

HISTORIC PRESERVATION IN UNINCORPORATED COMMUNITIES

by

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(Under the Direction of John Waters)

ABSTRACT

Unincorporated communities across Georgia face unique preservation challenges. These communities often have few people and a population that may be spread over a wider area than municipalities. Also, the leadership for these areas is usually based somewhere else. This thesis examines their unique situation and some potential solutions. The proposed solutions may not work everywhere, but they are options that have not been used widely, or at all, by unincorporated communities in Georgia.

INDEX WORDS: historic preservation; unincorporated communities; preservation law; preservation planning; counties

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Chapter 1

Introduction

Topic

This paper examines historic preservation in unincorporated areas of Georgia. Three different preservation methods are examined. Also included is a broader list of recommendations to help county governments as they work to preserve their jurisdiction. Appendix A includes a Glossary of Terms to help make the thesis as clear as possible. Please note that for the purposes of this paper, the term local government means the county government unless otherwise made clear. The methods included are far from an exhaustive list of everything that can be done to protect these areas. Rather, these are ideas that are either new to the preservation playbook or that have been around for awhile but are underused. This paper seeks to argue for why these tools are important and to show that, when used correctly, they can work to help preserve historic resources in unique and creative ways.

Why This Topic?

In 1993, the Georgia General Assembly passed a law that changed what it meant to be a city in the State of Georgia. Under the new law, in 1995 and thereafter a city must meet three conditions to maintain its charter. First, the city must perform a minimum of three services from a prescribed list. Second, it must hold at least six regular, officially recorded public meetings in a year. Finally, the city must have held or show that it could hold regular municipal elections. This change in the law meant that in 1995, 187 cities lost their charter thereby reducing the

number of municipalities in Georgia from 724 to 537.¹ This left the historic resources of many former municipalities largely unprotected. Even though all of the cities that lost their charters were small, when they were cities they were the focus of local planning used regularly by leaders who were responsible for the administration of local government. People were there because these communities were the center of local government and they used the historic sites and buildings and maintained them the best they could. After these cities lost their charter, many of these ex-municipalities simply died. These ghost towns litter the rural Georgia landscape and are often poorly looked after or simply forgotten because county governments do not care, feel as though they are helpless to protect them, lack the funding needed to care for them or are unaware of the importance of these areas. Two years of work with local governments for the Georgia Department of Community Affairs Office of Planning and Quality Growth has helped the author to better understand problems. Given that experience, the preservation options included in this paper are presented as the most viable for unincorporated communities in Georgia.

Research Methodology

Material from a wide variety of print, media and web resources were used in researching and writing this thesis. Each community included here was chosen after researching several different possibilities. In the end, the communities who had best documented their process and presented their product in the clearest and most relatable ways were chosen. In the preservation plan chapter Beaufort, SC and Madison, GA were chosen as case studies because they are small, southern cities whose governments have clearly laid out the purpose and scope of their work and presented their plan in a concise and usable format. Other plans from across the country were

¹ Chambers, Raymond L. "Municipal Services." <http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-2865>. GeorgiaEncyclopedia.org, 9 July 2004. Web. 13 June 2010.

examined, but these two case studies seemed to best exemplify the types of resources and issues and opportunities that are often present in Georgia. Chicago was used as the example in the chapter on demolition delay ordinances because the process leading to adoption of the ordinance as well as the effectiveness of their ordinance was well documented by both the city and the media. Other local governments with demolition delay laws were researched including Boston, MA; Montgomery County, Maryland; and, New Castle County, Delaware, but these places had little information about what led them to pass the ordinance and no information about its effectiveness. Additionally, Chicago's ordinance was one of the most comprehensive ordinances examined.

In the chapter on special use districts, laws and case law from North Carolina were used. Georgia's laws relating to the topic were examined first but are too convoluted to use in this thesis. Next, the laws of states with more established land use regulations were examined including New York, California, Illinois and Massachusetts. However, these are states that have embraced stricter land use controls in a way that Georgia may never do. Because of this, the structure of their laws and the assumptions on which many of the court opinions were reached simply made it difficult to liken these examples to Georgia. Finally, more rural, southern states were researched including South Carolina, Alabama and North Carolina. North Carolina was chosen because their laws are clear, easy to understand, and their history and attitude towards land use is similar to Georgia's.

This thesis explores three key elements to protecting historic resources in unincorporated areas, one of which is non-regulatory in nature while the other two are regulatory in nature. The following sections are designed to give context to the regulatory topics.

Recommendations

As an additional resource for those county governments seriously interested in the protection of historic resources, the following steps are recommended. Recommendations 1-4 are the most critical and are necessities if the community is serious about protecting their historic resources. Implementing the following steps will help any local government to create a well-rounded historic preservation program. However, only three of these options – historic preservation plan, special use districts and demolition control ordinances – are discussed in this thesis.

Figure 1: Summary of Recommendations

1. Create a preservation planner position within the county planning office
2. Appoint an historic preservation commission
3. Train local government staff as to the best way to protect historic resources
4. Conduct a historic sites survey
5. Create a preservation plan
6. Adopt historic preservation ordinances, which establishes a county preservation commission
7. Adopt design guidelines for historic districts and neighborhoods

1. *Create a preservation planner position within the county planning office –*

A county may have adopted the best ordinances, policies and plans to protect their historic resources, but without staff to enforce and implement these tools they will be completely ineffective. Knowledgeable staff is an invaluable resource to any local government. Local staff members are the first line of defense for the historic resources

within a local government's jurisdiction because they are the first point of contact within the local government. They are the first to know about a demolition request, applications to alter historic structures and applications to build in close proximity to historic resources. Having a preservation planner on staff can provide not only a knowledge base within the local government, but also ensures that there is a person who is paying attention to the fate of the community's historic resources.

2. *Appoint a historic preservation commission –*

A historic preservation commission (HPC) is usually created through the adoption of a local historic preservation district ordinance and should act as the eyes and ears on the ground for the preservation effort in a local government. Under state law this group may have the power to prepare a historic resources survey, recommend structures or areas to be designated historic sites or districts, review applications for certificates of appropriateness, recommend that a structure or district lose its historic landmark or district designation, restore or preserve historic structures owned by the local government, conduct an education program on local historic resources, investigate as necessary matters related to historic preservation, seek state and federal funds for historic preservation, consult with the Georgia State Historic Preservation Office and submit to the state a list of designated historic properties or districts.² The local HPC potentially has considerable power and responsibilities to help the local government preserve its historic resources. Members of the HPC should have prior relevant knowledge, and interest in historic preservation and should be energetic enough to commit to the

² O.C.G.A. §44-10-25 (1993).

responsibilities of the job as a volunteer. A well run HPC can be an invaluable resource to a local government.

3. *Train local government staff on best management practices to protect historic resources–*

If a local government is committed to preserving its historic resources, it is critical that staff understand the importance of the historic sites and either know how to take care of them or know where to find help. The Historic Preservation Division, Department of Community Affairs and the local Regional Commission all have staff and resources to help local governments protect their historic resources. Without the support and understanding of staff any historic preservation efforts will stall or fail.

4. *Conduct a historic sites survey –*

A historic sites survey will help the local government to identify and gather information on all of the resources present. The survey should include location of the resources; architectural style and details; massing; and, description and estimated, or exact, date of construction. All structures 40 years of age and older should be surveyed. Because structures and sites 50 years of age and older are eligible for the National Register of Historic Places surveying sites that are 40 years old gives the survey a longer shelf life. Both the process of gathering information and then the dissemination of the survey after it is completed will help to increase awareness of the presence and importance of historic resources. Information gathered in the survey provides an inventory of historic resources that may be used in all future preservation efforts. The survey can help to prioritize the use of resources and identify districts or individual structures that may be eligible for national, state or local designation.

5. *Create a preservation plan –*

A preservation plan should guide and lead the local government's preservation efforts for 15 or 20 years. This is a long-term document that establishes the local government's vision for its resources and identifies ways the local government can preserve its history. To ensure that the plan remains current, it must be updated regularly. Updates should be completed every 5 years or as made necessary by changes within the community. In this document the local government, with input from citizens, identifies issues and opportunities for preservation, sets priorities for preservation projects in the future and identifies ways to raise funds to complete these projects. This should be a living document in that it will need to be revisited at least every 5 years to make sure it is still up to date.

6. *Adopt historic preservation ordinances, which establishes a county preservation commission –*

A well-written and enforced historic preservation ordinance is an invaluable tool to a local government. This is the document that gives the legal authority to protect historic structures. There is certainly much to be said for negotiating, finding compromises and setting policies to help guide people in their treatment of historic structures, but if a local government decides that some things absolutely must be done to protect their historic resources, then this needs to be set forth in a historic preservation ordinance.

- a. A basic historic preservation ordinance will establish a Historic Preservation Commission and set forth the way in which individual properties or districts will be given landmark status and increased protection. Other types of provisions or supplemental ordinances may also be used here. These include

overlay districts as part of the zoning code, special use districts and demolition delay ordinances.

- b. Historic preservation overlay districts will establish historic districts within the local government and set forth the standards and architectural controls required to protect the resources therein. Establishing local districts and landmarks is the way in which a local government lets citizens and visitors know that a place is important and that the city values it and wants to protect it. The way in which a local government grants a property or district landmark status is established in its historic preservation ordinance. Because listing on the National Register of Historic Places offers little in the way of actual protection for a resource, a local historic preservation district overlay is the only way a community can actually protect its resources. Local districts and landmarks should be treated differently than other areas in terms of site design, building design, materials, renovation work, etc. The historic preservation ordinance and design guidelines will establish these criteria.

- c. Special Use Districts are another way a local government can protect an entire district. Establishing this type of district can help protect not only the physical historic resources within the district, but also the historic character of the area. By establishing this type of district, a local government may set forth standards for maintaining a mix of uses and walkability, for example. In rural areas, the special use district can help protect farmland and therefore the historic character of the district.

7. *Adopt design guidelines for historic districts and neighborhoods –*

Design guidelines for historic districts are advisory, not regulatory, in nature, and they provide concrete guidelines and treatments for historic structures. Design guidelines are adopted by the local government as official policy and are used to help property owners understand how the local government wants its historic properties and districts treated. Because design guidelines are not law, they can often be more palatable to a government whose leaders or citizens are skeptical of land use regulations. If the local government has sufficient staff and expertise, it is good practice to encourage or require applicants to go through a design review process with city staff prior to officially turning in their application. During this process, staff can advise applicants as to the ways in which their project is and is not consistent with the local government's design guidelines and vision and help to find solutions that suit both the owner and the local government.

There are many benefits to design guidelines. They provide the HPC with a set of standards for making decisions to make Certificate of Appropriateness decisions to ensure that applicants are treated consistently and fairly. Setting forth these design guidelines helps to ensure uniformity between applicants and decisions and clarifies what is expected of applicants so it is easier to meet the expectations of the HPC. Finally, design guidelines also serve as an education tool to help property owners understand proper techniques for maintaining their property so that they will keep the historic integrity of the property and increase property values.

