



# TOWN OF ROXBURY CONNECTICUT

Historic District Commission

29 North Street • P.O. Box 203 • Roxbury, CT 06783-0203

## ROXBURY HISTORIC DISTRICT COMMISSION REGULAR MEETING JANUARY 20, 2016

### MINUTES

#### CALL TO ORDER

The meeting was called to order at 7:30 PM.

Present: C. Haver, J. Huber, M. Jonker, E. Lacy, G. Miller, C. Raymond, W. Walker; M. Olivieri

#### APPROVAL OF MINUTES

##### Regular Meeting – December 16, 2015

The minutes of the 16 December meeting were accepted with the following corrections: “most agreed” and “Zoning complaint”.

#### BUSINESS

##### Leavenworth Barns

M. Olivieri, construction manager for the project, outlined the plans for the barn complex. Although the HDC does not have jurisdiction, M. Olivieri wanted the HDC to review the plans, since the commission is committed to saving the town’s barns. The barns were part of the property of the now demolished Italianate farmhouse. No structures will be torn down but rebuilt instead. In 2008, a variance was granted to reconstruct a big gambrel roof barn that had burned down. The small barn on Painter Hill Road will be restored. The dairy barn will be disassembled, rebuilt, and except for the re-siting of windows and doors, will look as it does now. E. Lacy noticed on the plans a space between the reconstructed barn and dairy barn. M. Olivieri stated that it is a Zoning requirement for the reconstruction of the gambrel barn on its original footprint.

Attached to this dairy barn will be a modern structure for agricultural use: cider, fruit processing, chickens, mushrooms, herbs. A silo will be attached to the dairy barn at the point where this new flat, but pitched, roof building will be connected. The siding proposed is insulated barn siding.

W. Walker remarked that the plans reflect an effort to save the barns, and reintroduce farming activities to these abandoned structures. The functional design of the new additions can be an interesting counterpoint to the traditional barn buildings. The HDC thanked M. Olivieri for the presentation.

##### Eviroshake

C. Haver researched the product which is a composite of recycled rubber and wood pulp fashioned to resemble wood shake. Members will note the look of the material on Bulls Bridge.

##### State Register Forms

G. Miller downloaded the nomination form and compared it to the forms from J. Cunningham’s historic house survey. The information is essentially the same and could simply be transferred from one form to the other. W. Walker will reprint the list of old house homeowners who expressed interest in their house’s listing. She suggested that these residents be notified of the process and at that time be asked if they would support a town ordinance that would prohibit the demolition of any house listed on the State Register. J. Huber will download the form in a format that could be used to complete the nominations.

##### Budget

The HDC unanimously approved \$675 for next year’s budget. J. Huber will give the information to K. Baron.

In 2015, the sales of the Barn Book totaled \$980; the Survey Book, \$1575. W. Walker shows an expenditure of \$6253.82 for the reissue. J. Huber will check his accounts.

Rev. Swift House

J. Huber spoke to the owner who reiterated what D. Shaw had told the HDC; that the Air Stream will be moved to the lake house.

**ADJOURNMENT**

The meeting was adjourned at 8:50 PM.

Respectfully Submitted,

*Georgette Miller*

Georgette Miller, Clerk

The next meeting of the HDC is:

Wednesday 17 February 7:30 pm Roxbury Town Hall



# TOWN OF ROXBURY CONNECTICUT

Historic District Commission

29 North Street • P.O. Box 203 • Roxbury, CT 06783-0203

## ROXBURY HISTORIC DISTRICT COMMISSION REGULAR MEETING FEBRUARY 17, 2016

### MINUTES

#### CALL TO ORDER

The meeting was called to order at 7:35 PM.

Present: C. Haver, G. Miller, W. Walker, K. Yovans

#### APPROVAL OF MINUTES

The minutes of the 20 January meeting were accepted as submitted.

#### OLD BUSINESS

##### Survey/Barn Books

J. Huber reported that the total cost of the reissue was \$5951.75.

##### Firehouse light

Report at next meeting.

##### State Register

W. Walker spoke to J. Scoville of the State Preservation Commission to discuss the nomination forms. G. Miller and W. Walker chose 10 properties to nominate on this first round. These are significant due to local, state or national history of resident(s), age of house, and relevance to Roxbury's history, among other criteria. One form was filled out (Remember Baker Jr. House) using the inventory forms submitted by J. Cunningham with a list of proposed nominations. J. Scoville will review and get back to HDC.

