. 516, s. 26.
Section 96-a. Protection of historical places, buildings and works of art.
In addition to any power or authority of a municipal corporation to regulate by planning or zoning laws and regulations or by local laws and regulations, the governing board or local legislative body of any county, city, town or village is empowered to provide by regulations, special conditions and restrictions for the protection, enhancement, perpetuation and use of places, districts, sites, buildings, structures, works of art, and other objects having a special character or special historical or aesthetic interest or value. Such regulations, special conditions and restrictions may include appropriate and reasonable control of the use or appearance of neighboring private property within public view, or both. In any such instance such measures, if adopted in the exercise of the police power, shall be reasonable and appropriate to the purpose, or if constituting a taking of private property shall provide for due compensation, which may include the limitation or remission of taxes.

Section 119-aa. Purpose.
It is hereby declared to be the purpose of this article to encourage local governmental programs for the preservation, restoration and maintenance of the historical, architectural, archeological and cultural environment by clarifying and amplifying existing authority and providing necessary tools for such purpose. The framework provided by this article is intended to maintain and encourage the opportunity and flexibility for the counties, cities, towns and villages of the state to manage the historic and cultural properties under their jurisdiction in a spirit of stewardship and trusteeship for future generations and to authorize local governments to conduct their activities, plans and programs in a manner consistent with the preservation and enhancement of historic and cultural properties.

Section 119-bb. Definitions.
When used in this article, unless a different meaning clearly appears from the context, the terms listed below shall have the following meanings:

1. "Development rights" means the rights granted to a lot or parcel of land under a zoning ordinance or local law respecting permissible use, area, bulk or height of improvements executed thereon. Development rights may be calculated and allocated in accordance with such factors as area, floor area, floor area ratios, height limitations or any other criteria including assessed valuation that will effectively quantify a value for the development right in a manner that will carry out the objectives of this article.
2. "Historic and/or cultural place or property" means any building, structure, district, area, site or object, including the underground and underwater sites, with significance in the history, architecture, archeology or culture of the state, its communities, or the nation.
3. "Historic district" means any area which: (a) has a special character or special historic, architectural, archeological or cultural value; or (b) represents one or more periods or
styles of architecture typical of one or more eras; and (c) causes such area, by reason of such factors, to constitute a distinct section.

4. "Historic preservation" means, for the purposes of this article and notwithstanding any other provision of law, the study, designation, protection, restoration, rehabilitation and use of buildings, structures, districts, areas, sites or objects significant in the history, architecture, archeology or culture of this state, its communities, or the nation.

5. "Registered property" means any historic place or property within the boundaries of the state nominated by the commissioner of parks and recreation for listing on the national register of historic places or listed on the New York state register of historic places established pursuant to section 14.07 of the parks and recreation law.

6. "Transfer of development rights" means the process by which development rights are passed from one lot or parcel to another.

Section 119-cc. Local historic preservation report.

1. In order to facilitate the coordination between state and local preservation policies and activities and to provide necessary information for the effective financial and technical assistance to local government and for a state clearinghouse of public preservation programs, the chief executive officer of every county, city, town and village or designee of such officer may within twenty-four months after the effective date of this section, prepare or cause to be prepared a local historic preservation report. This report may include, but need not be limited to:

   (a) A statement of the present status of historic preservation activities and land use or other regulations relating thereto as they are being administered within the reporting jurisdiction by the local governing body and its appointed agents including a landmarks commission, planning board, environmental management council or other agency;
   (b) Proposals, if any, for the preservation and use of registered property and other historic and cultural properties within the reporting jurisdiction;
   (c) An identification and analysis of any problems or issues relating to the effectiveness of local development or administration of historic preservation plans and programs, including problems of funding and personnel requirements, procedural problems, enforcement problems, or any other issue. After a public hearing has been held on a draft report such report in final form shall be submitted to the commissioner of parks and recreation and a copy shall be available for public inspection in the municipal office of the reporting jurisdiction. It may be reviewed and updated as necessary.

2. The commissioner of the office of parks and recreation shall prepare and distribute a format which may be used or completed by reporting jurisdictions to satisfy the provisions of this section. The purposes of such report are informational and compliance by a reporting jurisdiction shall not be used by the commissioner or any other state official as a condition for the performance of any state service, assistance or other action.

Section 119-dd. Local historic preservation programs.