Legal Basis for Zoning

The power to zone finds its basis in the police power, the duty of the government to protect the health, safety and welfare of the public.³ Courts found that, like nuisances, incompatible or even unattractive development was “inimical to health, morals, and safety.”⁴ While these courts recognized that free use of land is a principle ownership right, they held that an owner could not use his property in such a way that would injure neighboring properties.⁵ An ordinance may be declared unconstitutional in relation to one or more pieces of property if it violates the police powers.⁶ Because the police power lies with the sovereign states, county and local governments have no inherent power to enact zoning regulations. Rather, these governments have only the power to zone as given to them by either their state constitution or their state’s zoning enabling legislation⁷ Some jurisdictions have decided that the power to zone therefore requires a specific delegation of such power from the state constitution. Other jurisdictions have been more lenient and declared that the power to zone is inherent in the delegation of police power from the state constitution and may therefore be implied from those provisions in the state constitution⁸

Georgia provides a rare example in that the entirety of the state’s local zoning power is derived from its constitution. The Georgia constitution reads, “The governing authority of each county and of each municipality may adopt plans and may exercise the power of zoning.”⁹ The

³ 272 U.S. 365 (1926).

⁴ *St. Louis Funning Advertising Co. v. City of St. Louis*, 137 S.W. 929 (Mo. 1911), appeal dismissed, U.S. 761 (1913).

⁵ 258 NYS 229 (App. Div. 1932).

⁶ *Nectow v. Cambridge*, 277 U.S. 183 (1928).

⁷ See e.g., [Perry v. County Bd. of Appeals for Montgomery County](#), 127 A.2d 507 (Md. 1956).

⁸ See e.g., [Town of Hialeah Gardens v. Hebraica Community Ctr., Inc.](#), 309 So. 2d 212 (Fla. App. 1975).

⁹ Ga Const. Art. IX, §II, Para. IV.

constitution does limit Georgia's legislature who, under the provision, may only adopt laws affecting zoning 'procedures. This provision ultimately provides a broad base of authority to local governments within the state of Georgia. The legislature may only tell local governments the procedures by which they must enact whatever types of zoning the local government deems appropriate. In Georgia, local governments have complete authority to zone as long as they follow the state's Zoning Procedures Act. The Act places no further restrictions on types of zoning options available to the counties and municipalities.¹⁰ Courts have upheld the broad power of Georgia's counties and municipalities to enact zoning regulations and have declared this power 'unquestionable.'¹¹ The courts have further held that Georgia's counties have been granted direct authority to enact planning and zoning laws for unincorporated areas.¹² However, the courts have also maintained a balance between this broad grant of authority and the right to free use of private property.¹³ If a zoning plan is found to be clearly arbitrary or capricious or strays too far from the objectives of the police power it will not be upheld.¹⁴ The right to free enjoyment of private property is one of the fundamental rights listed in the Georgia code.¹⁵ But, the courts have held that the state has the ability to deny any citizen any right so long as proper methods are followed.¹⁶

Flexible Zoning v. Euclidean Zoning

Special use districts have emerged as a more flexible solution to the often criticized rigidity of traditional Euclidean zoning. Originally, zoning emerged as a system that involved

¹⁰ Zoning Procedures Law O.C.G.A. §36-66-1.

¹¹ *Forsyth Corp. v. Bishop*, 362 F.Supp. 1389 (M.D. Ga. 1972), aff'd, 482 F.2d 280 (5th Cir. 1973), cert. denied, 422 U.S. 1044.

¹² *Johnston v. Hicks*, 170 S.E.2d 410 (Ga. 1969).

¹³ *Humthlett v. Reeves*, 90 S.E.2d 14 (Ga. 1955).

¹⁴ *Forsyth Corp. v. Bishop*, 362 F.Supp. 1389,

¹⁵ O.C.G.A. §1-2-6(a)(3) (2007).

¹⁶ *White v. Clements*, 39 Ga. 232 (1869).

three basic uses: industrial, commercial, and residential. Within these three broad categories, more specialized subcategories have emerged, for example single family residential versus multi-family residential. As counties began implementing zoning of their own and creating land use maps and comprehensive plans, more broad categories such as agricultural and rural, were added. While this system has its benefits, critics feel that Euclidean zoning is rigid and prohibits too many types of developments. For example, neighborhoods with a mix of commercial, office and residential are often prohibited. The perceived principle benefits of traditional zoning include preservation of property values and a clear delineation of uses. A person may buy their home comfortable in the knowledge that an adverse use will not be built immediately next door. However, this system also has downsides. Historically, towns were built so that people lived close to where they worked, shopped and went to school. Your destination was probably not more than a bike or buggy ride away. Euclidean zoning, on the other hand, requires that uses be separated, which means that there will be a commute between every kind of daily activity. Cities, as a result, have become more spread out, and more pavement and development is needed to accommodate the increased number of drivers. Zoning is, of course, not the only reason for urban sprawl, but it is probably part of the reason cities changed during the 20th century.

Increasingly people have begun to dislike this sprawling style of development and have pushed for different ways of designing and building a neighborhood or city. Development patterns, and thus our lifestyle, have changed over the last century. Euclidean zoning requires a separation of uses so where people historically could live and work in or close to downtown. The rise of the interstate highway system and the popularity of cars made it not only easy, but glamorous to drive. When these factors are combined with the ability to build ever less expensive housing farther and farther from the city center our cities have eaten land at a rate

much faster than their actual population growth. Over time, these factors have created a lifestyle where people must drive everywhere they go resulting in hours a day spent in the car, often in traffic. The huge amount of impervious surface has created environmental issues in the way of water quality, erosion and destruction of critical natural resources. These environmental issues create costs for local governments as they work to mitigate the effects of these development patterns. The loss of tree cover has changed the temperature of these rapidly growing areas, which leads to increased energy demands and costs. As the backlash against sprawl grows, city residents search for different ways of building up their cities and somewhat ironically have often looked to the past for inspiration.

New Urbanism and mixed-use developments are buzz words used by developers to get people to buy into their latest project, but really, most of these ideas come from the way cities were historically built. These types of developments are impossible under the Euclidean zoning model, but as demand for ‘innovative’ types of development grew, so did the creativity of urban planning departments. To accommodate the increased diversity in types of development projects local governments began adopting flexible zoning. The goals of flexible zoning include development that: mixes compatible uses; minimizes infrastructure costs by promoting density and infill development; streamlines the administrative procedure for approval of zoning requests; allows for land uses to respond to market needs and encourages high quality design for both the site and building; and, preservation of natural resources.¹⁷ These objectives seek to cure complaints about traditional zoning procedures and their effects by improving administrative procedures while promoting high quality development that conserves natural and historic resources and keeps infrastructure costs as low as possible. Ultimately, proponents of flexible

¹⁷ [Douglas R. Porter, et al., Flexible Zoning: How It Works \(Urban Land Institute 1988\).](#)

zoning hope to make zoning more effective at achieving the ultimate goals of the local government.

Challenges to Flexible Zoning

Flexible zoning, like traditional zoning, will generally be challenged on one of two grounds.¹⁸ The first of these challenges to a zoning ordinance will often find its basis in the Substantive Due Process Clause of the Constitution's Fourteenth Amendment. The issue will be whether or not the zoning regulation advances the public health, safety, morals and welfare.¹⁹ Beginning with *Euclid*, courts have created a list of goals furthered by a zoning ordinance that would be found to further the goals of the police power. The types of goals that have been upheld as valid exercises of the zoning power include preservation of open space, light and air, and protection from excess noise, vibration, or fumes.²⁰ Further, in *Penn Central* the court found that zoning ordinances designed to preserve the aesthetic and historic qualities of a city or district and its built environment were constitutional and are a valid exercise of the police power.²¹ Courts give wide deference to local governments' zoning regulations and will generally look for any way in which the regulation may satisfy the substantive due process requirement. Even with this deference, courts have found cases where ordinances violated the Due Process clause. Therefore, governments should take care in creating their ordinances to insulate themselves as much as possible from this type of claim.

A second common constitutional challenge is that the zoning regulation results in an illegal taking under the Fifth and Fourteenth Amendments. These claims focus on the idea that the zoning ordinance unfairly deprives the owner of use of his property without just

¹⁸ [Douglas R. Porter, et al., Flexible Zoning: How It Works \(Urban Land Institute 1988\).](#)

¹⁹ [Douglas R. Porter, et al., Flexible Zoning: How It Works \(Urban Land Institute 1988\).](#)

²⁰ [Douglas R. Porter, et al., Flexible Zoning: How It Works \(Urban Land Institute 1988\).](#)

²¹ *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104 (1978).

compensation. In defending against a takings claim, the government must first show that the ordinance advances a public purpose and that the regulation in question is in furtherance of that purpose.²² One type of challenge raises the claim that the regulation is unconstitutional on its face no matter the property to which it is applied. These challenges are difficult to support because rarely will an ordinance be so egregious as to be unconstitutional in every conceivable instance. The more successful challenge claims that the regulation is unconstitutional only as it is applied to the claimant's land.²³ This claim has the greatest chance of success if the regulation denies the landowner of all use of the land. However, courts have found that even if the value of land is severely reduced, so long as there is some value left with the property, the regulation does not constitute a taking.²⁴ While avoidance of these types of challenges is not insurmountable, zoning authorities must take care to enact and implement their regulations in a way that keeps these types of claims in mind.

²² *Nollan v. California Coastal Commission*, 107 S.C. 3141 (1987).

²³ [Douglas R. Porter, et al., Flexible Zoning: How It Works \(Urban Land Institute 1988\)](#).

²⁴ *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001).

Chapter 2

Historic Preservation Plan

Introduction

Often preservation efforts are aimed at a single building or site with little consideration of the surrounding context or other historically and culturally significant resources in the area. The reality of fundraising will dictate that restoration and rehabilitation efforts will continue to happen one or two buildings at a time. However, these efforts will be much more meaningful when completed within an awareness of the entire context in which they existed. Many historic preservation projects are undertaken not by the local government but by individuals or non-profits in the area. One of the responsibilities of government is the stewardship of resources and the development of plans to insure wise use of those resources. By creating a plan for how to treat historic resources, the local government will be able to interact more effectively with these individuals and groups. Because the plan will affect them, both the public and relevant non-profit groups should be included in the planning process. A historic preservation plan incorporates the vision for a community's historic resources. Taking the time to create a thoughtful and realistic plan will save time, money and resources. The plan will guide a local government's investment in protecting their resources. Despite the prevalence of planning in the professional world, preservationists often do not take this step. The idea of historic preservation planning is not new, but it is not widely used. Few governments in Georgia have adopted a plan that systematically outlines how they will preserve and treat their historic resources. By following the guidance of other professionals, preservationists have an

opportunity to integrate planning into their regular activities. Doing this will help save time and resources, raise money and strengthen the profession as a whole as it moves into the future.