House and Jane Miller House. We are waiting to hear from the State.

#### ADJOURNMENT

The meeting was adjourned at 8:15 PM.

Respectfully submitted,

*Georgette Miller*

Georgette Miller, Clerk

The next meeting of the HDC is: Wednesday 16 March 7:30 pm Roxbury Town Hall



# TOWN OF ROXBURY CONNECTICUT

Historic District Commission

29 North Street • P.O. Box 203 • Roxbury, CT 06783-0203

## ROXBURY HISTORIC DISTRICT COMMISSION REGULAR MEETING MARCH 16, 2016

### MINUTES

#### CALL TO ORDER

The meeting was called to order at 7:36 PM. C. Haver chaired.

Present: C. Haver, J. Huber, M. Jonker, C. Raymond, G. Miller; W. Ferris

#### APPROVAL OF MINUTES

The minutes of the 17 February meeting were accepted as submitted.

#### PRE HEARING

W. Ferris, Roxbury Market, would like to update the door to the market furthest on the north left side. At present, the glass paned door is inoperable. He would like to reopen the door and replace with a Dutch door. This would open at top to offer ice cream to customers. A custom door would have to be fabricated since the opening is not standard. The old door handle would be reused. The HDC discussed the possibility of installing a traditional Dutch door with a panel at the bottom instead of glass panes. The HDC agreed that this type of door would still be appropriate and would probably be available without custom work. The HDC instructed W. Ferris to submit an application for a traditional Dutch door in that location.

#### NEW BUSINESS

##### Alliance Review

There is an article on Demolition by Neglect Ordinances with examples and process. G. Miler will provide copies for HDC at the next meeting.

#### OLD BUSINESS

##### Firehouse light

Correspondence regarding the light had advanced to the submission of the pole number to Eversource. Awaiting further reply.

##### Congregation Church Parsonage

J. Huber spoke to Rev. Peters about reinstalling window boxes as were originally. He agreed and J. Huber will send him a photo of the parsonage to illustrate the size of the boxes that were there.

##### State Register Nomination

Ten properties are in the first nomination go-round: Thos. & Geo. Barnes House, Warner Millhouse, Alden Beers House, Ezekial Beardsley House, Remember Baker, Jr. House (used to fill out an example form), Herman Beardsley House, Stephen Sanford House and Jane Miller House. We are waiting to hear from the State.

#### ADJOURNMENT

The meeting was adjourned at 8:25 PM.

Respectfully submitted,

*Georgette Miller*

Georgette Miller, Clerk

The next meeting of the HDC is: Wednesday 20 April 7:30 pm Roxbury Town Hall



# TOWN OF ROXBURY CONNECTICUT

Historic District Commission

29 North Street • P.O. Box 203 • Roxbury, CT 06783-0203

## ROXBURY HISTORIC DISTRICT COMMISSION REGULAR MEETING APRIL 20, 2016

### MINUTES

#### CALL TO ORDER

The meeting was called to order at 7:35 PM.

Present: C. Haver, J. Huber, M. Jonker, G. Miller, C. Raymond, W. Walker

#### APPROVAL OF MINUTES

The minutes of the 16 March meeting were accepted as submitted.

#### PUBLIC HEARING

Proposed change to Roxbury Market: replace the northern most glass paned door with a functioning Dutch door with glass above and panels below. The existing hardware will be reused. The HDC reviewed the material including a note from the owner stating he was aware of changes and a correction on the spec sheet to show the door swings in with hinges on the left. Since there was no one to represent the application, W. Walker asked for further questions or comments. As there were none the hearing was closed.

The HDC discussed the application. The application was exactly as presented in the pre-hearing. C. Raymond made a motion to accept the application as submitted; C. Haver seconded. W. Walker called for a vote: Aye – Haver, Huber, Jonker, Miller, Raymond, Walker; Nay – none. The motion was passed unanimously.

#### BUSINESS

##### Alliance review

Copies of an article on Demolition by Neglect Ordinance were distributed to the commission. Discussion will be at next meeting.

##### Survey/Barn books

E. Lacy was not present but in an email to W. Walker noted that the Roxbury Market has been selling copies of the Barn Book.

##### Firehouse light

The issue remains as reported at last meeting. W. Walker will talk to B. Henry who seems to get timely responses from Eversource.

##### Congregational Church

J. Huber spoke to Rev. Peters re: replace the plastic window boxes to wood as were original. J. Huber brought photos of the newly installed wood window boxes.

