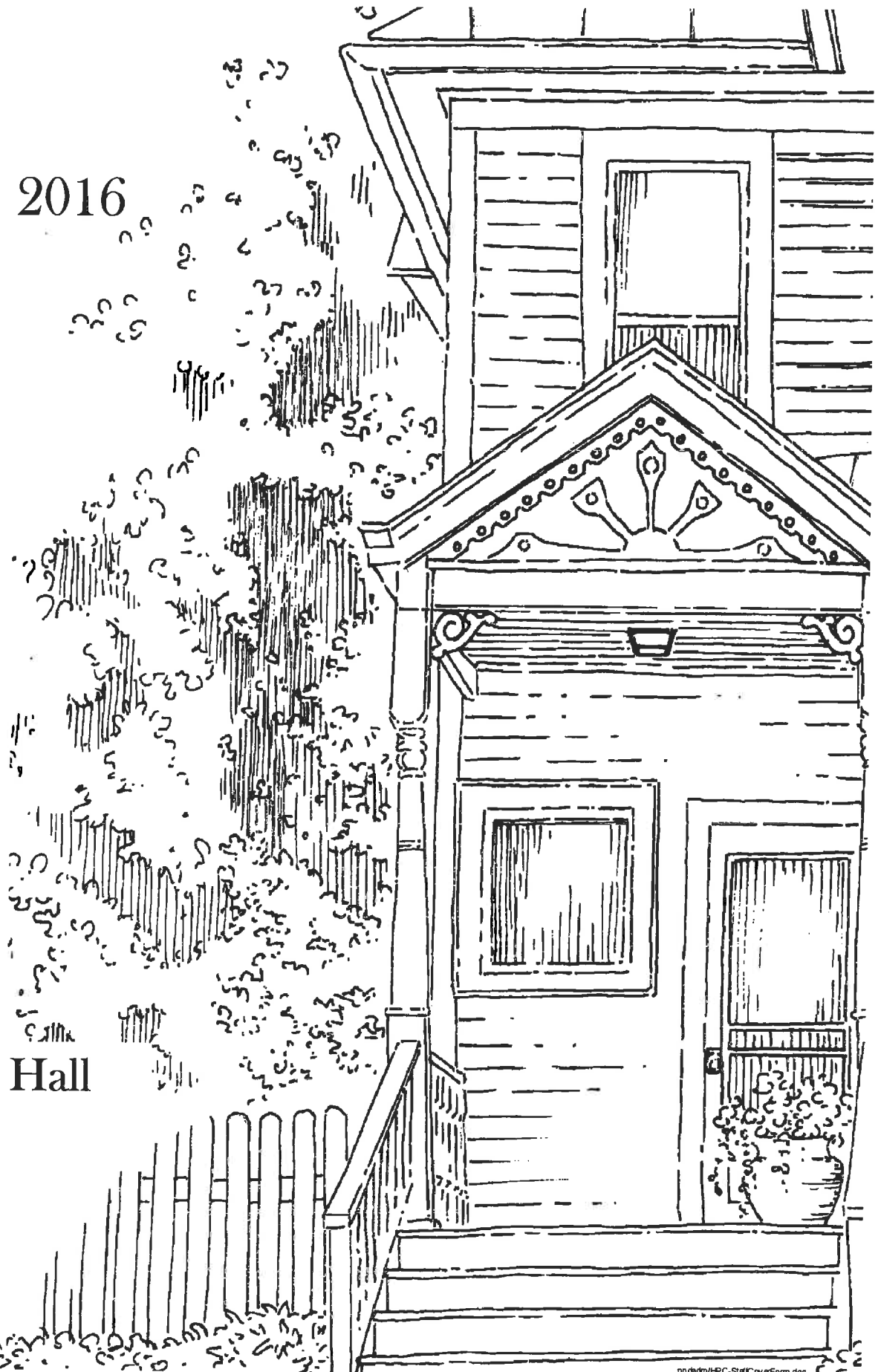
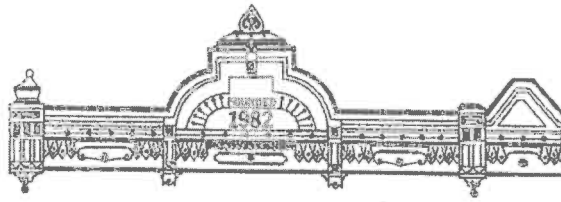


Iowa City Historic Preservation Commission

Thursday
January 14, 2016
5:30 p.m.

Emma Harvat Hall
City Hall





IOWA CITY HISTORIC PRESERVATION COMMISSION

Thursday, January 14, 2016

City Hall, 410 E. Washington Street

Emma J. Harvat Hall

5:30 p.m.

A) Call to Order

B) Roll Call

C) Public discussion of anything not on the agenda

D) Certificate of Appropriateness

1. 920 Dearborn Street – Dearborn Street Conservation District (window, door, and deck alterations)

E) Report on Certificates issued by Chair and Staff

Certificate of No Material Effect – Chair and Staff review

1. 721 E. College Street – College Green Historic District (garage siding repair and replacement)
2. 314 S. Summit Street – Summit Street Historic District (porch repair)
3. 607 Grant Street – Longfellow Historic District (roofing replacement)
4. 636 S. Governor Street – Governor-Lucas Street Conservation district (deck replacement)

Minor Review – preapproved item – Staff review

728 Rundell Street – Longfellow Historic District (front door replacement)

F) Review of By-laws and Procedures

G) Report on 2015 Historic Preservation Awards

H) Consideration of Minutes for December 10, 2015

I) Adjournment

Historic Review for 920 Dearborn Street

District: Dearborn Street Conservation District

Classification: Noncontributing

The applicant, Mark Redmond, is requesting approval for a proposed kitchen and bathroom remodel project and deck reconstruction at 920 Dearborn, a noncontributing property in the Dearborn Street Conservation District. The project consists of remodeling the interior of a previous addition so that exterior windows and a door must be relocated or removed.

Applicable Regulations and Guidelines:

4.0 *Iowa City Historic Preservation Guidelines for Alterations*

4.3 Doors

4.11 Siding

4.13 Windows

5.0 *Guidelines for Additions*

5.2 Decks and Ramps

Staff Comments

This one and one-half story gable roof house features a projecting front gable wing and a projecting gabled entry. There is a small gable addition to the side and a shed roof addition and shed roof dormer addition on the back of the house. Windows throughout are double hung vinyl and the home has vinyl siding. A newer double car garage is located in the rear of the lot. The house appears to date circa 1945-1950 and may be referred to as a Minimal Traditional house, blending the feeling of the 1920s period cottages and the very simplest type of post-WWII ranch.

The applicant is proposing to remodel the kitchen and bathroom and remove the existing deck and replace it with a larger deck. The windows on the north and south ends of the rear addition would be removed. The current back door would be removed and the opening filled in and sided to match the existing. A new half-lite steel Waudena door will be located on the north end of the existing rear addition facing the garage. On the east or rear side of the existing addition, one of the three windows would be removed, leaving the pair of windows on the north side to allow for a bath and laundry area. The openings of the removed windows would be sided to match the existing vinyl siding.

The guidelines recommend that for noncontributing properties in conservation districts, if a window opening is to be closed on a framed structure, appropriate siding that matches the existing should be used with its members being placed across and randomly extended beyond the opening. If windows are relocated, it should not detract from overall fenestration patterns. Synthetic siding use on noncontributing properties in conservation districts will be evaluated on a case-by-case basis. Siding for additions should be encouraged which will not further degrade the property. It is recommended to add new door openings that are trimmed to match the other doors and windows in the building.

Decks should be located on the back of a primary building, opposite the street-facing façade and set in from the side walls at least 8 inches. Railings and balusters visible from the street must be painted or stained. Deck railing design is illustrated in the guidelines and their review, individually, is a minor review that does not need to go to the full commission.

In Staff's opinion, this renovation is mostly interior. The home is non-contributing so matching the existing vinyl siding seems most appropriate. The removal of three windows and the relocation of the door are all on the exterior and will not impact any window location pattern. While the removed door, which will be replaced with a steel door, is original, it is not visible, is on the back of the house, and replacing it will not have a negative impact on a house that is already non-contributing for reasons beyond the vinyl siding and windows. The deck will follow the setback and railing design guidelines.

Recommended Motion

Move to approve a Certificate of Appropriateness for the project at 920 Dearborn Street, as presented in the staff report.

Application for Historic Review

Application for alterations to the historic landmarks or properties located in a historic district or conservation district pursuant to Iowa City Code Section 14-4C. Guidelines for the Historic Review process, explanation of the process and regulations can be found in the *Iowa City Historic Preservation Handbook*, which is available in the Neighborhood and Development Services office at City Hall or online at: www.icgov.org/HPhandbook

For Staff Use:

Date submitted: 11/24/15

- ☐ Certificate of No material Effect
☐ Certificate of Appropriateness
 ☐ Major review
 ☐ Intermediate review
 ☐ Minor review

The HPC does not review applications for compliance with building and zoning codes. Work must comply with all appropriate codes and be reviewed by the building division prior to the issuance of a building permit.

Meeting Schedule: The HPC meets the second Thursday of each month. Applications are due in the office of Neighborhood and Development Services by noon on Wednesday three weeks prior to the meeting. See attached document for application deadlines and meeting dates.

Property Owner/Applicant Information

(Please check primary contact person)

- ☒ Property Owner Name: Mark Redmond
Email: mredmond44@gmail.com Phone Number: (563) 590-1464
Address: 24380 7th Ave
City: Bernard State: IA Zip Code: 52002
☐ Contractor / Consultant Name: Self
Email: _____ Phone Number: () _____
Address: _____
City: _____ State: _____ Zip Code: _____

Proposed Project Information

- Address: 920 Dearborn
Use of Property: Rental property Date Constructed (if known): 1950's

Historic Designation

(Maps are located in the Historic Preservation Handbook)

- ☐ This Property is a local historic landmark.

OR

- ☒ This Property is within a historic or conservation district (choose location):

- | | |
|--|---|
| <input type="checkbox"/> Brown Street Historic District | <input type="checkbox"/> Clark Street Conservation District |
| <input type="checkbox"/> College Green Historic District | <input type="checkbox"/> College Hill Conservation District |
| <input type="checkbox"/> East College Street Historic District | <input checked="" type="checkbox"/> Dearborn Street Conservation District |
| <input type="checkbox"/> Longfellow Historic District | <input type="checkbox"/> Goosetown / Horace Mann Conservation District |
| <input type="checkbox"/> Northside Historic District | <input type="checkbox"/> Governor-Lucas Street Conservation District |
| <input type="checkbox"/> Summit Street Historic District | |
| <input type="checkbox"/> Woodlawn Historic District | |

Within the district, this Property is classified as:

- ☐ Contributing ☐ Noncontributing ☐ Nonhistoric

version #1
leaving 2 windows
to North

Application Requirements

Choose appropriate project type. In order to ensure application can be processed, please include all listed materials. Applications without necessary materials may be rejected.

☐ Addition

(Typically projects entailing an addition to the building footprint such as a room, porch, deck, etc.)

- | | | |
|--|--------------------------------------|--------------------------------------|
| <input type="checkbox"/> Building Elevations | <input type="checkbox"/> Floor Plans | <input type="checkbox"/> Photographs |
| <input type="checkbox"/> Product Information | <input type="checkbox"/> Site Plans | |

☒ Alteration

(Typically projects entailing work such as siding and window replacement, skylights, window opening alterations, deck or porch replacement/construction, baluster repair, or similar. If the project is a minor alteration, photographs and drawings to describe the scope of the project are sufficient.)

- | | | |
|--|---|--|
| <input type="checkbox"/> Building Elevations | <input checked="" type="checkbox"/> Photographs | <input type="checkbox"/> Product Information |
|--|---|--|

☐ Construction of new building

- | | | |
|--|--------------------------------------|--------------------------------------|
| <input type="checkbox"/> Building Elevations | <input type="checkbox"/> Floor Plans | <input type="checkbox"/> Photographs |
| <input type="checkbox"/> Product Information | <input type="checkbox"/> Site Plans | |

☐ Demolition

(Projects entailing the demolition of a primary structure or outbuilding, or any portion of a building, such as porch, chimney, decorative trim, baluster, etc.)

- | | |
|--------------------------------------|---|
| <input type="checkbox"/> Photographs | <input type="checkbox"/> Proposal of Future Plans |
|--------------------------------------|---|

☐ Repair or restoration of an existing structure that will not change its appearance.

- | | |
|--------------------------------------|--|
| <input type="checkbox"/> Photographs | <input type="checkbox"/> Product Information |
|--------------------------------------|--|

☐ Other: _____

Please contact the Preservation Planner at 356-5243 for materials which need to be included with application.

