

The Local Landmarker

Issue 3, March 2007



On the Cover: Sag Harbor, on the South Fork of Long Island, became a Certified Local Government in 1989. Virtually the entire village is a historic district, with eighteenth and nineteenth century commercial, residential and civic buildings. This view of Main Street shows the pedestrian scale and historic commercial buildings that give the downtown its distinctive village character.

From the Coordinator

This issue

This issue of *The Local Landmarker* deals with the law (or ordinance) that created your historic preservation commission, architectural review board, or whatever name your review body goes by. This legislation typically details specific powers, duties, and processes for conducting business. In order for a local preservation board to do its job most effectively, each member must be familiar with the local law. Carrying out a meeting, deliberating, or making a decision without knowing your law is like trying to get from one place to another without a roadmap. You might make it, but with some wrong turns, some lost time, and possibly an accident or two.

Grants applications are coming out soon!

I'd also like to call your attention to the fact the 2007 round of CLG grants will be announced in May, with an anticipated due date in the middle of July. It is not too early to be thinking of projects you'd like to apply for. I'd be glad to discuss any ideas you might have for a project, so that there is less mystery or anxiety about the application. Remember that not everyone will be funded: There are 57 CLGs across New York State and a limited supply of cash in the grants pool. I always advise people to apply for projects that can be done in a single year or to break a large project into stand alone components that we may be able fund sequentially over several years. The highest ratings go to projects that have the potential to have a state-wide or regional impact, such as conferences or pilot projects that can be taken to a larger audience. One example of this approach that was funded in 2006 was Saratoga Springs' application to hold a statewide CLG conference, the first such one in several years (See the special announcement in this issue.) Another creative application came from the Town and the Village of New Paltz. Separate municipalities and separate CLGs, they jointly applied for a project to hold workshops for the development of a "template" website that communities can easily adapt for use in their community. This has the potential to allow communities to have access to an easily customized, cost efficient web presence for their preservation programs.

As usual, I'll be around the state meeting with member communities and those interested in becoming members. Please let me know what I can do to help as you work to preserve your community's sense of place.

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The New York State Office of Parks, Recreation and Historic Preservation oversees the Certified Local Government program. This office receives federal funding from the National Park Service. Regulations of the U.S. Department of the Interior strictly prohibit unlawful discrimination in the departmental federally assisted programs on the basis of race, color, national origin, age or handicap. Any person who believes he or she has been discriminated against in any program, activity, or facility operated by a recipient of federal assistance should write to: Director, Equal Opportunity Program, U.S. Department of the Interior, National Park Service, P.O. 37127, Washington, D.C. 20013-7127

Your Preservation Law

The local law or ordinance that established the board or commission you serve on is more than a one-time use document, setting up the review body and then filed away and forgotten. It has a great deal of information to give you about how your body should operate. In it, the rights and responsibilities of commission or board members as well as applicants can be found. The role you play in local government is spelled out, the criteria for designation are described, and the basic guidelines for reviewing alterations, new construction and demolition are delineated. Without knowing the law personally, you could be operating with a somewhat fuzzy recollection of it rather than a personal working knowledge.

Not every law is exactly the same, but most are either based on or very close to the “Model Law” (available at http://www.nysparks.state.ny.us/shpo/certified/docs/Model_Law.doc) that was developed by the State Historic Preservation Office (SHPO). With that being the case, I am using that law as an outline to discuss some basic concepts that good preservation laws contain and what they mean to your work. You may wish to have a copy alongside so that you can refer it as you read this article.

Section 1: Purpose

Although seen by some as a mere preamble to the meat of the law, the language in the “purpose” statement is very important. The Model Law’s purpose section makes several bold statements, including the opening:

“It is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of landmarks and historic districts are necessary to promote the economic, cultural, educational, and general welfare of the public.”

This statement or one similar to it, having been adopted by your municipality, publicly acknowledges the role of historic resources in civic life and therefore sets a tone for your commission’s authority and work. The rest of the law simply explains how the purpose is to be carried out. Don’t be afraid to quote this section in explaining your work.

Section 2: Historic Preservation Commission:

The first portion of Section 2 establishes the commission and details the makeup of the membership. Typically this includes an architect (if available locally), a historian, a resident of a district (if a district exists), and someone with a strong commitment to preservation. In addition, all members are to have an interest in preservation within the municipality. This composition was developed to ensure that persons with a background, commitment or interest in history and/or preservation would serve and to prevent unqualified appointments. The membership of the review body is something that is checked during CLG audits to see if the details of this section are being adhered to.

