

Montevallo Historic Preservation Commission

Minutes

Nov. 15, 2022

6:00 pm

City Council Chamber

Members Present:

Veronica Bailey

Melinda Nix

Bill Glosson

Susan Godwin

Anitka Stewart Sims

Valerie Johnson

Sherry Valides

Kathy King

Call to Order:

- Establish quorum: 6:04 pm
- Approve minutes: 6:06 pm

Chair's Reports:

- CLG annual report (due Dec. 1, 2022)
 - Discussion / collation of information needed for report
- CLG grant funding cycle
 - Discussion of deadlines
- Shoal Creek Graveyard GPR survey
 - Shoal Creek Foundation Board Cemetery Committee and archaeologist inspected the site
 - Discussion of timing for clearing, supervision, volunteer opportunities to assist
 - Fundraising for restoring and maintaining the cemetery

Other Reports:

- Aldrich listing in the Alabama Places in Peril program (Veronica)
 - No updates
- Prentice marker (Melinda)
 - No updates
- Design standards review and section 106 (Susan)
 - Local HPC authority drawn from Police power connected to US constitutional authority (See Appendix 2, page 2 and first paragraph page 3))
 - Video on Section 106 of NHPA
 - <https://mylearning.nps.gov/library-resources/section-106-nhpa/>
 - “The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.”
 - See Appendix 1, Section 106 of the National Historic Preservation Act: Video Transcript
 - Discussion of planting by Main Street, discussed by Arbor and Beautification Board, around the Montevallo Main Street Post Office

- Concern that a landscaping decision might merit a Section 106 review
- Motion to request Chair to clarify with AHC whether a Section 106 review is required; if it is required, to then request planting delay
 - Motion passes; vote is unanimous

New Business:

- African American Heritage Trail – request to consider earmarking some of the funds for creating plaques for following churches: Shiloh Baptist, Wards Chapel, maybe Epsibeth Church?
 - Cost is \$575 per plaque, including installation
 - Plaques can be installed / posted on interiors or exteriors of the churches; first step is to consult with pastors of the churches
 - Discussion of steps and procedures
 - Historical info will be circulated via email by Anitka Sims for HPC review – decision at January meeting
 - Motion: Johnson; second: Godwin
 - Vote is unanimous: motion passes
 - Suggestion to include Epsibeth Church on Places in Peril and endangered properties list
 - Discussion of Planning and Zoning information relevant to the Aldrich area
 - Suggestion to get Aldrich designated as a historically protected area or historic district – Epsibeth as the central property

Adjournment: 7:41 pm

Next meeting: 10 Jan. 2023

Appendix 1:

SECTION 106 of the NATIONAL HISTORIC PRESERVATION ACT

Video transcript

Source: National Park Service

Scattered within a marshland off the New Jersey Turnpike, only a few miles from New York City, lies all that remains of one of the largest, most expensive and awe-inspiring buildings ever built. These are the ruins of the once grand Pennsylvania Rail Station. Artists, writers and film makers from JD Salinger to Alfred Hitchcock were so inspired by the architecture that they designed entire scenes around the building just to include it in their works. As the gateway into New York City, it symbolized all the prestige and grandeur of the city at the height of its acclaim. But then in 1963, in the name of progress, Penn Station was torn to the ground.

Vincent Sculley lamented over the loss. “Through it, one entered the city like a God. One scuttles in now like a rat.”

With no preservation movement existing at the time to defend it, Penn Station was quickly reduced to rubble, trucked out of the city and dumped in a New Jersey landfill, where much of it remains to this day. The loss of Penn Station created an outcry across the country, the effects of which we still feel today. New Yorkers were so distraught over the loss that they immediately passed the Landmarks Preservation Law, saving other historical buildings throughout New York.

“Maybe we had to lose something as important as Penn Station”, said Paul Goldberger, architecture critic for New York magazine. “I sometimes think of it as the building that died so that others might live.”

New York's Landmark Preservation Law was a direct inspiration for the National Historic Preservation Act, which expanded those same protections for historical sites across the United States. Section 106 of the National Historic Preservation Act charges the National Park Service with preserving and protecting America's story. Whenever the National Park Service has a project involving federal land or funding, Section 106 must be done. It also applies to any cultural resources listed on or eligible for the National Register of Historic Places. The mission is to protect our history by ensuring that no historical structure or landscape will ever again be lost through lack of planning or foresight.

While the impact of destroying the historic landmark like Penn Station is obvious, many small and often well intended projects in our parks could have similar unforeseen consequences. Digging a hole for a fence could accidentally cut through an ancient grave. A new comfort station situated in a battlefield could affect the view. A new trail could lead to a

sensitive resource such as an archaeological site. The grass you are maintaining never existed historically and could change the landscape. A new road had shoulders and a pull out that could impact an archaeological resource. Painting the historic building a new color or adding modern windows may change the historic character. The Section 106 compliance process must be followed for every project. It is for improvements as well as demolitions, for routine maintenance and upkeep as well as new construction, for small projects as well as for big ones. Section 106 matters because our history matters. It protects structures like Penn Station from ever being lost again without first ensuring careful and thoughtful study. Following the 106 process represents the respect we have for our resources and the guarantee that they will be protected for future generations. It is fundamental to how we, the National Park Service, fulfill a primary part of our mission to preserve unimpaired our cultural resources for the enjoyment, education and inspiration of this and future generations.

