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Land Use Regulation: Historical Districts

Michigan State University

Cooperative Extension Service

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Land Use Regulation:

Historical Districts

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Dept. of Resource Development

This is one in a series of publications designed to acquaint the interested Michigan public with recent concepts in land use control. The series covers junkyard regulation, outdoor advertising restrictions, historical district regulations, construction permit qualification systems and zoning ordinance administration and implementation.

Some of the methods of historic site preservation discussed have been used in only one or two places in the U.S. and others have been used in parts of Michigan. In no case should it be assumed that any of these schemes can be validly applied in any given locality. Generally, specific state enabling legislation is required before a city, town or village can enact an ordinance for the preservation of an historic area. Before adopting one of these schemes, consult with the attorney for your governmental unit.

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Introduction

Historical district zoning is not a new concept in land use guidance. In fact, Charleston, South Carolina and New Orleans, Louisiana enacted zoning ordinances to protect historic property more than 70 years ago. However, over the years, our heritage and culture have been increasingly recognized as priceless national assets. In 1966, for example, the federal government passed the National Historic Preservation Act, which officially acknowledged the importance of preserving historical and cultural regions of the country. Additionally, most states and numerous municipalities have enacted some form of historical site protection legislation.

While the federal and state governments take an active interest in the protection of historical sites, the local governments are primarily responsible for their establishment and regulation. Municipalities are generally granted the legislative authority to establish and regulate historical districts via state zoning enabling acts.

However, historical district regulation is vastly different from traditional zoning. A typical zoning ordinance, for instance, generally divides the community into regions and regulates specific land uses within such regions. The purpose of a zoning ordinance is to increase the health, safety and welfare of community inhabitants. In contrast, the sole objective of historic district legislation is to preserve an already well-established neighborhood or area as it was in the past. Since the majority of historical district preservation legislation is similar, the following ordinance may be considered representative.

The Vieux Carre Ordinance

New Orleans was one of the first municipalities to establish a district for the sole objective of preserving historic property. In 1936, the Louisiana legislature vested New Orleans with the authority to organize a Commission, whose purpose was to preserve and protect buildings in the "Vieux Carre", or French Quarter, section of the city. Under this legislative

grant of authority, New Orleans enacted the Vieux Carre Ordinance which officially created the Vieux Carre Commission and delineated a set of rules governing the Commission's powers and duties. The Ordinance also specified the boundaries of the Vieux Carre historical district.¹

Basically, the heart of Vieux Carre Ordinance was control over the external appearance of all private and semi-public structures within the historical district. For example, any new construction, remodeling, painting, restoration or demolition of any building which fronted on a public street in the Vieux Carre section first had to be approved by the Commission. In fact, the Commission required owners wishing to modify buildings in the historic area to submit detailed plans of the proposed alterations. The Commission further required that all buildings reflect the heritage and culture of the district by conforming to the traditional historic style in terms of color and texture of materials, exterior architectural design and relation to other buildings.¹ Property owners in the historical district were also obligated to keep their buildings maintained and repaired.

The size, placement and details of other exterior features, such as floodlights, signs and overhanging balconies, were also regulated. For example, the Ordinance prohibited the owner of any building in the Vieux Carre from maintaining an advertising sign without first obtaining a permit from the Commission. Moreover, the maximum area of any sign displayed in the historical district, according to the Ordinance, was limited to eight square feet.²

While not directly related to the public health or safety, the Vieux Carre legislation and similar ordinances have been determined to be valid regulations based on their relationship to cultural and economic welfare. The purpose of the New Orleans Ordinance, for instance, was not merely to preserve the old buildings themselves. Rather, it was to preserve the cultural nature and the historic aspect of the entire Vieux Carre section. Moreover, the City recognized the economic importance of safeguarding the heritage of the French Quarter for the tourist industry.²

Additional Ordinances and Considerations

Numerous other municipalities have also enacted legislation similar to the Vieux Carre Ordinance to protect their historical areas. San Diego, California, for example, established an historical district in the "Old Town" section of the city. This section was the site of the original San Diego settlement and contained a number of buildings constructed before 1870. The "Old Town" historical district ordinance regulated the exterior architectural design of neighborhood buildings and other structures in the public view much the same as the Vieux Carre Ordinance. San Diego also recognized the economic value of tourism, along with the cultural and educational advantages of preserving the historical section as a "visual story of the beginnings of the City."³

Massachusetts passed zoning enabling acts authorizing the creation of historic districts in Beacon Hill, Boston, and Nantucket Island, based on similar connections to improvements in public educational, cultural and economic welfare.^{4,5} The Nantucket historical district was established primarily to preserve early American architectural features as they were when the island was the center of the New England whaling industry. However, in passing the historical district enabling legislation, the Massachusetts legislature also specifically acknowledged the benefits that would accrue to Nantucket's economy from the vacation-travel industry.⁴

Similarly, the Beacon Hill historic district was created to protect and preserve the architectural and cultural features of the area's residential homes, many of which were built in the 1850's. Like the Vieux Carre legislation, the Beacon Hill Ordinance attempted to regulate exterior architectural building features to preserve the culture of the area as a whole.⁵ Ordinances have also been enacted to preserve historical districts in Santa Fe, New Mexico, Williamsburg, Virginia and countless other areas.