The next key part of Section 2 is letter (D), powers of the commission. These should be read carefully and referred to often. I won't go into every power noted in the list on the model law, but several stand out.

- Section (i) gives the commission the power to employ staff and consultants as necessary (and of course, as funded) to carry out its duties. This allows for the possibility of paid staff (typically for larger communities) or the hiring of consultants to carry out the development of guidelines, undertake surveys, or prepare written materials such as information brochures, etc.
- Section (ii) gives the commission the power to adopt rules and regulations (the use of this section to adopt guidelines and standards for review was dealt with in the December *Landmarker*.)
- Section (iv) addresses the conduct of surveys to find properties worth designation and protection. Surveys are not “one-time” efforts. They should be ongoing and regularly updated to have the best, most recent information about historic resources in your community.
- Section (vii) is one that can easily be lost in the everyday business of a commission. This is the power of “increasing public awareness of the value of historic, cultural and architectural preservation by developing and participating in public education.” Getting your message out is important to the smooth functioning of the designation and review process and in building support. This can be done through workshops, newspaper articles, publications, websites, award ceremonies, and other creative methods.
- Of course, Section (x) is the linchpin of Section D: “Approval or disapproval of applications for certificates of appropriateness pursuant to this act.” Section below deals directly with this power.

Section 3: Designation of Landmarks or Historic Districts

Section 3 sets forth the criteria and process for designation (or in cases where designations are recommended to the municipal legislative body, the process for recommendation). The criteria are important and those that are applicable should be stated specifically in any designation, as they are the legal grounds for such a decision.

Likewise, the process for notification, public hearings, and recording the designation is important to follow as part of the legally required and defensible process for designation.

Section 4: Certificate of Appropriateness for Alteration, Demolition or New Construction

Although a short section, this is a big responsibility for the commission. Simply restated here, it essentially outlines the purview of the commission in regard to the types of projects it can review:

“No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction, or moving of a landmark or property within a historic district, nor shall any person make any material change in the appearance of such property, its light fixtures, signs, sidewalks, fences, steps, paving or other exterior elements which affect the appearance and cohesiveness of the landmark or historic district, without first obtaining a certificate of appropriateness from the Historic Preservation Commission.”

Check the wording of your law. If it is missing one of these descriptors, you could be missing the power to review some potentially significant impacts on your community.

Section 5: Criteria for Approval of a Certificate of Appropriateness

Understanding and using the criteria for review is an extremely important matter. Learning them and using them should be a priority of all commission members. Since the criteria are the only defined standards in the law for making decisions about landmarked properties, they should be referenced in any printed materials, mentioned during public meetings, and most importantly, noted in any decisions issued as to how an application does or does not meet them.

Section 5 contains the criteria for alterations, additions, or new construction. Of course, these may be expanded by adoption of specific guidelines and standards under the powers noted in Section 2 discussed in the last edition of the *Landmarker*.

Section 6: Certification of Appropriateness Application Procedure

The title of this section makes it appear self-explanatory. However, there are some details in this section that are very telling and should not be overlooked. The list of materials required in Section (A) is important to stress to applicants. They are:

- name, address and telephone number of applicant;
- location and photographs of property;
- elevation drawings of proposed changes, if available;
- perspective drawings, including relationship to adjacent properties, if available;
- samples of color or materials to be used;
- where the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination, and a plan showing the sign's location on the property; and
- any other information which the Commission may deem necessary in order to visualize the proposed work.

Note the last one carefully: “*any other information....*” This gives the commission the ability to request more than the basic information in the list. However, most applications having the basic information should be fairly complete. Having the required materials spelled out in a pre-printed application can speed review and make the process easier for the applicant and review board member. If your body hasn’t used application forms, it might be a good exercise to create some, using existing models. The City of Utica has an excellent model application form on the historic preservation section of its website:

(<http://www.cityofutica.com/EconomicDevelopment/Planning/Scenic+and+Historic+District.htm>)

Letter (B) is also extremely important, as it directs that no building permits be issued for work until the commission/board has issued its certificate. Since this is one of the main ways of ensuring compliance with the law, you should have a good working relationship with your building department, making certain its staff understand your role in the process and has a complete and updated list of landmarked properties so that they can “flag” properties and direct applicants to the commission.

Letter (D) of Section 6 states that “*all decisions shall be in writing;*” and that a decision state the reasons for denying or modifying an application. Writing the decision makes it more difficult for an applicant to claim that he/she did not understand the decision, and it also makes the decision a public record. In fact, this section also calls for the decision to be filed for public inspection! The reasons for denial/modification should come straight from the criteria for review and/or any other adopted guidelines. Another benefit from writing the decision is that it makes the board use and become familiar with the review criteria.