<https://youtu.be/KyZ9-XpRiJA>

Appendix 2:

BASIC CONCEPTS

Commission Authority

The first issue facing any local historic preservation commission is whether it has the legal authority to act. If it doesn't, its actions will be determined to be null and void when challenged, and every commission member will have wasted his or her time. So where does a historic preservation commission get its authority to make decisions affecting the property of other individuals and organizations in the community?

The Tenth Amendment of the United States Constitution provides that, "The powers not delegated to the United States by the Constitution, nor prohibited

by it to the States, are reserved to the States respectively, or to the people." One of those powers **not** held by the Federal government, but reserved to the states is known as the *police power*. Based on the Latin maxim *sic utere tuo ut alienum non laedas* (so use your own property as not to injure another's), the concept is of Anglo-Saxon origin and was adopted by the American colonies from British common law. Basically, it can be described as the power of a government to provide for the public health, safety, morals, and general welfare of its citizens. As Justice Douglas stated in the famous Supreme Court decision of *Berman v. Parker*, 348 U.S. 26 (1954), in probably

the most eloquent defense of the police power ever written:

The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.¹

States exercise the police power by passing laws and adopting regulations affecting such matters as public health, environmental protection, building safety, and zoning. Historic preservation, too, falls within the scope of the police power.

Every state has enacted some form of historic preservation legislation, and many state courts have upheld the regulation of individual properties and areas having special historic, architectural, or cultural significance.

The U.S. Supreme Court explicitly recognized preservation as a legitimate government purpose within the scope of the police power in *Penn Central Transportation Company v. City of New York*, 438 U.S. 104 (1978). In that case the Court upheld the constitutionality of

What Does That Mean?

In reading this publication or cases cited here, you may encounter unfamiliar legal terminology. Legal dictionaries are available in your public library and there are several searchable Internet sources for legal definitions. Two sites that are simple to use are:

Lawyers.com — based on Merriam-Webster's Dictionary of Law 2001: www.lawyers.com/legal_topics/glossary/index.php

Law.com — with three different search methods for finding words: <http://dictionary.law.com>

References to cases and statutes mentioned in the text are in the technical language of legal citation. Professor Peter W. Martin of Cornell University has produced a useful online guide to help you decipher these strange "hieroglyphics:" www.law.cornell.edu/citation/

the New York City landmarks ordinance and the city's denial of the railroad's request to build a 55-story office tower above historic Grand Central Terminal. The Court's majority observed that it is "not in dispute" that "States and cities may enact land-use restrictions or controls to enhance the quality of life by preserving the character and desirable aesthetic features of a city."²

But how does local government get into the business of exercising the police power? It comes as a surprise to many people to learn that the United States Constitution makes no mention of cities, counties, school districts, or any other forms of local government. Rather, the form, number, powers, and other matters pertaining to local government structure and administration are left up to the individual states themselves. As so-called "creatures" of the states, local governments owe their very existence to the state governments of which they are a part (whether they like it or not!).

In interpreting the powers that have been given to local governments by the states, the courts initially adopted a very restrictive view. This bias against local government power was essentially codified in an 1868 Iowa case, *Merriam v. Moody's*

Executors, 25 Iowa 163 (1868). Written by Judge John Dillon, a recognized expert on local government law, his pronouncement came to be known as *Dillon's Rule*:

[A] municipal corporation [i.e., city] possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable; fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation—against the existence of the power.³

Although Dillon's Rule is couched in terms of "municipal corporations," the concept—and bias—has applied historically to counties and other forms of local governments (townships, boroughs, etc.) as well.

This restrictive view toward local government power was the prevailing sentiment in most state legislatures for generations, but, as the needs of urban residents grew more extensive and complex over time, the idea

took hold and grew that matters of "local concern" could and should be delegated down to the local governments themselves.

The course of this path differed from state to state, but the overall trend throughout the twentieth century was toward more local control. In many cases, this new approach involved changes in the state's constitution. Some states adopted very broad and generous provisions delegating significant powers to local governments over revenue-raising, form of government, and other key factors, while others took modest or even confused steps.

Many state legislatures were willing to entertain seriously the notion of a true partnership with local governments, one in which the powers and responsibilities of governance were shared in a significant and meaningful way. Others continued to apply a strict standard of limited local government powers.

In terms of historic preservation commissions, what this legal backdrop means is that not only local law but also state law must be consulted to determine the extent to which commissions have been empowered to regulate historic property. If there is doubt about the existence of this power, the courts may rule against the commission. Commission members should