

June 2, 2011

**SCARSDALE FORUM
(TOWN AND VILLAGE CIVIC CLUB EDUCATION FORUM, INC.)
Report of the Neighborhood Character Committee**

PROPOSED ACTION

The Committee proposes the following resolution for adoption by the Club:

RESOLVED, that the Report of the Neighborhood Character Committee regarding the issue of a new Historic Preservation Law for the Village of Scarsdale be approved and that a copy of this report be sent to the Village Board of Trustees.

RECOMMENDATION AND MAJOR CONCLUSIONS

The Committee recommends that the Village Board of Trustees consider the following information and conclusions regarding Neighborhood Character and the implementation of a new Historic Preservation Law:

1. A complete revision of the current Historic Preservation Law, as suggested by the Advisory Committee on Historic Preservation, is timely and is supported by Neighborhood Character Committee of the Scarsdale Forum.
2. Research shows that there is legal basis for Historic Preservation Laws to landmark privately-owned property without the consent of the property owner.
3. Available information shows that there are both positive and negative impacts on landmarked properties.
4. The requirements for becoming a Certified Local Government (CLG) may outweigh the benefits.
5. Development of the criteria to be used to select landmark properties is a key component of the new law.

DISCUSSION AND CONCLUSIONS

PART I. Neighborhood Character and Historic Preservation

A. Background

In June 2009 the Neighborhood Character Committee submitted a report outlining and defining various means and methods designed to preserve or enhance neighborhood character in Scarsdale. The report was approved by the membership and submitted to the Village board and made public to various concerned entities.

In order to address the issue of Neighborhood Character, the following definition was adopted:

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“Neighborhood character is the combination of the features that make up the distinct personality of a given neighborhood. These features include land use, scale, and type of development, historic features, patterns and volumes of traffic, noise levels, and other physical or social characteristics that help define a community. Not all of these elements affect neighborhood character in all cases; a neighborhood usually draws its distinctive character from a few of these determining elements.

An assessment of neighborhood character is generally needed when an action would exceed preliminary thresholds in any one, or have moderate effects on several, of the following areas of technical analysis: land use, urban design, visual resources, historic resources, socioeconomic conditions, traffic, or noise.”¹

A component of neighborhood character incorporated in that definition is historic resources. An important recommendation of the report pertained to historic preservation and observed: “The current state of the Village’s Historic Preservation ordinance does not appear strong in protecting neighborhood character. The fact that its only mandate is to provide a “go/no-go” decision on demolition alone may ignore many key issues of preservation.”

B. Regulation Status

In early 2010, the Law Committee of the Village Board of Trustees met to consider several amendments to the existing Historic Preservation Law [Chapter 182 of Local Laws] submitted by the Committee for Historic Preservation (CHP). The outcome of that meeting was considering a complete revision of the current law. For that purpose, the Board of Trustees by resolution dated February 9, 2010 established an Advisory Committee on Historic Preservation to review the Village’s Historic Preservation Law.

As noted in the report of that Advisory Committee issued in September 2010, the Advisory Committee was charged to address, among other things, the following:

1. The efficacy of the existing law.
2. The amendments proposed by the CHP.
3. The use of different criteria by the CHP and the Board of Architectural Review (BAR) in demolition determinations under the existing law.
4. The question of pre-designation of properties and districts.
5. Standards for regulation and maintenance or improvement of such designated landmarks or districts.

In addressing the first charge regarding the efficacy of the existing law, the Advisory Committee essentially concluded that the existing law did not meet its intentions of protecting historic buildings;

¹ Source of the definition and assessment criteria is the *2001 City Environmental Quality Review (CEQR) Technical Manual*

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fostering civic pride in the accomplishments of the past; protecting and enhancing the attractiveness of the Village; or providing an educational role in the Village with respect to Historic Preservation.

As a result, the Advisory Committee recommended and provided a new draft law for adoption, including, in particular, items 4 and 5 listed above in their report as the issues to be addressed.