Local Planning in Georgia

Every local government in Georgia is required to create a comprehensive plan. If a local government does not have a comprehensive plan that has been approved by the state, it loses its qualified local government status and access to state funding associated with Qualified Local Government status. Comprehensive plans are twenty-year plans that must be updated every ten years. A good comprehensive plan will indicate: 1. existing conditions at the time the plan was written; 2. areas of future growth; 3. the local government's policies to guide growth into the future; 4. areas requiring special attention; and, 5. the boundaries of the local government's character areas. This plan creates a vision for the local government as its community develops and should be used to guide land use decisions. The comprehensive plan process includes data gathering and public input sessions. There should be time at these public input sessions to discuss the local government's vision and goals for its historic resources. This input should guide the historic plan development process. A government's historic preservation plan should be consistent with and supplement the comprehensive plan. The historic preservation plan should extrapolate those goals, issues, opportunities and policies included in the comprehensive plan that relate to historic preservation and create a plan to deal specifically with historic resources.²⁵

Historic preservation issues should be taken into consideration when creating infrastructure plans. Local governments create plans that outline where they will provide

²⁵Lord Aeck and Sargent. "Historic Preservation Plan Update." http://www.cityofbeaufort.org/client_resources/pdf/planning/BeaufortHPPUpdateFinalReport.pdf. City of Beaufort, SC, 2008: 10-14. Web. 13 June 2010.

traditional infrastructure services, such as water and sewer. The high costs of providing infrastructure necessitate the creation of a plan that outlines where these services will be provided. Because new development often locates where infrastructure already exists, these plans also help local governments determine where future development will occur. Ideally, the government will structure their zoning codes and development ordinances to encourage quality development in the areas that have been designated to receive infrastructure improvements in the future. New infrastructure should be directed away from rural historic sites in the unincorporated parts of the county to retain the resources, context and historic integrity of these places. A well-thought out historic preservation plan should include considerations for future infrastructure investments. By adopting an official historic preservation plan at the local government level it will be easier for preservationists to work with the other county departments to ensure that their plans are consistent with the goals and vision of the historic preservation plan.

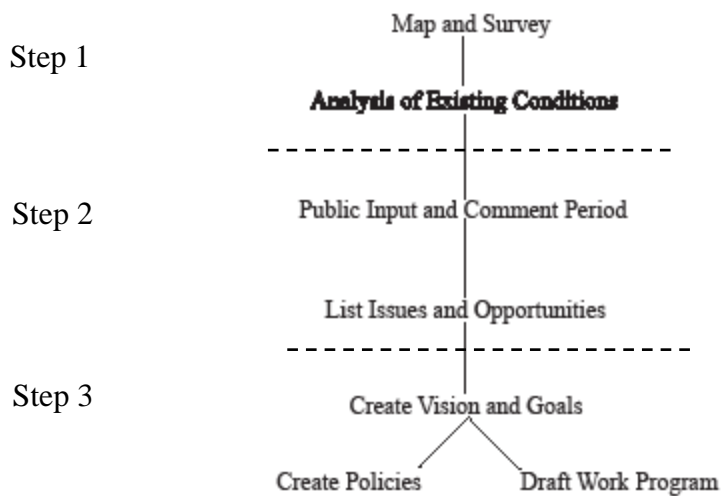
Elements of a Preservation Plan

As a part of their planning process, governments should create a plan that outlines both the location of historic resources as well as a plan for their preservation, restoration or rehabilitation. Planning efforts should be spearheaded by a steering committee which should be responsible for keeping the planning process moving forward. This group should have representatives from the County Commission, staff, active non-profits and residents. This group should be responsible for working with the plan preparers to make sure the plan truly represents the community's wishes. The plan should set forth a vision for the different areas of the county and the different types of historic resources present therein. The plan should also create a work program that identifies which activities will be undertaken each year, how those activities will be

funded and who is responsible for those activities. This should be a living document, regularly updated as new projects are identified and previous projects are completed and as the local government's will and ability changes over time.

A historic preservation plan should serve three essential functions: research; public comment and opinion; and plan development.

Figure 2: Historic Preservation Plan Flow Chart



(1) First, the plan would locate and map all of the historic and cultural resources within the local government's jurisdiction. This would include archaeological sites, other extant historic resources, and, where possible, buildings and sites that have been lost to time or development. Mapping all of the historic resources is an important step in the preservation of even a single resource because it helps to put every historic and cultural resource into its context. These maps could be layered into ten or twenty-year periods so that each map shows which resources were present during a specific time period thereby outlining the development pattern of a community.

In addition, research should include a survey of each of the sites listed on the map. These surveys should include information about the style of the house, architectural features, condition of the structure and estimated date of construction. A good survey can help increase public awareness and support. Especially in counties where many of the structures are set far off the road it will be important for surveyors to work with landowners so that they can have access to as many historic sites as possible. Collecting as much information as possible about each of these sites and structures is an important step in creating the full picture of the historic resources in the community. It is important to remember that historic resource surveys are never complete. Over the years as sites are restored, or lost, the survey will need to be updated. Because much of the rest of the historic resources plan will be based on information in the survey, it is important that decisions are based on the most current information available. The information collected in these surveys will also help in the future preservation of these structures and sites. FindIt, a program operated through the College of Environmental Design at the University of Georgia, has already begun inventorying the historic sites and structures in counties across the state. Not every county in the state has been surveyed and not every survey is up to date.²⁶ Nonetheless, these surveys would be a great starting place for a government's historic preservation plan. Because not every county has been surveyed recently, if at all, these surveys alone would probably not be sufficient to create a thorough plan. The county would need to update any survey information that is currently available through either FindIt or other local surveys. Resources in rapidly developing counties, in particular, need to be frequently surveyed to keep the records current. Because of this, FindIt's records will probably serve only as a good starting place for local governments when they construct their historic preservation plans.

²⁶ Roberts, Melissa. *FindIt* <http://www.uga.edu/findit/programs/findit/report/index.htm>. University of Georgia, School of Environment and Design, n.d. Web. 13 June 2010.

Morgan County and the City of Madison have mapped their historic, cultural and natural resources in their Morgan County Greenprint. The Greenprint includes the existing natural and cultural resources and depicts the structure of their community in the same way a blueprint shows the structure of a building. The project was spearheaded in part by the Madison-Morgan Conservancy, a non-profit group whose mission is to preserve the quality of life in Morgan County by preserving its natural, agricultural and historic resources.²⁷ The City of Madison, Morgan County, and the Madison-Morgan Conservancy collaborated in the effort to create the Greenprint because they felt that the first step in protecting the unique features of the county was inventorying what was there. To create a thorough Greenprint map, the County held public input sessions where county residents came together and told the consultants who were making the map about the county's resources and the location of different historic, cultural and environmentally sensitive sites.²⁸ This map shows the location of all of the historic and natural resources across the county. The City of Madison and Morgan County governments use the information compiled on the Greenprint map to create a document which sets forth a detailed list of the properties on the map, goals and objectives for the cultural and natural resources, greenspace protection programs, tools, policies and implementation recommendations. The City of Madison and Morgan County have therefore used public input to turn a survey and map into a very real plan for the future of the city and county's natural and cultural resources.²⁹

(2) Second, a historic preservation plan should include an opportunity for public comment and opinion. Because the plan deals with the future of the community's resources, it is

²⁷ Madison-Morgan Conservancy. <http://www.mmcgeorgia.org/>. Web. 11 July 2010.

²⁸ Madison-Morgan Conservancy. "Greenprint Resource Guide Morgan County, Georgia." Madison-Morgan Conservancy (2010).

²⁹ Madison-Morgan Conservancy. "Greenprint Resource Guide Morgan County, Georgia." Madison-Morgan Conservancy (2010).

important for the local government to include the input from stakeholders and members of the community from a wide range of backgrounds and interest groups. These stakeholder groups should include the plan's steering committee, the County Commission, business groups, non-profits, church groups, residents of historic areas of the county, any municipal groups that would be affected by the plan, owners of significant or potentially significant buildings and interested citizens. The public participation process should include an initial meeting to let people know what is going on and how the process will work. Following the initial meeting, there should be additional meetings at a variety of times and locations to best facilitate attendance from different groups in order to gather significant public input. Work sessions and/or charrettes should be held so that citizens can work through different options and understand the implications of losing certain buildings and the effects of incompatible development on historic resources. These meetings should be used to identify the community's goals for their resources and the issues and opportunities facing them.

The job of the plan preparer then becomes to take all of the information and comments received during the public participation process and turn those into issues and opportunities. These issues and opportunities will help to guide and inform the other elements of the plan. To create the issues and opportunities, the plan preparers should get input from many different community members, not just a few people from the same group. For example, an issue could be that development pressures have threatened the area's historically rural character. An opportunity could be that despite these development pressures, the county still has a large number of historic farm outbuildings intact. As the community moves forward into the final stage in the process, creation of the plan, team members would find ways to protect and utilize these resources. The plan sets forth how the local government will address their issues and take

best advantage of their opportunities. The participants could create a thorough list of all of their issues and opportunities related to their historic structures. These are not meant to be final, but should be presented to the local leadership and plan steering committee for their thoughts and input.³⁰

(3) After integrating the leadership's comments into the initial draft plan preparers create the final plan for the conservation of the historic sites and structures in the local government's jurisdiction. The final plan should consist of the following components: vision and goals; work program; and policies. Policies are different from the work program. The items in the work program should be distinct projects that may be crossed off a list when they are complete. Policies are overarching statements that should guide and inform every decision made by the local government. In addition to these components, the plan should designate a group to champion the activities designated in the plan. This group could be within the government, but may be more effective if it is, instead, a local nonprofit group or a partnership between the two. A well managed nonprofit could dedicate itself to the fundraising and public support and awareness efforts needed to ensure the plan's ultimate success. This final step will give concrete organization and direction to local historic preservation efforts.

The City of Beaufort, South Carolina recently updated their preservation plan. To do this they created an inventory of their historic sites, gathered public input on the future of their historic resources and created a plan for the future of these resources.³¹ Counties in Georgia should follow their lead and plan systematically and thoughtfully for the future of their cultural

³⁰ Lord Aeck and Sargant. "Historic Preservation Plan Update."
http://www.cityofbeaufort.org/client_resources/pdf/planning/BeaufortHPPUpdateFinalReport.pdf. City of Beaufort, SC, 2008: 5, Appendix A and Appendix B. Web. 13 June 2010.

³¹ Lord Aeck and Sargant. "Historic Preservation Plan Update."
http://www.cityofbeaufort.org/client_resources/pdf/planning/BeaufortHPPUpdateFinalReport.pdf. City of Beaufort, SC, 2008. Web. 13 June 2010.

resources to ensure that the focus remains set on a clear goal and that progress is made in achieving this goal.

