

# Running Effective Meetings & Making Defensible Decisions

Cheltenham Township BHARs

Megan McNish | Community Preservation Coordinator  
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# Our Agenda for this Evening

- Introductions
- Legal Authority for Historic Preservation
- The Role of Preservation Boards
- Why Good Decisions Matter
- Elements of a Good Decision
- The Secretary of the Interior's Standards
- How to Run an Effective Meeting
- Discussion and Questions

\* Nothing in this presentation is intended to constitute legal advice. You are advised to consult with the Municipal Solicitor or other legal counsel for official interpretation of applicable laws and policies.

# What we won't talk about today

- Formulas/rules for specific issues
- Current, anticipated, or recently completed cases

# Legal Authority for Historic Preservation

- The 10th Amendment to the U.S. Constitution delegates to States all powers not reserved for the Federal Government
- Includes “police power” – the right to enact laws that protect the health, safety, and general welfare
- Interpreted to allow regulation of the activity of the individual



# Legal Authority for Historic Preservation

**The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.** Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

Article I, Section 27, Pennsylvania Constitution

# Legal Authority for Historic Preservation

## **Common Examples of the Police Power**

- Public health regulations
- Building codes
- Zoning ordinances
- Subdivision regulations
- Sign regulations
- Pollution controls
- Environmental regulations
- Historic preservation ordinances

# Legal Authority for Historic Preservation

## Limits to the Police Power

- Must be for the public good
- Doesn't single out individuals or individual parcels of land
- Not clearly arbitrary & unreasonable

# Legal Authority for Historic Preservation

- Enabling legislation describes the requirements and limitations on municipalities when exercising these powers
- Historic preservation in Pennsylvania is enabled by two statutes
  - Municipalities Planning Code
  - Historic Districts Act

# Legal Authority for Historic Preservation

- Historic Districts Act
  - Commonly referred to “Act 167”
  - Passed in 1961, prior to National Historic Preservation Act
  - Allows municipalities to designate historic districts and appoint “Boards of Historic Architectural Review”
  - Requires property owners to obtain Certificate of Appropriateness for various activities

# Legal Authority for Historic Preservation

- Historic Districts Act (cont...)
  - Makes governing body the decision-makers
  - Review Board (BHAR) is advisory
  - Limits review to exterior work that is visible from a public way

# Exercise: Say What?

Imagine, for a moment, that you are the Board of Supervisors for Oldeville Township, Pennsylvania. The Historic Architectural Review Board (HARB) has reviewed an application for a Certificate of Appropriateness from a property owner within the local historic district and has sent the Board a recommendation for final action.

## **Review the recommendation memo and discuss the following issues/questions:**

1. Does the recommendation give you the information you need to make a decision about issuing a Certificate of Appropriateness?
2. What about this recommendation is useful in your decision-making? What do you wish were different?
3. What action would you take on this recommendation?
  1. Approve the Certificate of Appropriateness
  2. Deny the Certificate of Appropriateness
  3. Table the motion to a future meeting so you can gather more information

# Local Preservation vs. the National Register Program

## The National Register of Historic Places

- **DOES:** Recognize the importance of that building, structure, object, or district for its importance to local, state, or national history
- **DOES NOT: Prevent** the demolition of historic properties by federal, state, local, or private development
- **DOES: Encourage** preservation of historic properties by documenting their significance
- **DOES NOT: Restrict** or **regulate** the maintenance, repair, or restoration of historic properties
- **DOES: Facilitate** SHPO review of state or federally funded projects
- **DOES NOT: Automatically** invoke local historic district zoning or landmark designation
- **DOES: Provide** information for planning purposes

## Local Designation

- **CAN: Locally** designate historic resources
- **CAN: Regulate** the demolition and relocation of historic properties
- **CAN: Restrict** or **regulate** the maintenance, repair, or restoration of historic properties
- **CAN: Review** new construction
- **CAN: Protect** designated historic resources

# Why Good (and Defensible) Decisions Matter

- HARBs/Commissions are government entities
- You have an obligation to afford equal protection to applicants



*"Hi! I'm from the government, and I'm here to help you!"*

# Why Good (and Defensible) Decisions Matter

- Equal protection
  - Prohibits discrimination in application of law
  - Similarly situated property should be treated similarly under the law
  - Different treatment of similar property will be upheld **if reasonable grounds exist for the disparity**