##### Rev. Swift House

The Air Stream has been moved closer to the house on the south behind a line of evergreens. These do not at present provide a screen since they appear to be 4 feet high. C. Haver wondered how the ZC defines “screened from view”.

##### State Register nominations

There has been no word from the State about the preliminary submission. W. Walker has called several times and had not heard back.

Roxbury gasoline sign

W. Ferris is planning to scrape the rust off the pole and the sign's surround and paint black. Since this is maintenance, there is no need for an application.

Roxbury Station

The train station will be moved 6 feet to the interior to accommodate the reconstruction of a platform. The road in front is actually the distillery's property but the platform would extend into the middle of the road. W. Walker suggested that a plaque be installed at the original location for future reference.

**ADJOURNMENT**

The meeting was adjourned at 8:35 PM.

Respectfully Submitted,

*Georgette Miller*

Georgette Miller, Clerk

The next meeting of the HDC is:

Wednesday 18 May at 7:30 pm in the Roxbury Town Hall



# TOWN OF ROXBURY CONNECTICUT

Historic District Commission

29 North Street • P.O. Box 203 • Roxbury, CT 06783-0203

## ROXBURY HISTORIC DISTRICT COMMISSION REGULAR MEETING MAY 18, 2016

### MINUTES

#### CALL TO ORDER

The meeting was called to order at 7:35 PM.

Present: C. Haver, M. Jonker, E. Lacy, G. Miller, C. Raymond, W. Walker

#### APPROVAL OF MINUTES

The minutes of the 20 April meeting were accepted as submitted.

#### BUSINESS

##### Alliance Review

The article "Establishing a Demolition by Neglect Ordinance" in the publication of the National Alliance of Preservation Commissions was distributed at the last meeting. The HDC discussed the article which addresses a problem encountered in Roxbury: the demise of historic structures by ignoring or causing structural failures. The discussion focused on whether there is any enabling CT legislation or precedent. As requested by HDC, G. Miller will send a copy of the article to Gail McTaggart, Town Counsel, for her opinion.

##### Survey/Barn books

The Barn Books are outselling the Survey Books. W. Walker asked E. Lacy to find out the amount in the Preservation Fund.

##### Firehouse light

W. Walker heard back from Eversource which looked at the light, questioning if it was a safety issue. The color and the position of the light can be changed which can be done in two weeks. By next meeting, we should see the change.

##### State Register

J. Scofield got back to W. Walker and noted that all 10 proposed nominations have merit and are pre-approved. J. Scofield reviewed the form the HDC submitted and made notations on each section where she felt improvements could be made. She will be returning this guide. The emphasis should be on the significance of the architecture not the individual. All buildings on the site should be referenced as should the status of integrity of the house (inside and out). J. Scofield is to send additional material.

##### Old House Journal

An article on old windows provides a short question and answer sidebar that could be added to the HDC website. J. Huber will review.

#### ADJOURNMENT

The meeting was adjourned at 8:50 pm.

Respectfully Submitted,

*Georgette Miller*

Georgette Miller, Clerk

The next meeting of the HDC is: Wednesday 15 June 7:30 pm Roxbury Town Hall



# TOWN OF ROXBURY CONNECTICUT

Historic District Commission

29 North Street • P.O. Box 203 • Roxbury, CT 06783-0203

## ROXBURY HISTORIC DISTRICT COMMISSION REGULAR MEETING JUNE 15, 2016

### MINUTES

#### CALL TO ORDER

The meeting was called to order at 7:32 PM. C. Haver chaired.

Present: C. Haver, J. Huber, E. Lacy, G. Miller

#### APPROVAL OF MINUTES

The minutes of the 18 May meeting were accepted as submitted.

#### BUSINESS

##### Distillery

E. Davis is setting up an on-site meeting with the CT Preservation Office to review the Nat'l Register nomination and to explain the plans for the railroad station. In order to restore the look of the station to when it was operational, a platform on three sides, as on the original, will be added. But since one side sits on the road (which is on the distillery's property), the station will need to be moved 8 feet to accommodate the platform. The Secretary of the Interior's Standards state that moving a historic structure takes it out of context and makes it ineligible for designation. Whether this will hold in this specific case is the question for the CT Preservation representatives.

Also, Mary Donohue, formally with the state preservation office with whom the HDC had worked for many years, has started her own firm Grant Houses Heritage Services that does, among other things, prepare nominations for State and National Registers. The HDC agreed that to pass her name along to E. Davis.