The issues and opportunities generated during the public comment period should be used to generate a vision, goals and work program for the community's historic resources. The plan's vision statement should set forth the local government's vision for their cultural resources in fifteen or twenty years, depending on the plan's period. This statement will let citizens know what the local government envisions for the future of its cultural resources. This can help to set expectations for the future and give citizens confidence that investing in the community is a smart financial decision and that their quality of life will improve over time. Depending on the county, there may be the need to break the county into districts or character areas. Each character areas would include its own vision and goals. The vision and goals set forth for each character area would work together to help realize the overall vision for the community, but would also recognize the unique character and treatment of each area, for example, a historic crossroads community should be treated differently than historic farmland. The City of Beaufort took this approach in their Preservation Plan. They divided the city into different character areas, talked about the defining characteristics of each area and recommendations for each character area. These recommendations detail what needs to be done in each character area to help the city achieve its overall vision.³² This approach could work in counties as well, depending on the historic and current development patterns in that county. Some counties may only need one vision and character area while others may need several.

³² Lord Aeck and Sargant. "Historic Preservation Plan Update." *http://www.cityofbeaufort.org/client_resources/pdf/planning/BeaufortHPPUpdateFinalReport.pdf*. City of Beaufort, SC, 2008: 51-52. Web. 13 June 2010.

After creating the overall vision statement for the county's cultural resources, the plan should set forth a series of goals that will work together to help the local government reach its vision. These goals should all address some aspect of the overall vision and should work together to help the local government achieve its long-term vision. Pictures, details of the current conditions relating to that goal, and illustrations may accompany each goal to help make clear the desired result. Once the local government has set forth its vision and goals, each goal should be broken down into specific steps that will allow the local government to achieve that goal. These specific steps become a work program. The work program should consist of specific and manageable projects. Each specific step should include details about potential funding sources, responsible parties and whether the project should occur in the short or long-term. Finally, the plan should include policies that will guide local decision makers.

Affect of a Historic Preservation Ordinance and Commission

Most of Georgia's 159 counties do not have a historic preservation ordinance and commission (see Appendix 2). For those counties that do have these resources, preservation planning may become an easier exercise. The presence of a historic preservation ordinance and commission indicates that the local government has a history of supporting preservation and that citizens are used to considering the importance of historic resources. Local governments pass historic preservation ordinances and create historic preservation commissions because they care about their historic resources and residents have expressed support for these actions. Having this base of support may make it easier for a local government to create a historic preservation plan because a lot of the groundwork has already been laid. The existence of the historic preservation commission means that there is already a group on the ground with knowledge of the community's historic structures and the local political climate. The historic preservation

commission, if present, should be used to drive all historic preservation planning efforts and they are uniquely positioned to do so. Additionally, historic preservation commissions usually have the power and responsibility to create and maintain a historic resources survey for the local government. If the historic preservation commission has undertaken this task it would be an invaluable resource in the historic preservation planning process.

A well-functioning historic preservation commission that is supported by the local government is an invaluable resource in the preservation planning process. Unfortunately, not all historic preservation commissions function well or receive adequate support from their local government. A historic preservation ordinance may have been passed and the commissions created under one political regime, but as new local leaders are elected, priorities change. This means that a historic preservation commission may not get the support it needs from local staff and leadership. On the other side, preservation commissions are made up of volunteers. These volunteers may or may not have the necessary knowledge base to make preservation decisions. If a historic preservation commission gets a reputation for making poor decisions then it is difficult to re-earn the trust of the local leadership and citizenry. A historic preservation commission that is not trusted by the community may actually be a hindrance to preservation planning efforts.

If there is not a historic planning ordinance and commission then the local government will have to designate a group of interested and informed citizens and staff to lead and guide the planning process. The lack of a preservation ordinance and commission can be a plus because there are no negative memories associated with preservation, but it is also a negative in that there is no groundwork for preservation efforts and no pre-existing group present to spearhead the

planning efforts. The group that leads the preservation planning efforts will need to be proactive to keep the community interested and involved.

Conclusion

A historic preservation plan is a valuable tool for any local government. Historic preservation plans can also be powerful tools because they are non-regulatory in nature. While regulations are a powerful and effective way to accomplish a goal, a well-constructed plan that is supported by local leadership and that sets clear goals and visions for the future is also effective and less controversial. People sometimes have adverse reactions to regulations either because they do not fully understand them or because they resent government control of private property in general. A well-constructed plan is a less contentious way to lay out the local government's objectives. These plans could be a powerful tool to help communities to focus on the long-term results of short-term decisions.

Chapter 3

Special Use Districts

Introduction

Zoning started in New York City in the early 20th century. The original goal of zoning were to create zones for different types of uses. In doing this, local officials hoped to insulate homeowners from industrial and commercial districts which were viewed as incompatible with residential use. They believed that separating uses would create a more orderly and well-defined society. Under these plans, homeowners felt more confident that large, industrial plants moving in nearby would not interrupt the peaceful character of their neighborhood. In 1926, with the case of *Village of Euclid v. Ambler Realty*, the courts first upheld the constitutionality of zoning. The zoning power of local governments was reinforced and expanded over the following decades. In 1978, the Supreme Court issued its decision in *Penn Central Transp. Co. v. New York City*³³, in which it found that the city could deny a building permit because it wanted to preserve the historic Union Station in New York City. Because denial of the building permit did not deprive the owner of all economically valuable use of the property, the court upheld the zoning board's decision. This case opened the door for local governments to create ordinances specifically for the purpose of protecting the historic resources within their jurisdiction. Since this case, city and county governments, across the country have adopted special purpose overlay districts such as historic districts for the purpose of historic preservation. These overlay districts work to preserve specific areas through architectural controls and standards.

³³ 438 U.S. 104 (1978).

Special Use Districts

Special use districts are one zoning tool that has emerged as a part of this move towards more flexible zoning. These districts enable a local government to set aside a particular tract or area of land for a purpose separate from that of the general use district. The term special use district can also be used to describe a floating zone system whereby property is rezoned to accommodate only one use.³⁴ These goals may include preservation of historic resources or environmental protection. The purpose may even be maintenance of the traditional mixed commercial residential and commercial character of a neighborhood. Whatever the reason for their creation, special use districts provide a degree of flexibility not provided for by Euclidean zoning and can offer local governments with another tool to further those goals enumerated in their comprehensive plan. These districts can potentially provide cities and counties with a valuable tool to preserve the historic nature of an area or to facilitate future development in a way deemed to be appropriate under the goals of the comprehensive plan. If a county has determined that there are historic resources in the unincorporated areas of their district, special use districts may be a way to achieve this goal.

While special use districts can potentially be beneficial to a local government, they can also be somewhat intimidating because they bring with them a series of unique problems. Primary on this list is the fact that even though special use districts have been around in some form or another for at least twenty years.³⁵ nobody has written a single, definitive definition of exactly what they are. According to Matthew Bender while the term ‘special use district’ lacks “precise definition” the term is used in different ways by cities to generally achieve the goals of increased flexibility in zoning, retaining control over new development or resolution of

³⁴ [*Sheridan v. Planning Board of Stamford*, 266 A.2d 369 \(Conn. 1969\).](#)

³⁵ *Chrismon v. Guilford County*, 370 S.E.2d 579 (1988).

community problems³⁶ Special use districts may best be defined by examining related flexible zoning techniques and the definitions and limitations courts have given to these terms. The three most applicable terms for this purpose are spot zoning, conditional use permits, and contract zoning. To best examine the issue, the laws of North Carolina will be used as an example.

Conditional use permits are generally granted by the city council or board of commissioners and provide for a conditional use for a particular piece of property within a larger zoning district. Conditional uses for each district are set forth in the zoning ordinance. Every district lists permitted uses, which are automatically allowed, and conditional uses which are only allowed with the permission of the local governing body. North Carolina courts have established a system whereby property owners are almost automatically entitled to receive a conditional use permit so long as they can show “competent material and substantive evidence.”³⁷ for the change. This requirement effectively shifts the burden of proof to the city council to show sufficient reason for denying a permit. Under this standard, the zoning board may not make any decisions which are arbitrary or which unduly discriminate and interfere with the rights of property owners.³⁸ This means that the county’s ability to grant conditional use permits is strictly limited by the desires of the property owner. Finally, the doctrine of contract zoning prohibits zoning boards from entering into contracts or agreements to rezone a particular piece of property.³⁹ Like special use districts, courts have yet to establish a clear and definite definition of contract zoning but it is clear that the doctrine is based on the concept that zoning authorities may not contract away their police powers.

³⁶ Matthew Bender, 7-39 Zoning and Land Use Controls §39.01(3)(c).

³⁷ [*Humble Oil & Ref. Co., 202 S.E.2d at 136 \(N.C.\)*](#).

³⁸ *Bethanie C. Massey v. City of Charlotte and Albemarle Land Company*, 550 S.E.2d 838 (N.C. 2001) at 842.

³⁹ 68 N.C.L.Rev 177 at 182.

When taken altogether these doctrines provide a basic framework for what ultimately constitutes a special use district. In short, zoning authorities may not contract away their police powers and they have to provide a sufficient and valid reason for making a zoning decision or denying a landowner a conditional use permit under the zoning ordinance. It is impermissible for a zoning authority to interfere with the rights of the property owners in a way that is unduly discriminatory. The reasons for doing so must be supported by documentation and evidence. When creating a special use district the zoning authority must be able to show that there was a reasonable basis for the creation of a small district whose zoning differs from surrounding areas. It is important here to note and remember that special use districts are different from conditional use districts. In conditional use districts there is no one permissible use, rather there is a list of uses that may be permissible and a land owner must go to the zoning board to apply for a permit claiming to fall under one of the pre-approved uses before being able to use their land in that way.⁴⁰

A potential administrative problem with special use districts for historic preservation purposes may arise if the landowner opposes the change in zoning designation. In some jurisdictions, if a county wants to create a special use district the government must obtain the permission of the landowner. Some states, such as North Carolina, have adopted the view that a special use district will only be created by request of the landowner.⁴¹ A county in North Carolina or a jurisdiction with the same laws, which is dedicated to the preservation of its rural areas may still accomplish its goal through special use districts in a variety of different ways. A county may institute a program of transferable development rights so that a landowner who is injured by the zoning regulation may sell his development rights to another landowner within the

⁴⁰ 68 N.C.L.Rev. 177.

⁴¹ N.C. Gen. Stat. §153A-342.

county. Another option is that the county may provide tax incentives to landowners who choose to have their historic property zoned as a special use district. Alternatively, the county could implement a long-term advocacy plan as part of their historic preservation plan to encourage landowners to preserve their property. The necessity and ability for a county to combine special use districts with other programs will vary from state to state, depending on the specific rules in their jurisdiction. Even if special use districts must be implemented hand in hand with other programs, they may still prove a valuable tool in preserving unincorporated areas across the county.