Proposed Project Details

Project Description:

Kitchen and bathroom remodel
Deck addition

includes new back door opening (relocate) and removing back windows + filling in - This is to change area into bath + laundry (laundry is part of room now)

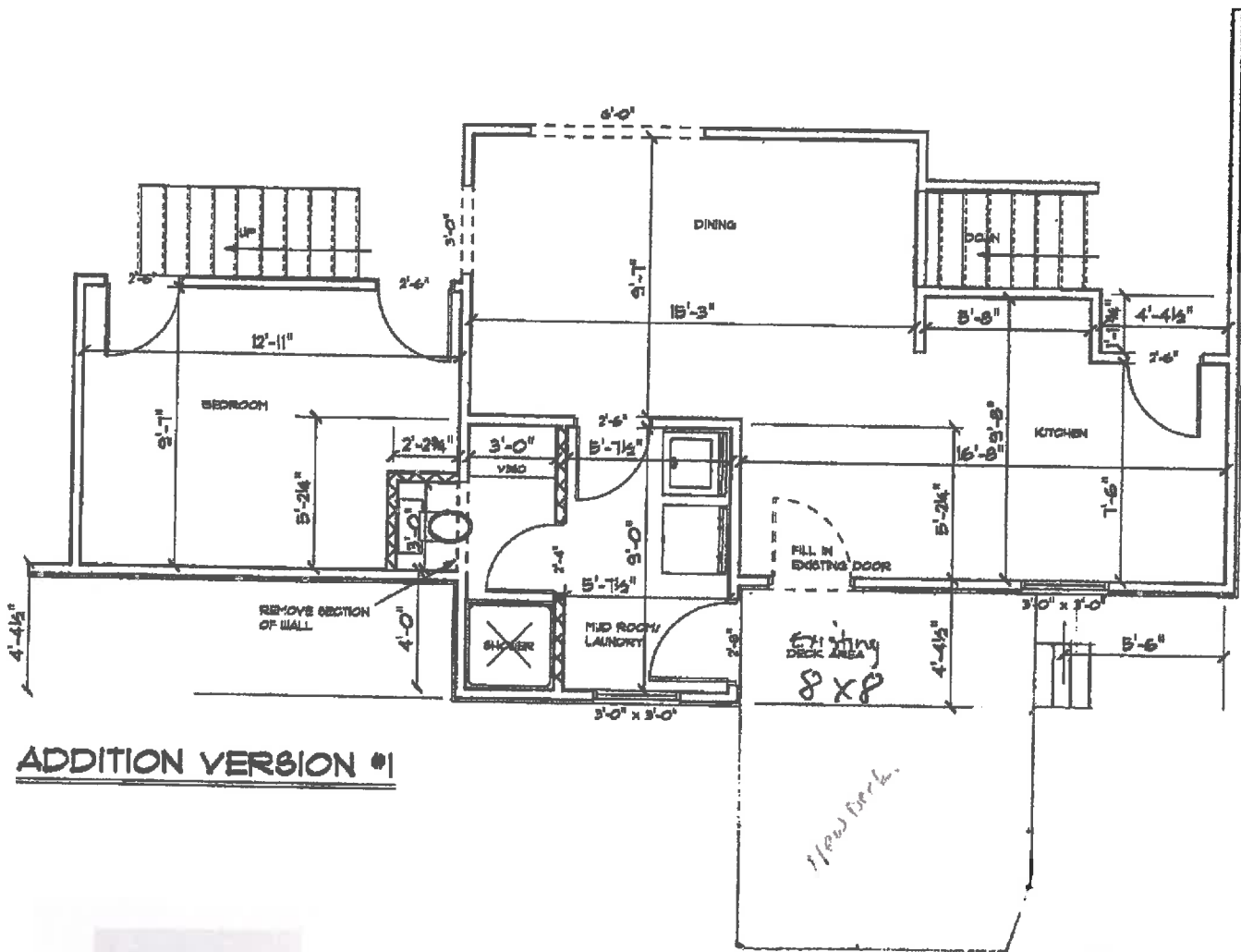
Materials to be Used:

Window openings would be filled with same vinyl siding that is on house now (existing windows are vinyl)
new door would be steel entry door

Exterior Appearance Changes:

new door openings - filling in existing windows + old door location + new rear deck





R
E
/O

R
E
8/O S

New Door by Waudena Millwork

window will be replaced
with door



window on side face will
be removed



one rear window and door will be removed



CITY OF IOWA CITY MEMORANDUM

Date: January 8, 2016
To: Historic Preservation Commission
From: Ginalie Swaim, Chair
Re: Meeting Procedures

We have had some recent cases that included considerable input from neighbors and other interested parties (for example the demolition request for 610 Ronalds Street). We currently do not have written procedures for how such input is received by the Commission. To help improve the flow and efficiency of future Commission meetings I suggest that we review our bylaws and establish written procedures for how we conduct our meetings.

The Planning and Zoning Commission has adopted meeting procedures (see attached "Planning and Zoning Commission Procedures for Public Discussion") that may serve as a model for our commission. The Historic Preservation by-laws and Planning and Zoning by-laws are included for your review and comparison. Articles VI and VII of the P&Z by-laws are not applicable to the Historic Preservation Commission and are therefore not represented by similar Articles in the HP by-laws. Please make note of this if you compare the two.

The National Trust for Historic Preservation's "Procedural Due Process in Plain English" is also include in you packet.

I would like to discuss these documents at our January meeting with the goal of identifying appropriate updates to our bylaws and procedures.

Planning and Zoning Commission Procedures for Public Discussion

To ensure that interested parties have adequate time to address the Commission and that discussion can proceed in a timely manner regarding issues before the Planning and Zoning Commission, it is the intent of the Commission to observe the following procedure.

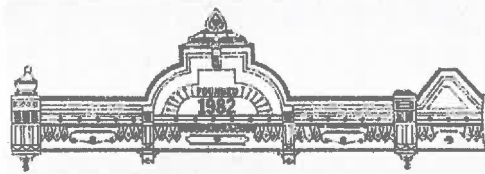
After introducing the item for discussion, the Chairperson of the Commission will:

1. Ask the City planners for a staff report.
2. Ask for questions from members of the Commission to the City staff.
3. Ask the applicant if they would like to present information.
4. Open the issue for public discussion:
 - A. Each speaker is asked to limit their comments to five minutes.
 - B. After everyone who wishes to has spoken, a **second** round of discussion may be held. Each speaker is asked to limit their comments to two minutes.
5. Close public discussion and ask the Commission members for the appropriate motion.
6. Moderate Commission discussion and call for the vote.

General Information:

1. Questions regarding the issue under discussion should be addressed to the Chairperson.
2. Speakers are asked to approach the podium, give their name and address, **print** their name and address on the form provided, and speak into the microphone.
3. The Chairperson may place time limitations on application presentations or total time for public discussion.

*Thank you for your cooperation.
Public involvement is the cornerstone of good government.*



BY-LAWS

IOWA CITY HISTORIC PRESERVATION COMMISSION

ARTICLE I.

MEETINGS

Section 1. Regular Meetings. Regular meetings of this Commission shall be held once each month. In addition, a date and time shall be reserved for a second meeting each month for the purpose of reviewing Certificate of Appropriateness applications. If no applications are filed for review at the second meeting, the meeting need not occur.

Section 2. Special Meetings. Special meetings of the members may be called by the Chairperson and shall be called by the Chairperson's at the request of three or more members of the Commission.

Section 3. Place of Meetings. Regular meetings shall be in the City Hall or other appropriate meeting place in Iowa City, Iowa. Should these places be unavailable, another meeting place shall be selected.

Section 4. Notice of Meeting. Notice and agenda for all regular meetings shall be distributed to all members of the Commission and the press. Special meetings may be called upon notice to all members of the media at least 24 hours before a special meeting is held. All provisions of the State Open Meetings Law shall be followed.

Section 5. Quorum. A majority of the members of the Commission shall constitute a quorum at any meeting and a majority of votes cast at any meeting at which a quorum is present shall be decisive of any motion or election.

Section 6. Proxies. There shall be no vote by proxy.

Section 7. Public Discussion. Time shall be made available during all regular meetings for open public discussion.

ARTICLE II.

MEMBERSHIP

Section 1. Membership. The Historic Preservation Commission shall consist of one representative from each historic district and four members selected at-large. The Chairperson and Vice-Chairperson will be elected annually by the Commission members. All members shall be qualified electors of the City of Iowa City, Iowa, and shall serve as members without compensation, but shall be entitled to the necessary expenses, including travel expenses, incurred in the discharge of their duties.

Section 2. Nomination. The City Council shall appoint members to the Historic Preservation Commission as vacancies occur. If a position/appointment becomes vacant by reason of resignation or otherwise and results in an unexpired term, the Council may choose to fill the unexpired term in such a manner that the appointee shall continue in the position not only through the unexpired term but also through a subsequent regular term.

Section 3. Terms. Members shall be appointed for three-year terms. All terms expire March 29 and no more than four terms may expire in any given year.

Section 4. Absences. Three consecutive unexplained absences of a Commission member may result in a recommendation to the Mayor from the Commission to discharge such member and appoint a new Commission member.

Section 5. Orientation for New Members. Prior to the first regular meeting following their appointment, new members shall be provided with copies of the pertinent portions of the City Code, Historic Preservation Commission By-laws, and other documents that would be useful to Commission members in carrying out their duties.

ARTICLE III.

OFFICERS

Section 1. Number. The officers of this Commission shall be a Chairperson and Vice-Chairperson, each of whom shall be elected by members of the Commission.

Section 2. Election and Term of Office. The officers of this Commission shall be elected annually.

Section 3. Vacancies. A vacancy in either office shall be filled by Commission members for the unexpired portion of the term.

Section 4. Chairperson. The Chairperson shall, when present, preside at all meetings of the members, appoint committees, call special meetings and in general perform all duties of the Chairperson and such other duties as may be prescribed by members from time to time.

Section 5. Vice-Chairperson. In the absence of the Chairperson or in the event of death, inability or refusal to act, the Vice-Chairperson shall perform the duties of the Chairperson and when so acting shall have all the powers of and be subject to all the restrictions upon the Chairperson.

ARTICLE IV.

CONDUCT OF COMMISSION AFFAIRS

Section 1. Agenda. The Chairperson or a designated representative, together with appropriate members of the City staff, shall prepare an agenda for all regular Commission meetings. Agendas are to be sent to Commission members, the City Council and the media at least three days prior to the regular meetings.

Section 2. Secretary. A secretary, not to be a Commission member, shall be provided for all regular and special meetings.

Section 3. Minutes. Minutes of all regular and special meetings are to be prepared and distributed to Commission members and approved by the Commission prior to being sent to City Council, in the manner prescribed by the Council. Specific recommendations for the Council are to be set off from the main body of the minutes, and appropriately identified.

Section 4. Policies and Programs. Periodically, the Commission shall review the policies and programs of the City relating to historic preservation, and make such recommendations to the City Council as are deemed appropriate.

Section 5. Referrals from Council. From time to time letters, requests for information, requests for recommendations, and other matters are referred to the Commission by the City Council. The Commission shall initiate the consideration of such items at the next regular meeting following receipt, and shall notify Council of its disposition.

Section 6. Attendance at Council Meetings. The Commission Chairperson or designated representative are to be in attendance at all City Council meetings, including informal sessions, at which matters pertaining to the Commission are to be discussed or when actions concerning the Commission's responsibilities are to be taken. The Commission's Chairperson is to receive Council agenda prior to each Council meeting, and is to be otherwise notified of meetings involving Commission business.

Section 7. Annual Report. An annual report, detailing the activities of the Commission, shall be prepared by the Chairperson, approved by the Commission, and submitted to the City Council.

Section 8. Liaison with Planning and Zoning Commission. At such time as the Commission undertakes any business which is deemed pertinent to the activities of the Planning and Zoning Commission, the Planning and Zoning Commission shall be so notified, and may send a representative to the next meeting of the Historic Preservation Commission to act as a liaison between the two Commissions.

Section 9. Ex parte Contacts. A member who has had a discussion of an agenda item outside of a public meeting with an interested party shall reveal the contact prior to staff report, naming the other party and sharing specifics of the contact, copies if in writing or a synopsis if verbal. Provided, however, that in ruling upon applications for certificates of appropriateness, the Commission is acting in a quasi-judicial capacity. In these matters, ex parte communications item outside of a public meeting between members of the Commission and parties or persons with a personal interest in the application should not occur, in accordance with *Rodine v. Zoning Board of Adjustment of Polk County*, 434 N.W. 2d 124 (1988).

Section 10. Design Review Subcommittee. The Commission shall have the authority to establish a historic preservation design review subcommittee to review and make recommendations to the Commission regarding applications for certificates of appropriateness. Said subcommittee shall consist of three members of the Commission, appointed annually by the Commission, to serve one year terms.

ARTICLE V.

AMENDMENTS

Section 1. These by-laws may be altered, amended or repealed and new by-laws may be adopted by the members at any regular meeting or at any special meeting called for that purpose.

BY-LAWS
Iowa City Planning and Zoning Commission

items not included
in HPC by-laws
are highlighted

ARTICLE I. AUTHORITY:

The Iowa City Planning and Zoning Commission shall have that authority which is conferred by Chapter 414 of the Code of Iowa, Section 14-4A, City Code, City of Iowa City, Iowa and through the adoption of these by-laws stated herein.

ARTICLE II. PURPOSE:

The purpose of the by-laws stated herein is to provide for the general welfare of the citizens of Iowa City by establishing a Planning and Zoning Commission to advise the City Council on all matters pertaining to the physical development and the Comprehensive Plan of Iowa City.

ARTICLE III. MEMBERSHIP:

Section 1. Qualifications. The Planning and Zoning Commission shall consist of seven (7) members appointed by the City Council. All members of the Commission shall be qualified electors of the City of Iowa City, Iowa.

Section 2. Compensation. Members shall serve without compensation, but may be reimbursed for expenses incurred for travel outside the city on designated Commission business. Such expenses must be submitted to the City Manager.

Section 3. Orientation for New Members. Prior to the first regular meeting following their appointment, new members shall be provided with copies of the City Zoning Chapter and subdivision regulations, by-laws, and other documentation that would be useful to Commission members in carrying out their duties. They shall also be given an orientation briefing by the City staff and the Commission as is deemed appropriate.

Section 4. Absences. Three consecutive unexplained absences of a Commission member from regular formal meetings may result in a recommendation to the City Council from the Commission to discharge said member and appoint a new Commission member.

Section 5. Vacancies. Any vacancy on the Commission because of death, resignation, long-term illness, disqualification or removal shall be filled by the City Council after at least 30 days public notice of the vacancy.

Section 6. Terms. Members shall be appointed for terms of five years, with terms expiring on May 1. Not more than one-third of the terms may expire in any one year. If a position becomes vacant by reason of resignation or otherwise, and results in an unexpired term of six months or less, the Council may choose to fill the unexpired term in such a manner that the appointee shall continue in the position not only through the unexpired term, but also through a subsequent regular term.

Section 7. Resignations. Resignations should be submitted in writing to the Mayor with a copy to the City Manager, Director of Planning and Community Development and Chairperson of Planning and Zoning at least 60 days prior to the date of intended departure.