Section 7: Hardship Criteria for Demolition

Section 8: Hardship Criteria for Alteration

Section 9: Hardship Application Procedure

I’ve grouped these sections together as they all deal with hardship. Hardship process is the “pressure valve” for projects that honestly can not meet the review criteria without causing an actual, documented financial or other problem for the owner. Hardship is a very important concept to understand in the work of a review body.

An applicant first has to be denied before he/she can make application for hardship. This ensures equal treatment under the law since by the board doing this the review criteria are not “bent” or set aside on a case-by-case basis for any project. Once denied the case has to be made that there is no way that the property would earn a “reasonable return” without the work, and in the case of demolition, that efforts to sell it to a person interested in preserving it have failed.

Since this is a very important matter, I will be addressing it in more detail in a future issue of *The Landmarker*.

Section 10: Enforcement

Like Letter (B) of Section 6, this is another section that connects your work to the local building department. Your enforcement officer is the Building Code Enforcement Officer, so it is important to foster a good working relationship with that individual and his/her office.

Section 11: Maintenance and Repair Required

Since review boards typically deal mainly with applicants proposing elective work, there is the possibility that some properties will “fall through the cracks” if work need to ensure their preservation is not proposed by the owner. Section 11 addresses those situations by requiring owners to address serious deterioration that could endanger a property or a district. Using this section well can be a powerful tool against owners who see your community as simply a place to maximize income without much cost (such as neglectful absentee landlords) or to speculate on property values without regard to the existing building on site.

Section 12: Violations

Having a strong violations section is important to being taken seriously in your decisions. The model law has blanks for fine amounts, as most communities look to standardize the fee structure with other building violation penalties.

Section 12, Letter (B) also ties the municipal attorney into your process by making that office responsible for bringing cases against violators. An interesting portion of this section is that it directs that an owner who “demolishes, alters, constructs, or permits a designated property to fall into a serious state of disrepair” (see Section 11 above) to “restore the property...to its appearance prior to the violation.” This section is aimed at owners who alter/demolish building without review in an attempt to subvert the process. Rather than simply paying a fine and moving on, owners can be required to repair damage - or even rebuild demolished structures or sections of structures. Used carefully, this section can be a powerful deterrent to that type of approach.

Section 13: Appeals

Like any other process, there is a process for appeals of decisions. Note that like hardship, the owner has to have gone through the process and gotten a denial of either an application or a hardship request. While the decision is out of the hands of the review board in this process, the last sentence is important to note: “Reviews shall be conducted based on the same record that was before the Commission and using the same criteria.” This means that any new information cannot be brought into the appeal process; doing so restarts the review process before your body. Also decisions made by the appeal body have to be made using the same criteria that was used for the initial review. The intent is that the appeals process should be mainly about the process the preservation body used to reach a decision and not be an opportunity for the appeal body to make a decision allowing “special” approvals outside the intent of the law. Your law will designate the appeals body. Typically it is the Village Board/Town Board/City Council of your municipality.



These two small historic houses in Sag Harbor are typical of many along the streets and alleys of the village. Their size, materials, and details are crucial aspects of the historic character of Sag Harbor. However, their scale also makes them targets for additions and alterations, a fact that the Sag Harbor Board of Historic Preservation and Architectural Review deals with regularly during Certificate of Application review

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These tips are some general ideas that may help your review board work more efficiently with the rest of your municipal government. Sometimes it helps to remind everyone that you are an official part of City, Village, or Town Hall and that you have legal responsibilities that other offices need to be aware of or know how to work within.

- Meet with your mayor and council at least once a year and update them on your activities, concerns and problems.
- Request that a member of the council be appointed to serve as a liaison with the preservation commission.
- Get to know the other commissions and boards that serve the community as part of local government, such as the planning commission, zoning appeals, etc.
- Print an annual report of the activities of the commission emphasizing success stories and new programs.
- Learn how the commission can work with the housing administrator or block grant administrator in your community to integrate preservation with projects serving low-income or elderly individuals.
- Meet with your building inspector to discuss the commission's concerns regarding the treatment of historic properties under the building code
- Ensure that zoning ordinances, sign ordinances, etc., do not conflict with the design guidelines for landmarks and historic districts.
- Meet with the director of public works to coordinate that public improvements in historic districts are commented on by the commission.
- Meet with your city attorney *before* your commission runs into problems. Ask him/her to attend a meeting and critique it for proper procedural methods