##### Hat Shop

A prospective buyer has contacted the HDC with some questions about the property. The email that was sent with attachments was shown to the commission. Included were photos of fencing to surround the property. W. Walker sent the Design Guidelines and G. Miller was approached by this potential buyer asking to explain the guidelines. The advice was to look around the district at the existing fencing – style and height – to understand the guidance offered. An invitation was extended to attend a meeting with the caution that only the owner of the property has the right to apply for a Certificate of Appropriateness.

##### Survey and Barn Books

There is an outstanding balance due which will be collected. E. Lacy will review the printout from J. Moker and report at next meeting.

##### Demolition by Neglect

A letter along with the Alliance Review article was sent to Town Counsel for her opinion.

##### Website

J. Huber will work on setting up links to Old House Journal articles.

#### ADJOURNMENT

The meeting was adjourned at 8:30 PM.

Respectfully Submitted,

*Georgette Miller*

Georgette Miller, Clerk

The next meeting of the HDC is:

Wednesday 20 July 7:30 pm Roxbury Town Hall

Roxbury Historic District Commission

June 15, 2016

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# TOWN OF ROXBURY CONNECTICUT

Historic District Commission

29 North Street • P.O. Box 203 • Roxbury, CT 06783-0203

## ROXBURY HISTORIC DISTRICT COMMISSION REGULAR MEETING JULY 20, 2016

### MINUTES

#### CALL TO ORDER

The meeting was called to order at 7:32 PM. C. Haver chaired.  
Present: C. Haver, J. Huber, M. Jonker, E. Lacy, G. Miller, K. Yovan

#### APPROVAL OF MINUTES

The minutes of the 15 June meeting was accepted as submitted.

#### BUSINESS

##### Pre-hearing

W. Walker is proposing to attach a railing on the west/rear of the house. The illustrations and plot plan were distributed to the HDC. All agreed that the railing looks good and there were no issues with the application. A public hearing will be scheduled for August.

##### Survey and Barn Books

E. Lacy reported that there is \$3,080 in the preservation fund and \$1,085 due in open invoices.

##### Demolition by Neglect

G. McTaggart has not yet responded to the HDC letter.

#### ADJOURNMENT

The meeting was adjourned at 8:05 PM.

Respectfully Submitted,  
*Georgette Miller*  
Georgette Miller, Clerk

The next meeting of the HDC is:  
Wednesday 17 August 7:30 pm Roxbury Town Hall



# TOWN OF ROXBURY CONNECTICUT

Historic District Commission

29 North Street • P.O. Box 203 • Roxbury, CT 06783-0203

## ROXBURY HISTORIC DISTRICT COMMISSION REGULAR MEETING AUGUST 17, 2016

### MINUTES

#### CALL TO ORDER

The meeting was called to order at 7:32 p.m.

Present: J. Huber, M. Jonker, E. Lacy, G. Miller, C. Raymond, W. Walker

#### APPROVAL OF MINUTES

The minutes of the 20 July meeting were accepted as submitted.

#### PUBLIC HEARING

The application proposes to install a hand wrought iron handrail at the west entrance. (W. Walker stepped down; C. Raymond chaired the hearing) C. Raymond read the application and passes the drawings among the members. There was no change from the pre-hearing. C. Raymond asked for further comments or questions. As there were none, the public hearing was closed.

The HDC discussed the application. As there were no changes, C. Raymond made a motion to approve the application as submitted; G. Miller seconded. C. Raymond called for a vote: Aye – Huber, Jonker, Lacy Miller, Raymond; Nay – none. The motion was passed unanimously.

#### BUSINESS

##### Mine Hill Distillery

W. Walker met with E. David re: National Register nomination for Roxbury Station. E. Davis will meet with each resident whose house will be included and explain the designation process.

##### HDC membership

A new resident, David Anthony, who resides outside the HD, has written a letter to B. Henry expressing interest in the HDC. Members agreed to invite him to a meeting.

##### Barn/Survey books

The outstanding balance of \$1080 will be paid soon. Maple Bank or The Market has requested no additional books. E. Lacy will follow up.

##### Demolition by Neglect

The material sent to the HDC by Town Counsel re: an ordinance is complex and in legal terminology. E. Lacy has read it and noted that most of the references are to the HD. G. Miller had requested information on the proposed ordinance for historic buildings outside the HD. The members discussed the processes for monitoring and enforcing the ordinance. G. McTaggart has offered to attend a meeting and explain the options. G. Miller will contact.