ARTICLE IV. OFFICERS:

Section 1. Number. The officers of this Commission shall be a Chairperson, Vice-Chairperson, and Secretary, each of whom shall be elected by the members of the Commission.

Section 2. Election and Term of Office. Officers of the Commission shall be elected annually at the first regular meeting in February each year; if the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as is convenient.

Section 3. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or other cause shall be filled by the members for the unexpired portion of the term.

Section 4. Chairperson. The Chairperson shall, when present, preside at all meetings, appoint committees, call special meetings and in general perform all duties incident to the office of a Chairperson, and such other duties as may be prescribed by the members from time to time.

Section 5. Vice-Chairperson. In the absence of the Chairperson, or in the event of death, inability or refusal to act, the Vice-Chairperson shall perform the duties of the Chairperson and when so acting shall have all the powers of and be subject to all the restrictions upon the Chairperson.

Section 6. Secretary. The Secretary shall have the responsibility of insuring that the Commission's minutes are accurate and are circulated as prescribed. The Secretary, in the absence of the Chairperson and Vice-Chairperson, shall perform the duties of the Chairperson and when so acting shall have all the powers of and be subject to all the restrictions upon the Chairperson.

ARTICLE V. MEETINGS:

Section 1. Regular Meetings. Regular formal meetings of this Commission shall be held twice monthly whenever possible.

Section 2. Special Meetings. Special meetings of the members may be called by the Chairperson and shall be called by the Chairperson or Vice-Chairperson at the request of three or more members of the Commission.

Section 3. Place of Meetings. Regular formal meetings shall be in a place accessible to persons with disabilities.

Section 4. Notice of Meetings. Notice of regular and special meetings shall be required; meetings may be called upon notice not less than twenty-four (24) hours before the meetings. The news media shall be notified by staff as required under Section 14-6U, City Code.

Section 5. Quorum. A majority of the members of the Commission shall constitute a quorum at any meeting.

Section 6. Proxies. There shall be no vote by proxy.

Section 7. Public Discussion. Time shall be made available during all regular formal meetings for open public discussion.

Section 8. Motions. Motions may be made or seconded by any member of the Commission except the Chairperson.

Section 9. Exparte Contacts. A member who has had a discussion of an agenda item outside of

a public meeting with an interested party shall reveal the contact prior to staff report, naming the other party and sharing specifics of the contact, copies if in writing or a synopsis if verbal.

Section 10. Conflict of Interest. A member who believes they have a conflict of interest on a matter about to come before the Commission shall state the reason for the conflict of interest, leave the panel of Commissioners before the discussion begins, shall not participate in the discussion and may return to the panel after the vote.

Section 11. Voting. A majority (but not less than three) of votes cast at any meeting at which a quorum is present shall be decisive of any motion or election. A two-thirds vote of the members of the Commission present or not less than four votes shall be required in consideration of a substantial amendment to the Zoning Chapter and the adoption of the Comprehensive Plan or part or amendment thereof.

Upon request, voting will be by roll call and will be recorded by yeas and nays. Every member of the Commission, including the Chairperson, is required to cast a vote upon each motion. A member who abstains shall state the reason for abstention.

Section 13. Roberts Rules of Order. Except as otherwise provided herein, Roberts Rules of Order as amended shall be used where applicable.

ARTICLE VI. POWERS AND DUTIES:

The City Planning and Zoning Commission, in addition to the powers conferred by Chapter 414 of the Code of Iowa, possesses the following powers established by Section 14-4A, City Code, City of Iowa City, Iowa:

Section 1. To make such surveys, studies, maps, plans or plats of the whole or any portion of the City and of any land outside thereof, which in the opinion of such Commission bears relation to the Comprehensive Plan, and shall submit such plan to the Council with its studies and recommendations and it may publish the same.

Section 2. To make recommendations for the location of public buildings, bridges, viaducts, street fixtures, public structures or appurtenances and the sites therefor, and the location or erection of statuary, memorials or works of art in public places.

Section 3. To make recommendations upon plans, plats, or replats of subdivisions or resubdivisions in such city which show streets, alleys or other portions of the same intended to be dedicated for public use.

Section 4. To make recommendations for street, park, parkway, boulevard, traffic way or other public improvements, or the vacation thereof.

Section 5. To carry on comprehensive studies of present conditions and the future growth of such city in order to guide and accomplish a coordinated, adjusted and harmonious development of such city in accordance with the present and future needs thereof to the end that the health, safety, order, convenience, prosperity and general welfare may be promoted.

Section 6. To conduct public hearings upon the adoption of such comprehensive plan or any amendment thereto.

Section 7. To prepare a zoning ordinance regarding the height, number of stories and size of buildings and other structures; the percentage of ground that may be occupied; the size of yards, courts and other open spaces; the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes and to this end shall prepare

a preliminary report and hold public hearings thereon and after such hearings have been held, to submit its final report and recommendations to the City Council.

Section 8. To recommend to the City Council, from time to time, as conditions require, amendments, supplements, changes or modifications in the comprehensive plan prepared by it.

Section 9. To do all things necessary or advisable in order to carry out the intent and purpose of this article and all other ordinances relating to the state as they now exist or as the same may be hereafter amended or supplemented.

ARTICLE VII. HEARINGS:

Section 1. Comprehensive Plan. Before the adoption or amending of any part of the Comprehensive Plan, the Iowa City Planning and Zoning Commission shall hold at least one public hearing thereon, notice of the time of which shall be given by one publication in a newspaper of general circulation in the municipality, not less than seven days or more than 20 days before the date of hearing. After adoption of said plan by the Commission, a copy shall be forwarded to the Council. If the plan, or any modification or amendment thereof, shall receive the approval of the Council, the plan, until subsequently modified or amended as authorized by this section, shall constitute the official city plan of Iowa City. After the City Council has adopted all or part of the Comprehensive Plan, the Planning and Zoning Commission shall:

- (a) Investigate and make recommendations to the City Council upon reasonable and practical means for putting into effect the Comprehensive Plan in order that it will serve as a pattern and guide for the orderly growth and development of the city. The measures recommended may include plans, regulations, programs, financial reports and capital budgets.
- (b) Prepare a biannual report to the City Council on the status of the plan and progress on its implementation.
- (c) Endeavor to promote public interest in and understanding of the comprehensive plan and regulations relating to it.
- (d) Consult with and advise public officials and agencies, public utility companies, and civic, educational, professional and other organizations, and citizens generally, on the implementation of the provisions of the Comprehensive Plan.

ARTICLE VIII. CONDUCT OF COMMISSION BUSINESS:

Section 1. Agenda. The Chairperson, or a designated representative, together with staff assistance shall prepare an agenda for all regular Commission meetings. Agendas are to be posted at least 24 hours before the meeting and shall be sent to Commission members and the media prior to regular formal meetings. Copies will be available to the public at the meeting.

Section 2. Minutes. Minutes of all regular formal meetings are to be prepared and distributed to Commission and City Council members. Specific recommendations requiring Council action are to be set off from the main body of the minutes and appropriately identified.

Section 3. Review Policy. The Commission shall review all policies and programs of the City, relating to the Commission's duties as stated herein, and make such recommendations to the City Council as are deemed appropriate.

Section 4. Referrals from Council. From time to time letters, requests for information, requests for recommendations, and other matters are referred to the Commission by the City Council. The

Commission will initiate consideration of each item at the next regular Commission meeting and shall notify Council of its disposition.

Section 5. Attendance at Council Meetings. The goal of the Commission is to have at least one representative at each regular formal meeting of the City Council. It is the responsibility of the Chairperson to designate the method by which this goal is achieved. The Chairperson or designated representative may also be requested to attend informal Council sessions at which matters pertaining to the Commission's responsibilities are to be discussed.

Section 6. Annual Report. An annual report detailing the activities of the Commission shall be prepared by the Chairperson, approved by the Commission, and submitted to the City Council.

ARTICLE IX. SUBCOMMITTEES:

The subcommittees of this Commission including composition, duties, and terms shall be designated by the Chairperson.

ARTICLE X. AMENDMENTS:

These by-laws may be altered, amended or repealed, and new by-laws adopted by an affirmative vote of not less than four members of the Commission at any regular meeting or at any special meeting called for that purpose. Amendments shall be approved by the Council to become effective.

PROCEDURAL DUE PROCES
in Plain English
A GUIDE FOR PRESERVATION COMMISSION



BRADFORD J. WHITE

PAUL W. EDMONDSON



NATIONAL TRUST FOR HISTORIC PRESERVATION

This publication was produced as a result of the Procedural Due Process Project, a cooperative project of the following organizations:

National Trust for Historic Preservation
National Park Service, U.S. Department of the Interior
National Alliance of Preservation Commissions
National Center for Preservation Law
University of Virginia School of Law



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FOREWORD

ONE OF THE MOST basic concepts underlying the experiment in democratic government has always been a special sense of "fairness" — the idea that all citizens are to be treated equally before the law. This sense of fairness and equality are what the Fourteenth Amendment and equivalent provisions in other state constitutions are all about. Without these words, the American Constitution — in its grand adventure itself — would be meaningless.

The concept of fairness or "due process" embodied in the Fourteenth Amendment embraces two central ideas. One is that the process of *making* laws will be open to everyone. The other is that in *administering and enforcing* the law, the government employed will not only be open, but essentially neutral as well. In other words, laws will not be passed without the knowledge of citizens subject to them, and the process by which they are enforced will be impartial — applicable equally to all.

Nowhere are these concepts more important than in the administration, and enforcement of historic district, landmark, and other preservation regulations of local and state governments. These are the principal tools by which the owners of private property are specially burdened with the task of preserving the heritage of the larger society.



But there is a difficult problem that arises from the increasing use of these tools. In the ordinary situation, the enforcement of most regulations is heavily on lawyers and judges familiar with legal processes and the special law. On the other hand, local preservation ordinances are increasingly administered by lay persons who, though typically untutored in the law, are nonetheless held to its very high standards of performance and accountability.



The courts have made it clear in case after case that the basis of fairness to be observed in administering our preservation regulations is applicable to lay persons than to lawyers and judges. But these laws are technical, sometimes almost to the point of unintelligibility, and the many lay members of our historic district and landmarks commissions must often-times act like judges, like it or not, qualified or not.

This publication has been crafted in the hope of bringing the complex rules arising from the concept of "procedural due process" down to the lay commission. It is essential that they take this essay seriously and conduct it according to the precepts set forth. The preservation of the American heritage and the underlying democratic traditions require no less.

ROBERT E. STIPE

TRUSTEE *EMERITUS*

NATIONAL TRUST FOR HISTORIC PRESERVATION

PROFESSOR OF DESIGN, N.C. STATE UNIVERSITY

I. PROCEDURAL DUE PROCESS: AN OVERVIEW



THE TERM "PROCEDURAL DUE PROCESS" is short-hand for a set of legal and practical principles, derived from the Constitution, court decisions, and state and local statutory provisions, intended to ensure that government agencies at all levels—federal, state, and local—act fairly in making decisions affecting the interests of individual citizens. In the chapters that follow, this publication sets out the basic legal framework that the courts use in approaching procedural due process questions, as well as specific guidance on topics that commonly arise in the context of local ordinances granting regulatory powers to historic preservation commissions or review boards.



As the information in this publication is considered, it may be useful to keep the following overview in mind:

1. "Procedural due process" refers to procedures designed to safeguard individuals from arbitrary governmental action. These procedures help to ensure that the substance of a decision by a government agency or official is reasonable, publicly accepted, and not susceptible to legal challenge. In the preservation context, procedural due process includes the need for **notice** of a commission action, the need for and type of **hearing** required, and the procedures necessary for **fair and informed decisionmaking**.
2. The **baseline** to look for procedural requirements are those procedures imposed by statute—state enabling legislation, preservation ordinances, state sunshine laws, administrative procedure acts, and others. Because due process requirements vary from state to state, these statutory sources—as well as relevant case law from the state—must be consulted in determining what procedures apply in any given case.

3. It is the responsibility of each preservation commission to establish and follow its own **rules of procedure** that meet the requirements of this statutory baseline, and that those requirements as necessary to provide additional safeguards to satisfy constitutional and fairness requirements.
4. Property owners, neighbors, and interested members of the general public must be provided a reasonable opportunity to be heard on any matter considered by a preservation commission that affects their interests. There can be no opportunity to be heard, however, without appropriate notice of an action by a preservation commission. Therefore, preservation commissions must provide reasonable notice of any action to affected property owners, neighbors, other parties, and the general public. Notice may be given (1) individually **mailed notice**, (2) **published notice** (through local newspapers), and (3) **posted notice** (on the property). The closer the distance a person is from a property under consideration by a commission, the more appropriate is the use of individually mailed notice. Notice should be sufficiently detailed so that the person receiving the notice understands the nature of the action the commission is considering, the time, and place for any public hearing, and the commission's plan for public participation.
5. A public hearing should be held **prior to** a commission's action on a specific application or proposal. One exception is the case of **interim controls**, including preliminary actions of historic properties, in which case temporary restrictions on the use of property may be put into place pending final action by the commission on a nominated preservation order to prevent demolition or significant alterations to historic properties under consideration for protection.
6. Public hearings by preservation commissions must be conducted in a **business-like** manner, but need not follow the formality of trial-like hearings. Consequently, except in particular jurisdictions that may require it (consult local jurisdiction attorney), swearing-in of witnesses and formal cross-examination are not required.

tion are generally not required. Hearings should be **open to the public**, consistent with state "sunshine acts," and managed in a way that permits a meaningful opportunity for interested parties to present their views and relevant information. Commissions may use **reasonable time limits** and other means to manage the conduct of the hearing, so long as these requirements are applied even-handedly to all parties. Above all, every participant in a public hearing has the right to be treated fairly, and with respect.