C. Conclusion

In this Committee's report of June 1, 2009 a specific recommendation was made in Exhibit B concerning the role of a Landmarking Law as follows:

“Although landmark² preservation laws vary by city and state, they have the same basic purpose: to keep landmarks as close to their original condition as possible. As a legal specialty, landmark and preservation law has developed as the number of designated landmarks has grown in the United States.³” The suggested plan for landmarking in the report was: “To assemble a possible list of candidate properties that are clear examples of historic importance and neighborhood character in Scarsdale and determine if it would be appropriate to develop and codify a landmark preservation law to protect these potential candidates.”

The draft law of the Advisory Committee addresses gaps in the existing law by adopting criteria which are based on the context of Historical Importance, as an alternative to merely counting the number of years elapsed. The draft law also facilitates the creation of Landmarking and Historical Districts, which to date have been absent on the local level. Thus a proposed new law, as suggested by the Advisory Committee, is supported by the previous recommendation of this Neighborhood Character Committee.

PART II. Owner Consent & Landmark Status

A. Background

In the September 22, 2010 report by the Advisory Committee, it was reported that 10 municipalities in Westchester [Bedford, Greenburgh, North Castle, North Salem, Village of Ossining, City of Peekskill, Village of Tarrytown, Town of Ossining, Town of Yorktown and Yonkers] have a “No Consent” clause in their adopted law. The report goes on to say that five other communities [Village of Mamaroneck, Town of New Castle, City of New Rochelle Town of Pound Ridge and City of Rye] specifically require owners consent for designation. [Pound Ridge requires a 70% “Yes” vote for homeowners affected by the designation of an historic district.] The report does not list

² A legal definition of landmark is: *A structure that has significant historical, architectural, or cultural meaning and that has been given legal protection from alteration and destruction.*

³ West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc. All rights reserved.

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data describing the number of landmark designations within the listed communities, therefore it is not clear how the issue of consent affects historic preservation within these municipalities.

By implementing a stronger and more comprehensive law, the Village is taking steps to provide better protection of local historic resources. The Advisory Committee on Historic Preservation has recommended that the village adopt a policy to require written property owner's consent prior to pre-designation, and has included that requirement in the proposed law. However, requiring owner's consent has the potential to "excuse" a property owner from the law just by virtue of the fact that the owner does not wish to participate.

B. Lawful Basis of "No-Consent"

The following is excerpted from research prepared by Julia Hatch Miller, the Editor-in-Chief of the *Preservation Law Reporter*, and reported in the February 1991 edition of that Journal. A municipal historic preservation law that does not contain a provision requiring owner consent for designation of a property as a historic landmark is clearly lawful. The basic constitutionality of historic preservation ordinances was upheld in 1978 by the U.S. Supreme Court and has been reaffirmed several times since. In *Penn Central Transportation Co. v. City of New York* ([Penn Cent. Transp. Co. v. New York City, 438 U.S. 104 \(1978\)](#)), the Court held that a municipality's decision to confer historic landmark status on a property does not violate the "Takings Clause" of the Fourteenth Amendment. In upholding the constitutionality of New York City's historic preservation ordinance, the court settled two important questions. First, it found historic preservation to be a valid public purpose, and secondly, it held that New York's ordinance – and by inference, similar ordinances enacted by other cities – had not taken private property in violation of the U.S. Constitution because the ordinance's restrictions left the Penn Central Company with a "reasonable beneficial use" of its landmark property. Penn Central not only set the federal constitutional standard for takings challenges to historic preservation, but the states have also followed it uniformly in interpretation of their own constitutions.

Penn Central has served to effectively insulate historic preservation from regulatory takings challenges for three principal reasons. First, Penn Central eliminated a variety of the concerns about coercive historic preservation regulations. Second, it directed attention to the value remaining in the property, and structures protected by preservation restrictions (as opposed to natural resources protected by environmental controls) nearly always have some economic value that a clever developer can exploit. Third, preservation ordinances have been drafted and administered in the light of Penn Central with sufficient flexibility to avoid constitutional confrontations. In general, the market has once again adapted to new land use restrictions.