#### ADJOURNMENT

The meeting was adjourned at 8:45 p.m.

Respectfully Submitted,

*Georgette Miller*

Georgette Miller

The next meeting of the HDC is: Wednesday 21 September 7:30 p.m. Roxbury Town Hall

Roxbury Historic District Commission

August 17, 2016

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# TOWN OF ROXBURY CONNECTICUT

Historic District Commission

29 North Street • P.O. Box 203 • Roxbury, CT 06783-0203

## ROXBURY HISTORIC DISTRICT COMMISSION REGULAR MEETING SEPTEMBER 21, 2016

### MINUTES

#### CALL TO ORDER

The meeting was called to order at 7:35 p.m.

Present: C. Haver, J. Huber, M. Jonker, E. Lacy, G. Miller, W. Walker; D. Anthone, G. McTaggart

#### APPROVAL OF MINUTES

The minutes of the 17 August meeting were accepted with a clerical error corrected.

#### BUSINESS

W. Walker made a motion to table the agenda until the next meeting. G. Miller seconded. W. Walker called for a vote: the motion passed unanimously.

#### HDC candidate

D. Anthone was introduced to the commission. He is a new resident of Roxbury. He outlined his preservation history including his present position as Preservation Officer at the General Services Administration responsible for the Northeast and the Caribbean. He served on the Rhinecliff, NY, HDC and continues his work in the preservation field. He was invited to stay for G. McTaggart's presentation.

#### Demolition by Neglect

G. McTaggart handed out a review of the issue (attached) and reviewed the contents. The enabling statutes do not cover repairs, etc. to historic structures. The use of the EPA legislation has been partially successful but is very difficult to bring to suit. There is new legislation, PA 71-48, which covers properties on the National and State Registers but does not address the HDC's concern about unregistered properties. The issue is the "intentional factor". Other municipalities use a Blight Ordinance for control. However, an ordinance proposed in a public meeting in Roxbury drew no support. McTaggart acknowledged that a Blight Ordinance works more effectively in urban areas. She looked into other protective ordinances in rural areas, Windsor and Guilford. Neither specifically mentioned historic properties in their ordinances and applied the statute to homes in general. Other examples came from New Orleans, LA, and Culpepper, VA. The HDC agreed that targeting an ordinance to historic properties would garner more support in this town. Southbury had established a task force to look into this specific problem. McTaggart reviewed the report titled "Property Maintenance Ordinance" (PMO). The proposal advocated a pro-active stance for preservation. Unfortunately, the report was not acted upon. However, it does provide the groundwork for such an ordinance, which would protect historic properties from neglect whether intentional or not. (The Alliance Review article advocates much of the proposals in Southbury report.)

There is a Small Cities Grant for towns that Roxbury participates in which can be used in cases of neglect caused by financial distress. This can be used for repairs, interior or exterior, and provides an interest free loan for the repairs. This becomes a lien payable at the property's transfer.

Since Roxbury is Certified Local Government, there might be financial resources to set up a preservation fund to use in a PMO. Another option would be to band with other towns and lobby the State Legislature to amend the enabling legislation to include "repairs".

The HDC was interested in reviewing the PMO report from Southbury and McTaggart will email a copy. She noted that if the HDC would choose to pursue the PMO, it would be the first such ordinance in the state.

The HDC will review the material and discuss at the next meeting.

**ADJOURNMENT**

The meeting was adjourned at 9:15 p.m.

Respectfully Submitted,  
*Georgette Miller*  
Georgette Miller, Clerk

The next meeting of the HDC is: Wednesday 19 October 7:30 pm Roxbury Town Hall

**From:** [Gail McTaggart](#)  
**To:** [Georgette Miller](#)  
**Cc:** [geomiller8@att.net](mailto:geomiller8@att.net)  
**Subject:** Figarsky v. Historic Dist. Commission of City of Norwich  
**Date:** Monday, August 15, 2016 3:37:32 PM  
**Attachments:** [Figarsky v Historic Dist Commission of City of Norwich.rtf](#)

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Hi Georgette—As noted I am re-sending my long May 30 e-mail below and provided additional info below. . . Jurisdiction of the HDC and the Town will be a threshold issue with any demolition by neglect regulations. . . I understand that the demolition delay ordinance is not a perfect remedy, as it merely slows down the process. Obviously the problem is that the HDC lacks authority to intervene early to prevent demolition and is not the authority with power once the deterioration has progressed to a level of health, fire and public safety issues. In effect there would need to be a demolition neglect ordinance- the question is under what jurisdiction. .