7. A preservation commission's decision should adequately explain the **basis of the decision**, with specific reference to information in **the record** and the relevant **standards and criteria** included in the preservation ordinance.
8. The commission should carefully record its actions through **written minutes**. It is also advisable to maintain **an audio or video recording** of commission meetings and hearings, which can be transcribed as necessary (or as may be required as a standard procedure by local practice).
9. The tenets of procedural due process require decisionmaking by a fair and unbiased tribunal. Consequently, preservation commission members should avoid even the perception of **bias or prejudice** in their conduct, particularly by avoiding extraneous commentary during—or outside of—commission meetings. Commission members should also be careful to avoid **conflicts of interest**, or even the appearance of a conflict, due to a personal, financial, or professional interest in the subject matter of a proceeding (or with an interested party). Where a potential conflict exists, advice should be sought from a competent outside source, such as a city or municipal attorney. If a conflict is found to exist, a commissioner may not participate in the decisionmaking process.
10. A commission's decisions should be made on the basis of information contained in the public record and available to all interested parties. **Ex parte contacts** (private communications between an interested party and a commissioner on an issue before the commission) should be prohibited.

11. Commission members should work closely with the **municipal attorney** to establish workable procedure, particularly to ensure that any local or state-level procedural requirements are addressed and incorporated into a commission's own rules of procedure.

II. THE LEGAL FRAMEWORK



"... nor shall any State deprive any person of life, liberty, or property without due process of law."

—U.S. Const. Amend. XIV

THE DUE PROCESS CLAUSE of the Fourteenth Amendment, and the Due Process Clause of the Fifth Amendment (which applies to the federal government) together enshrine one of the most fundamental concepts of American democracy: that government agencies and officials at *all* levels must act fairly in making decisions that affect the rights of the individual. The term "due process," as it has come to be interpreted over the years, effectively stands as shorthand for a set of legal principles designed to safeguard individuals from arbitrary governmental action.



The various federal and state courts have recognized two categories of protections as coming within the broad framework of "due process." The first, "*procedural* due process," refers to the manner in which government decisionmaking is carried out. The second, "*substantive* due process," addresses the rationality or reasonableness of the substance of the decision. Thus, the Constitution requires that both the *process* and the *result* of governmental decisionmaking meet basic constitutional standards of fairness and rationality. From a practical standpoint, however, careful attention to the procedural aspects of decisionmaking—in the preservation context, as in any other—can help to ensure that the substance of the decision is reasonable, accepted by the public, and likely to be upheld if challenged in court.

What is "procedural due process"? The procedural protections

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emanating from the Due Process Clause generally are covered by three related subjects:

- (1) the need for, and type of, **notice** required for governmental actions;
- (2) the need for, and type of, **hearing** required; and
- (3) the need for **fair and informed decision making**.

What the Constitution may require for different types of governmental actions, however, depends on the particular circumstances involved. As remarked by Supreme Court Justice Thurgood Marshall, "[w]e have often noted that procedural due process means many different things in the numerous contexts in which it applies."

In the context of local historic preservation commission review boards, the issue of procedural due process may be stated as the following question:

What rights do the various parties who may be involved have in either (1) the designation of a historic property or (2) the issuance of a permit relating to a designated property? What have in the decisionmaking process of the governing agency responsible for those actions?

From a constitutional standpoint, the answer to this question can be found through application of an analytical framework that considers four separate factors (as described below). It is important to note, however, that many procedural requirements are expressly set out in state or local laws, independent of the requirements of the Constitution. Those statutory procedures may be more or less stringent than those required by the Constitution, but some case must be followed. Another complicating factor is the often state-by-state differences in the way different courts interpret the law in this area; these jurisdictional differences should be noted in determining how much "process" should be required in any particular case.

A. THE CONSTITUTION AND THE COURTS

From a legal standpoint, procedural due process, like many other constitutional doctrines, may be described as a set of general principles, the application of which depends on a balancing of several different factors.

There are four basic factors considered by the courts in determining which procedural standards apply to specific governmental actions affecting the interests of private individuals. They are: (1) the nature of the governmental action; (2) the nature of the interest of the person in question; (3) the nature of the interference by the proposed governmental action; and (4) the nature of the government's interest in carrying out the action.

1. *What is the nature of the governmental action in question?* Courts addressing procedural due process issues often make a distinction between two types of governmental actions: those that are "legislative" in nature, and those that are considered "adjudicative."

"Legislative" actions—those that involve the adoption of general public policies—usually are not considered to require extensive procedural protections for individual members of the public. The reason for this is that the public process involved in making legislative decisions itself addresses many fairness concerns, because of the large number of persons affected, the openness of the process, and the degree to which elected officials are directly accountable to the public through the electoral process. Consequently, legislative actions are not generally subject to detailed hearing, notice, or public participation requirements.

"Adjudicative" actions, on the other hand, usually involve the application of previously-adopted policies to individual cases and specific factual circumstances, and are more likely to pose questions of fairness and impartiality. Consequently, such actions generally require more extensive procedural protections for the individual.

Where do the actions of local preservation commissions and review boards fit into this conceptual framework? The answer, unfortunately, is not totally predictable—because of the different ways in which preservation ordinances work, and because of jurisdictional differences in case law from one state to another.

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In the context of local preservation ordinances, generally two different types of governmental actions. First is the action of *designating* a property, or a district of properties, as historic. Second is a local preservation commission board's action in considering a specific *permit application* to a particular property, once that property has been designated. These actions are carried out in different ways by different communities. In some communities, for example, designation is done by the local legislative body (often after recommendation or approval by a historic preservation commission); in other cases, the preservation commissions are solely responsible for designations.

Designations, particularly those made by a local legislative body through the adoption of an ordinance, are more likely to be considered to be legislative in character (meaning that they may expect less stringent procedural requirements). Unclear under state law, however, it is advisable to check with local counsel to determine whether designations (or the actions of formally recommending properties for designation) should follow the stricter notice and hearing requirements that may be required for "adjudicative" proceedings. In any event, commissions making or recommending designations should establish procedures for notice and public participation to ensure that they are publicly accepted as fair and reasonable.

Commission actions on permit applications or other actions, as a general rule, are more likely to be considered adjudicative, and subject to a higher level of procedural requirements. (This, as discussed below, does *not* usually mean that they follow formal procedures.) Again, because of state-by-state variations, it is advisable to check with local counsel to find out how courts in a given jurisdiction are likely to characterize such permit actions. The procedural requirements may flow from that characterization in that jurisdiction.

2. What is the interest of the person entitled to procedural protection? Governmental actions affect different parties in different ways. The general principle is that the interest of any individual varies in accordance with her proximity to the property that is the subject of the governmental action—in other words, the greater the distance a person lives from that property, the less procedural protections may be required.

In the case of historic preservation ordinances, the owner or occupant of a particular property under consideration for designation, or that is the subject of a permit proceeding, clearly has a strong interest that may be affected by the government action—an interest in the legitimate use of land. Adjacent landowners, who are likely to be directly affected by changes to a historic property, also have a strong interest. In the case of a historic district, other property owners within that district may have a lesser, but nonetheless distinct, interest in any action that may affect the integrity of the historic district. Even members of the general public have an interest in the action, although generally their interests are less tangible than those so directly affected.

Each of these interested parties may be entitled to *some* procedural protection, through notice or an opportunity to participate in a public hearing. Nonetheless, the *degree* of protection afforded may vary, depending on the interest. For example, a landowner who has applied for a permit to alter his or her property has such a strong interest in the outcome of the preservation commission proceeding that he or she should be entitled to receive individual written notice of an upcoming hearing on that application. However, a landowner three blocks away has a lesser interest in the proceeding, and may have to rely on some lesser degree of notice—such as a notice published in a local newspaper, or a sign posted in front of the property in question. Thus, the answer to the question “What amount of process am I due?” may depend to a certain degree on the person asking the question.

3. *To what degree does the proposed governmental action actually interfere in a protected interest?* Procedural due process applies to any governmental action that affects a “life, liberty, or property” interest recognized by the Constitution. Different types of governmental actions have different impacts on each of those interests. The constitutional analysis of procedural due process used by the courts requires an examination of the nature of the interference, in order to adjust the procedures accordingly.

Historic preservation regulations affect private property or economic interests, rather than interests relating to life or liberty. Within this area of interests, however, the degree of actual regula-

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tion may vary considerably, depending on the legal authority to the local historic preservation commission or review board. For example, a preservation ordinance that merely imposes a delay has far less of an impact on the property and interests of the owner of a property than does a regulation requiring a demolition denial. The less the degree of regulation, the degree of procedural protection will be required from a constitutional standpoint. (In certain situations, a court action may be considered merely ministerial, and not requiring extensive procedures.) Conversely, the stricter the degree of regulation included in a local preservation regulation, the greater the degree of procedural protections that may be due individuals.

4. What is the nature of the government's

In any regulatory proceeding, the public has an interest in that the government conducts its activities in a manner that is efficient both from a standpoint of time and economy of public interest in a workable decisionmaking process as well as a legitimate limit on procedural steps. Notice requirements, for example, must be reasonably tailored to balance the interests of the individual with the broader interests of the community. The high cost and time-consuming nature of mailed notice may require resorting to newspaper announcements or posted notices for individuals other than those directly affected by a proceeding. Similarly, public hearings—when required—should be reasonably limited in time and in scope. Otherwise, the “process” could prevent governmental action altogether.

B. A PRACTICAL APPROACH FOR LOOKING AT PROCEDURAL DUE PROCESS

The constitutional framework described above should be understood as general guidance that can help local governments understand the way that the courts approach the issue of procedural due process. From a practical standpoint, however, this constitutional framework gives little specific direction for determining which procedures should be used in any particular context. Nonetheless, several basic principles can serve as a practical approach

preservation commissions that recognize the need to establish a workable set of procedures to govern the various actions that may be taken by a local historic preservation commission or review board.

1. Look first at statutory sources. The term "procedural due process" generally refers to the constitutional requirements emanating from the Due Process Clause. From a practical point of view, however, procedural requirements may be imposed both by the Constitution, and by independent statutory sources. These sources, in the preservation context, may include state enabling laws for preservation regulations at the local level (or home rule laws for those ordinances based on home rule powers), the terms of the local preservation ordinance itself, or other laws—state or local—specifically designed to set out procedural requirements for administrative decisionmaking (often called administrative procedure acts).

In many cases, these laws include some minimal reference to notice and hearing requirements; in a few, procedural requirements are much more detailed. In any case, the basic requirements imposed by statute should be considered to be the baseline for procedural requirements for any local preservation commission, and must be followed carefully. Those baseline *statutory* requirements—where sketchy—should be supplemented with more detailed procedural guidelines to ensure that *constitutional* due process requirements are fully met.

2. Understand state case law variations. It is important that local preservation commissions be aware of any special procedural rules that have been recognized by the courts of their particular state. In some cases, the general constitutional requirements of procedural due process have been addressed by state courts in contexts that may be of direct relevance to local preservation commissions—particularly in the context of zoning and other land use controls. These decisions may give special attention to issues such as cross-examination, whether hearings must be taken under oath, and whether transcripts may be required.

It is advisable for local preservation commissions to seek the guidance of a local attorney—either a municipal attorney or lawyer in private practice—with a working knowledge of the particular

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court decisions in their state that may be relevant in the procedures that should be followed by the commission exercising its authority.

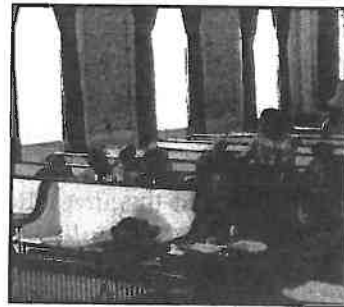
3. Establish basic procedures that are individual citizens, but that are also workable for government. And stick to them. Once the minimum requirements and state variations are understood, the constitutional framework described above should be used to persuade preservation commissions to establish an expanded set of requirements addressing the various decisions or actions of the commission in carrying out its responsibilities. Procedures—which may be adopted by the commission in the form of guidelines or regulations—should be as fair as possible to all property owners, and to members of the public generally. Procedures should not, however, be so detailed or onerous that they are unworkable for the commission. Procedures that are too rigid are not likely to be followed to the letter, and may later be challenged the substantive decisions of the local preservation commission. Both flexibility in approach, and consistent application, are key to effective—and defensible—procedures.

III. WHAT PROCESS IS DUE?



"The fundamental requisite of due process of law is the opportunity to be heard."—Grannis v. Ordean, 234 U.S. 385 (1914)

WHAT TYPE OF notice requirements apply to the different actions taken by historic preservation commissions? When is a hearing required? What type of proceedings must be followed at a hearing? Must transcripts be taken? Is cross-examination required? What factors are necessary for fair decisionmaking? When should a commissioner consider recusing himself or herself because of a potential conflict of interest? What form should a final decision follow?



While there are few unequivocal answers to any of these questions, application of the various principles described in the previous section of this publication can help to establish a workable, and legally defensible, set of procedural guidelines for carrying out the work of a local preservation commission.

A. NOTICE

General principles. The need for notice stems from the requirement that people have a right to be heard before a government agency or official takes an action affecting a protected interest. Interested parties cannot properly exercise their "right to be heard" unless the local government or administrative agency informs them in advance of the action that may be taken. In other words, a hearing is not meaningful—and may be legally challenged—if interested parties are not given a reasonable opportunity to participate.

In addition to notifying individuals directly affected, it is advisable (and in many cases required by statute) that a commission give some type of public notice concerning its upcoming actions.

What does the procedural due process requirement mean for local preservation commissions? It means type of notice should be provided to all interested parties. When a commission takes an action affecting any specific property, notice should be given, for example, prior to a Commission designating a landmark or historic district (or formally recommending a district for designation), or before approving or denying a claim of economic hardship relating to the alteration or demolition of a historic property before acting on a claim of economic hardship.

Who should get notice, and what form should it take? The place to look for notice requirements is in the historic preservation ordinance. To the extent that notice requirements are specified in the ordinance, commissions should follow them closely. If no requirements are included in the ordinance—or other local enabling acts—other local land use regulations provide a useful framework for developing notice requirements. Beyond this, the following guidelines should be followed:

Who should receive notice? The individual whose property is under consideration for historic designation should be given notice of any upcoming hearing by a preservation commission on a proposed designation. Also, the individual who has applied for permission to alter or demolish a designated property should be given notice of the commission's planned consideration of that application.