Examples and Analysis of the following "Taking Law" principles are provided in Appendix 1:

PRINCIPLE: No Absolute Right of Use

No one has an absolute right to use his property in a manner that may harm the public health or welfare, or damage the interests of neighboring landowners or the community as a whole.

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PRINCIPLE: Reasonable Return or Use

Property owners have a right to a reasonable return or use of their land, but the U.S. Constitution does not guarantee that the most profitable use will be allowed.

PRINCIPLE : Consider the Parcel as a Whole

The focus of a takings inquiry continues to be on the entire property interest.⁴

C. Conclusion

While the Penn Central decision makes clear that historic preservation ordinances without an owner consent provision are legal, no court has ever addressed the issue of whether the reverse is true. Because few cases have addressed the validity of owner consent provisions in an historic preservation ordinance, there is limited legal precedent on the issue. Nevertheless, owner consent provisions in historic preservation ordinances bring to mind several serious constitutional questions. Do they constitute an unlawful delegation of legislative authority? Do they undermine the police power objective of promoting the general welfare and raise equal protection concerns? Are they consistent with state enabling authority? Accordingly, any municipality contemplating enactment of an ordinance containing an owner consent provision should bear in mind the possibility of litigation challenging such a provision along those lines.

While the hesitancy of utilizing a no-consent clause for fear of bring litigation on to the village, it is possible that leaving a situation to linger may in the future lead to a more difficult and costly battle for eminent domain.

Preservationists should continue to encourage communities to use a variety of planning tools and economic incentives to promote historic preservation so that condemnation is not necessary. Historic preservation tools such as historic districting, property assessment rollbacks and rehabilitation tax incentives support the use, reuse, occupancy, conservation and stability of our older and historic neighborhoods and commercial corridors. A community's use of these tools can promote economic revitalization, precluding the need for more invasive forms of redevelopment and the use of eminent domain.⁵

PART III. Effects on Landmarked Properties

⁴ Roddewig, Richard J., and Christopher J. Duerksen. "Takings Law in Plain English." *Department of Commerce Home*. 1994. Web. 15 May 2011. <http://www.commerce.wa.gov/_cted/documents/ID_1090_Publications.htm>.

⁵ Edmondson, Paul, Vice President & General Counsel. "Some Thoughts about the Kelo Decision for Members of the Historic Preservation Community...." *National Trust for Historic Preservation*. 2 Aug. 2005. Web. <<http://www.preservationnation.org/resources/legal-resources/understanding-preservation-law/resources/Kelo-Commentary.pdf>>.

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A. Background

Some obstacles to historic designation may include: perceived invasion of private property rights, fear of additional expenditures, fear of displacement and gentrification, apathy, development pressure and lack of awareness of the significance of historical resources.

While each law contains provision for designation, including definition of what constitutes *historic*, they may not be clear on how to appeal or refuse designation. Benefits are usually highlighted, while negative impacts are marginalized or non-existent for those examined. In addition, it is difficult to determine the dollar value of benefits and negative impacts.

B. Research on Impacts

These issues are addressed in detail in certain [National Trust publications](#) and on the [National Park Service's website](#). However, research of various sources produced this comparison of the impacts on citizens.

Positive Impacts:

- Maintain, increase property value
- Stabilize neighborhood
- Tax- exemptions/ deductions/ grants-in-aid might be offered
- Preserve historic, cultural heritage
- May be easier to sell property
- Pride at designation
- Positive identity in community
- Knowledge that property will be preserved for greater community good

Negative Impacts:

- Restrictions to external/façade appearance and architectural details
- Restriction on additions and demolition
- Cost to maintain may be higher since special contractors and consultants might be needed
- May require allowing public access, viewing
- Periodic government inspections may be required
- One or more levels of government approval might be needed to do anything with property
- Might not be allowed to sublet, lease all or part of property for particular uses
- Hardship appeals may be costly, lengthy
- Need to preserve/board up/maintain, even if not actively using the property
- Possible jealousy of owners whose property does not have the designation
- Restrictive covenants for those who inherit or purchase the property

The references for this list are contained in Appendix 2 of this report.

