

PRESERVING PENNSYLVANIA'S HISTORY

Townships Must Consider Historic Resources When Planning for Future

Land use planning is a major concern in many townships today and requires elected officials, planning commissions, and others to carefully weigh development gains against open space losses. However, natural features are no longer the only resources townships must consider when planning their communities' future. Under Pennsylvania law, townships must also take into account the preservation of historic resources in the course of land use planning.

BY SAMUEL C. SLAYMAKER III, ESQ. /
SLAYMAKER HERITAGE LAW

Land use and open space planning are hot topics in many townships these days. In fact, developers often run up against a community's desire to preserve its green spaces and rural character. It is less common to hear that citizens are resisting development because they fear a loss of historic resources. Yet, under Pennsylvania law, such as the Local Historic District Act of 1961 and the History Code of 1988, townships are authorized and, in some cases, required to consider the preservation of historic resources when planning future development.

The evolution of historic preservation

The historic preservation movement in America remains a relatively recent phenomenon, as evidenced by the fact that such secular shrines as Mount Vernon and Monticello were simply allowed to deteriorate until pri-

vate restoration efforts saved them in the late 19th century. This may be in part because, until relatively recently, Americans have viewed their country as being "new." Unlike the "Old World" of Europe, with its castles, cathedrals, and ever-present sense of the past, America was focused confidently on the future. There seems to have been a tacit understanding among our predecessors that buildings, regardless of their architectural or historic significance, were inherently impermanent. A similar attitude prevailed with natural resources, which were frequently exploited for private gain without restraint or acknowledgment of the need to conserve them for future generations.

The first American proponents of historic preservation were found among the private patriotic organizations that bloomed in the late Victorian era. They included such groups as the Mount Vernon Ladies Association and Civil War veterans who took steps to preserve battlefields as shrines to their fallen com-

rades. Thus, the initial focus of historic preservation was on buildings and sites associated with great men and events.

The Progressive Era of the early 20th century saw the federal government take its first major steps to preserve America's most significant buildings and historic sites, along with some of the nation's greatest natural resources. President Theodore Roosevelt signed the Antiquities Act of 1906 to designate as national monuments historic structures and sites on federal land, and the National Park Service was established in 1916 to oversee both national parks and federal historic sites.

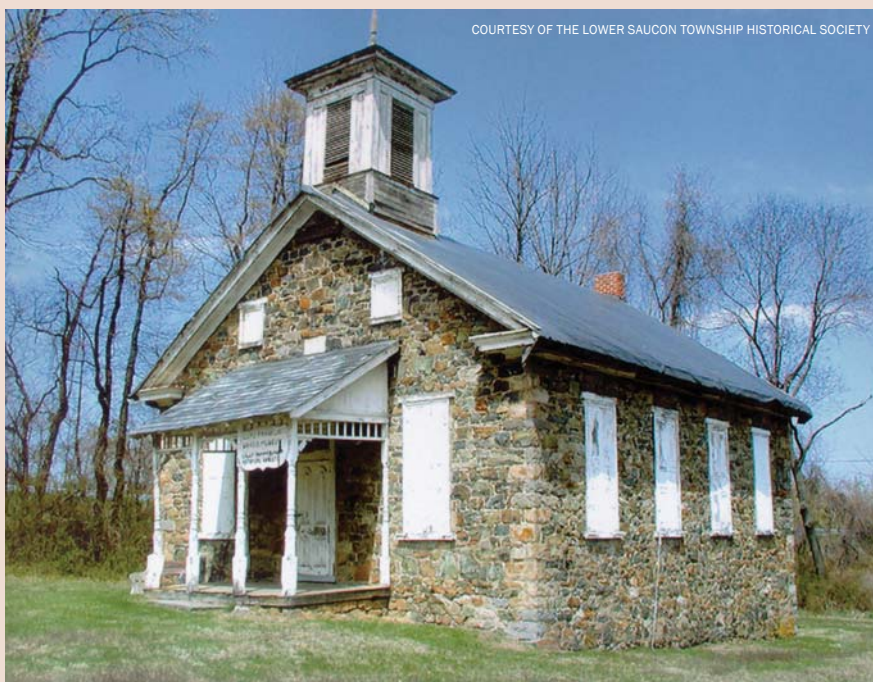
As the 20th century progressed, state governments also began to identify and protect their historic resources. By mid-century, Pennsylvania had established the Pennsylvania Historical and Museum Commission to erect historical markers, oversee a system of state museums, and act as the liaison with the U.S. Department of the Interior for the National Register of Historic Places.