Are neighbors and other nearby property owners entitled to notice? While their *legal* entitlement to notice may be less clear, as a matter of fairness—and to ensure broad public acceptance of commission decisions—*some* provision for notice to nearby property owners should be established. (The different ways that notice can be accomplished are described below.)

What about the general public? Although the interest of the public at large may not be as obvious as those directly affected by the actions of a preservation commission, it is advisable (and in many cases required by statute) that a commission give some type of public notice concerning its upcoming actions. After all, preservation commissions are designed to promote the educational, economic, and general welfare of the public through the preservation and protection of historic and architectural resources and to provide a sense of community identity. Consistent

purpose, preservation commissions should provide notice of upcoming actions to the general public, as well as to interested parties. (Some communities, in addition to providing general public notice of pending actions in the newspaper, provide individual mailed notice as a courtesy to interested organizations and individuals.)

What type of notice is required? The most common types of notice are: (1) individual mailed notice; (2) published notice (usually through local newspapers); and (3) posted notice (generally on a sign on the property that is the subject of the action). These three types of notice vary in degree in both cost and effectiveness.

The use of individual mailed notice is generally only required for those persons who will be directly affected by a local commission's actions—particularly the owner whose property is under consideration for designation, or the person who has applied for a permit to alter or demolish a designated property. A number of communities, as standard practice, also provide individual mailed notice to adjacent property owners within a set distance from the property—three hundred feet, for example. For these individuals, mailing notice to the “owner of record” listed on the property tax rolls is generally considered sufficient. Due process does not require that a title search be undertaken to establish ownership (although a few state statutes and local ordinances require that ownership be established from deed information). In most cases, consistent use of an established database, such as property tax records or water department records, is sufficient for purposes of identifying owners for this type of notice.

For others in the area, who may be interested in the proceedings but who are not required under local procedures to receive individual mailed notice, the posting of a sign on the subject property is generally considered sufficient to meet procedural due process requirements.

For the general public, public advertised notice is generally both effective and cost-efficient. While not always considered necessary as a matter of constitutional law, notice through publication in a newspaper of general circulation in the community is generally considered an appropriate method to provide notice to the general public of impending actions that a commission is considering.

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While not a constitutional requirement, it is a good idea, where possible, to record local historic designations in local land records.

What about content? Regardless of the type of notice, the content of the notice should be sufficiently detailed to enable the person receiving the notice to understand the nature of the action that the commission is considering, the date, time, and location of any public hearing, and the opportunity for public participation in any proceeding. A good measure of determining whether a notice meets requirements of fairness and due process is whether a reasonable person would be able to understand the nature and consequences of the action being considered by the commission.

Special considerations in the notice are that, in applying these general principles, there are a number of issues that arise from time to time in the notice area that are worth considering in particular. They include the following:

Designation by reference to another source may be used in a notice. Some preservation ordinances provide for local designation of properties on the basis of eligibility or listing in the National Register of Historic Places. The National Register was not intended to be used as a local regulatory tool, and does not have the same impact on private property interests as local designation does. (See discussion above on pages 9-10.) Consequently, the federal government (which administers the Register) may not apply the same notice requirements for a National Register nomination that would ordinarily apply to a local regulatory program. Notice requirements for National Register nominations are subject to federal regulations, and differ from those described here. Therefore, frequently, any local preservation ordinance and preservation program that provides for local designation on the basis of eligibility or listing in the National Register should provide separate notice to the property owner before locally designating the property because of the potential effect of local designation on private property.

Notice to new purchasers of property. Most courts have held that new purchasers have a responsibility to investigate the status of the property, particularly as to matters that are in the public record, such as zoning classifications or historic designations. Therefore, most new purchasers cannot claim that they were not given notice of a property's local historic designation status when they were legally "on notice" at the time of purchase. Notice, while not a constitutional requirement, it is a good idea.

possible, to record local historic designations in local land records. Some communities include historic designation as an item on a seller's disclosure form. In addition, some communities make it a practice to mail information to new purchasers notifying them of the property's prior designation and explaining the procedures under the historic preservation ordinance. With the proliferation of Geographic Information System (GIS) technology allowing local governments to record a wealth of information about each parcel located in a community in a data base, information regarding historic designation should be simple to archive and obtain, and should satisfy any notice concerns relating to subsequent purchasers of designated buildings.

Failure to give notice. Failure to give notice to an interested party may not invalidate an administrative proceeding, such as a public hearing, if the party in question learns of the proceeding some other way and ends up participating. (This is referred to as a party having received "actual notice.") In some states, however, failure to comply with *statutory* notice requirements, even if such requirements are more stringent than those constitutionally required by due process, may invalidate the preservation commission's actions. Therefore, when drafting a preservation ordinance or preparing rules and regulations regarding notice, local communities should be careful *not* to over-complicate notice requirements, because of the potential for technical failure. In any case, a commission should carefully follow the notice requirements in the ordinance or statute.

New notice requirements. If a hearing has been called after proper notice, but new matters are addressed that were not included in the original notice, new notice may be required. The need for new notice and further proceedings depends on simple issues of fairness—i.e., whether a member of the public might reasonably have anticipated that the new matter would arise at the hearing. Most courts will take a practical approach in dealing with this issue—for instance, if a new subject is brought up at a hearing, the preservation commission may be able to leave the record open for a set period of time for additional written public comment. The best solution to this problem is to ensure that the initial notice is sufficiently detailed to permit a member of the public to understand

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what will be addressed at the hearing, but not so limited that it can be read to exclude consideration of related matters.

Interim or preliminary controls. In some cases, it is necessary for local communities to adopt interim or protective measures for properties prior to formal designation, in order to preserve the status quo while a detailed preservation plan is established. Generally, courts have permitted interim restrictions on the use of property, particularly in emergency situations, without prior notice. Affected individuals should be given notice of any restriction within a reasonable amount of time *after* it takes effect. However, whenever possible—and when it does not defeat the purpose of the interim regulation—prior notice should be given.

B. THE PUBLIC HEARING

There are three basic purposes of a public hearing. First, the hearing provides the property owner an opportunity to be heard with regard to decisions about his or her property. Second, the hearing provides the decision makers with information and the owner's opinion on public policy matters. Third, the hearing provides a forum for the presentation of specific facts concerning a particular property.

Courts have not rigidly applied standards for public hearings to meet these purposes. Instead, the courts generally weigh the interests relating to an individual's "right to be heard" against the public interest of fair but efficient hearings, so that decisions can take place at the local level on a regular basis. There is no rule unless there is statutory or other legal guidance in a particular state or local community that suggests otherwise (which is usually carefully determined by the preservation commission with the assistance of a knowledgeable attorney), public hearings should be fairly informal. How informal? "Informal" in the sense of a "trial-like"—in other words, no swearing in of witnesses, no formal examination as long as opposing interests have a reasonable opportunity to present their views, and representation by counsel while generally permitted, is not mandatory. Basically, what is required is that those affected by commission decisions have a reasonable opportunity to be informed of factors that will be considered by the commission, to present information relevant to the decision,

understand the basis for the decision once it is made.

The basic elements of a fair hearing include:

- an unbiased tribunal;
- fair notice of the proposed action and the grounds asserted for it;
- an opportunity to present reasons why the proposed action should or should not be taken;
- the opportunity to present witnesses and relevant evidence;
- a meeting open to the public; and
- the making of a record and statement of reasons.

How do these elements work in the context of a local preservation commission? The following guidelines should provide some specific direction:

Timing of hearing. The general rule in procedural due process is that a hearing should be held *prior* to a governmental action affecting a protected property interest. In a few limited instances, however, the hearing may be held within a reasonable time *after* the government takes action.

In the case of local historic preservation commissions, the action of designating a property, or acting on a permit application—following the general rule—should be preceded by a public hearing. One limited exception, however, is the use of interim controls *pending* a commission's final decision on whether to designate a nominated property as historic. In such a case, interim restrictions may be necessary to prevent significant alteration or demolition pending completion of the designation process. (In other words, the restrictions may be necessary to limit a property owner's ability to circumvent the nomination process by altering or demolishing a historic property before the government can act.) If a commission action involves this type of interim control (sometimes called a "preliminary designation"), the required public hearing may take place *after* imposition of the restriction, in light of the danger of demolition and the temporary nature of the regulation. The necessary hearing should be held as soon as possible after the temporary restriction is set into place.

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Commission members are allowed, and should be encouraged, to ask questions of witnesses to determine if their testimony is credible. Commission members, however, must be careful not to "testify" at the hearing.

Role of preservation commission members and staff. The preservation commission is usually composed of members that have some expertise in architectural history, law, real estate, rehabilitation, or others who are interested in the preservation and protection of historic resources. More and more frequently, historic preservation ordinances require that some commission members include residents living in individual landmarks or within historic districts to ensure that the commission is representative of those members of the community that are subject to the commission's regulatory powers.

Questions frequently arise as to the role that the commission and its staff must play in the hearing process. One of the functions of the commission is to hear evidence and make recommendations or decisions regarding designation and issuance of landmarks. In this role, the commission must listen to the testimonies of witnesses and consider other evidence presented to them, and make a decision based on information in the record. Commission members should not make decisions based on their personal knowledge of facts specific to a particular case if those facts are not in the record or not publicly known. This is not to say that a commission member's personal experience does not come into play in the decisionmaking process—after all, commission members are chosen to serve because of their specific knowledge and expertise in preservation or a related field. However, personal knowledge and expertise should be used simply to evaluate the relevance of evidence presented in a specific case.

Commission members are allowed—and should be encouraged—to ask questions of witnesses to determine if their testimony is credible. Commission members, however, must be careful not to "testify" at the hearing nor base their decision on information that is not made part of the public record.

Commission staff members, however, have a different role. Staff members play an important—and often active—role in gathering together the record on which the commission's decision is based, but should not play an active role in making the decision. In some jurisdictions, staff members may actually present information regarding the matter at issue at the hearing, but they should report on information gathered from their own investigation.

facts in a particular case. (This is often presented as a formal staff report, with recommendations, which becomes part of the public record.) In working with the commission, however, staff members should be careful not to present facts that are not made part of the public record.

Role of preservation organizations. In all cases, and especially in communities that do not provide staff to the preservation commission, local preservation organizations or other interested individuals may play a critical role in providing testimony at the hearing. Commissions should ensure that *all* sides of a particular issue are presented for the record; where only the applicant's side is presented—regardless of how meritorious—the commission may find it difficult to point to any fact in the record that would justify denying the application.

Swearing in of witnesses. Most jurisdictions do not require that local commissions swear in witnesses at public hearings, so long as testimony is taken in such a manner that all those involved understand the importance of the testimony. Some courts, however, have ruled (and some state statutes require) that witnesses before any local administrative agency acting in a “quasi-judicial” capacity give testimony while under oath to ensure a fair hearing. This is one of those issues that should be checked carefully with the assistance of local counsel, in order to determine whether the actions of local preservation commissions are considered to come within such a requirement.

Cross-examination and rebuttal. The ability of an interested party to question or dispute the testimony of adverse witnesses is an important element of due process. In the context of an administrative proceeding, however, few courts have found that the ability to challenge the testimony of witnesses must be carried out through formal cross-examination. The courts have generally recognized that hearings in this type of context may be relatively informal in nature and do not have to be conducted as if before a court. (Indeed, the use of court-like procedures may actually deter public participation.) Therefore, a commission's refusal to permit a formal cross examination would usually not be considered to deprive the parties of a fair and impartial hearing. For example, a designation hearing may seldom involve issues of fact that cross-

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Commission members and commission staff must know and understand the "sunshine act" of their state, which requires meetings to be held openly after public notice.

examination will help resolve, because opinions regarding significance of buildings to architecture, history and culture are particularly well-suited to explanation through cross-examination. Instead, the ability to present opposing views and information generally satisfy the interests that would otherwise be served by formal cross-examination. Testimony by all sides of a particular issue effectively places all controversies squarely before the commission and becomes part of the record upon which commission members base their decision.

Voting. Commission members should not be allowed to vote by proxy. If a member is unable to attend a meeting when a decision is to be made, that commission member should not be permitted to vote. No commission member should be able to vote on a particular designation, permit application, or economic development request unless he or she has "heard" the testimony, having been present at the subject hearing or by having reviewed the record, audio or video recordings, or transcripts. In a section discussed in further detail below, commission members must refrain from voting when they have a conflict of interest.

"Sunshine Acts." Many states (and some local governments) have adopted so-called "sunshine acts"—statutes that define what constitutes a meeting and require that every portion of an administrative agency and legislative meeting be open to public observation except in specific situations. Typical sunshine acts define a meeting as taking place whenever a certain number of commission members gather to discuss commission business. Sometimes the number is quantified in the statute or sometimes it is tied to the state or local ordinance's definition of a quorum. To ensure that such meetings are open to the public, the commission must provide public notice of the meeting (usually under terms defined in the sunshine act or other local ordinances governing public meetings). Specific provisions that would provide exceptions to the sunshine act may include discussions relating to discipline of an employee or a business strategy. In these cases, the information to be discussed is so damaging to an individual or could jeopardize the attorney-client relationship and the agency is allowed to meet in executive session.

Commission members and commission staff must understand the sunshine act of their state. Questions :

application of the sunshine act most often arise in meetings that take place outside of the normal course of events—for example, when some or all commission members go to a property at the same time to assess its significance for designation, or to better understand a property owner's request for a building permit. In these instances, particularly when a specific date and time have been set for the property visit, the "meeting" should be given public notice in accordance with the notice requirements stated in the particular state's sunshine act, or the appropriate local ordinances. It is easy to run afoul of state sunshine acts, and commissions should make every effort to comply with them to ensure due process.

Maintenance of a record. Commissions are responsible for compiling and preparing records and making them available to interested parties. The commission should be able to charge a modest fee to cover the costs of making copies of transcripts of testimony and minutes, or otherwise providing copies of the record of proceedings to interested parties. However, the commission should also make the record available for public inspection at an appropriate location, such as the commission's own offices or the city clerk's office. Failure to maintain a record may be grounds for reversal or remand of a decision that has been appealed to the courts. (The issue of record-based decisionmaking, including what constitutes a record, is discussed further below.)