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C. Conclusion

The list above shows that the impact of landmark designation is not only negative. However, it is not clear that there is a 'one size fits all' solution to historic preservation designation. It is likely that the tax/financial incentives noted above may be eliminated as budgets are trimmed at all government levels.

The creation of historic districts within the Village may have some benefits, chief among them are ways to maintain the character of the Village Center and the Heathcote Five Corners areas, among others. This is an issue to evaluate within a matrix of additional information provided by a historic buildings survey/inventory and other resources.

PART IV. CLG Requirements and Benefits

A. Background

One of the recommendations to the Village Board in the June 2009 report of this Committee was:

“In particular, the Village should join the Certified Local Government Program (CLG) sponsored by the National Park Service. This is a nationwide program that supports local preservation activities by creating a formal link with state and federal preservation programs. Direct benefits would include special grants, professional legal and technical assistance and training. Grants can be used for a variety of goals, such as historic surveys, publications, planning studies and commission training. To become a CLG, the village would have to enact and maintain a local preservation law that meets federal standards (ours currently does not), establish a local Historic Preservation Commission (already in place) and develop a process for landmarking historic resources (not in place).”

B. CLG Requirements and Benefits

Key parts to becoming a CLG are as follows:

- Assignment of powers to a historic preservation review commission, which must include at least the power to:
 - i) Designate or recommend designation of properties worthy of preservation;
 - ii) Provide advice and guidance to property owners and government agencies concerning historic preservation issues;
 - iii) Adopt rules for the conduct of commission business; and
 - iv) In the case of cities, towns, and villages, the power to approve or disapprove any demolition, relocation, new construction, or exterior alteration affecting designated properties under its jurisdiction.
- Designation of a historic property does not require owner consent.

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- The provisions of an historic preservation ordinance must include procedures for enforcing commission decisions.
- A process for seeking relief from the strict application of the law in cases where unnecessary economic hardship can be proven.

Complete details can be obtained at: <http://nysparks.state.ny.us/shpo/certified-local-governments/documents/CLGProgramNYS.pdf>. However, it is clear that the historic preservation law and powers of a historic preservation commission must be substantial.

The CLG Program is administered jointly by the National Park Service (NPS) and the State Historic Preservation Offices (SHPO). The SHPO receives annual funds from Congress to distribute to recipients that meet both NPS and SHPO requirements. According to Diana Painter, PhD, AICP, author of The Care and Feeding of your Historic Building - or - Economic Incentives for Historic Preservation, 2004, <http://www.preservationplans.com/documents/economic-incentives.pdf>, “(t)he projects that are eligible for CLG funds are typically small and often oriented towards preservation planning. Examples include historic resource surveys and inventories; design guidelines and modifications to development regulations to accommodate historic properties; nominations to the state, local or National Register; the development of walking tours and other public outreach activities; and other special studies.”

The New York State Office of Parks, Recreation & Historic Preservation, offers the CLG program as “...one way to get professional guidance and support to shape the future of your community.” <http://nysparks.state.ny.us/shpo/certified-local-governments/>. The benefits are listed as follows:

- Ongoing, focused support from your SHPO;
- Technical preservation assistance and legal advice;
- Direct involvement in SHPO programs, such as identifying properties that may be eligible for listing in the State and National Registers of Historic Places;
- Training opportunities that increase the ability of communities to protect their historic resources and integrate them into short- and long-term planning initiatives;
- [Grants designated exclusively for CLG projects](#); and
- Membership in statewide and national CLG networks.

The NYS SHPO website notes that “Past grant awards have ranged from \$1,200 to \$29,000, with most in the \$5,000 to \$15,000 range. The total amount of available funding varies each year with the federal allocation.”

