

Using New Tricks to Help the Old Dog

Electronic Resources for Legal Research in Historic Preservation Law

By Lance M. Werner and Nicholas L. Bozen

America is rich in history derived from myriad perspectives. Her history is embodied in a variety of media, from paintings to texts and from city plans to architectural styles. The U.S. Congress, state legislatures, and local legislative bodies have recognized the need to preserve and protect the nation's historic resources. As a result, legislatures have adopted a plethora of laws to ensure that historic resources are protected today and for generations to come.

This article is meant to furnish a brief overview of electronic legal resources. It will address historic preservation law and, more specifically, resources relating to the administrative appeals process in Michigan. The primary areas for discussion are procedural resources, local or municipal resources, and state and federal resources.

Procedural Resources

The Local Historic Districts Act (LHDA)¹ authorizes aggrieved applicants to appeal adverse decisions of local historic district commissions. Administrative appeals are filed with the State Historic Preservation Review Board (Review Board), which is housed in the Michigan Department of History, Arts and Libraries (HAL). While these hearings are designed to enable applicants to represent themselves, quite often, attorneys will represent one or both parties. Knowledge of the applicable historic preservation law is critical to success in these cases.

A variety of readily available electronic resources gives guidance about the procedural aspects of the contested case process. Much of the legal authority that pertains to the procedural aspects of these hearings comes from the Administrative Procedures Act (APA).² The APA text can be accessed electronically at www.legislature.mi.org. Re-

searchers can conduct a Public Act MCL Search by entering the public act number and year where prompted.

The Office of Regulatory Affairs (ORA) in HAL offers an excellent self-help guide describing how to appeal adverse decisions of local historic commissions. The guide is available at http://www.michigan.gov/documents/hal_mhc_shpo_How_to_Appeal_HDC_Decision_128679_7.pdf. HAL also offers a list of historic preservation links, which may be used by anyone conducting research or who has interest in historic preservation and historic preservation law. The list is available at http://www.michigan.gov/hal/0,1607,7-160-17449_18638-58304--,00.html. Additionally, it is possible to obtain copies of prior administrative decisions by submitting a Freedom of Information Act (FOIA)³ request to the HAL FOIA coordinator. Lastly, ORA is in the process of developing an electronic case index, which should be available in December 2008. The index should enable researchers to narrow the scope of case requests.

The State Historic Preservation Office (SHPO), a division of the Michigan Historical Center, an agency in HAL, is another invaluable source of information for anyone researching the law on historic district formation and administration. The SHPO website can be accessed at http://www.michigan.gov/hal/0,1607,7-160-17445_19273_19318--,00.html. It contains infor-

mation regarding the establishment of local historic districts and historic preservation financial incentives, e.g., state and federal tax credit eligibility, among other things.

Local Resources

Practitioners should note that each local historic district is also governed by local ordinance and code provisions and, in many instances, by local design and review guidelines. The local historic district itself and work performed within the district on historic district assets fall within the purview of commissions, which apply local ordinances and codes. It is possible to access many of these local ordinances online through the Municipal Code Corporation website at www.municode.com. Occasionally, municipalities will make their respective codes and ordinances available online at their own websites. Descriptions of local historic districts can also be obtained on request from the SHPO, but individual municipal websites remain a good source for researching local design promulgation.

State Resources

The enabling state law pertaining to local historic districts in Michigan is the LHDA. Once again, the Michigan legislature's website serves as a valuable resource for obtaining Michigan statutory law. The LHDA

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can also be accessed at www.legislature.mi.gov by entering 399.201-399.215 in the MCL search box.

The State Office of Administrative Hearings and Rules (SOAHR), an autonomous body in the Michigan Department of Labor and Economic Growth, is the agency responsible for conducting administrative hearings on behalf of the Review Board. SOAHR's website has a variety of information available, including administrative rules, hearing calendars, and decisions, and is available at http://www.michigan.gov/dleg/0,1607,7-154-10576_35738---,00.html.

Federal Resources

Federal historic preservation law can be readily accessed electronically. The National Historic Preservation Act⁴ can be viewed at the Cornell Law School LII/Legal Information Institute website at http://www4.law.cornell.edu/uscode/html/uscode16/usc_sup_01_16.html and the Government Printing Office (GPO) website at http://www.access.gpo.gov/uscode/title16/chapter1a_subchapterii.html.

The National Park Service and National Register of Historic Places website at <http://www.nps.gov/nr/index.htm> may also be of use to legal researchers. There is a great deal of information available on the website, including information for owners of historic properties and how to get recognition for a property.

The Code of Federal Regulations (CFR) sections that prescribe historic preservation work can be obtained at the GPO Access site at <http://www.gpoaccess.gov/cfr/index.html> by entering the search term "historic" or the citation "36 CFR 67" using the "retrieve by citation" search option. These rules reference the Secretary of the Interior's Standards for rehabilitation, which can be found online at http://www.nps.gov/history/hps/tps/standards_guidelines.htm.

Historic preservation briefs may also be of use to legal researchers. The briefs offer guidance to owners, developers, and others regarding specific types of work on historic resources in relation to the Secretary of the Interior's Standards. They can be found at <http://www.nps.gov/history/hps/TPS/briefs/presbhom.htm>.

Some historic preservation decisions are available online. D.C. Historic Preservation Decisions: Mayor's Agent Decisions are available on the Georgetown Law Library website at <http://www.ll.georgetown.edu/histpres/decisions.cfm>. The Georgetown Law Library website also has a useful compilation of historic preservation law resources available at http://www.ll.georgetown.edu/histpres/other_hp_law.cfm. Federal historic preservation case law is available for the time period of 1996 to 2000 through the Advisory Council on Historic Preservation website at <http://www.achp.gov/pubs-caselaw.html>. Although not binding in Michigan, the Mayor's Agent decisions are extrinsically indexed and are issue searchable. They can give practitioners a good idea about how the Secretary of the Interior's Standards are applied nationwide, including in Michigan.

The U.S. Department of Agriculture, National Agricultural Library, Rural Information Institute Historic Preservation Resources website has an extensive list and links to a variety of resources concerning historical preservation and related topics and can be found at <http://www.nal.usda.gov/ric/ricpubs/preserve.html>.

Conclusion

Historic preservation law is relatively new. Judicial guidance really took hold in the late 1970s with the issuance of the nation's seminal historic preservation case, *Penn Central Transportation Co v City of New York*,⁵ in which the Court upheld the application of New York City's Landmarks Preservation Law to Grand Central Termi-

nal. The Court affirmed the city's denial of requests to demolish a portion of the terminal and construct a 55-story office building above it.

While researching this developing area may be difficult at times, the benefits will be well worth the effort. ■

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FOOTNOTES

1. MCL 399.201 *et seq.*
2. MCL 24.201 *et seq.*
3. MCL 15.231 *et seq.*
4. 16 USC 470 *et seq.*
5. *Penn Central Transportation Co v City of New York*, 438 US 104; 98 S Ct 2646; 57 L Ed 2d 631 (1978).