Role of the expert. The expert witness has become a standard component of the hearing process. Technical information, accompanied by opinion evidence from experts and laypeople, help to explain the importance of a proposed action and relate the action to the standards and criteria included in the ordinance. In situations where a commission relies on lay testimony rather than expert testimony, the commission may find that its decision is challenged as "against the weight of the evidence." A commission can reject an expert's opinion in weighing and balancing the evidence even where there is no other expert testimony. However, in such a case the commission must clearly establish why the testimony of the expert is not being accepted, for example by showing that the testimony was not credible because of inconsistencies, or because of bias, conflicting evidence, or conflict of interest. (If expert testimony is one-sided, some commissions are authorized to call on their own

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Where testimony by many individual members of the public is likely to be redundant, it is appropriate for the commission to ask that a spokesperson be appointed to address a particular point of view.

initiative other experts to testify, to give a more balance

Role of counsel. Due process does not require attorneys be present at preservation commission proceedings. Nonetheless, the participation of (or representation by) attorneys should not be prohibited. At the same time, a preservation commission should not permit the presence of lawyers to turn a hearing process into a trial-like setting.

Timing of witnesses. The commission should establish rules that are applied even-handedly and fairly to all witnesses, and that provide the public with a fair opportunity to present testimony. All witnesses, not just those supporting the applicant, should be granted a reasonable time for testimony. However, a commission should not be forced to hear testimony. It is appropriate for the commission to appoint a spokesperson to address a particular point. Another option for the commission is to leave the record open for an established period of time to obtain written comments.

A variety of techniques may be used to provide parties with a reasonable time to be heard. One way to do this is to provide proponents and opponents with a set amount of time, for example 15 minutes each—for direct presentation, with an opportunity for rebuttal, as well as an opportunity for members of the public to make a brief statement, and a record for submission of written comments for a period of time after the hearing. Whatever technique is used, the commission should apply it consistently to all interested parties, and provide flexibility depending on the complexity of the matter at hand.

Relevancy of admitted information. Commissions, unlike courts, are not required to follow strict rules of evidence. Courts have recognized that rules of evidence in administrative proceedings, such as commission hearings, should be applied with flexibility in favor of admission of evidence. Even where evidence has been "admitted" during the hearing proceedings, the commission, in weighing and balancing that evidence, may give it little or no weight. Still, the commission should not be accepting obviously irrelevant evidence into the record, as this only serve to prolong hearings and add confusion to the decision-making process.

Applicant's and public's right of access to information prior to hearing, including staff recommendations or case reports. Just as applicants and the public have the right to review transcripts and minutes of meetings, they also should be given reasonable access to relevant information prior to a commission hearing. Due process does not require that the proponents or opponents of a designation or permit application enter into a formal "discovery" process with the commission (such as might be required in a trial-like setting); however, any interested party should be given the opportunity to review information that relates to the matter of an upcoming proceeding. Generally, this should include staff recommendations or case reports on the matter (unless this information is deemed confidential, which is the case in some jurisdictions; it is advisable to check this with local counsel). If the matter involves a single property owner, information should be provided to the property owner at the same time it is provided to commission members prior to the subject hearing. If many property owners are involved, it is advisable to include in any public notice instructions as to where and how information on the matter may be reviewed prior to the hearing.

C. RECORD-BASED DECISIONMAKING

The right to be heard also includes the right to a responsive decision. This simply means that a preservation commission's decision should adequately explain the basis of the decision, with specific reference to information in the record and to applicable ordinance criteria. Some state statutes and many preservation ordinances require express findings of fact (or a detailed statement of reasons) and a written decision. These may not be necessary to meet constitutional due process standards (for example, a hearing transcript or written minutes, if sufficiently detailed, may suffice instead of a formal written decision). However, it is strongly advisable that commissions articulate—preferably in writing—a summary of findings of fact, the basis for the decision with references to the appropriate ordinance criteria and record, and the decision.

To ensure that a responsive decision is made by the commis-

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The record is a compilation of testimony from the hearings, written information provided by witnesses, staff reports and recommendations, and any other information that is placed into the record and used to form the basis for the decision.

sion: (1) a record of the commission hearings and decision-making process must be prepared; (2) the commission must maintain a record that lays out the rationale for the action taken by the commission; (3) the decision must be consistent with ordinance and supported by facts in the record; (4) the decision must be consistent with previous decisions dealing with similar cases; (5) minutes of the meeting at which the decision is made should be prepared, maintained, and approved at the meeting; and (6) a verbatim record in the form of audio or video recording or transcript should be maintained.

Preparation of the record. Preservation should make determinations regarding landmark decisions, certificates of appropriateness and certificates of economic development that set forth clear findings of fact from the record. Together with a discussion of how the facts relate to the ordinance criteria, serve as the basis for the decision.

What constitutes the record? The record is a compilation of testimony from the hearings, written information provided by witnesses, staff reports and recommendations, and other information that is placed into the record and used as the basis for the decision. Testimony may be recorded in written minutes or audio or video recordings. Audio or video recordings are more reliable, particularly when professional reporters are not available to prepare a formal transcript.

Written information provided by witnesses and other parties must be maintained as part of the record. It is important to maintain the record as a history of the decisionmaking process. In case the decision is later challenged, or in case a similar case should arise in the future.

Consistency in decisionmaking. Due process requires that all applications and applicants coming before the commission be treated consistently. In addition, the commission should make every effort to make decisions that are consistent with previous decisions. However, the overriding principle in the decisionmaking process is that decisions be supported by information in the record. In past cases, courts have upheld commission decisions that are inconsistent with previous decisions, so long as they are supported by information in the record and are consistent with the

For example, at least one court has upheld a commission's denial of a permit to apply vinyl siding on a house even where the commission had previously routinely approved such requests. The court concluded that the findings of fact supported such a decision. Thus, commissions should make every effort to follow precedent but at the same time not be hamstrung by it. As a practical matter, few cases are clearly identical. Good recordkeeping, however, is essential in order to note different facts that may justify different decisions.

Caution must also be taken in those cases that deal with issues never before considered by a commission. Before making a decision, the commission should carefully examine the facts and consider how the decision may apply to future applicants.

Minutes, Recordings, and Transcripts. Minutes of meetings are essential in preparing and maintaining a record for the commission to review in making its decisions or maintaining a history of the commission and its prior decisions for future commissioners. Minutes help give the commission an institutional memory and consistency, not only from meeting to meeting, but also over a long period of time as commission members change and are replaced. Minutes should be in writing and approved by the commission at its next meeting. Minutes should also be reasonably available for review by the public.

While minutes serve as the detailed summary of the commission's meeting, a verbatim record should also be maintained by audio or video recording. The recording need not be transcribed (unless required by local ordinance or other statutory source), but is available if questions arise later about evidence presented, or if an absent commission member needs to review the proceedings in detail in order to participate in the commission's consideration of the matter.

D. BIAS, CONFLICTS, AND OTHER COMPLICATIONS

A wide variety of other issues relating to the conduct of commissioners, including conflict of interest, *ex parte* contacts, bias, and the role of advisory commissions, must be understood as part of the overall subject of procedural due process.

Bias. Whether a historic preservation commission decision

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meets procedural due process requirements often d
commission members remaining unbiased and free from
apparent conflicts of interest. As many legal commen
courts have recognized, "an impartial decisionmaker is e
meeting due process requirements."

Biased commission members create two problems f
preservation commissions. First, commission decision
challenged as violating due process requirements on the
bias or conflict of interest. Second, any appearance
members of the commission are biased or have conflicts
will diminish the public perception of the preservation c
and call into question the fairness of their decisionmakir
Three types of bias, institutional policy bias, prejudgment
and personal animus, are discussed below.

Institutional policy bias. Allegations are occasion
that the very mission of the historic preservation commissi
an institutional policy bias, since most preservation co
members have some expertise or interest relating to
preservation. Courts have recognized, however, that the s
backgrounds of many individual commission members
help to ensure fair and informed decisionmaking, becau
complexity of issues involved. Courts also recognize that co
members inevitably will have personal opinions reg
preferred course of development or solution to the iss
them. Due process does not require that commissioners
opinion about the matter before them, but rather, that
sioners consider the evidence with an open mind and giv
fair consideration to all points of view presented with resp
facts of a particular case.

Prejudgment of a case. Another form of bias is pre
of the facts of a case. Prejudgment may be alleged where
of a commission have made public statements regarding t
tance of saving a particular structure prior to closing of t
for designation or permit review. To avoid allegations of
ment, commission members should always refrain from
statements regarding a particular matter outside of the co
meeting setting and prior to completing the decisionmakin

Personal animus. Extremely difficult to prove are al

that a particular commission member has personal animus, or is engaged in a personal vendetta, against a particular applicant. Still, commission members must be extremely cautious to prevent personal feelings about an applicant from entering into the decisionmaking process. Some extreme cases may require that the commission member remove himself or herself from the decision-making process.

Conflicts of Interest. Allegations of conflict of interest are more successful in court than any other type of bias claim. Commission members should be careful to ensure that they do not have any type of personal, financial, or professional stake in any proceeding before them. When a conflict of interest exists, the commission member should formally remove himself or herself from the decisionmaking process. This includes leaving the room during any hearing or discussion of the matter, and making no further statement or comment about the matter. Most local governments have separate conflict of interest ordinances or guidelines; in some cases these are spelled out in the preservation ordinance or the commission's rules and regulations. Although these provisions may vary, they all direct commission members with real or potential conflicts to refrain from participating in the review of the matter at issue. Some commissions recognize only financial conflicts, although most also recognize that conflicts may arise that are personal in nature.

As a general rule, being open about potential conflicts early in the decisionmaking process will help to avoid later allegations of due process violations.

Also, if any individual commission member finds that his or her personal, professional, or business interests result in recurring conflicts of interest, it may be advisable for that member to step down from the commission, rather than risk impairment of the commission's functions.

Personal conflicts. These are generally easy to identify and usually revolve around the relationship between a commission member and an applicant that would create a conflict between self interest and civic obligations. Direct relationships, such as brother or father are easy to identify. Indirect relationships, such as neighbors or close personal friends, may pose more difficult

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questions. Commission members should understand that may exist even if a relationship creates only an *appe* impropriety.

Financial conflicts. If a commission member's interests will be directly or indirectly affected by a decision, he or she should be disqualified from the decision-making process. In general, financial interests are easily identified. For example, if a commission member owns the structure or is a limited partner in an entity that owns the structure, a financial conflict exists. In addition, if the value of the property owned by a commissioner will be directly enhanced by the decision of the commission, the commissioner should be disqualified. A conflict will likely occur where the commissioner owns property adjacent to a derelict landmark or potential landmark. In this type of conflict, a commissioner may also have a personal conflict because of a relationship with his or her neighbor. More difficult conflicts arise when the conflict is less direct—for example, when a commissioner owns property in the vicinity of the property at issue. In a case, it may be advisable to seek advice from an attorney familiar with such issues in order to obtain a prior ruling on a potential conflict. In any case, early disclosure and resolution of any fact or relationship that may reasonably be construed as a potential conflict may help to ward off a later claim of impropriety.

Professional conflicts. These types of conflicts may arise when a commissioner's professional interests conflict with the ability to make an impartial decision. Since many professional commissioners have some professional interest in historic preservation, these types of conflicts can frequently arise. Clear instances include where a commissioner is the architect for the application or she cannot participate in the decisionmaking process. In a case, the potential conflict is both professional and financial. More difficult are issues arising from past employers or professional relationships, or involve commissioners who are directors or officers of a local advocacy group that is taking a public position on a particular designation or permit application. While an association or past professional relationship with a local advocacy group or organization is usually insufficient to constitute a conflict of interest, to avoid accusations of conflict of interest,

commissioner would be well-advised to note—both publicly and early in the process—his or her relationship with the organization. It may also be advisable in such circumstances to ask the city attorney or outside counsel to give an opinion for the record about any potential conflict.

Personal Conduct. Generally, commission members can be expected to act in a professional manner, without any general directive from procedural rules or guidelines. Occasionally, however, a commission member will take some action, such as attending a commission meeting while under the influence of alcohol, that will be particularly embarrassing to a commission. Clearly, these instances should be avoided. However, commissions should have rules and regulations addressing personal conduct so that when problems do occur they can be handled promptly and appropriately.

Applicants and their representatives, witnesses, and others coming before the commission must be treated courteously and professionally even under contentious circumstances.

Another personal conduct matter is failure to attend meetings on a regular basis. Most preservation ordinances or rules and regulations address regular meeting attendance. Missing a predetermined number of consecutive meetings may be automatic grounds for dismissal as a commissioner.

Ex Parte Contacts. Another potential problem for preservation commissions is how to avoid the charge that a commissioner's decision is tainted because of *ex parte* contacts or communications. An *ex parte* contact or communication is an oral or written communication that is not on the public record, and of which other interested parties are not given reasonable prior notice. There are a whole range of *ex parte* contacts that may arise in the course of a commission proceeding. For example, a commissioner may want to visit a property before a hearing to better understand the significance of the property for designation or the possible impacts of issuing a permit. While site visits are appropriate and useful, they should be conducted carefully and openly (preferably, after public notice) to prevent being turned into a private briefing for commissioners by the property owner or applicant. In another example, the commissioner may happen to speak to the applicant—or to a local preservation advocate—in a social setting

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***Ex parte* contacts are contrary to the ideals of fairness encompassed within the concept of procedural due process, because interested parties cannot rebut or challenge the information.**

unrelated to the commission proceeding.

To preserve fairness, it is important to prevent any information from one side of an issue to be given to the decisionmaker without all interested parties having an opportunity to know the necessary counter, that information. This type of one-sided information may taint the decision of a commissioner who receives the information. *Ex parte* communication may result in a subsequent legal challenge. *Ex parte* communication is contrary to the ideals of fairness encompassed within the concept of procedural due process, because interested parties cannot challenge the information. It is good practice to prohibit *ex parte* communications, and to adhere to this rule. Commissioners should politely inform callers or others that they are not permitted to discuss a pending matter outside of the hearing.