In addition to existing powers and authorities for local historic preservation programs including existing powers and authorities to regulate by planning or zoning laws and regulations or by
local laws and regulations for preservation of historic landmarks and districts and use of techniques including transfer of development rights, the legislative body of any county, city, town or village is hereby empowered to:

1. Provide by regulations, special conditions and restrictions for the protection, enhancement, perpetuation and use of places, districts, sites, buildings, structures, works of art and other objects having a special character or special historical, cultural or aesthetic interest or value. Such regulations, special conditions and restrictions may include appropriate and reasonable control of the use or appearance of neighboring private property within the public view, or both.

2. Establish a landmark or historical preservation board or commission with such powers as are necessary to carry out all or any of the authority possessed by the municipality for a historic preservation program, as the local legislative body deems appropriate.

3. After due notice and public hearing, by purchase, gift, grant, bequest, devise, lease or otherwise, acquire the fee or any lesser interest, development right, easement, covenant or other contractual right necessary to achieve the purposes of this article, to historical or cultural property within its jurisdiction. After acquisition of any such interest pursuant to this subdivision, the effect of the acquisition on the valuation placed on any remaining private interest in such property for purposes of real estate taxation shall be taken into account.

4. Designate, purchase, restore, operate, lease and sell historic buildings or structures. Sales of such buildings and structures shall be upon such terms and conditions as the local legislative body deems appropriate to insure the maintenance of the historic quality of the buildings and structures, after public notice is appropriately given at least thirty days prior to the anticipated date of availability and shall be for fair and adequate consideration of such buildings and structures which in no event shall be less than the expenses incurred by the municipality with respect to such buildings and structures for acquisition, restoration, improvement and interest charges.

5. Provide for transfer of development rights for purposes consistent with the purposes of this article.
IC 36-7-11-1 Application of chapter
Sec. 1. This chapter applies to all units except:
   (1) counties having a consolidated city;
   (2) municipalities in counties having a consolidated city; and
   (3) townships.

IC 36-7-11-1.5 "Commission" defined
Sec. 1.5. As used in this chapter, "commission" refers to a historic preservation commission established through the adoption of an ordinance under section 4 of this chapter.
As added by P.L.227-1997, SEC.1.

IC 36-7-11-2 Continuation of existing historical preservation commissions; new commissions; commissions for the preservation of historic street area
Sec. 2. (a) If before July 1, 1977, a unit established by ordinance a commission for the purpose of historic preservation, that commission may continue to operate, regardless of whether that ordinance is subsequently amended or is consistent with this chapter. If the unit wants to operate a historic preservation commission under this chapter, it must adopt an ordinance under section 4 of this chapter, and this chapter then provides the exclusive method for operation of a historic preservation agency in the unit.
   (b) If a unit did not establish a commission for the purpose of historic preservation before July 1, 1977, this chapter provides the exclusive method for operation of a historic preservation agency in the unit.
   (c) Subsections (a) and (b) do not limit the power of a municipality to establish a commission for the preservation of a historic street area under IC 36-7-11.3.

IC 36-7-11-3 Legislative intent; conflicts between zoning districts and historic districts
Sec. 3. The historic district regulation provided in this chapter is intended to preserve and protect the historic or architecturally worthy buildings, structures, sites, monuments, streetscapes, squares, and neighborhoods of the historic districts. Zoning districts lying within the boundaries of the historic district are subject to the regulations for both the zoning district and the historic district. If there is conflict Indiana Code 2015 between the requirements of the zoning district and the requirements of the historic district, the more restrictive requirements apply.

IC 36-7-11-4 Commission; establishment
Sec. 4. (a) A unit may establish, by ordinance, a historic preservation commission with an official name designated in the ordinance. The commission must have not less than three (3) nor more than nine (9) voting members, as designated by the ordinance. The voting members shall be appointed by the executive of the unit, subject to the approval of the legislative body. Voting members shall each serve for a term of three (3) years. However, the terms of the original voting members may be for one (1) year, two (2) years, or three (3) years in order for the terms to be staggered, as provided by the ordinance. A vacancy shall be filled for the duration of the term. In the case of a commission with jurisdiction in a city having a population of more than one hundred thousand (100,000) but less than one hundred ten thousand (110,000), the commission must after June 30, 2001, include as a voting member the superintendent of the largest school corporation in the city.