The HDC powers are set out in the HDC enabling Act. In CT. HDC's and HPC's do not have the authority to require any maintenance or repair of an existing building or structure- no extension of authority to protect the historic properties from loss through deterioration. . . If a property is visibly deteriorating, members may contact the property owner to express their concern and offer guidance on appropriate solutions for stabilization and protection. Certainly allowing a building or structure to deteriorate to a point that it cannot be reasonably preserved or repaired is "demolition by neglect. . . Today, all the HDC may do, is to ask the building official and ZEO to inspect the property for building code and zoning violations (also Health violations may apply). But those may not be all that is required to protect the historic aspects of a building

I do see that Conn. Gen. Stat. Section 7-148 ©(10)(F) was amended by PA 13-181 to authorize a municipality to create a new commission to :

"Protect the historic or architectural character of properties or districts that are listed on or under consideration for listing on, the National Register of Historic Places ... or the State Register of Historic Places." See <https://www.cga.ct.gov/2013/act/pa/pdf/2013PA-00181-R00SB-00960-PA.pdf>

This enabling legislation encourages communities to explore innovative ways to highlight and preserve historic resources that are listed on the State or National Register of Historic Places, but are not located in designated Local Historic Districts. The Connecticut Trust for Historic Preservation proposed the new enabling act for the 2013 session of the state legislature, and has drafted a model Historic Preservation Ordinance for municipalities to consider and discuss. The model ordinance derived from PA 13-181 offers three ways to encourage the preservation of a community's distinct historical and architectural heritage 1) Research, documentation, and public recognition of historic buildings, sites, and structures 2) Closer collaboration with municipal boards, commissions, and agencies in recognizing the value of historic resources and planning for preservation 3) Modest regulatory review for significant exterior alteration or demolition of historic properties. The ordinance can be shaped and customized to suit the needs of the individual municipality. The model ordinance is found at [http://ctrust.org/\\_IMAGES/Model%20local%20ordinance%20Nov2013%20PDF.pdf](http://ctrust.org/_IMAGES/Model%20local%20ordinance%20Nov2013%20PDF.pdf). The recommendation would be to adopt some or all of the model ordinance or develop a different type of historic preservation ordinance under the general language of the new law. "For communities that already have a demolition delay ordinance, a blight ordinance, or a local historic district ordinance, the new enabling legislation opens a new realm of possibilities." This is only applicable to properties in historic districts that have this federal designation. It requires establishment of a historic preservation commission .

If there were an anti-blight ordinance, that might also be an avenue for enforcement, but most of those are not limited to historic buildings. . . I understand that Roxbury residents attending an informational meeting regarding a possible blight ordinance for Roxbury were not generally in favor of such regulations. Perhaps a more limited ordinance targeted to apply to historic structures could be considered—this would take some careful thought. A blight ordinance can work to preserve and protect property values and protect, preserve and promote public health safety and welfare. . . The Connecticut General Statutes (Section 7-148 [7] (h) {xv}) allows municipalities to define blight and act on it. Under CGS 7-148 towns can adopt an ordinance to prevent housing blight and impose fines of between \$10 and \$100 for each day that a violation continues. See Guilford Blight Ordinance with no reference to historic buildings so there is no discrimination. I am not certain how this has worked. <http://www.ci.guilford.ct.us/pdf/blight-ordinance.pdf>; see also dated AG opinion:

<https://www.cga.ct.gov/2003/olrdata/pd/rpt/2003-R-0771.htm>.. These ordinances may get at demolition by neglect by describing blight in broad terms such as :

1. is not being adequately maintained, e. g. , it has missing or boarded windows or doors;
2. a factor that is seriously depreciating property values in the neighborhood; or
3. a factor creating a substantial and unreasonable interference with the lawful use and enjoyment of other space within the premises or neighborhood.
4. a property is considered blighted if it is dilapidated. In the case of a vacant building, this means that the property is in a physically deteriorating condition that is causing unsafe, unsanitary conditions and is nuisance to the public under applicable state and local laws. A partially occupied building is considered dilapidated if any dwelling unit does not meet Housing Code standards or if any non-residential space violates the blight standards.

For these ordinances, the physical situation is the key, not the historic preservation. A list of blighted properties may be published and inspected annually and that could provide an incentive. .