Over the last 50 years, the definition of "historic resources" has expanded from sites and buildings associated with great men and events to a far broader, almost environmental approach. A variety of sites and structures that help us understand how our predecessors lived and worked may now be considered historic resources. Modest structures, once considered insignificant, may be eligible for the National Register of Historic Places if, for example, they are sufficiently related to such phenomena as the Underground Railroad, Pennsylvania's industrial past, or early patterns of settlement.

The focus in the historic preservation movement has gradually shifted from the preservation of individual historic sites to the preservation of those features that provide each municipality with its unique character and identity, or "sense of place." Consequently, historic preservation considerations should play a central role in any comprehensive plan that seeks to maintain the unique character of a community while accommodating growth and change.

Historic preservation in Pennsylvania

The public interest in preserving



Townships are required by several state laws to provide for the preservation of historic areas and structures, such as the 125-year-old Lutz-Franklin schoolhouse in Lower Saucon Township, Northampton County (above), and this historic barn in Gregg Township, Centre County (left).

Historic preservation considerations should play a **central role** in any **comprehensive plan** that seeks to **maintain the unique character** of a community while accommodating **growth and change**.

historic resources and a sense of place is well-established in Pennsylvania law. The Local Historic District Act of 1961 authorized municipalities to "create and define, by ordinance, a historic district or districts within the geographic limit or limits of such political subdivision." The 1971 Environmental Rights Amendment to the Pennsylvania Constitution provides that "The people have a right to clean air, pure water, and to the preservation of the natural, sce-

nic, *historic* and aesthetic values of the environment." (*emphasis added*)

With the enactment of the Pennsylvania History Code of 1988, the commonwealth sought to add "teeth" to the broad provisions of the Environmental Rights Amendment. Among its other provisions, the code charges the state and municipalities with preserving historic resources within their jurisdiction.

For example, Section 507 requires state agencies and political subdivisions

HISTORIC PRESERVATION

Pennsylvania townships are not simply **authorized** to provide for **historic preservation** in their zoning and comprehensive planning — they are **required** to do so.

to notify potential permittees, contractors, and others whose activities may affect archaeological sites that the cost of surveys or field investigations should be included in their bids or permit applications. It also requires those agencies and political subdivisions to notify the Pennsylvania Historical and Museum Commission “before undertaking any Commonwealth assisted, permitted, or contracted projects” that affect or may affect such a site. Virtually any historic site may be considered a potential archaeological site.

In addition, Section 510 of the History Code requires townships to consult with the commission “on the design and proposed location of any project, building, or other undertaking financed in whole or in part by Commonwealth funds which may affect the preservation

and development of a district, site, or building listed on or eligible for the National Register of Historic Places.” This would include any road improvement projects that use PennDOT funding, such as liquid fuels.

Perhaps the most significant provision of the History Code is Section 512, which provides legal standing to any “person or other legal entity” to “maintain an action in an administrative tribunal or court for the protection or preservation of any historic resource in this Commonwealth.” Because the term “historic resource” is not defined in the act and remains largely undefined by appellate case law, this provision would appear to give broad standing to almost anyone who wishes to sue to protect something that he or she considers a “historic resource.”

The Pennsylvania Municipalities Planning Code also contains both permissive and mandatory provisions for historic preservation. Among the permissive provisions are Section 603(b) (5), which states, “Zoning ordinances ... may permit, prohibit, regulate, restrict, and determine protection and preservation of natural and *historic* resources.” (*emphasis added*)

Section 605 permits zoning provisions “for the regulation, restriction, or prohibition of uses and structures at, along, or near ... places having unique historical, architectural, or patriotic interest or value” and allows for the creation of historic preservation “overlay zones” to permit regulations and restrictions on specific classes of historically significant buildings in the township.

Amendments made to the MPC in 2000 include some of the following mandatory provisions:

- “Zoning ordinances shall provide for protection of natural and historic features and resources” [Section 603(g) (2)];
- “The provisions of zoning ordinances shall be designed: 1) to promote, protect and facilitate ... preservation of the natural, scenic, and historic values in the environment” (Section 604); and
- “The municipal ... comprehensive plan ... shall include, but not be limited to, the following basic elements: ... 6) A plan for the protection of natural and historic resources to the extent not preempted by Federal or State law.” (53 P.S. 10301)

A 2002 amendment included the following language to the preamble of the MPC: “It is the intent, purpose, and scope of this act to protect and promote safety, health, and morals ... to promote the preservation of this Commonwealth’s natural and *historic resources* and prime agricultural land.” (53 P.S. 10105)

Consequently, Pennsylvania townships are not simply *authorized* to pro-

DON'T WASTE TIME AND MONEY BIDDING WHEN PIGGYBACK IS AVAILABLE
PURCHASE ON DEPT. OF GENERAL SERVICES CONTRACT #2420-02 OR
LACKAWANNA COUNTY PROCUREMENT CONTRACT—2005