(b) The ordinance may provide qualifications for members of the commission, but members must be residents of the unit who are interested in the preservation and development of historic areas. The members of the commission should include professionals in the disciplines of architectural history, planning, and other disciplines related to historic preservation, to the extent that those professionals are available in the community. The ordinance may also provide for the appointment of advisory members that the legislative body considers appropriate.

(c) The ordinance may:

1. designate an officer or employee of the unit to act as administrator;
2. permit the commission to appoint an administrator who shall serve without compensation except reasonable expenses incurred in the performance of the administrator's duties; or
3. provide that the commission act without the services of an administrator.

(d) Members of the commission shall serve without compensation except for reasonable expenses incurred in the performance of their duties.

(e) The commission shall elect from its membership a chairman and vice chairman, who shall serve for one (1) year and may be reelected.

(f) The commission shall adopt rules consistent with this chapter for the transaction of its business. The rules must include the time and place of regular meetings and a procedure for the calling of special meetings. All meetings of the commission must be open to the public, and a public record of the commission's resolutions, proceedings, and Indiana Code 2015 actions must be kept. If the commission has an administrator, the administrator shall act as the commission's secretary, otherwise, the commission shall elect a secretary from its membership.

(g) The commission shall hold regular meetings, at least monthly, except when it has no business pending.

(h) A final decision of the commission is subject to judicial review under IC 36-7-4 as if it were a final decision of a board of zoning appeals.


IC 36-7-11-4.3 Commission; authority to grant or deny certificate of appropriateness
Sec. 4.3. (a) An ordinance that establishes a historic preservation commission under section 4 of this chapter may authorize the staff of the commission, on behalf of the commission, to grant or deny an application for a certificate of appropriateness.

(b) An ordinance adopted under this section must specify the types of applications that the staff of the commission is authorized to grant or deny. The staff may not be authorized to grant or deny an application for a certificate of appropriateness for the following:

1. The demolition of a building.
2. The moving of a building.
3. The construction of an addition to a building.
4. The construction of a new building.


IC 36-7-11-4.6 Commission; acquisition and disposition of property
Sec. 4.6. An ordinance that establishes a historic preservation commission under section 4 of this chapter may:

1. authorize the commission to:
   (A) acquire by purchase, gift, grant, bequest, devise, or lease any real or personal property, including easements, that is appropriate for carrying out the purposes of the commission;
   (B) hold title to real and personal property; and
   (C) sell, lease, rent, or otherwise dispose of real and personal property at a public or private sale on the terms and conditions that the commission considers best; and
2. establish procedures that the commission must follow in acquiring and disposing of property.

As added by P.L.227-1997, SEC.5.

IC 36-7-11-5 Concern for visual quality in historic district
Sec. 5. The commission shall be concerned with those elements of Indiana Code 2015 development, redevelopment, rehabilitation, and preservation that affect visual quality in the historic district. However, the commission may not consider details of design, interior arrangements, or building features if those details, arrangements, or features are not subject to public view, and may not make any requirement except for the purpose of preventing development, alteration, or demolition in the historic district obviously incongruous with the historic district. A commission established by a county may not take any action that affects property located in a municipality.


IC 36-7-11-6 Maps of historic districts; classification of historic buildings and structures
Sec. 6. (a) The commission shall conduct a survey to identify historic buildings, structures, and sites located within the unit. Based on its survey, the commission shall submit to the legislative body a map describing the boundaries of a historic district or historic districts. A district may be limited to the boundaries of a property containing a single building, structure, or site. The map may divide a district into primary and secondary areas.
(b) The commission shall also classify and designate on the map all buildings, structures, and sites within each historic district described on the map. Buildings, structures, and sites shall be classified as historic or nonhistoric in the manner set forth in subsections (c) and (e).

(c) Buildings, structures, and sites classified as historic under this section must possess identified historic or architectural merit of a degree warranting their preservation. They may be further classified as:
   (1) outstanding;
   (2) notable; or
   (3) contributing.

(d) In lieu of the further classifications set forth in subsection (c), the commission may devise its own system of further classification for historic buildings, structures, and sites.

(e) Nonhistoric buildings and structures are those not classified on the map as historic under subsection (b).


IC 36-7-11-7 Approval of maps of historic districts
Sec. 7. The map setting forth the historic district boundaries and building classifications must be submitted to, and approved in an ordinance by, the legislative body of the unit before the historic district is established and the building classifications take effect.