The most effective tool would be a revision to the HDC statutes to allow a local preservation ordinance to require affirmative maintenance and ensuring that the local HDC commission is equipped with adequate remedies and enforcement authority. I do not know what initiatives have occurred in this respect. My preliminary research below shows that affirmative maintenance provisions have been upheld and enforced by the courts. The leading case is Maheer v. City of New Orleans, 516 F.2d 1051 (5th Cir. 1975), cert. denied, 426 U.S. 905 (1976), in which a federal appeals court upheld an affirmative maintenance provision for the French Quarter in New Orleans, ruling that the provision **was constitutional as long as it did not have an unduly burdensome effect on the individual property owner**. In Harris v. Parker, Chancery No. 3070 (Cir. Ct. Isle of Wight County, Va. Apr. 15, 1985), a case from Smithfield, Virginia, the court actually ordered repairs to be carried out in compliance with the affirmative maintenance requirements in the ordinance. And in Buttnick v. City of Seattle, 719 P.2d 93, 95 (Wash. 1986), the court ruled that requiring an owner to replace a defective parapet on a historic building did not result in unreasonable economic hardship. However, the D.C. Court of Appeals in District of Columbia Preservation League v. Department of Consumer and Regulatory Affairs, 646 A.2d 984 (D.C. App. 1994), reversed the District of Columbia's approval of the demolition of a historic landmark in dilapidated condition caused by the owner's own actions, because the demolition permit was unauthorized under the District's preservation act. The New York Landmarks Commission has successfully obtained judgments against owners of historic buildings in particularly egregious condition. In 2004, a New York City trial judge ordered the owners of the landmarked "Skidmore House" in Manhattan to make all repairs ordered by the Landmarks Commission and to keep the building in "good repair." See City of New York v. 10-12 Cooper Square, Inc., 793 N.Y.S.2d 688 (N.Y. Cty. 2004). On May 21, 2009, a Manhattan judge ordered the owner of the vacant Windermere Apartment Complex to maintain and repair the complex's three buildings and to pay \$1.1 million in civil penalties. See <http://www.preservationnation.org/information-center/law-and-policy/legal-resources/preservation-law-101/resources/Demolition-By-Neglect.pdf>. These cases involve a regulation or law that permits affirmative maintenance, which is lacking in CT under the HDC statutes.

Conn. Gen. Stat Section 7-148 allows the passage of anti-blight ordinances that may have a "carrot and stick" approach that allows not only fines and other penalties but also financial incentives and other solutions. Under the Act, ". . . communities are encouraged to define, prohibit, and abate blight and nuisances and to protect, preserve, and promote health, safety and welfare . . . and to preserve and protect property values."

The goal might be for the Town to adopt a comprehensive Property Maintenance Ordinance (as recommended by Southbury's Blight Task Force) that expands enforcement prerogatives of existing regulations and codes (or using more negative terms, Demolition by Neglect Blight ordinance) to allow the Town officials to direct a property owner to maintain their historic buildings and require certain repairs if the Town finds the building could be compromised if the repairs are not completed. These kinds of ordinances bump into the powers of the Building Official, Fire Marshall, Health Director, Zoning Official, HDC, Police, Assessor, etc. So there are already enforcement capabilities in place even though the historic buildings may fall between the cracks in these regulations and powers. The weakness in this approach is how to deal with cross-department coordination and how to offer a resource for owners of property in distress or affected neighbors. . . a Property Preservation and Conservation ordinance could create a Property Preservation and Conservation Review Board to act as a mediator and resource where complaints would be lodged and consultation accomplished.

Roxbury might consider a Windsor-type blight ordinance that reportedly applies to, "among other things, buildings in which more than 25% of a publically-visible façade is blighted." This would give the Town a tool to prevent willful neglect. Active monitoring and reporting of structural blight is important to prevent demolition by neglect.

Simply talking to the owner may provide insight into the reason for a neglectful appearance and, in some cases, staff or committee head may be able to point the owner to grant or loan programs or to groups that volunteer to help with upkeep tasks.”

[http://www.townofwindsorct.com/documents/departments/planning/docs/Chapter\\_6\\_Historic\\_Resources.pdf](http://www.townofwindsorct.com/documents/departments/planning/docs/Chapter_6_Historic_Resources.pdf).

One option has been to find grants available to help people who simply do not have the resources to maintain historic properties. For example, Windsor is a Certified Local Government (CLG). CLG is a federal program administered by the State, where communities are certified if they can demonstrate their commitment to historic resource preservation. CLG designation opens the door for additional grant opportunities. The Town may regularly seek grants to implement the strategies in this CLG plan and for specific projects that will help meet other goals in this Plan. Southbury CT is a CLG and its Blight Task Force looked at the incentive aspect of this problem. I have a copy of their report which in the end did not target historic structures. And has not been implemented.