Despite any potential administrative difficulties that may accompany implementation of a zoning plan that includes special use districts, local governments should examine the possibility of utilizing these districts. Special use districts can provide a degree of flexibility not possible under a traditional Euclidean zoning plan. As in New York, special use districts can be used to effect historic preservation purposes and may help promote the conservation of cultural and historic resources. Special use districts are not the only form of flexible zoning that may be effectively utilized by counties to promote well-planned growth, but they are certainly a powerful tool that has proven to be effective in various regions across the country. Counties can use a system of special use districts to preserve those historically important areas that lie outside their municipalities. Creation and effective implementation of special use districts by counties will provide these local governments with a valuable tool for well-planned development that respects the pre-existing social context of the area.

Legality of Special Use Districts

The power to enact special use districts comes along with the power to zone. The power for local governments to zone originates with the state government. State governments have the

ability to grant zoning authority through the police power. While the police power is held by the states, state legislatures have the authority to delegate the responsibilities of the police power, including the ability to enacting zoning regulations, to local governments.⁴² These restrictions come in the form of either the state's constitution or its zoning enabling legislation. State constitutions often contain 'home rule' provisions. 'Home rule' provisions are concerned with those matters, which are entirely local in character and have not been otherwise barred through other state laws. The courts in each state have the job of further enumerating these restrictions and giving local governments guidance as to exactly what types of zoning are and are not permissible.

North Carolina grants broad authority to zone to their counties but also provides a very specific framework in which they must operate. Their enabling legislation grants counties the ability to create general use districts, overlay districts and special or conditional use districts as the county deems appropriate. Counties are permitted to create as many districts in any desired shape as they deem necessary to carry out the purposes of their comprehensive plan.⁴³ The constitutionality and validity of this provision is generally assumed valid by the courts. Even this power though has limitations. While the counties have the power to enact many different types of zoning and can arrange their districts and plan in any way they deem appropriate, these plans must fit within a well defined framework. The state legislature, in enacting the state's zoning enabling legislation, defined all the different types of permissible zoning regulations and provided for how those terms were to be applied and how the plans should be enacted and implemented. Therefore, even when zoning legislation grants local governments wide discretion

⁴² See e.g., [*Chesterfield Civic Ass'n v. Board of Zoning Appeals of Chesterfield County*, 209 S.E.2d 925 \(Va. 1974\).](#)

⁴³ N.C. Gen. Stat. §153A-341 (2006).

to zone and be flexible in their zoning plans, there may still be a definite and more rigid system in which local governments are forced to operate. In determining whether they can create special use districts for historic preservation purposes, counties must first look carefully at the system in which they operate.

How Special Use Districts are Used

Special use districts have been used in a variety of ways by different cities. A notable example is San Francisco, CA. San Francisco has utilized special use districts both in developing Candlestick Point as well as the Van Ness Special Use District.⁴⁴ The Candlestick Point special use district provides guidelines to developers within its bounds as to how the city wanted the area around the Forty Niners' stadium to be developed.⁴⁵ The ordinance provided that surrounding commercial and retail establishments should be complimentary to a large stadium and that the ordinance was designed to bring jobs and economic prosperity to the neighborhood. In the case of the Van Ness Special Use District, the city identified neighborhoods where diverse uses were seen to provide a positive atmosphere and implemented a plan to protect these mixed commercial and residential neighborhoods.⁴⁶ The city in these examples found that traditional, Euclidean zoning would be too rigid to accomplish the goals set forth for long-term growth and development in these areas. It therefore adopted special use districts to establish or maintain certain desirable character traits in particular areas of the city. These goals are in line with those of historic preservation: to maintain a sense of place and distinctness from neighborhood to neighborhood, town to town and community to community.

⁴⁴ Cohen, *San Francisco's Neighborhood Commercial Special Use District Ordinance: An Innovative Approach to Commercial Gentrification*, 13 Golden Gate U. L. Rev. 367 (1983).

⁴⁵San Francisco Planning Code, Art. 2, §249.19,
<http://www.municode.com/content/4201/14131/HTML/cha035.html>.

⁴⁶ Cohen, *San Francisco's Neighborhood Commercial Special Use District Ordinance: An Innovative Approach to Commercial Gentrification*, 13 Golden Gate U. L. Rev. 367 (1983).

New York City has successfully utilized special use districts to preserve its historic districts. A notable example is the New York Theatre District. The city noticed a pattern whereby the building of profitable high rise office towers resulted in the destruction of less profitable yet historically significant theatre buildings. The problem became so severe that the city worried that these theatres were threatened with extinction. To combat this serious problem, in 1967 the city created the Special Theatre District, a thin strip of land in Manhattan extending to include the theatres of Broadway as well as Times Square. The ordinance originally granted incentives to developers who built theatres into the first floor of their new buildings. This provision was later changed so that the incentives went to developers who saved certain, listed theaters.⁴⁷ This stretch of Broadway and surrounding streets has come to be known as the Theatre District in New York and houses one of the most famous and prestigious collections of theatres in the world. Because of New York City's creative and innovative use of flexible zoning and special use districts in particular, this important historic and cultural center was saved. New York has also used its system of special use districts to protect the 5th Avenue Shopping District, Lincoln Square and the United Nations area. These plans not only set aside parts of the city to be protected but also provide for financial incentives to developers who preserve the features of these areas and act in furtherance of the goals set forth in the creation of the districts. New York and San Francisco are just two examples of cities that have used special use districts effectively to preserve areas of social and historic importance within their cities.

Not all communities are as proactive about utilizing special use districts as San Francisco and New York. Some states, such as North Carolina, require an owner to apply for a permit for a variance to the zoning ordinance. If the variance is approved the zoning board will turn that

⁴⁷ New York City Zoning Resolution, §81-742 to §81-745, see also Bender 2-8 Zoning and Land Use Control 8.02(1)(b).

piece of property into a special use district.⁴⁸ Therefore, in North Carolina and other states with similar enabling statutes and provisions counties and local governments do not have the power to rezone areas to special use districts for any purpose: historic preservation or otherwise. The differences between North Carolina and New York and San Francisco highlight the fact that the ability to adopt special use districts will vary sharply from state to state. Each state's constitutional provision and zoning enabling legislation will give counties guidance regarding the utilization of special use districts and other flexible zoning techniques for historic preservation.

Potential for Special Use Districts in Georgia

In Georgia, zoning legislation has been adopted and interpreted such that counties and municipalities have absolute power to adopt zoning ordinances in accordance with their comprehensive plan and in furtherance of the goals set forth in adopting that plan. A historic preservation plan will therefore be strengthened if it is adopted in conjunction with or as an amendment to the comprehensive plan. A county's ability to create special use districts for purposes of historic preservation has yet to be litigated in Georgia. In fact, Georgia courts have yet to rule on a county's ability to create special use districts for any purpose. However, the Official Code of Georgia says in multiple places that "nothing in this article shall limit or compromise the right of the governing authority of any county or municipality to exercise the power of zoning."⁴⁹ When combined with the broad grant of authority through Georgia's constitution it appears as though Georgia counties have been given the legislative authority to create special use districts.

⁴⁸ *Chrismon v. Guilford County*, 370 S.E.2d 579 (N.C. 1988).

⁴⁹ See e.g., O.C.G.A. §50-8-12 (2007); see also O.C.G.A. §36-70-5(a) (2007).

In the case of *Johnston v. Hicks*, 170 S.E.2d 410 (Ga. 1969), the court held that the legislature had granted full authority to the county governments to enact zoning ordinances for unincorporated areas. The *Johnston* court found that: “The governing authority for each county is empowered to enact for unincorporated areas of the county appropriate planning and zoning ordinances for public health, historic, health, business, residential and recreational purposes.”⁵⁰ The case therefore specifically provides that counties have the ability to enact zoning regulations for historic preservation purposes in unincorporated areas of the county. The *Johnston* court succeeded in setting forth the ideas that Georgia counties were free to enact zoning regulations for their unincorporated areas for historic preservation purposes. This case ensures that local governments have the power to enact ordinances to protect their historic resources.

The Georgia Historic Preservation Act (GHPA) has added weight to preservation efforts of cultural and historic resources in the state. The General Assembly enacted the GHPA to revitalize central business districts, encourage the use of conservation easements and enhance the state’s historic and esthetic resources. The GHPA was created after the General Assembly found that: “the historic, cultural and aesthetic heritage of this state is among its most valued and important assets and that the preservation of this heritage is essential to the promotion of the health, prosperity and general welfare of the people.”⁵¹ This act demonstrates the legislature’s commitment to historic preservation and maintenance of its sense of place. The act provides a broad discretion of power to state and local government to protect historic resources as they see fit within their area. Not only does the GHPA encourage local governments to enact historic preservation programs, it also seems to give further credence to the idea that historic preservation fits comfortably into the grant of power under the police power. The GHPA sets forth that the

⁵⁰ *Johnston v. Hicks*, 170 S.E.2d 410, 412.

⁵¹ Georgia Historic Preservation Act O.C.G.A. §44-10-21 (1980).

state sees historic preservation as a valuable practice. The goals of this act when combined with the broad delegation of zoning power to local governments may provide a strong argument for the idea that county governments may create special use districts to protect the unincorporated areas of historic significance within their boundaries.

Affect of a Historic Preservation Ordinance and Commission

The presence of a well-functioning historic preservation commission with the support of the local government can help the creation and implementation of historic preservation special use districts. The historic preservation commission can help to identify areas in need of special protection, write the necessary provisions to preserve those resources and monitor the enforcement of the ordinance. Other local groups, such as the zoning board of appeals or planning commission, have much more to think about than historic preservation which means that sometimes preservation can inadvertently slip through the cracks. The presence of a historic preservation commission means that there is a local group with the sole focus of promoting and preserving the community's cultural resources. If there is a historic preservation ordinance in place, it is critical that the special use districts are consistent with the provisions in the historic preservation ordinance. If these two ordinances are inconsistent, or even directly contradictory, it will weaken both ordinances and thus the local government's entire preservation effort. Whether or not there is a preservation commission, it will be critical for local staff, elected officials and other boards involved in the interpretation and enforcement of local ordinances to understand the importance of historic preservation and work together to enforce the provisions in the special use district and make sure that the community's historic resources receive the necessary protections.

Conclusion

While the flexibility of the plan may vary from state to state, in general, special use districts may be used by counties to preserve historic resources in unincorporated areas. Because of differences in state laws, special use districts may need to be coupled with other zoning or advocacy techniques to be truly effective or usable. Even though there is no one set definition of what constitutes a special use district or how to establish one, local governments have enough guidance from other flexible zoning techniques, case law and other states to create a program that will suit their particular needs. Local governments in each state will have to look to their state constitution and enabling legislation to determine whether or not this practice could be permissible in their jurisdiction. It seems clear that special use districts may be used for historic preservation purposes in Georgia's unincorporated areas and can be a valuable part of a county's comprehensive and adaptable zoning plan for county governments looking for a way to preserve their valuable cultural and historic resources located in unincorporated areas.