C. Conclusion

The incentives for Scarsdale to become a CLG need to be considered relative to the requirements. Scarsdale has a sophisticated Planning Department, which is complemented by several land use boards comprised of citizen volunteers. “Technical preservation assistance and legal advice” from the NYS SHPO could provide additional support for those agencies in preserving potentially historic

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structures and features. Members of the Planning Board, Board of Appeals and Committee on Historic Preservation could attend training seminars and network with preservationists.

There are several government sponsored alternatives as they relate to historic preservation. These alternatives were listed in the June 2009 report of this Committee as resources for all parties concerned with Neighborhood Character and are repeated below:

NATIONAL/FEDERAL LEVEL

National Trust for Historic Preservation
National Park Service, Department of the Interior

REGIONAL/STATE LEVEL

NYS Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau for NYS
Preservation League of NYS
Westchester County Historical Society – Historic Preservation Advisory Committee / Landmarks Advisory Committee
Westchester Land Trust

These soft incentives are attractive, while funds available for projects seem limited. The strict requirements for an historic preservation law and the amount of staff time devoted to pursuing the incentives may offset the benefits. In any case, a desire to become a CLG should not be a determining factor in deciding that consent to designation is not required in a revised historic preservation law.

PART V. Criteria to Select Landmark Properties

A. Background

In addressing Historical Preservation, this Committee noted in its June 2009 report:

“A key observation is that almost every community, with the exception of Bedford and Scarsdale, has a process in place to designate specific districts and landmarks to be protected. Furthermore, the scope of protection in adjacent communities extends well beyond mere demolition, to include items such as: architectural features, structures, walls, fences, light fixtures, signs, sidewalks, steps, paving, exterior appearance, alterations, repairs, movement, changes to interiors for landmarks, changes to exteriors for districts, or new construction in districts.” And “A landmarks list would provide a better “rifle-shot” approach for Scarsdale to utilize. The course of action would be to pass a new ordinance, and then accept nominations for landmark status for specific properties.”

B. Criteria and List

The Advisory Committee provided this recommendation in its report:

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“We recommend that the Village undertake a Significant Sites and Structure survey. We recommend enactment of the new law to formally establish the criteria against which buildings, structures, sites and objects would be evaluated before the survey is undertaken. Alternatively a survey could be authorized and undertaken while a draft law is being discussed as long as there is agreement on what factors should be evaluated. Some communities follow the parameters set out in the Historic Resource Inventory Form available from NYS Office of Parks, Recreation and Historic Preservation.”

C. Conclusion

The Village Board has already acted in this area by following the further recommendation of the Advisory Committee: “that the Village consider hiring a consultant with experience in this area to work with the Village Planner and Village Historian in reviewing Scarsdale properties.” This is in line with the suggestion of and supported by this Committee.

SUMMARY

In the Village of Scarsdale the issue of neighborhood character has become more prevalent as re-development is considered within existing sites. As noted in a TVCCEF meeting presentation on historic preservation: communities and their needs continue to evolve and there is a purpose in mediating successfully these forces of change. This report follows up the previous recommendations of this committee regarding historical preservation as it relates to the preservation and improvement of neighborhood character and provides information to consider in the implementation of a revised Historic Preservation Law.

Respectfully submitted:

Neighborhood Character Committee of the Scarsdale Forum

John Bonanno, Co-Chairman
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*Those noted were members of the Advisory Committee on Historic Preservation and so served as Advisors for this Report.

Contributors: Andrew Bass, John Bensché

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The following applicable principles 1, 2 & 4 out of 9 listed in Takings L*A*W in Plain English

PRINCIPLE 1: No Absolute Right of Use

No one has an absolute right to use his property in a manner that may harm the public health or welfare, or damage the interests of neighboring landowners or the community as a whole.

Example: The owner of a petroleum refinery, once located far from any city or town, has watched over the years as development from the nearest metropolitan area has crept closer and closer. The refinery was once surrounded by open fields, but is now surrounded by residential subdivisions, shopping centers, and schools. The local community has grown concerned that smoke and other pollutants from the factory are having an adverse effect on the health of local residents, as well as the economic health of the community as a whole. The county council finally decides enough is enough, and adopts a law that prohibits emission levels above certain amounts. The owner says that he cannot afford the necessary emission controls, and will be forced to close the plant if required to comply with the law. He claims that the result would be a taking.