# Why Good (and Defensible) Decisions Matter

- Two important components of equal protection
  - Substantive Due Process
    - protects a person from being deprived of life, liberty or property for **arbitrary** reasons
  - Procedural Due Process
    - means adequate notice and opportunity for affected parties to be heard fairly

# How to Make Good Decisions

- Know your role and limitations
- Do your homework
- Follow adopted procedures
- Apply your guidelines/review standards
- Be clear and concise

# What constitutes a “good” decision?

- Written
- Based on evidence and testimony
- Supported by reasons & facts
- Consistent with enabling law, ordinance, and guidelines
- Consistent with previous decisions



# Elements of a Good Decision

- Findings of Fact
- Conclusions of Law
- Structure of a Good Motion
- Consistent with previous precedent

# Elements of a Good Decision

## EXAMPLE

### **With respect to Application #1234, I find that:**

- *The subject property is a contributing property to the Pine Street Historic District*
- *The existing porch of the subject property, including the roof, railings, and decking, is a character-defining feature of the building*
- *Porches are common features in the Pine Street Historic District which create a sense of rhythm and architectural interest to the streetscapes that define the district's historical and architectural significance*
- *All of the homes on the 200 block of Pine Street have porches of a similar age and style to the subject property, including the immediately adjacent properties; all porches on the block are comprised of wood components.*
- *The existing wooden elements are in need of maintenance, but the applicant has not demonstrated that they are deteriorated beyond repair*
- *The proposal to replace the existing turned, wooden porch columns, railings, and decking with pre-fabricated vinyl components would remove a significant feature of the building and negatively alter the architectural character of the block and the larger historic district*

**Therefore...**

# Elements of a Good Decision

## EXAMPLE

***I move to recommend denial of Application #1234, as submitted, because***

- *The proposed alterations are not consistent with the following Secretary of the Interior's Standards for Rehabilitation*
  - *Standard 3*
  - *Standard 6*
- *The application would be consistent with Secretary of the Interior's Standards if the following actions were undertaken:*
  - *Repair missing and/or deteriorated elements with like materials*
  - *Apply a coat of paint or other exterior finish to the existing and replaced materials to protect from further deterioration*

# The Secretary of the Interior's Standards

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided
3. Each property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.

# The Secretary of the Interior's Standards

6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

# Exercise: I move...

Imagine now that you are the Historic Architectural Review Board for Oldeville Township, Pennsylvania. You are reviewing an application for a Certificate of Appropriateness from a property owner within the local historic district. Their scope of work is as follows:

**Replace lap siding with fiber cement board and replace rotten wood windows with double hung vinyl windows.**

1. Do the proposed activities meet the Secretary of the Interior's Standards for Rehabilitation?

# Exercise: I move...

**Replace lap siding with fiber cement board and replace rotten wood windows with double hung vinyl windows.**

Do you have sufficient information to make a decision?

What action would you take on this recommendation?

1. Approve the Certificate of Appropriateness
2. Deny the Certificate of Appropriateness
3. Table the motion to a future meeting so you can gather more information

What motion would you make for the case?

# How to Run a Good Meeting

- Be nice and courteous
- Speak clearly and avoid jargon
- Follow the rules of procedure
- Give folks a chance to talk



# How to Run a Good Meeting

- Avoid statements of personal preference

~~LIKE~~

~~NICE~~

~~PRETTY~~

# How to Run a Good Meeting

- Make decisions in a timely manner
  - Don't debate minutiae endlessly
  - Don't lose sight of your jurisdiction
- Decide on the matter before you



"Let's hold off making a decision until we have even more information we don't really need."

# How to Run a Good meeting

- Avoid Conflicts of Interest
  - Recuse yourself when necessary
  - Inform the Chair and staff of your recusal in advance to ensure a quorum

**Farcus**

by David Waisglass  
Gordon Coulthart



**“What conflict of interest?!  
I work here in my spare time.”**

# How to Run a Good Meeting

- Avoid Ex Parte Communication
  - Communication about an application outside of a public meeting
  - Communication with a party involved in an application
  - Disclose inadvertent contacts before discussion and vote
  - Use staff as go-between

# In summary...Why all of this matters

- Serve as expert advisory body to Board of Supervisors
- Uphold the public's interest in historic preservation
- Conduct meetings in a professional, legal, and ethical manner
- Understand and respect an individual's rights to due process and fair and equitable treatment
- Make decisions based upon facts...not opinions