Chapter 4

Demolition Control Ordinances

Introduction

Numerous challenges face historic structures, not the least of which is the threat of demolition. It is often possible for structures in unincorporated areas to be demolished without local officials' knowledge. Even if a county requires a landowner to obtain a demolition permit there is rarely any review as to the potential importance of the site or structure. Additionally, requiring a demolition permit does not necessarily mean that people will apply for one. Structures are taken down at night or on weekends under the theory that it is easier to ask for forgiveness later. This is particularly true where historic resources are not grouped into a single district or area. Most counties in Georgia have isolated historic resources, but some also contain places where resources are grouped together as is the case with municipalities that have lost their charter. The community of Farmington in Oconee County is an example of this. Farmington still includes a rail depot and closely grouped historic homes and structures, but is wholly governed by the county. Demolition control ordinances are a way to help mitigate the threat of demolition. This type of ordinance requires that before a demolition permit may be issued an assessment must be made as to the importance of the structure. This delay can allow the county the opportunity assess the importance of the structure and potential alternatives to demolition. These ordinances do not prevent demolition. Rather, they give the local government a specific period to review the importance of the structure and, if the structure is deemed significant, a specific amount of time to seek landmark status or other means of preserving the building such

as finding a buyer interested in restoring the structure. A well-written and enforced demolition control ordinance can help to control the destruction of potentially historic resources.

What are Demolition Control Ordinances?

Demolition control ordinances are a legal tool that act as a safety net for potentially significant historic resources. These ordinances allow for the preservation commission or County Commission, as set forth in the ordinance, to review demolition permits to determine whether the structure is significant and could qualify for local landmark status. These laws provide an extra layer of protection for historic resources, but they do not guarantee that historic resources will not be demolished. Rather, they provide for the review of demolition permits to give the local government time to decide whether it has the will and capacity to take further action to protect the structure or site if it is historically significant. The ordinance sets forth a specific period of time during which the structure may not be demolished. If the structure is deemed historically significant then this gives the local government the opportunity to decide whether to give it landmark status or pursue another preservation option such as finding a private investor to buy and maintain the property. Demolition of structures known to be significant can be a particular problem in unincorporated areas where historic resources are often spread out across a wide area as opposed to municipalities where historic resources are generally more concentrated.⁵²

Demolition control ordinances provide an extra layer of protection that may be missing from traditional historic preservation ordinances. In the unincorporated parts of counties, historic and cultural resources are spread across a wide area. There may be country crossroads or old municipalities that have lost their charter, but many of the buildings, structures and sites

⁵² Miller, Julia H. “Protecting Potential Landmarks Through Demolition Review.” *National Trust for Historic Preservation* (2007).

are isolated as part of historic farms. Because of this, it is difficult, if not impossible, for a county historic preservation commission to accurately identify each and every potentially historic site or structure across the entire county. A demolition control ordinance is a tool to provide these resources with an extra layer of protection. This provides a chance for review and consideration before structures are demolished. The delay period further provides a local government with the opportunity to investigate and consider possible preservation options for the structure. These laws give communities the opportunity to consider preservation options for structures that may not meet the often high standards for landmark status or designation, but that do contribute to the community's sense of place. By providing a delay on the demolition of these structures, interested citizens may work to consider preservation options that will help to preserve these structures and therefore their property values and quality of life.⁵³

Different Types of Demolition Control Ordinances

Demolition control ordinances may take one of three different forms. First, demolition delay provisions are included in a historic preservation ordinance and can be designed to prevent the demolition of a building that either has been given landmark status or is a contributing structure within a historic district. Demolition delay provisions give the local government a specific period to investigate alternatives to demolition such as raising money for its rehabilitation.⁵⁴

The second type of ordinance is also found in historic preservation ordinances and is known as an interim protection provision. The primary purpose of interim protection provisions is similar to that of a development moratorium in that they seek to maintain the current state of

⁵³ Miller, Julia H. "Protecting Potential Landmarks Through Demolition Review." *National Trust for Historic Preservation* (2007).

⁵⁴ Miller, Julia H. "Protecting Potential Landmarks Through Demolition Review." *National Trust for Historic Preservation* (2007).

affairs until further protection measures may be put in place. To accomplish this, these provisions prevent the demolition or alteration of structures while they are under consideration for historic district designation.⁵⁵

The third type of demolition control ordinance, a demolition review ordinance, is generally separate from a historic preservation ordinance. They are designed to prevent the demolition of any building over a certain age or meeting other criteria set forth in the ordinance for a specific period of time. During this time, the county can determine whether the building is historically or culturally significant and, if it is, then the county has time to find alternatives to demolition. Demolition review ordinances can be particularly helpful because local governments rarely have the time or resources to identify all of the historically significant resources prior to enacting a historic district. This is particularly true because the body of historically significant properties is continually increasing and changing. Demolition review ordinances can, therefore, fill in the holes that may be left by even the best-written historic preservation ordinances or the most well surveyed historic district. Demolition review ordinances act as a catch-all to make sure that no historically significant structure falls through the cracks. Because demolition review ordinances provide for a review of all buildings that meet certain criteria they may prevent the destruction of buildings that are interesting and important to the community's character but do not fall neatly into a historic district or under a local preservation ordinance.⁵⁶

Use of Demolition Control Ordinances in Counties

When used in cities, any of the aforementioned options may be appropriate depending on the historic protection ordinance and the local government's situation. These protection and

⁵⁵ Miller, Julia H. "Protecting Potential Landmarks Through Demolition Review." *National Trust for Historic Preservation* (2007).

⁵⁶ Miller, Julia H. "Protecting Potential Landmarks Through Demolition Review." *National Trust for Historic Preservation* (2007).

review laws often operate in conjunction with historic districts so that any demolition request for a structure within the district will be reviewed under the ordinance. Combining the demolition review ordinance with a locally designated historic district can be a particularly powerful tool because it affords historic properties the protection of both tools. This means that as long as the ordinances are well written and enforced, any properties that would fall through holes in the local district protection would be caught and saved by the demolition review ordinance. At the county level, however, it is common for things to work differently. Often county resources are spread out in the form of individual farms or homestead sites rather than clustered together into a distinct district. Because Georgia developed through a system of land lotteries in the early 19th century, development of communities and farmsteads occurred. Settlers got the land to begin their farmstead through the lottery and cities sprung up to serve these new farms. Until the mid-20th century, development continued to occur for the most part in the cities, but at this time began to sprawl outwards. Since everything built before 1960 is historic, most historic structures are found in municipalities, unincorporated communities like Metcalf in Thomas County or Farmington in Oconee County and on farmsteads.

These differences between counties and cities mean that demolition review ordinances may be the most appropriate tool for counties. Demolition review ordinances are the most straightforward way to protect every resource in the county. Even where counties have historic districts in place, as is necessary for demolition delay and interim protection provisions, these two types of demolition control ordinances will not always protect every historic resource in the county. There will still be isolated structures scattered across lands that have historically been used for agriculture. Historic districts can offer tremendous preservation opportunities to many unincorporated communities, but demolition review ordinances can help to fill in the holes where

these districts end. Demolition review ordinances can also be a valuable tool for counties that have not yet enacted historic preservation ordinances or designated local districts. They can serve as protection while the preservation ordinances and local districts are put in place and then continue to serve a valuable role in protecting resources in any locally designated districts and protecting those resources that lie outside of the locally designated historic districts.

Legality of Demolition Control Ordinances

The issue of demolition control ordinances is one of first impression in the State of Georgia. This means that the Georgia court system has yet to hear a case concerning demolition control ordinances. However, it seems likely that were this type of ordinance challenged, the court would likely uphold the local government's ability to enact this type of ordinance. The Georgia Constitution grants home rule powers to counties. This means that counties have the power to enact codes and ordinances for the purposes of planning and zoning. The General Assembly has the ability to set forth procedural requirements that local zoning ordinances must follow. The General Assembly has not set forth any limitation on a local government's ability to enact different types of ordinances or otherwise limit the ability of local governments to control what local regulations govern within their boundaries. The court system has the power to limit what local governments can and cannot do in their land use regulations, and they have set forward some rules that local governments must follow. Courts have upheld local governments' right to enact development moratoria and ordinances to promote historic preservation. When taken together these previous rulings make it unlikely that demolition control ordinances would be struck down. Even though demolition control ordinances are a question of first impression in Georgia, they have yet to be adjudicated. Given the court's previous record in upholding

regulations for the purpose of historic preservation it is not unreasonable to expect them to uphold demolition delay ordinances as well.

What Demolition Review Ordinances Protect

Demolition review ordinances will provide specific rules for determining which structures are subject to the provisions in the ordinance. Age is typically used as the determining factor. The National Register of Historic Places considers anything over 50 years old to be historic, and many communities adopt this rule.⁵⁷ Other communities, however, declare that anything built before a certain date is historic, usually to maintain the historic fabric of a certain era. These options can be limiting because it then becomes possible to miss sites and structures that would be considered significant but that fall outside of the designated period.

The local government may also choose to conduct a historic resources survey and subject all of the properties on this survey to review under the demolition review ordinance.⁵⁸ A problem with this approach is that the historic survey will need to be routinely updated and maintained to ensure that the ordinance remains relevant. For this option to work, the local government will need to commit the staff time and resources to continually updating the survey. To decide which structures to evaluate, the local government needs to consider the age of most of their significant structures and the time and resources that it can realistically commit to staying abreast of changes to historic properties.

When the Ordinance is Triggered

When writing the demolition review ordinance, the local government will need to decide what actions will trigger the ordinance. A request to completely demolish the structure should always trigger the law, but the community should also consider whether the law will be triggered

⁵⁷ Montgomery County, Md. Ordinances ch. 8 art. III § 8-27(c) (2010).

⁵⁸ Chicago, Ill. §13-32-230 (2003).

in cases of partial demolition. For example, if 50% or more of the front façade will be destroyed the local government may decide that this constitutes a demolition under the ordinance and needs to be reviewed to determine if the structure is significant. Montgomery County, Maryland's ordinance is triggered when any structure, other than single-family residential, 25 years or older, is demolished or removed.⁵⁹ The City of Chicago ordinance is triggered only if the landowner wishes to fully demolish the entire structure.⁶⁰ The city further provides that the demolition review ordinance does not apply if "demolition is necessary to remedy conditions imminently dangerous to life, health or property as determined in writing by the Department of Buildings, the Board of Health or the Fire Department."⁶¹ It is up to the local government to determine what will trigger the demolition review. This determination should be based on the administrative capacity of the staff, the support among citizens and elected officials, and the types of structures located in the community. If structures in the unincorporated county represent a distinct building style, the local government may decide that the demolition review ordinance will take effect if certain elements characteristic of the architectural style would be destroyed.