IC 36-7-11-8 Additional surveys and maps
Sec. 8. The commission may conduct additional surveys, and draw and submit additional maps for approval of the legislative body, as it considers appropriate.


IC 36-7-11-8.5 Interim protection
Sec. 8.5. (a) When submitting a map to the legislative body under section 7 or 8 of this chapter, the commission may declare one (1) or more buildings or structures that are classified and designated as historic on the map to be under interim protection.

(b) Not more than two (2) working days after declaring a building or structure to be under interim protection under this section, the commission shall, by personal delivery or first class mail, provide the owner or occupant of the building or structure with a written notice of the declaration. The written notice must:
   (1) cite the authority of the commission to put the building or structure under interim protection under this section;
   (2) explain the effect of putting the building or structure under interim protection; and
   (3) indicate that the interim protection is temporary.

(c) A building or structure put under interim protection under subsection (a) remains under interim protection until:
   (1) in a county other than a county described in subdivision (2), the map is:
      (A) submitted to; and
(B) approved in an ordinance or rejected by; the legislative body of the
unit; or
(2) in a county having a population of more than two hundred fifty thousand
(250,000) but less than two hundred seventy thousand (270,000), the earlier of:
(A) thirty (30) days after the building or structure is declared to be under
interim protection; or
(B) the date the map is:
   (i) submitted to; and
   (ii) approved in an ordinance or rejected by; the legislative body
       of the unit.
(d) While a building or structure is under interim protection under this section:
   (1) the building or structure may not be demolished or moved; and
   (2) the exterior appearance of the building or structure may not be conspicuously
       changed by:
       (A) addition;
       (B) reconstruction; or
       (C) alteration.

IC 36-7-11-9 Assistance from unit officials; legal counsel
Sec. 9. (a) Each official of the unit who has responsibility for building inspection, building
permits, planning, or zoning shall provide any technical, administrative, or clerical assistance
requested by the commission.
   (b) The attorney for the unit is the attorney for the commission. However, the
commission may employ other legal counsel authorized to practice law in Indiana if it considers
it to be necessary or desirable.

IC 36-7-11-10 Construction projects within historic districts; certificates of appropriateness
required; exception
Sec. 10. Except as provided in sections 19 and 20 of this chapter, a certificate of
appropriateness must be issued by or on behalf of the commission before a permit is issued for
or work is begun on any of the following:
   (1) Within all areas of the historic district:
       (A) the demolition of any building;
       (B) the moving of any building;
       (C) a conspicuous change in the exterior appearance of historic buildings by
           additions, reconstruction, alteration, or maintenance involving exterior color
           change; or
       (D) any new construction of a principal building or accessory building or
           structure subject to view from a public way.
   (2) Within a primary area of the historic district:
(A) a change in walls and fences or the construction of walls and fences along public ways; or
(B) a conspicuous change in the exterior appearance of nonhistoric buildings subject to view from a public way by additions, reconstruction, alteration, or maintenance involving exterior color change.


IC 36-7-11-11 Applications for certificates of appropriateness
Sec. 11. Application for a certificate of appropriateness may be made in the office of the commission on forms provided by that office. Detailed drawings, plans, or specifications are not required. However, to the extent reasonably required for the commission to make a decision, each application must be accompanied by sketches, drawings, photographs, descriptions, or other information showing the proposed exterior alterations, additions, changes, or new construction.


IC 36-7-11-12 Approval or denial of application for certificates of appropriateness
Sec. 12. (a) The commission may advise and make recommendations to the applicant before acting on an application for a certificate of appropriateness.

(b) If an application for a certificate of appropriateness:
   (1) is approved by the commission; or
   (2) is not acted on by the commission; within thirty (30) days after it is filed, a certificate of appropriateness shall be issued. If the certificate is issued, the application shall be processed in the same manner as applications for building or demolition permits required by the unit, if any, are processed. If no building or demolition permits are required by the unit, the applicant may proceed with the work authorized by the certificate.
   (c) If the commission denies an application for a certificate of appropriateness within thirty (30) days after it is filed, the certificate may not be issued. The commission must state its reasons for the denial in writing, and must advise the applicant. An application that has been denied may not be processed as an application for a building or demolition permit and does not authorize any work by the applicant.
   (d) The commission may grant an extension of the thirty (30) day limit prescribed by subsections (b) and (c) if the applicant agrees to it.