A few jurisdictions recognize *ex parte* contacts as acceptable when a commission is acting in a quasi-judicial manner, such as a designation of a historic district. However, this type of distinction is difficult to apply with any consistency. In any event, any *ex parte* communication may open the commission's actions up to challenge on the basis of other types of bias.

To avoid due process challenges based on *ex parte* communications, preservation commissions should adopt rules and regulations that clearly prohibit such contacts. Commissions should also prohibit commissioners from providing advice or opinion to potential applicants prior to a hearing.

Ex parte communications, however, may not be prohibited in all proceedings, particularly if disclosed at an early date. When an *ex parte* contact or communication has been made, the commission should disclose for the record the nature and character of the contact. Such disclosure will give the interested parties an opportunity to rebut or challenge the information.

Advisory Commissions. Due process requirements for a legal matter, may not apply to the actions of advisory agencies which have only advisory functions. Nonetheless, if such agencies make recommendations that are relied upon by a decisionmaking body, it is prudent that they also follow the principles of procedural due process in carrying out their powers.

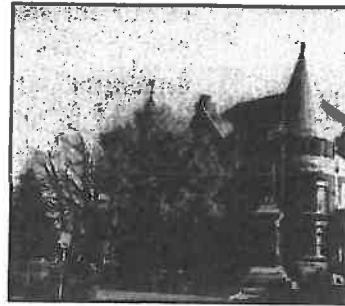
In the preservation context, while not common, such

governments have established advisory commissions for each locally-designated historic district to provide input on preservation matters. It is strongly recommended that these advisory commissions establish and follow basic procedural due process guidelines, by providing proper notice of meetings, holding public meetings, conducting proceedings in a manner that provides interested parties a reasonable opportunity to participate, and making a decision within a reasonable time.

IV. TEN TIPS FROM THE CITY ATTORNEY



CITY ATTORNEYS Robert L. Zoeckler and Kate Herrmann Stacy have each spent a considerable portion of their legal careers advising local preservation commissions and staff about how to carry out their responsibilities in a manner that is both effective from a preservation standpoint, and fair to those individuals affected. The following practical tips for preservation commissions reflect some of the guiding principles that these two attorneys have found useful in helping to keep their clients out of trouble, and out of court.



- 1. Create and follow your own Rules of Procedure.**
Every commission or board should compile a set of rules governing their procedures. These rules should be simple, clear, and easy to interpret and enforce—but also flexible enough to handle difficult situations. Once promulgated, procedural rules should be strictly followed. An oral summary of your procedures is an excellent way to begin each meeting.
- 2. Treat every person fairly and impartially.** Treating a party fairly and impartially is more important than ruling in their favor. Parties frequently choose to appeal a commission decision less because they lost than out of a sense of unfair or biased treatment. As a practical matter, a large and legitimate part of due process is perception. Take your constitutional responsibility to provide a fair and meaningful hearing seriously:
 - Treat everyone politely and with respect.
 - Give every speaker your attention.

- Reciprocate courtesies—if you grant one party automatically extend that courtesy to the other
- Never express personal feelings about any individual

3. Always maintain control and decorum.

The Chair bears this responsibility, but all members should. Be fair but firm. Never let speakers cross-talk or speak out of turn. If necessary, gavel them down. Do not allow demonstrations. It is unfair to others and a major problem to allow a public meeting to get out of control and become disruptive.

4. Do not delay or compromise decisions unnecessarily.

Avoid the human urge to delay every controversial decision in the hope that it will be resolved. Do not compromise every problem. Accept the fact that you cannot make everyone happy, and that you must make a decision that usually makes you the enemy to a part of the public. Delay frequently takes a heavy toll of financial resources. Similarly, compromise always seems like a good idea but frequently backfires and is often directly contrary to the criteria you are required by the law to follow. If further testimony is likely or further testimony necessary, compromise may be appropriate. Otherwise, take the time to make the difficult decision and move on.

5. Remember Ms. McGillicuddy.

If you encounter a thorny notice issue, it may help to imagine the existence of an unknown citizen—a Ms. McGillicuddy—who stays at home reading legal notices. Think about how she would react to your conduct. Focus on what you know—not what you think you know. Would she be aware that you are taking up an issue you did not publish? How would she react if you decided to delay the meeting until tomorrow? When in doubt, defer the meeting to ensure proper notice. To remain objective by keeping your focus on the public when dealing with notice questions.

6. **Avoid Surprises.** Try to avoid surprising the public with new information at the decisionmaking hearing. Allow the public an opportunity to review available information on the matter before the commission ahead of time whenever feasible. Get notices and agendas out to the public as early as possible.
7. **Record, record, record.** This is the most important point to remember. A good record is an absolute necessity on appeal, due to the type of decisions most commissions render. If you want your decision to be upheld, you must have a good record to support that decision:
 - Always be aware that what you say is being recorded. Assume it will be transcribed and read. Hearings are not social gatherings. Flip comments, in addition to being inappropriate, will often come back to haunt you.
 - Be meticulous in your record keeping. Make an audio or video tape of every meeting. If the machine breaks, stop the meeting until it is repaired.
 - Date every document, preferably with a colored stamp to identify an original. Maintain all of these documents in a master docket.
 - Never go "off the record" to have private discussion unless you first comply with your jurisdiction's sunshine laws and consult with legal counsel, if possible.
 - Never express your conclusions prior to hearing all of the evidence.
 - The person who decides must hear. Review the record. Do not vote if you are not familiar with the record or have not actually heard or reviewed everything in the record.
8. **Listen to your legal counsel.** Every commission needs legal counsel on occasion. If you anticipate a difficult hearing, ask your attorney to attend. If you ask a legal question, follow the advice given. The worst posture for legal counsel is to answer a question, only to have the client make a contrary

decision on the record—such inconsistencies are defend in court. If you are not prepared to follow not ask the question.

9. Explain your decisions. The public should know voted the way you did, and often, your jurisdiction require some form of factual findings and conclusions

- Try to make sure every decision has an explanation, either written or expressed at the public
- Be consistent in your decision making. Explain for apparent inconsistencies on the record.

10. Follow your criteria. Though not always procedural terms, this point is critical. Read and the criteria in your ordinance. Listen to the evidence mine the facts. Then apply those facts to the criteria. By tying your decision to the criteria with a knot, you are treating all parties fairly while providing a sound foundation in case of an appeal.

MINUTES
HISTORIC PRESERVATION COMMISSION
DECEMBER 10, 2015
IOWA CITY PUBLIC LIBRARY MEETING ROOM A

PRELIMINARY

MEMBERS PRESENT: Kent Ackerson, Thomas Agran, Esther Baker, Gosia Clore, Kate Corcoran, Frank Durham, Andrew Litton, Pam Michaud, Ginalie Swaim, Frank Wagner

MEMBERS ABSENT: Ben Sandell

STAFF PRESENT: Jessica Bristow, Bob Miklo

OTHERS PRESENT: Pat Lang

RECOMMENDATIONS TO COUNCIL: (become effective only after separate Council action)

CALL TO ORDER: Chairperson Swaim called the meeting to order at 5:30 p.m.

PUBLIC DISCUSSION OF ANYTHING NOT ON THE AGENDA:

There was none.

CERTIFICATES OF APPROPRIATENESS.

429 Ronalds Street.

Bristow said this property is on the corner of Ronalds and Van Buren Streets in the Goosetown/Horace Mann Conservation District. She showed a photograph of the house with its new front porch.

Bristow said the applicant is remodeling the kitchen and would like to remove the double hung window and the door on the east side, which faces Van Buren Street, and save them to potentially relocate them on the south side. She said the applicant would like to replace the door with a fixed window with a head at the same height as the door that would fit the width of the current door opening and match all the other windows.

Bristow said the sill height is still to be determined, based on what would be necessary for counter clearance in the kitchen. She said staff would work with the applicant to approve the material choice for the window, once that is decided. Bristow said that with the size of the space on the inside, this is the best option for getting anything close to a modern-style kitchen.

Bristow said that on this house, there are no windows to align with on the second floor above this area. She said that in the front bay there are single windows instead of paired windows, so a single window would not necessarily mess up any window rhythm. Bristow said this house also has numerous, smaller rectangular windows in each of the gable ends as well as the small window next to the front door, which appears to be original also, because of the window trim and the placement of the radiators inside.

Bristow said that the window in the bay is also a large, fixed window, so the house has some precedent for not having just double hung windows and having something that is a little bit more

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of a rectangular shape. She said staff recommends approval of this, based on the idea of getting the window material approved. Bristow said that when the porch was remodeled, the applicant removed some of the synthetic siding and will probably have enough to fill in the area. She said that anything extra that is needed should be able to be matched.

Bristow showed a current image and also a Photoshop image of what this project could look like.

Ackerson asked if the steps are poured in place or are an independent unit and what the foundation situation would be if they are removed. Bristow responded that this was a University partnership house, and she had asked about the steps but they were existing and not put in place. She said staff believes the steps are independent. Bristow said that, looking at this from the inside photographs, there does not appear to be any foundation issue. She said the foundation is all rough-textured, concrete block.

Michaud asked if it would be possible to allow a casement window over the sink for ventilation. Mikio said the guidelines would indicate a double hung unless a casement is needed for egress. He said that this could be designed as a double hung.

MOTION: Corcoran moved to approve a certificate of appropriateness for the project at 429 Ronalds Street with the following condition: window product information submitted for review and approval by staff. Clore seconded the motion. The motion carried on a vote of 10-0 (Sandell absent).

1009 East College Street.

Bristow stated that this is a continuation of the Commission's discussion at its last meeting. She said this property is in the East College Street Historic District. Bristow said that earlier this project came before the Commission for some siding and a window resizing above the porch.

Bristow said that currently, the application is to reroof the house. She said it has a standing seam metal roof that would be replaced with shingles. Bristow said the chimney would be tuck pointed, some siding would be replaced as needed above the base, and an ice and water guard product would be installed. Bristow said the part of the application that caused this to be deferred is the gutters.

Bristow said the application is to remove the built-in gutters by roofing over them and installing a K-style gutter on the outside. She said the crown molding would be removed to create a flat fascia, and the K-style gutters would be installed outside of that. Bristow showed images of the built-in gutter.

Bristow said this is a Greek revival transitioning into Italianate house. She said the gutters do create the cornice returns and are one of the main architectural characteristics to differentiate and define this house and its style. Bristow said that is the reason staff recommended not removing the gutters.

Bristow said the packet contains a memo explaining that roofer Mark Anderson has looked at the house. She said Anderson has the ability to coat the existing standing seam roof with a coating called Acrymax, add fabric reinforcement to the gutters, and coat the gutters as well. Bristow said Anderson confirmed that he provided the applicant with a quote to do that work.

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Bristow said staff has also found a couple of articles discussing the construction and purpose of the built-in gutters and how they can be maintained or repaired. She said that one of the articles talks about the Secretary of the Interior Standards for Rehabilitation and how to maintain the gutters.

Bristow referred to a photograph of a home that is not in a district and is not a landmark property, on the corner of Market and Governor Streets, where the built-in gutters were roofed over and did exactly what the Commission is discussing, except for the possibility of continuing the gutter at the cornice return. She said that on the example house, the crown molding was covered over.

Bristow said staff also looked into some of the past examples of this type of request. She stated that there were multiple projects where the homeowners decided to repair their gutters, and a certificate of no material effect was issued. Bristow showed photographs of these examples.

Bristow said there were also instances where the gutters were allowed to be removed. She showed a prairie style house on Summit Street and said that she could not tell the difference with this house between before and after, partly just because of the incredible expanse of eave and because the eave itself is much more of a feature in this particular instance.

Bristow showed a photograph of a house for which the owner was given approval to remove the gutter. She said it is a different style and is part way up the slope. Bristow said the owner decided to repair and coat over the gutters, and the gutters were not removed. Miklo said the plan was to actually remove the gutters and reinstall something very similar. He said the owner was not going to change the molding. Bristow agreed that the molding was not going to be impacted here, because the gutter is not down in the molding area.

Bristow said that the issue before the Commission is whether to approve removing the gutters, removing the crown molding at the fascia, and installing K-style gutters. She said the staff recommendation is to not do this and to repair the gutters instead. Bristow said staff has found out from SHPO that if the Commission decides to allow the gutters to be covered over, the recommendation is not to remove the crown molding but instead to install a half-round gutter outside of that, keeping the molding and all of the architectural features and install the gutter outside. Bristow said that one of the reference books discusses how to use that method instead of using the K-style gutters.

Swaim stated that Litton is recusing himself from consideration of this, because he is the owner of the house.

Ackerson said he is surprised that SHPO is recommending the half round gutters, which he thinks that would be more obtrusive than the solution at 906 East Market Street. He said that in that case, the K-style had a square base and almost looked like it had a crown molding on it and is indistinguishable from before and after.

Bristow said that the K-style gutter has the floor that does stick out more than the molding. She said she thinks that, from SHPO's viewpoint, it is the fact that they don't want the original crown molding removed but want to maintain the architectural feature. Bristow said part of that is the fact that the Secretary of the Interior's Standards are very strong on being able to remove things done to a house that are modern to put it back in more of an historic state. She said that if one

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removes the crown molding, it is harder to replace than it would be to just add the gutters on the outside, according to SHPO.

Miklo said another viewpoint of SHPO may be that the half-round gutter does allow for some visibility of the molding behind it, whereas with the K-style, the molding is gone.

Durham said that to him it looks like the cornice on the College Street house is the thing that one really wants to preserve. He said that the crown molding itself is secondary. Miklo said that gets back to the guidelines, which say that one should repair the gutter instead of removing it.

Litton, the owner of the house, said that the half-round gutter would be acceptable to him. He showed close-up photographs of the gutters. Litton said it is his opinion and the opinion of his roofing contractor, Pat Lang, that the gutters have failed completely. Litton said he is having water issues on the west side, and none of the gutters are draining properly. He said the pitch somehow is now out of whack, and he has standing water issues.