Affect of a Historic Preservation Ordinance and Commission

The affects of a historic preservation ordinance and commission on the effectiveness of a demolition control law are similar to those previously mentioned in the Special Use District and Historic Preservation Plan chapters. A historic preservation commission would be an incredibly valuable resource in the creation and implementation of demolition control laws. Two types of demolition control provisions are found only in historic preservation ordinances. This means

⁵⁹ Montgomery County, Md. Ordinances ch. 8 art. III § 8-27(c) (2010).

⁶⁰ Chicago, Ill. §13-32-230(b) (2003).

⁶¹ Chicago, Ill. §13-32-230(b) (2003).

that a historic preservation ordinance and commission is necessary before these provisions can be created and implemented. In the case of demolition review ordinances there needs to be a historic preservation commission or another local board willing to take on a similar role for the law to be effective. Under these laws, a local body of the local government needs to review demolition applications to determine whether the structure in question is historically significant and worthy of protection. A well-run historic preservation with strong local support is perfectly positioned to fill this role. If a historic preservation commission is unavailable, the planning commission, local staff of Board of Commissioners, could make these decisions. However, these groups may not have the necessary expertise to make decisions that will truly preserve the necessary cultural resources. These groups also may not have the time to educate themselves on historic preservation issues or give these applications the needed consideration. The Board of Commissioners in particular has the massive responsibility of managing the entire county. County Commissioners need to have an advisory board or staff report to give it advice on preservation issues rather than being the body with sole responsibility for the community's cultural resources. The Board of Commissioners may best be used as a body to hear appeals, not the group who makes the first and final decision on demolition permits. A strong historic preservation commission is perfectly suited and positioned to provide that expert opinion and advice to the Board of Commissioners and other local decision-makers.

Demolition Control in Chicago

Demolition control ordinances are relatively new to Georgia. There are some jurisdictions such as the cities of Thomasville and Athens that have adopted, or researched the possibility of adopting, demolition control laws. Because demolition control laws are relatively new to Georgia it is helpful to look to jurisdictions with more established ordinances to see how

effective they really are at preventing the demolition of historic structures. The City of Chicago passed their demolition review ordinance in January 2003.⁶² Under the ordinance, the city may delay the issuance of a demolition permit of certain historic buildings for up to 90 days. The delay period starts at the time the demolition permit is given to the Historic Preservation Division. The 90-day delay period may be extended if the applicant and the city agree to the extension. During this time, the city can explore options to preserve the building including, but not limited to, landmark designation. Chicago spent 12 years and \$1.2 million to create a historic resources survey of the entire city, which ranks buildings based on their significance as determined by the planning department. The demolition review ordinance applies to properties that have some potential significance in the broader context of the history of the City of Chicago, State of Illinois or United States or to properties, which are potentially significant in the context of the surrounding community.⁶³ Approximately 6200, of the more than 17,000 included in the survey, are subject to the ordinance.

In January 2003, before the adoption of the demolition review ordinance, the Chicago Tribune ran a series of four articles that tracked the fate of buildings listed on Chicago's historic resources survey and the success of the demolition review ordinance. Tribune reporters conducted their own survey of 23 of the city's 77 official community areas in Chicago. In those neighborhoods, they identified over 200 structures on the historic resources survey that had been

⁶² City of Chicago.

http://egov.cityofchicago.org/city/webportal/portalContentItemAction.do?BV_SessionID=@@ @1308978063.1270781682@@@&BV_EngineID=cccccadekdckelfdhcefecelldffhdffif.0&contentOID=537042795&contentType=COC_EDITORIAL&topChannelName=Dept&blockName=Zoning+and+Land+Use+Planning%2FDemolition+Delay%2FI+Want+To&context=dept&channelId=0&programId=0&entityName=Zoning+and+Land+Use+Planning&deptMainCategoryOID=-536903037. City of Chicago. Web. 13 June 2010.

⁶³ City of Chicago. <http://egov.cityofchicago.org/Landmarks/CHRS.html>. City of Chicago. Web. 13 June 2010.

destroyed. Most of the demolitions occurred with the City's knowledge.⁶⁴ Before adoption of the demolition review ordinance, departments within the city were not communicating with each other so that the Buildings Department would routinely issue demolition permits without consulting the survey or notifying the Landmarks Division.⁶⁵ The effects of this lack of communication were especially poignant when the Metra commuter rail agency razed a historic tavern that was part of Schlitz Row to expand a parking lot.⁶⁶ Metra said they were never informed that the building was significant or even included on a historic resources survey.⁶⁷ This practice went largely uncommented upon until the Buildings Department granted a demolition permit to a private investment firm to tear down the famous Chicago Mercantile Exchange Building. Stunned and bruised from the public outcries and protests that occurred as a result of this decision, Mayor Daley and the Planning Commissioner proposed adopting an amendment to the city's building code which would require officials to put a 90-day hold on any request to demolish a building listed as red or orange on the city's historic resources survey.⁶⁸

Mayor Daley's proposed amendment passed 16 January, 2003 and nearly a year later, in December of the same year, the Tribune revisited the issue of demolition of historic structures to determine whether the demolition review ordinance had helped, hurt or changed anything at all.

⁶⁴ Kamin, Blaire and Patrick T. Reardon. "Research and Destroy." *Chicago Tribune* 13 January 2003:51. Print.

⁶⁵ Kamin, Blaire and Patrick T. Reardon. "Research and Destroy." *Chicago Tribune* 13 January 2003:55. Print.

⁶⁶ Kamin, Blaire and Patrick T. Reardon. "The City That Wrecks." *Chicago Tribune* 14 January 2003: 5 1. Print.

⁶⁷ Kamin, Blaire and Patrick T. Reardon. "The City That Wrecks." *Chicago Tribune* 14 January 2003: 5 1. Print.

⁶⁸ Kamin, Blaire and Patrick T. Reardon. "The City That Wrecks." *Chicago Tribune* 14 January 2003: 5 5. Print.

In its first year, the demolition review ordinance saved one building.⁶⁹ In that same year, 58 properties listed as significant on the historic resources survey were torn down.⁷⁰ In 2009, according to the city's website, 24 demolition permits were received that triggered the demolition review ordinance. Of those 24, 22 were approved for demolition and subsequently demolished, one was under consideration for landmark status and one is still listed as under review.⁷¹ Some preservation experts in Chicago and Illinois believe that in order to actually save buildings under the ordinance the city needs to set priorities and back those priorities with stronger legal and financial incentives.⁷² Setting priorities makes other preservationists nervous. They believe that doing this would put a death sentence on any building not ranked at the highest level.⁷³ One issue seems to be the fate not of large landmark buildings (the one building saved in 2009 was the monumental St. Gelasius Church) but rather the fate of everyday buildings such as taverns, triangle-shaped commercial buildings and cottages.⁷⁴ These buildings, which make up the majority of historic structures in the city, go largely unprotected. Another issue is the lack of staffing. Chicago's Landmarks Division has a staff of 10 people.⁷⁵ In comparison, New York City staffs 48 people in their Landmarks Preservation Commission and Boston's Landmarks

⁶⁹ Kamin, Blaire and Patrick T. Reardon. "Going? Going. Gone." *Chicago Tribune* 15 December 2003: 5 6. Print.

⁷⁰ Kamin, Blaire and Patrick T. Reardon. "Going? Going. Gone." *Chicago Tribune* 15 December 2003: 5 1. Print.

⁷¹ City of Chicago.

http://www.cityofchicago.org/city/en/depts/zlup/supp_info/demolition_delayholdlist2009.html.

City of Chicago. Web. 13 June 2010.

⁷² Kamin, Blaire and Patrick T. Reardon. "Going? Going. Gone." *Chicago Tribune* 15 December 2003: 5 1. Print.

⁷³ "Kamin, Blaire and Patrick T. Reardon. "Going? Going. Gone." *Chicago Tribune* 15 December 2003: 5 6. Print.

⁷⁴ "Kamin, Blaire and Patrick T. Reardon. "Going? Going. Gone." *Chicago Tribune* 15 December 2003: 5 6. Print.

⁷⁵ "Kamin, Blaire and Patrick T. Reardon. "Preserve and Protect." *Chicago Tribune* 15 January 2003: 5 5. Print.

Commission has a staff of 18.⁷⁶ Chicago's staff simply is not large enough to adequately conquer the task. Finally, there is the issue that Chicago's historic resources survey does not include any buildings built after 1940 and has not been updated since 1995, which leaves a lot of potentially significant buildings unprotected.⁷⁷

Chicago's situation highlights some important issues that will be common to any local government that chooses to enact this type of regulation. First, the ordinance needs to protect everything that the local government wants to save whether those are monument type structures or farm outbuildings and the local government needs to be committed to upholding the ordinance. Second, a local government truly committed to protecting its historic resources passes the ordinance, hires staff to enforce the ordinance and supports that staff politically, even when they need to make difficult decisions. Third, each demolition permit needs to be objectively considered under the same criteria to lend predictability and fairness to the process and local residents and potential applicants need to know what to expect from the process. Fourth, maintaining an updated survey is critical to the success of the ordinance. If significance under the ordinance is based on the survey and the survey is out of date, it makes it that much harder for preservation staff to do their job because they are working with incomplete information.

Conclusion

Demolition control ordinances come in several forms, the most appropriate of which for counties are demolition review ordinances. These laws can exist separately from any historic preservation ordinance and provide the local government with a high degree of flexibility so they

⁷⁶ "Kamin, Blaire and Patrick T. Reardon. "Preserve and Protect." *Chicago Tribune* 15 January 2003: 5 5. Print.

⁷⁷ "Kamin, Blaire and Patrick T. Reardon. "Going? Going. Gone." *Chicago Tribune* 15 December 2003: 5 1. Print.

can tailor the ordinance to the sites they want to protect and the amount of staff they can afford to hire to enforce the ordinance. Even though demolition control ordinances are a powerful tool to help protect against the loss of historic resources, the City of Chicago teaches the lesson that they need to be written, monitored and enforced adequately for them to have any meaningful weight. Without the backing of the local government and the support of the citizens neither the demolition review ordinance nor any other historic preservation ordinance will be successful at saving historic resources.