IC 36-7-11-13 Reconstruction, alteration, maintenance, and removal of historic buildings and structures; preservation of historic character
Sec. 13. (a) A historic building or structure or any part of or appurtenance to such a building or structure, including stone walls, fences, light fixtures, steps, paving, and signs may be moved, reconstructed, altered, or maintained only in a manner that will preserve the historical and architectural character of the building, structure, or appurtenance.
(b) A historic building may be relocated to another site only if it is shown that preservation on its current site is inconsistent with subsection (a).


IC 36-7-11-14 Demolition of buildings following failure to secure certificates of appropriateness; notice

Sec. 14. (a) The purpose of this section is to preserve historic buildings that are important to the education, culture, traditions, and economic values of the unit, and to afford the unit, historical organizations, and other interested persons the opportunity to acquire or to arrange for the preservation of these buildings.

(b) If a property owner shows that a historic building is incapable of earning an economic return on its value, as appraised by a qualified real estate appraiser, and the commission fails to approve the issuance of a certificate of appropriateness, the building may be demolished. However, before a demolition permit is issued or demolition proceeds, notice of proposed demolition must be given for a period fixed by the commission, based on the commission's classification on the approved map but not less than sixty (60) days nor more than one (1) year. Notice must be posted on the premises of the building proposed for demolition in a location clearly visible from the street. In addition, notice must be published in a newspaper of general local circulation at least three (3) times before demolition, with the first publication not more than fifteen (15) days after the application for a permit to demolish is filed, and the final publication at least fifteen (15) days before the date of the permit.

(c) The commission may approve a certificate of appropriateness at any time during the notice period under subsection (b). If the certificate is approved, a demolition permit shall be issued without further delay, and demolition may proceed.


IC 36-7-11-15 Conformance to statutory requirements for buildings

Sec. 15. Historic buildings shall be maintained to meet the applicable requirements established under statute for buildings generally so as to prevent the loss of historic material and the deterioration of important character defining details and features.


IC 36-7-11-16 New buildings and nonhistoric buildings within historic districts; compatibility required; exception

Sec. 16. Except as provided in section 20 of this chapter, the construction of a new building or structure, and the moving, reconstruction, alteration, major maintenance, or repair involving a color change conspicuously affecting the external appearance of any nonhistoric building, structure, or appurtenance within the primary area must be generally of a design, form, proportion, mass, configuration, building material, texture, color, and location on a lot compatible with other buildings in the historic district, particularly with buildings designated as historic, and with squares and places to which it is visually related.

IC 36-7-11-17 Compatibility factors; exception

Sec. 17. Except as provided in section 20 of this chapter, within the primary area of the historic district, new buildings and structures, as well as buildings, structures, and appurtenances that are moved, reconstructed, materially altered, repaired, or changed in color, must be visually compatible with buildings, squares, and places to which they are visually related generally in terms of the following visual compatibility factors:

1. Height. The height of proposed buildings must be visually compatible with adjacent buildings.

2. Proportion of building’s front facade. The relationship of the width of a building to the height of the front elevation must be visually compatible to buildings, squares, and places to which it is visually related.

3. Proportion of openings within the facility. The relationship of the width of the windows to the height of windows in a building must be visually compatible with buildings, squares, and places to which it is visually related.

4. Rhythm of solids to voids in front facades. The relationship of solids to voids in the front facade of a building must be visually compatible with buildings, squares, and places to which it is visually related.

5. Rhythm of spacing of buildings on streets. The relationship of a building to the open space between it and adjoining buildings must be visually compatible to the buildings, squares, and places to which it is visually related.

6. Rhythm of entrances and porch projections. The relationship of entrances and porch projections to sidewalks of a building must be visually compatible to the buildings, squares, and places to which it is visually related.

7. Relationship of materials, texture, and color. The relationship of the materials, texture, and color of the facade of a building must be visually compatible with the predominant materials used in the buildings to which it is visually related.

8. Roof shapes. The roof shape of a building must be visually compatible with the buildings to which it is visually related.

9. Walls of continuity. Appurtenances of a building, such as walls, wrought iron fences, evergreen landscape masses, and building facades, must form cohesive walls of enclosure along the street if necessary to ensure visual compatibility of the building to the buildings, squares, and places to which it is visually related.