Litton said that the gutters have been coated multiple times. He said he has met staff at the house and has the bid from Anderson, who would remove any of the loose debris and then put on another coat of EPDM. Litton said he does not think that is a long-lasting, viable solution.

Litton said the tuck pointing is close to being done, and then he will start getting all the old, rotted wood off for a major exterior rehab. He said he needs the roof to be sound before he can move forward on anything else. Litton said the guidelines do allow the roofline to be changed, if the gutter system has failed, which is his opinion.

Lang said that, as a remodeler, he likes to get a feel for his customers. He said it is great to try to preserve things, but people buy these houses, and they have no idea as to what they just purchased.

Lang said that one cannot see the built-in gutters from the street or any place around the building. He said that if one wants the historic replication, that's fine and he would like to see it as well and have it be mandatory so that everyone knows that and he can tell people what they just bought. Lang said that in this case, since one cannot see that from the ground, if the crown is left, he can do a special edging that he can tie the back of that half-round gutter in so that he can keep the ice from climbing up and inside. Lang said that all one would see from the ground would be a half-round gutter hanging on the outside, like people did for one hundred years.

Lang said it would be nice if there is a feel that he can take with him to all of the hundreds of bids that he does so he can help people with restoration. He said he loves what the Commission does, but he needs a feel in the public of what can be done.

Bristow said that she drove around taking photographs today and had no idea that there was such an extensive number of built-in gutters in Iowa City. She said the one article discusses the fact that they can be repaired. Bristow said they do have about a 100-year lifespan, and a lot of these homes have hit that point. She said this will be coming up a lot.

Ackerson asked if the Commission is allowed to take into account the incremental expense of restoring gutters like this. He said he thinks this can get real expensive really fast, and it is not very helpful to either local buildings or contractors if the Commission's response is that it does not care how much it costs to repair the gutters. Ackerson said that if the Commission says

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that, then these houses are going to be demolished, because they can't be repaired at a reasonable cost and so they'll be torn down. He said that to him, that is not a very good solution.

Miklo said that at this point, numbers have not been presented. Durham said he thinks it is in the back of everyone's mind as these things are being reviewed.

Lang said that it is very, very expensive to make all the repairs to the wood itself. He said he has modern underlayments he can put down, but then to put metal back in those, it gets to \$15,000 in a heartbeat, and that has nothing to do with the repairs to be made when peeling all of that system up. Lang said he just did another copper solder on a house in Cedar Rapids that cost \$18,000 just to do a canopy roof.

Swaim asked if, when one is talking about altering the roofline, is that because the layer at the end would be removed. Bristow said it is because basically the roofline comes down, and then it is supposed to catch in the pan that is the gutter, and then there is the crown molding. She said the roofline would come down, but it would go over to the end of the gutter instead of to the inside of the gutters. Bristow said it would go over to the outside, and then the gutter would be on the outside of that. She said the guidelines do show a diagram that shows the roofline not being straightened out but kind of ending in a lower slope over the gutter itself.

Swaim asked if the half round gutters would obscure the crown molding. Bristow said the half round gutters are preferable for a couple of reasons. She said that the half round gutters themselves are more historic than modern, K-style gutters. Bristow said the K-style gutters require the removal of the crown molding so that there is a flat fascia so there is a flat back wall of it. She said that with the half round gutter, since it curves up, one could feasibly see up in between and see the crown molding. Bristow said it would not be overly visible from the street, but there is the fact that the molding still exists.

Agran said that costs are not supposed to be part of the decision-making process. Having said that, he said it seems to him that in the packet it does not say one must do this or the house will be ruined. Male said he thinks that two feasible options have been presented. He said one option is that the gutter is abandoned, the roof is bridged, and a somewhat equally historic half round gutter is put on, which seems acceptable to him.

Agran said the other recommendation is to fix this, which the Secretary of the Interior seems to think is something possible. He said if the Secretary of the Interior thinks it is possible, then he thinks there must be some degree of possibility there. Agran said that whether that fix will last another 100 years, perhaps they need to be made out of a different material or totally rebuilt.

Durham said that we are very comfortable as a society and as a Commission with putting asphalt roofs on that do not last another 100 years. He said that the standard that something has to last 100 years and costs a fortune is a possibility and the two options provided and recommendations in the report seem like viable options to him. Durham said that if someone wants to go back and take off the bridging and restore the gutters and take off half round gutters, then they can do that. He said that both of the options seem good to him.

Michaud asked about the EPDM and if four coats would be required. Bristow said it would actually be a liquid material, not EPDM. She said it would be something that would literally be hand painted on.

Lang said the reason to put coatings on is that, although the metal itself is infallible, it is either rusted through or there is so much wood damage below it that coats of things are put on it just to get by.

Bristow said the research in the articles discussing built-in gutters talked about multiple things, including the fact that if the gutters are going to be repaired that they not be coated, that one takes out what is there, repairs any of the rotten wood and relines them with a metal that could feasibly be repaired in small sections. She said the metal itself is literally soldered in between the pieces so that one can make repairs anywhere along the line. Bristow said that is why it is said that they have such an extended life.

Bristow said that at one point in our history, those were considered as something that could be easily repaired by almost anyone, because of the fact that people had more knowledge about how to do those things. Because this is a gutter that has a greater width and more structure, she said it is more solid and would last longer than a modern applied gutter that people have to have applied more often. Bristow said that they are also supposed to have a greater ability, usually, for holding water and getting rid of water, because they are supposed to be so much more expansive.

Bristow said these gutters look like they have been coated and filled multiple times, so they don't have quite the capacity that most of the gutters she has found would have.

Bristow said they also are supposed to allow things like leaves to just blow out of them, because they are not as narrow as an applied gutter. She said the holes for the downspouts are supposed to be bigger than on modern gutters, so they are not supposed to clog like modern gutters do. Bristow said that is why they were used so much, but they do have to be maintained.

Durham said another thing to note is that buildings settle with time. He said that then there are issues like this, where material is pooling in the low spot.

Lang said that when metal is filled with ice and there is nothing but a wood structure below it, the condensation from frost and moisture is what destroys material. He said they did not have our modern underlayments. Lang said that a special, high temperature ice guard is now put underneath all the built-in gutters. He said that is impervious to temperature. Lang said those modern products have to be put underneath, because when one puts a wood structure under metal, the life of that is subject to the most severe winters. He said they were always rebuilding those houses, because there is no protection below that.

Lang said that is when people started hanging gutters on the outside. He said that people quit using built-in gutters, because there is so much maintenance. Lang said there is so much ice, and there could be ice in the gutter five months out of twelve.

Michaud said it seems that the Commission has approved changes for the covering over of built-in gutters previously. She said she would agree with Ackerson's perspective, as far as changing the roofline slightly.

Agran said that changing the roofline is a recommended option. He said that there is no issue with changing the roofline per se, but the issue is with the gutter system and removing the piece

of crown molding. Agran said his understanding is that it is okay to bridge this and then use a half-round gutter or repair the built-in gutter.

MOTION: Durham moved to approve a certificate of appropriateness for the project at 1009 East College Street as presented, with the provision that half round gutters be installed and the crown molding be repaired and maintained. Michaud seconded the motion. The motion carried on a vote of 9-0 (Sandell absent and Litton abstaining).

Swaim said Lang talked about the need for contractors to get a sense for what is allowed and to do that proactively. Swaim asked Lang if he had any suggestions for the Commission on how to get the word out on the importance of the guidelines so people do not do things that are disallowed.

Lang stated that he recently talked to the Linn County Historical Society. He said they discussed the lead-based paint law and that if he touched any house built before 1977, it gets into another whole realm of removal and restoration of the paint itself. Lang said he received the letter regarding the boundaries in Iowa City, and it was very beneficial to now know the boundaries.

Lang said that the Linn County Historical Society is going to put together a document of historic things that they would like a realtor or a homeowner who is selling a house to have and that would be accessible to the public. Swaim stated that the guidelines are available online, but the Commission is always looking for ways to make the public more aware.

REPORT ON CERTIFICATES ISSUED BY CHAIR AND STAFF:

Certificate of No Material Effect – Chair and Staff Review.

620 South Summit Street.

Bristow said the owner was doing some soffit, siding, and shutter repair and window replacement on the south side and the rear of this house. She said the rear of the house has quite a few windows that are non-historic. Bristow said this was found mid-project; the owner did not talk to the City first.

Bristow said staff believes that everything the owner was doing is correct but did not have a before image.

714 North Van Buren Street.

Bristow said the owners of this house contacted staff about reroofing and removing the chimney. She said staff talked the owners into tuck pointing the chimney instead. Bristow said the owners are also replacing the asphalt shingles.

530 Ronalds Street.

Bristow said the house had a little area in a roof bridge where the side wall was not brought out flush with the fascia and water was getting in. She said the owners needed to move the little side wall out and repair some of that.

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Bristow said that on the bay, there were some crown molding problems and some roofing problems. She said the owners were repairing the standing seam and the molding and not changing anything.

Minor Review – Preapproved Item – Staff Review.

1115 Sheridan Avenue.

Bristow said this property came up previously, because the owners were doing some porch repair. She said the owners replaced the stucco base of the porch column on the corner and did a really nice job.

Bristow said the owners wanted to repair the storm windows on the bay instead of replacing them. She showed a photograph with the modern storm door that was framed down shorter than the historic wood front door. Bristow said the owners wanted to put in a storm door that would actually fit, so they wanted to take out that little build down area and get the right size wood door, instead of an aluminum storm door.

DISCUSSION OF HISTORIC PRESERVATION AWARDS.

The Commission reviewed the award nominations from the award subcommittee.

MOTION: Corcoran moved that the Commission accept the report of the subcommittee regarding the historic preservation awards and approve them. Durham seconded the motion. **The motion carried on a vote of 10-0 (Sandell absent).**

Swaim thanked the subcommittee members for their work. She said that a form is sent out to the property owners to ask for details about their projects. Bristow said the awards ceremony is to be held January 21.

Swaim said that there was a fire at 623 College Street. She said that she and Bristow and Alicia Trimble have discussed with the owners what they would like to do and what the guidelines say about potential demolition of the house. Swaim said the last she had heard, the owners have not yet decided what to do.

Bristow said that when she was looking at the past agendas for discussion of gutters, she found another house that had a fire in May that did not come before the Commission to approve the demolition until November. She said she does not know what that means for the timing of the College Street house if the owners decide they want to save it, but it may not be under as much of a time crunch as she had thought.

Miklo stated that the City Council will be considering a rezoning of the City Hall parking lot next to the Unitarian Church. He said that, as part of that package, the Unitarian Church would be designated as a landmark to allow the development rights to occur on the City property. Miklo said for that to happen, the City property needs to be rezoned, and that is what the City Council is going to be considering in January.

Miklo said it is a very complex project, in that it would include replacing the City parking lot with new parking for the City fleet vehicles and employee parking. He said it would involve a new fire station with drive-through bays where the addition to the church was torn down. Miklo said it

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would involve residential, townhouse-style buildings lining the parking structure on Iowa Avenue and Van Buren Street. He said there would be an additional three floors of apartments in the middle of the block above the parking garage.

Miklo said the project requires not only zoning but some sort of agreement in terms of transfer development rights. He said that the City would own some of the property but sell parts of it for air rights above the garage.

Miklo said that Swaim spoke to the Planning and Zoning Commission, but not on behalf of the Commission, about this. Miklo said it is in line with the letter the Commission sent to the City Council several months ago. He said it is hopeful that the church can be preserved as part of this larger, complex project.

Michaud asked if there will be any consideration for design compatibility of the protruding second and third stories. Miklo answered that the CB-5 zoning designation that is working its way through does have design guidelines and requirements that would apply to the property.

Corcoran said the view of Iowa Avenue toward the Old Capitol is very important. Miklo said that is why that aspect of the project is proposed to be limited to four floors.

Michaud said it is her understanding that the setback is going to be maintained in line with the next block east on Iowa Avenue. Miklo responded that the setback will be similar to what the church's setback is.

CONSIDERATION OF MINUTES FOR NOVEMBER 12, 2015:

MOTION: Corcoran moved to approve the minutes of the Historic Preservation Commission's November 12, 2015 meeting, as written. Wagner seconded the motion. The motion carried on a vote of 10-0 (Sandell absent).

ADJOURNMENT:

The meeting was adjourned at 6:39 p.m.

Minutes submitted by Anne Schulte

**HISTORIC PRESERVATION COMMISSION
ATTENDANCE RECORD
2015-2016**

NAME	TERM EXP.	12/11	1/8	2/12	3/12	4/9	5/14	6/11	7/9	8/13	9/10	10/8	11/12	12/10
ACKERSON, KENT	3/29/16	X	X	X	X	X	X	X	X	X	X	X	X	X
AGRAN, THOMAS	3/29/17	X	X	X	O/E	X	X	X	X	X	O/E	X	X	X
BAKER, ESTHER	3/29/18	X	X	O/E	X	X	X	X	X	X	X	X		X
CLORE, GOSIA	3/29/17	O/E	X	X	X	X	O/E	O/E	O/E	X	O/E	X	X	X
CORCORAN, KATE	3/29/16	X	X	X	X	X	X	X	X	O/E	X	O/E	X	X
DURHAM, FRANK	3/29/16	X	X	O/E	X	O/E	O/E	X	X	X	O/E	X	X	X
LITTON, ANDREW	3/29/17	X	O/E	X	X	X	X	X	X	O/E	X	X	X	X
MICHAUD, PAM	3/29/18	X	X	X	X	X	X	O/E	X	X	X	X		X
SANDELL, BEN	3/29/17	X	X	X	X	X	X	O/E	X	X	X	X	X	O/E
SWAIM, GINALIE	3/29/18	X	X	X	X	X	X	X	X	X	X	X		X
WAGNER, FRANK	3/29/18	O/E	O/E	O/E	X	X	O/E	X	O/E	O/E	O/E	X		X

KEY: X = Present
 O = Absent
 O/E = Absent/Excused
 --- = Not a Member