Analysis: Communities have the right to stop harmful activities of individual landowners. This is the case even for activities that have been carried out for many years, since changes in circumstances will permit changes in the general law to protect the public interest. In almost every instance, the property in question may be put to other uses, including--as in this case--developed for residential or other low-impact uses. Even where *no* other use is possible, however, compensation will not be due if the prohibition is based on established principles of the law of property and nuisance.

PRINCIPLE 2: Reasonable Return or Use

Property owners have a right to a reasonable return or use of their land, but the U.S. Constitution does not guarantee that the most profitable use will be allowed.

Courts continue to insist on a high threshold for takings claims. All or virtually all reasonable use or return must be denied the property owner before a court will find a taking. A significant reduction in value does not necessarily give rise to a taking. A governmental action that restricts the value (or valuable uses) of land is not a taking, so long as it advances a legitimate public interest, and so long as some reasonable use of the property remains.

Example: A dilapidated building in a large city is designated as a local historic landmark, due both to its architectural significance and its historic importance as the early residence of an internationally-known author. Current zoning of the area permits a wide variety of low- and high-density uses, and a number of properties adjacent to the landmark have been developed as high-rise office towers. However, the local landmark law prohibits demolition or major changes to the building except as approved by a local landmarks commission, under very strict criteria. The landmark is purchased by a developer, who seeks permission to demolish it in order to develop another office tower. At the hearing, the developer submits uncontroverted evidence that the current value of the property is about \$100,000, but that it would be worth over \$2 million if it could be developed to its "highest and best" use. The landmarks commission nonetheless denies the demolition application; the developer claims that the severe diminution of value amounts to a taking. Is he right?

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Analysis: No. The U.S. Supreme Court has repeatedly held, as recently as 1993, that the mere diminution of property values is insufficient to demonstrate a taking. This principle goes back to the early zoning cases that upheld the imposition of new zoning regulations that instantly decreased property values because of the loss of development potential. In this case, there are likely to be a number of other, lower-density uses to which the property can be put, and which would not necessitate the demolition of the existing structure.

Coastal zone laws, like numerous other environmental and land use laws, have been upheld as a valid basis for regulation

PRINCIPLE 4: Consider the Parcel as a Whole

The focus of a takings inquiry continues to be on the entire property interest.

A severe adverse impact of a regulation on one portion of a property or ownership interest is not enough to constitute a taking, if the property as a whole continues to have a reasonable economic use.

Example: A county in a western state has had a water shortage for a number of years and needs additional sources to provide drinking water to its residents. A lake in one part of the county has never been tapped for drinking water because of high pollution levels, primarily from run-off from adjacent development. The county decides that, in order to ensure the availability of the lake as a source of drinking water, it will establish a 100-foot buffer zone around the lake shore, within which no new construction or ground-disturbing activity will be permitted. A lakeside property owner, who had hoped one day to develop his rustic campground into a commercial marina complex, claims that the government has effectively condemned a 100-foot swath of his property.

Analysis: Assuming that the county can demonstrate that the 100-foot buffer is necessary to achieve the legitimate public need for a pure water source, the real issue here is the residual use of the parcel affected by this regulation. Contrary to popular belief, takings law does not look primarily at the portion of the land that is restricted, but rather on the remaining use of the entire parcel. If the landowner retains a reasonable use of the property--here the continuation of a valid existing use, or the development of some other portion of the property--the lot as a whole can continue to be viably used, and there is no taking.

It is worth noting, however, that a variance or hardship procedure would protect the county against takings claims by providing a means to alleviate any hardship that might exist on a case-by-case basis due to unusual topographical or other circumstances. It is also worth noting that, as is explained below in Principle 9 (pages 39-40), the justification for a development ban in this case, if supported by background principles of nuisance law, may cause the restriction to be upheld even if all use of the parcel is prohibited.¹

More can be found at the link provided in the citation below.