10. Scale of a building. The size of a building and the building Indiana Code 2015 mass of a building in relation to open spaces, windows, door openings, porches, and balconies must be visually compatible with the buildings, squares, and places to which it is visually related.

11. Directional expression of front elevation. A building must be visually compatible with the buildings, squares, and places to which it is visually related in its directional character, including vertical character, horizontal character, or nondirectional character.


IC 36-7-11-18 Ordinances; penalties for violations
Sec. 18. Ordinances adopted under this chapter may provide for penalties for violations, subject to IC 36-1-3-8.


IC 36-7-11-19 Phases; certificate of appropriateness; objections

Sec. 19. (a) In an ordinance approving the establishment of a historic district, a unit may provide that the establishment occur in two (2) phases. Under the first phase, which lasts three (3) years from the date the ordinance is adopted, a certificate of appropriateness is required only for the activities described in section 10(1)(A), 10(1)(B), and 10(1)(D) of this chapter. At the end of the first phase, the district becomes fully established, and, subject to subsection (b), a certificate of appropriateness must be issued by the commission before a permit may be issued for or work may begin on an activity described in section 10 of this chapter.

(b) The first phase described in subsection (a) continues and the second phase does not become effective if a majority of the property owners in the district object to the commission, in writing, to the requirement that certificates of appropriateness be issued for the activities described in section 10(1)(C), 10(2)(A), and 10(2)(B) of this chapter. The objections must be received by the commission not earlier than one hundred eighty (180) days or later than sixty (60) days before the third anniversary of the adoption of the ordinance.


IC 36-7-11-20 Changes in paint colors; exclusion from activities requiring certificate of appropriateness

Sec. 20. In an ordinance approving the establishment of a historic district, a unit may exclude changes in paint colors from the activities requiring the issuance of a certificate of appropriateness under section 10 of this chapter before a permit may be issued or work begun.


IC 36-7-11-21 "Interested party" defined; private rights of action; allegations; bond; liability; attorney's fees and costs; revenue; other remedies

Sec. 21. (a) As used in this section, "interested party" means one (1) of the following:

1. The executive of the unit.
2. The legislative body of the unit.
3. The agency having land use planning jurisdiction over a historic district designated by the ordinance adopted under this chapter.
4. A neighborhood association, whether incorporated or unincorporated, a majority of whose members are residents of a historic district designated by an ordinance adopted under this chapter.
5. An owner or occupant owning or occupying property located in a historic district established by an ordinance adopted under this chapter.
6. Historic Landmarks Foundation of Indiana, Inc., or any of its successors.
7. The state historic preservation officer designated under IC 14-21-1-19.

(b) Every interested party has a private right of action to enforce and prevent violation of a provision of this chapter or an ordinance adopted by a unit under this chapter, and with
respect to any building, structure, or site within a historic district, has the right to restrain, enjoin, or enforce by restraining order or injunction, temporarily or permanently, any person from violating a provision of this chapter or an ordinance adopted by a unit under this chapter.

(c) The interested party does not have to allege or prove irreparable harm or injury to any person or property to obtain relief under this section.

(d) The interested party bringing an action under this section does not have to post a bond unless the court, after a hearing, determines that a bond should be required in the interest of justice.

(e) The interested party that brings an action under this section is not liable to any person for damages resulting from bringing or prosecuting the action unless the action was brought without good faith or without a reasonable belief that a provision of this chapter, or an ordinance adopted by a unit under this chapter, had been, or was about to be violated or breached.

(f) An interested party who obtains a favorable judgment in an action under this section may recover reasonable attorney's fees and court costs from the person against whom judgment was rendered.

(g) An action arising under this section must be brought in the circuit or superior court of the county in which the historic district lies and no change of venue from the county shall be allowed in the action.

(h) The remedy provided in this section is in addition to other remedies that may be available at law or in equity.


IC 36-7-11-22 Removal of classifications in certain counties
Sec. 22. (a) This section applies only to a county having a population of more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000).

(b) Notwithstanding any other provision, in the case of a building or structure owned by a political subdivision that is classified by a commission as historic and for which the classification is approved by the legislative body of the unit that established the commission, the commission may remove the historic classification of the building or structure without the adoption of an ordinance by the legislative body of the unit if the commission determines that removal of the classification is in the best interest of the unit and the political subdivision.