Chapter 5

Conclusions

Unincorporated areas face different challenges than municipalities. Unincorporated areas lack the compact collection of historic resources usually found in a city's downtown and historic neighborhoods. Historic resources are more often distributed throughout unincorporated communities and historic farm sites. These differences mean that some of the preservation tools that are often used in municipalities do not lend themselves well to counties. To protect the resources in their unincorporated areas, counties may have to think outside of the box and use tools that are available but not traditionally used to preserve historic resources. Preservation planning, special use districts and demolition delay ordinances are among the tools that can help counties to solidify and reach their ultimate preservation goals. Preservation planning will allow a local government to thoroughly identify its resources, set a vision for the future of these resources, identify issues and opportunities, set preservation policies and create strategies and a short-term work program that will guide the local government as it continues to make decisions about cultural resources. Special use districts can be used to create districts designed to protect historic resources, but so far have not been used solely for this purpose. Special use districts can establish regulations that are unique and particular to the special situation that exists in unincorporated areas. Demolition delay ordinances can help counties to prevent the inadvertent demolition of resources that are historically significant. By placing a delay on demolition permits until the local government determines if the structure is significant and eligible for landmark status, the local government has the opportunity to seek options for the structure other

than demolition. These ordinances will not save all structures, but they will give the local government time to organize and find alternatives. These three options are not an exhaustive list of the options available to counties to preserve their historic resources; they are simply three options that are promising, but not often used to preserve resources, particularly in unincorporated areas. However, if effectively organized and managed, these options can help counties preserve their resources in ways that are not offered by other preservation methods.

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Appendix A

Glossary of Terms

1. **Certificate of Appropriateness** → "a document approving a proposal to make a material change in the appearance of a designated historic property or of a structure, site, or work of art located within a designated historic district, which must be obtained from a historic preservation commission before such material change may be undertaken."⁷⁸
2. **Demolition Delay Ordinance** → a legal tool that ensures historic structures are not inadvertently demolished without notice and review from a preservation commission.
3. **Design Guidelines** → an advisory tool to help inform and assist the local government and private property owners as to the ways in which historic sites should be maintained.
4. **Designation** → "a decision by the local governing body of a municipality or county wherein a property or district proposed for preservation is located to designate such property or district as 'historic property' or as a 'historic district' and therefore to prohibit all material changes in appearance of such property or within such district prior to the issuance of a certificate of appropriateness by the historic preservation commission."⁷⁹
5. **Historic District** → a group of structures or sites that have been determined to be historically significant by the local, state and/or federal government. Districts are composed of contributing and non-contributing structures.
6. **Historic Preservation Commission** → the body appointed by the local government to enact the ordinance which provides for the protection, enhancement and use of historic properties and historic districts.⁸⁰
7. **Historic Resource** → "a building, structure, site, district or object that is significant in American history, architecture, archaeology, engineering and culture."⁸¹
8. **Historic Sites Survey** → an inventory of all sites and structures within a defined geographic area which may be historically significant because they are above a certain age or because they meet other predetermined criteria.

⁷⁸ O.C.G.A §44-10-22 (2010).

⁷⁹ O.C.G.A §44-10-22 (2010).

⁸⁰ O.C.G.A §44-10-24(a) (2010).

⁸¹ www.schaefferstownbypass.com/glossary.htm

9. **Local Government** → a county or municipal government. For purposes of this paper a local government refers to a county government unless otherwise specified.
10. **Local Historic Landmark** → a building, structure, site or object which has been studied by the local historic preservation commission and deemed to have historical, architectural, archaeological or cultural value.
11. **National Register of Historic Places** → the federal government’s official list of districts, sites, buildings, structures and objects deemed worth of preservation.
12. **Overlay District** → an additional land use requirement that is placed on a geographic area but that does not change the underlying zoning.⁸²
13. **Preservation Plan** → a long-term plan that provides the local government with guidance as to the treatment of and goals for the historic resources within the community. The plan includes a survey of the local historic properties, issues facing these properties, community goals and policies for local historic properties and an implementation program, which sets forth how the local government will achieve the goals set forth in the plan.
14. **Special Use District** → provides an alternative zoning procedure for a specified use or uses as opposed to a general zoning district designation, which provides a broad range of uses.⁸³
15. **Zoning** → “the power of local governments to provide within their respective territorial boundaries for the zoning or districting of property for various uses and the prohibition of other or different uses within such zones or districts and for the regulation of development and the improvement of real estate within such zones or districts in accordance with the uses of property for which such zones or districts were established.”⁸⁴

⁸² Milwaukee River Basin Partnership <http://clean-water.uwex.edu/plan/overlay.htm> (2003).

⁸³ *Trinity Presbyterian Church v. City of Wilmington, North Carolina* 612 S.E.2d 693 (2005).

⁸⁴ O.C.G.A. § 36-66-3(3) (2010).

Appendix B

Georgia Counties with Countywide Preservation Ordinances

This is a list of countywide historic preservation ordinances in Georgia. This list was created in November 2010 and is based on the list provided by the Georgia State Historic Preservation Office and ordinances posted online by Georgia's counties at that time.⁸⁵

- Athens-Clarke County → Athens-Clarke County has a countywide historic preservation commission with the power to designate historic landmarks and districts. Most of the protection is for designated districts and properties.⁸⁶
- Augusta-Richmond County → Augusta-Richmond County has a countywide historic preservation commission with the power to designate historic landmarks and districts. Most of the protection is for designated districts and properties.⁸⁷
- Chatham County → Chatham County has a countywide historic preservation commission with the power to designate historic landmarks and districts. Most of the protection is for designated districts and properties.⁸⁸
- Clayton County → Clayton County has a countywide historic preservation commission with the power to designate historic landmarks and districts. Most of the protection is for designated districts and properties.⁸⁹

⁸⁵ Ga. Historic Preservation Division *Ga. Cities and Counties with Historic Preservation Ordinances* (January 2010). http://gashpo.org/Assets/Documents/HPO_List_March_2010.pdf.

⁸⁶ Athens-Clarke County, Ga. Code of Ordinances Part III, Ch. 8-5 (1992).

⁸⁷ Augusta-Richmond County, Ga. Code of Ordinances Ch. 4 (2004).

⁸⁸ Chatham County, Ga. Historic Preservation Ordinance (2009).

<http://www.thempc.org/documents/CCHPC/CHATHAM%20COUNTY%20HISTORIC%20PRESERVATION%20ORDINANCE%20REVISED%202-27-09.pdf> (21 Nov 2010).

- Cobb County → Cobb County has a countywide historic preservation commission with the power to designate historic landmarks and districts. Most of the protection is for designated districts and properties.⁹⁰
- Coweta County → Coweta County provides protection of its historic mill villages, which are scattered throughout the county. They do not have a historic preservation commission, rather the county Board of Commissioners is responsible for making decisions about these resources.⁹¹
- DeKalb County → DeKalb County has a countywide historic preservation commission with the power to designate historic landmarks and districts. Most of the protection is for designated districts and properties.⁹²
- Dougherty County → Dougherty County has a countywide historic preservation commission with the power to designate historic landmarks and districts. Most of the protection is for designated districts and properties.⁹³
- Douglas County → Douglas County has a countywide historic preservation commission with the power to designate historic landmarks and districts. Most of the protection is for designated districts and properties.⁹⁴
- Fannin County → Fannin County has a countywide historic preservation commission with the power to designate historic landmarks and districts. Most of the protection is for designated districts and properties.⁹⁵

⁸⁹ Clayton County, Ga. Code of Ordinances §74-51 (2002).

⁹⁰ Cobb County, Ga. Code of Ordinances Ch. 66 (1984).

⁹¹ Coweta County, Ga. Code of Ordinances Appendix A, Art. 13 (2007).

⁹² DeKalb County, Ga. Code of Ordinances Ch. 13.5 (1994).

⁹³ Dougherty County, Ga. Code of Ordinances §2-12-8 (1996).

⁹⁴ Douglas County, Ga. Code of Ordinances §6-341 (1999).

⁹⁵ Fannin County, Ga. Code of Ordinances Ch. 38 (1996).

- Gordon County → Gordon County has a countywide historic preservation commission with the power to designate historic landmarks and districts. Most of the protection is for designated districts and properties.⁹⁶
- Hancock County → Hancock County is listed by the GA State Historic Preservation Office as having a historic preservation ordinance. However, the county does not have a website nor has posted their ordinances on another online site such as Municode.
- Heard County → Heard County has a countywide historic preservation commission with the power to designate historic landmarks and districts. Most of the protection is for designated districts and properties. Heard County also has interim protection provisions to prevent the demolition of structures while they are considered for local designation.⁹⁷
- Jenkins County → Jenkins County is listed by the GA State Historic Preservation Office as having a historic preservation ordinance. However, their ordinances are not available online so the extent of protection is unknown.
- Jones County → Jones County's website references their historic preservation commission, but their ordinances are not available online so the extent of protection is unknown.
- McDuffie County → McDuffie County has a countywide historic preservation commission with the power to designate historic landmarks and districts. Most of the protection is for designated districts and properties.⁹⁸

⁹⁶ Gordon County, Ga. Code of Ordinances Ch. 11, Art. VIII (2005).

⁹⁷ Heard County, Ga. Code of Ordinances Ch. 22 (1992).

⁹⁸ McDuffie County, Ga. Code of Ordinances Ch. 42 (1993).

- McIntosh County → McIntosh County is listed by the GA State Historic Preservation Office as having a historic preservation ordinance. However, the county does not have a website nor has posted their ordinances on another online site such as Municode.
- Morgan County → Morgan County has a Resource Preservation Advisory Board which serves a similar role to a traditional Historic Preservation Commission except they also hear seek designation and protection of significant natural resources.⁹⁹
- Pike County → Pike County is listed by the GA State Historic Preservation Office as having a historic preservation ordinance. However, this ordinances are not available online so the extent of protection is unknown.
- Taylor County → Taylor County is listed by the GA State Historic Preservation Office as having a historic preservation ordinance. However, the county does not have a website nor has posted their ordinances on another online site such as Municode.
- Troup County → Troup County has a countywide historic preservation commission with the power to designate historic landmarks and districts. Most of the protection is for designated districts and properties.¹⁰⁰ Troup County has also established a Historic Area Overlay district within their zoning code which is designed to preserve and protect historic areas of the county and provide guidelines for the rehabilitation of these areas.¹⁰¹
- Walker County → Walker County has a countywide historic preservation commission with the power to designate historic landmarks and districts. Most of the protection is for designated districts and properties.¹⁰²

⁹⁹ Morgan County, Ga. Zoning Ordinance Art. 21 (2007).

¹⁰⁰ Troup County, Ga. Code of Ordinances Ch. 42 (1987).

¹⁰¹ Troup County, Ga. Code of Ordinances Appendix A, Art VIII.

¹⁰² Walker County, Ga. Code of Ordinances §34-141 (2002).

- Wayne County → Wayne County has a countywide historic preservation commission with the power to designate historic landmarks and districts. Most of the protection is for designated districts and properties.¹⁰³
- Whitfield County → Whitfield County has a countywide historic preservation commission with the power to designate historic landmarks and districts. Most of the protection is for designated districts and properties.¹⁰⁴

¹⁰³ Wayne County, Ga. Code of Ordinances Ch. 21 (1993).

¹⁰⁴ Whitfield County, Ga. Code of Ordinances Ch. 9 (2004).