¹ Roddewig, Richard J., and Christopher J. Duerksen. "Takings Law in Plain English." *Department of Commerce Home*. 1994. Web. 15 May 2011. <http://www.commerce.wa.gov/_cted/documents/ID_1090_Publications.htm>.

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References

National Historic Preservation Act of 1966; National Historic Landmark Designation can be found at:
http://en.wikipedia.org/wiki/National_Park_Service

New York State Historic Preservation Act of 1980; New York State List of Historic Places
The State and National Registers of Historic Places are the official lists of buildings, structures, districts, objects, and sites significant in the history, architecture, archeology, engineering, and culture of New York and the nation. The same eligibility criteria are used for both the State and National Registers. The National Historic Preservation Act of 1966 and the New York State Historic Preservation Act of 1980 established the National and State Registers programs. In New York, the Commissioner of the New York State Office of Parks, Recreation and Historic Preservation, who is also the State Historic Preservation Officer (SHPO), administers these programs.

Westchester Inventory of Historic Places.

<http://www.westchestergov.com/planning/Design/historic.html>

http://planning.westchestergov.com/index.php?option=com_content&view=article&id=841&Itemid=3291

<http://www.preservationnation.org/resources/faq/historic-districts/>

FEDERAL DESIGNATION

Specific effects of designation are:

A. The National Register was designed to be and is administered as a planning tool. Federal agencies undertaking a project having an effect on a listed or eligible property must provide the Advisory Council on Historic Preservation a reasonable opportunity to comment pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended. The Advisory Council has adopted procedures concerning, *inter alia*, their commenting responsibility in 36 CFR Part 800.

B. Section 110(f) of the National Historic Preservation Act of 1966, as amended, requires that before approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council a reasonable opportunity to comment on the undertaking.

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C. Listing in the National Register makes property owners eligible to be considered for Federal grants in-aid for historic preservation.

D. If a property is listed in the National Register, certain special Federal income tax provisions may apply. The Tax Reform Act of 1986 revises the historic preservation tax incentives authorized by Congress in the Tax Reform Act of 1976, the Tax Recovery Act of 1978, the Tax Treatment Extension Act of 1980, the Economic Recovery Tax Act of 1981, and the Tax Reform Act of 1984, and as of January 1, 1987, provides for a 20 percent investment tax credit with a full adjustment to basis for rehabilitating historic commercial, industrial, and rental residential buildings. The Tax Treatment Extension Act of 1980 provides Federal tax deductions for charitable contributions or for conservation purposes of partial interests in historically important land areas or structures.

E. If a property contains surface coal resources and is listed in the National Register, certain provisions of the Surface Mining and Control Act of 1977 require consideration of a property's historic values in determining issuance of a surface coal mining permit.

F. Section 8 of the National Park System General Authorities Act of 1970, as amended {90 Stat. 1940, 16 U.S.C. 1-5), directs the Secretary to prepare an annual report to Congress which identifies all National Historic Landmarks that exhibit known or anticipated damage or threats to the integrity of their resources. In addition, National Historic Landmarks may be studied by NPS for possible recommendation to Congress for inclusion in the National Park System.

G. Section 9 of the Mining in the National Parks Act of 1976 (90 Stat. 1342, 16 U.S.C.1980)l directs the Secretary of the Interior to submit to the Advisory Council a report on any surface mining activity which the Secretary has determined may destroy a National Historic Landmark in whole or in part, and to request the Advisory Council's advice on alternative measures to mitigate or abate such activity.