IC 36-7-11-23 Removal of historic district designation
Sec. 23. (a) This section provides the exclusive method for removing the designation of a historic district. The owner or owners of a building, structure, or site designated as a single site historic district may sign and file a petition with the legislative body of the unit requesting removal of the designation of the building, structure, or site as a historic district. In the case of a historic district containing two (2) or more parcels, at least sixty percent (60%) of the owners of the real property of the historic district may sign and file a petition with the legislative body of the unit requesting removal of the designation of the historic district.
(b) The legislative body shall submit a petition filed under subsection (a) to the historic preservation commission of the unit. The historic preservation commission shall conduct a public hearing on the petition not later than sixty (60) days after receiving the petition. The historic preservation commission shall provide notice of the hearing:

1. by publication under IC 5-3-1-2(b);
2. in the case of a historic district comprised of real property owned by fewer than fifty (50) property owners, by certified mail, sent at least ten (10) days before the hearing, to each owner of real estate within the historic district; and
3. in the case of a single building, structure, or site designated as a historic district, by certified mail, sent at least ten (10) days before the hearing, to each owner of the real estate abutting the building, structure, or site designated as a historic district that is the subject of the petition.

(c) The historic preservation commission shall make the following findings after the public hearing: Indiana Code 2015

1. Whether a building, structure, or site within the historic district continues to meet the criteria for inclusion in a historic district as set forth in the ordinance approving the historic district map under section 7 of this chapter. The determination must state specifically the criteria that are applicable to the buildings, structures, or sites within the district.
2. Whether failure to remove the designation of the historic district would deny an owner of a building, structure, or site within the historic district reasonable use of the owner's property or prevent reasonable economic return. Evidence provided by the petitioner may include information on:
   (A) costs to comply with regulations;
   (B) income generation;
   (C) availability of contractors to perform work;
   (D) real estate values;
   (E) assessed values and taxes;
   (F) revenue projections;
   (G) current level of return;
   (H) operating expenses;
   (I) vacancy rates;
   (J) financing issues;
   (K) efforts to explore alternative uses for a property;
   (L) availability of economic incentives; and
   (M) recent efforts to sell or rent property.
3. Whether removal of the designation of a historic district would have an adverse economic impact on the owners of real estate abutting the historic district, based on testimony and evidence provided by the owners of the real estate and licensed real estate appraisers or brokers.
4. Whether removal of or failure to remove the designation of the historic district would have an adverse impact on the unit's historic resources, and specifically
whether it would result in the loss of a building, structure, or site classified as historic by the commission's survey prepared under section 6 of this chapter.

(d) Not later than ten (10) days after the public hearing, the historic preservation commission shall submit:

(1) its findings on the petition; and
(2) a recommendation to grant or deny the petition; to the legislative body of the unit.

(e) Not later than forty-five (45) days after receiving the historic preservation commission's findings, the legislative body of the unit shall:

(1) take public comment and receive evidence in support of or in opposition to the petition; and
(2) do one (1) of the following:

(A) Deny the petition.
(B) Grant the petition by adopting an ordinance that removes the designation of the historic district by:
   (i) a majority vote, if the recommendation of the historic Indiana Code 2015 preservation commission is to grant the petition; or
   (ii) a two-thirds (2/3) vote, if the recommendation of the historic preservation commission is to deny the petition.

The legislative body shall record an ordinance adopted under subdivision (2) with the county recorder not later than ten (10) days after the legislative body adopts the ordinance. The historic district designation is considered removed on the date the ordinance is recorded with the county recorder.

(f) If the legislative body of the unit does not grant or deny the petition within forty-five (45) days after receiving the historic preservation commission's findings:

(1) the petition is considered granted or denied in accordance with the recommendation of the historic preservation commission; and
(2) if the petition is considered granted, the legislative body shall, not later than fifty-five (55) days after receiving the historic preservation commission's findings: (A) adopt an ordinance that removes the designation of the historic district; and (B) record the ordinance with the county recorder. The historic district designation is considered removed on the date the ordinance is recorded with the county recorder.

As added by P.L.206-2013, SEC.1. Indiana Code 2015
Bibliography


Tipson, David F. “Putting the History Back in Historic Preservation.” *The Urban Lawyer* 36 no. 2 (Spring 2004): 289-316.