In general, as long as historical district regulations are reasonable and bear some relation to the public welfare, they are considered constitutionally valid. For example, although compliance with certain provisions of the New Orleans Ordinance obviously

required individual property owners in the Vieux Carre to incur additional financial obligations, the regulations were considered valid because of their direct relationship to the economic and cultural welfare of the city.^{1,2} It must be emphasized, however, that the Vieux Carre Ordinance, as well as the Nantucket, Beacon Hill and San Diego Ordinances only attempted to regulate the *exterior* appearance of historical district structures in the public view. Efforts to regulate the *interior* appearance of buildings or the design of structural features not in the public view might well have been unconstitutional.

Finally, because some renovations doubtlessly occurred prior to historical district zoning, any specifically-designated historic district may contain some buildings that are not "historic" or that do not conform in appearance. However, because an historic district is not merely a number of separate buildings, but a neighborhood, the existence of a few nonconforming buildings generally does not invalidate the nature of the historic district as a whole.³

Public Acquisition Management

In addition to historical district zoning ordinances, there are some additional methods of preserving individual structures and property as historic landmarks. For example, federal, state or local governments may exercise their eminent domain or "condemnation" powers to "take" private property in order to preserve historic structures and areas. The private property owners must, of course, be justly compensated and the historic area or structure must be "taken" only to serve a public use. However, it has been generally accepted in most cases that the "taking" of private property to preserve an historic structure or region does indeed constitute a "public use."^{6,7,8}

The federal government was perhaps among the first to use the power of eminent domain to preserve property of historic value. Almost 80 years ago, the federal government "condemned" the Gettysburg, Pa. Civil War battlefield when its historical value was threatened by an electric railway company's roads.⁹ Since the preservation of the Gettysburg battlefield as a national historic site for the public use,

numerous states and localities have followed the federal government's example of using the power of eminent domain to protect property of architectural or cultural value.^{6,7,9}

A second method of preserving historic sites applies only to federally-funded activities or to the operations of federal agencies. In addition to mandating that the historical and cultural foundations of the country be preserved, the National Historic Preservation Act (NHPA) also created an Advisory Committee on Historic Preservation and developed a National Register of Historic Places. The administrators of federal agencies can not legally approve of federally-sponsored projects affecting areas located in the National Register unless they first satisfy certain requirements listed in NHPA and the National Environmental Protection Act.

For example, a citizens group in West Dundee, Illinois, successfully blocked a state bank from demolishing a house listed in the National Register of Historic Places.¹⁰ The bank was a member of the Federal Deposit Insurance Corporation, a federal agency, and therefore was required to comply with NEPA and NHPA. However, NEPA and NHPA apply only to the activities of federal agencies or to operations involving federal funds: state and local governments do **not** have to comply with NEPA and NHPA requirements unless federal funds are involved via federal assistance programs. As a result, the same federal court that stopped the FDIC-affiliated Dundee bank from demolishing the Historic house had no authority to stop the Village of West Dundee from issuing a similar demolition permit.¹⁰

Comments

While the federal government acknowledges the importance of protecting cultural and historic areas of the country, there is no real national coordination of historic preservation with land use planning. The federal historic preservation laws that do exist apply only to federal agencies and to federally-funded activities and are by no means comprehensive. Consequently, most of the actual planning for historic site preservation occurs at the state level, through

enabling act legislation, and at the local level, through historical district zoning ordinances and citizen action.

Application in Michigan

Michigan has adopted a statute specifically approving historic districts and carefully denoting the structure and procedure for forming and operating such districts.¹¹ It authorizes the creation of historical districts which are, in general, very similar to zoning boards. The courts have imposed the same limitations on historical districts as are applicable to general zoning bodies. For example, historical zoning cannot be used arbitrarily and capriciously,¹² cannot be used to depress property values,¹² and non-use variances must be granted upon a finding of "practical difficulty."¹³

Conclusion

The concept of historical districts received much public interest in the bicentennial year. If properly authorized and reasonably administered, there is no good reason why any governmental unit cannot create such entities.

FOOTNOTES

1. *Maier v. City of New Orleans* 516 F.2d 1051 (1975)
2. *City of New Orleans v. Pergament* 5 So.2d 129 (1941)
3. *Bohannon v. City of San Diego* 106 Cal. Rptr. 333 (1973)
4. *Opinion of the Justices to the Senate* 128 NE.2d 557 (1955)
5. *Opinion of the Justices to the Senate* 128 NE.2d 563 (1955)
6. *Cordova v. City of Tuscon* 494 P. 2d 52 (1972)
7. *Flaccomio v. Major & City of Baltimore* 71 A. 2d 12 (1950)
8. *United States v. Gettysburg Electric Railway Company* 16 S. Ct. 426 (1896)
9. *Coke v. Commonwealth of Kentucky* 502 S.W. 2d 57 (1973)
10. *Edwards v. First Bank of Dundee* 393 F. Supp. 680 (1975)
11. P. A. 1970, No. 169, MCLA 299.201 et seq.
12. *Michaels v. Village of Franklin*, 230, N.W. 2d 273 (1975)
13. *Heritage Hill Assn. v. City of Grand Rapids*, 211 N.W. 2d 77 (1973)

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