New York State Historic Preservation Office

New York's State Historic Preservation Office (SHPO) helps communities identify, evaluate, preserve, and revitalize their historic, archeological, and cultural resources. The SHPO administers programs authorized by both the National Historic Preservation Act of 1966 and the New York State Historic Preservation Act of 1980. These programs, including the Statewide Historic Resources Survey, the New York State and National Registers of Historic Places, the federal historic rehabilitation tax credit, the Certified Local Government program, the state historic preservation grants program, state and federal environmental review, and a wide range of technical assistance, are provided through a network of teams assigned to territories across the state. The SHPO works with governments, the public, and educational and not-for-profit organizations to raise historic preservation awareness, to instill in New Yorkers a sense of pride in the state's unique history and to encourage heritage tourism and community

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revitalization.

The SHPO reviews a variety of properties and projects, ranging from housing to accessibility to new additions. Property types include historic buildings, bridges, parks, canals, monuments, and archeological sites. SHPO review is triggered through its state and federal programs, such as historic preservation environmental review or various incentive programs. Projects are evaluated using the Secretary of the Interior's Standards for the Treatment of Historic Properties².

The standards promote the retention of historic features and materials and offer guidance on specific preservation treatments and approaches. The goal of the standards is to ensure the long term protection of historic properties.

Technical Preservation Guidance

- Preservation Guidance, Buildings and Structures: Exteriors
 - Roofs
 - Masonry: Cleaning, Repointing and Repair
 - Cladding and Siding
 - Windows
 - Storefronts
 - Rooftop Additions
 - Parking Additions
 - Demolition
- Preservation Guidance, Buildings and Structures: Interiors
 - Floorplans
 - Design Features, Materials and Finishes
 - New Interior Construction and Related Demolition
- Project Documentation
 - Photographs
 - Plans
 - Narrative

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- Project Checklist
- Preservation Guidance: Historic Landscapes
 - Topography
 - Vegetation
 - Circulation
 - Buildings and Structures
 - Site Furnishings and Objects
 - Spatial Organization and Land Patterns

SHPO website has the following links

- [Weatherization Tool Kit for Old Homes \(pdf\)](#)
- [Important Changes to the NYS Rehabilitation Tax Credit for Commercial Properties](#)
- [Nominations Under Consideration for December 7, 2010](#)
- [New State Historic Preservation Tax Credits](#)
- [New York State Tax Credit Forms \(pdf\)](#)

Westchester County Office of Planning Historic Preservation

The Planning Department provides the following information and services related to historic preservation activities in Westchester County

- Incorporate historic preservation issues into Planning Board Report and Capital Planning process.
- Develop appropriate treatment of significant buildings and sites.
- Monitor design and construction of Capital projects to assure protection of historic character to greatest degree possible. Facilitate New York State Historic Preservation Office Review of projects involving National Register-listed and eligible properties.
- Maintain countywide list of properties on the New York State and National Registers of Historic Places, and list of sites on the [Westchester Inventory of Historic Places](#).
- Implement special historic preservation projects as directed by the County Executive.

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- Coordinate efforts of citizen groups such as the Historic Preservation Advisory Committee and the Bronx River Parkway Reservation Conservancy.

Historic Preservation Advisory Committee

The Historic Preservation Advisory Committee serves the County of Westchester by assisting the County to identify and preserve historic and archeological resources on County-owned property, thereby enhancing the value of these cultural resources.

The Committee consists of citizen members, possessing expertise in fields related to historic preservation, that are appointed by the County Executive, along with representatives from the County Government serving in an ex-officio capacity. The Department of Planning provides staff for the Committee.

IMPLEMENTATION OF MISSION

In cooperation with the County administration and other appropriate organizations, the Committee seeks to advance its mission by:

- Reviewing Capital Budget requests involving historically significant County-owned properties and making recommendations and suggestions to the appropriate County Board or Department;
- Reviewing Non-Capital Budget proposals or plans involving historically significant County-owned properties that originate within the County government, or from the general public, and making preservation related recommendations regarding such proposals and plans;
- Reviewing [Westchester County Inventory of Historic Places](#) applications and recommending properties for Inventory listing to the County Executive;
- Reviewing applications and evaluating requests for archeological field investigations on County-owned property.
- Initiating programs and projects, as practicable, to facilitate the above activities while raising agency and public awareness of the value of the County's cultural and historic resources.