TRUCK EQUIPMENT BODIES

READING—GALION
RUGBY—TENCO—BIBEAU
BUCKS LIFT & GO—ROLL-OFF

PLOWS

WESTERN-TENCO—HENDERSON
GOOD ROADS

SPREADERS

WESTERN-TENCO—HENDERSON
GOOD ROADS-BUYERS

MISCELLANEOUS

CHAINS—PLOW EDGES—SIGNS
CULVERT PIPE—LIFTGATES
CRANES—EMERGENCY LIGHTS

CONSTRUCTION EQUIPMENT LOADERS

DAEWOO—TERRAMITE
BOXER—KANGA—GEHL

ASPHALT PAVERS-ROLLERS

GEHL—STONE

EXCAVATORS

GEHL—DAEWOO—BOXER

TRAILERS

CROSS-COUNTRY

CHIPPERS-LEAF BLOWERS

ELITE

RAKES-BROOMS

YORK—SWEEPSTER



SALES
SERVICE

1305 JUSTUS BLVD. CLARKS SUMMIT PA. 18411
PHONE 1888-44POWELL—FAX 570-586-6553
WWW.POWELLSEQUIP.COM

vide for historic preservation in their zoning and comprehensive planning — they are *required* to do so.

Taking some preventive measures

Many townships have been slow to respond to this historic preservation mandate, perhaps because no definite compliance time frame has been established or because the liability for noncompliance with environmental issues, such as wetlands, is far better established in the public consciousness.

Nevertheless, the potential for litigation under Section 512 of the History Code remains wide open, and townships should consider taking some preventive measures. The first step should always be to inventory and categorize the historic resources of your area.

Although some townships have sought to do so by setting up citizen-based historic commissions or advisory groups, this approach can be problematic. Sole reliance on amateur historians to document, inventory, and classify a township's historic resources can lead to unreliable and inconsistent results that are open to subsequent challenge. Furthermore, inventories should be prepared with the future drafting of comprehensive plans and zoning ordinances



COURTESY OF THE SOUTH SIDE HISTORIC VILLAGE ASSOCIATION

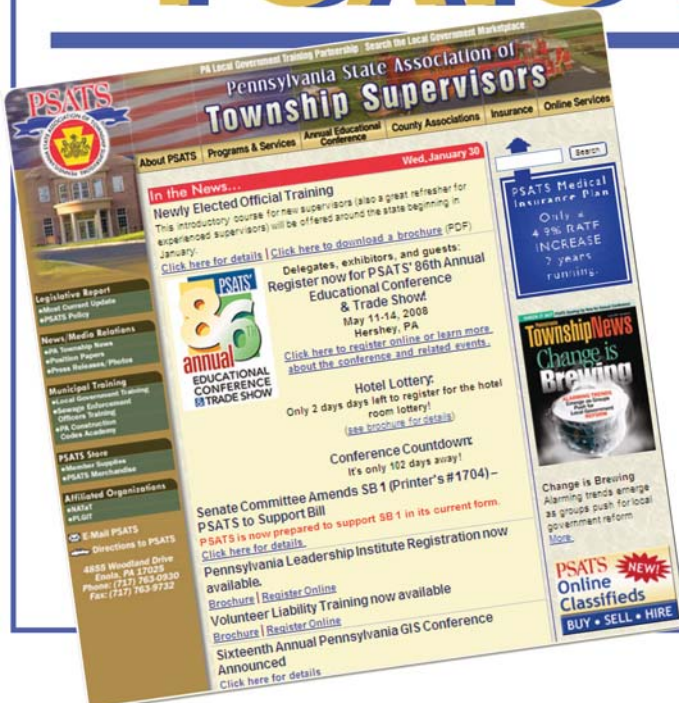
Greene Township in Beaver County took a hands-on approach to historic preservation by working with a local group to preserve an old school, blacksmith shop, and several log cabins to create the South Side Historic Village.

in mind, so it makes sense for townships to seek the services of professionals when undertaking this process.

Our commonwealth's rich cultural heritage surrounds us each day in the cities, boroughs, and townships in which we live and work. Pennsylvania's townships should view the preservation of this "sense of place" for future generations not as a burden, but as a sacred trust. ♦

Editor's note: The author, Samuel Slaymaker III, is the founder of Slaymaker Heritage Law in Lancaster, which provides counsel and representation in legal matters relating to the preservation of the historic, natural, and agricultural resources of southcentral and southeastern Pennsylvania.

PSATS ONLINE



**CHECK OUT PSATS
ON THE WEB AT
www.psats.org**

Find out what's happening in Harrisburg that could affect your township.

Download brochures. Register for training. Search *Township News* archives.

Plus, check out our new Online Classifieds.

And that's just the beginning!

Log onto **www.psats.org** today!