Many blight -type ordinances throughout the country allow for a Town to make the repairs and lien the property, if necessary, to recover the cost of the project. Some experts have said that the power of demolition by neglect ordinance does not come from the actual implementation of the ordinance, instead it comes from the threat of using it. For example, if a property owner knows the Town can lien the property they will often choose to perform the work themselves at a lower cost.

There's one other legal possibility- which in my opinion is not the best course in most instances. The Connecticut Environmental Protection Act allows any citizen to sue to prevent the "unreasonable destruction" of historic resources — defined as buildings listed on or under consideration for the National Register. This is not a certain resolution. There would need to be a court finding that an owner's intentional neglect or inaction is 'unreasonable destruction' under the Environmental Protection Act — a finding that would be a natural extension of legal precedent but also is a fact based review of intentions, which is never easy or certain in outcome. I have experience with this process and understand its expense and shortcomings—also its applicability is limited. One of the problems with demolition by neglect findings involves intent. The deterioration may be through benign indifference, financial situations, or a deliberate strategy to circumvent historic preservation restrictions against demolition.

I found a review of an aggressive DC statute that defined "demolition by neglect" as "neglect in maintaining, repairing, or securing an historic [property] that results in deterioration of an exterior feature of the building or structure or the loss of the structural integrity of the building or structure." This law requires owners of historic properties to prevent demolition by neglect and confers upon them an affirmative "maintenance of property" duty. This subsection lists specific conditions that the owners must prevent such as "facades which may fall,"<sup>88</sup> "deteriorated foundation . . . flooring, . . . walls,"<sup>89</sup> and "ineffective waterproofing of exterior walls, roofs, foundation, or floors, including broken windows or doors,"<sup>90</sup> to name a few. In addition to specific conditions, the last subsection is written in a more general style, which would likely capture any specific condition not explicitly noted. The law provides enforcement tools when the District makes a finding that a building is threatened by demolition by neglect. The City may order an owner to "repair all conditions contributing to demolition by neglect" or enter the property and make the repairs if the owner does not.<sup>92</sup> The City may also take the same action for a contributing building within a proposed historic district, which is a district identified in an application pending before the Review Board or with the Historic Preservation Division.<sup>93</sup> New subsection 6-1104.03 gives the District a new revolving fund, which will fund repairs the City makes to historic properties to correct demolition by neglect.<sup>94</sup> The District will charge the owner with the costs of the repairs, which will be assessed against the property and paid into the fund when received. The problem is that this is a big city with resources and a complex bureaucratic scheme. In serious situations, this law involves judicial intervention to obtain a court order to require an owner to repair all conditions that are threatening a building with demolition by neglect or make the repairs if the owner refuses to comply. Whatever the process, there will need to be due process, meaning a chance for a hearing and the requirements of certain findings.

All of this is food for thought. Please feel free to call.. Gail

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**From:** Gail McTaggart  
**Sent:** Monday, May 30, 2016 4:02 PM  
**To:** 'geomiller8@att.net'  
**Cc:** gail@mctaggart.com  
**Subject:** Figarsky v. Historic Dist. Commission of City of Norwich

Hi Georgette:

Are you thinking generally or just for properties within the authority of the district? Please confirm. This is the beginning of my look at this issue. It is a bit cathartic and preliminary, After you have read all this, we can talk.. Thus, this is not yet for wide consumption.

Of course, within the district the HDC has the power to require an application for demolition. See the definitions below. No building may be altered on the exterior, including demolition, without a COA. The question is as to affirmative enforcement powers, contrasted with the authority to approve demolition or work upon application.. The biggest question appears to be the gap between applications to demolish and ongoing demolition by neglect without such application. This involves the building official and possibly the health department to require renovations.

Under CT Law, in the event of a violation of the historic district regulations or ordinance, the commission can bring an action to the superior court to restrain any violation and to obtain orders directing that the violation be corrected or removed.

Regulations and orders of the commission may be enforced by the zoning enforcement official or building inspector, or any other person designated in the ordinance. The enforcement provisions are similar to those in [General Statutes § 8-12](#) for zoning violations.

At the National Trust Website I find the following definition:

“Demolition by Neglect” is the term used to describe a situation in which a property owner intentionally allows a historic property to suffer severe deterioration, potentially beyond the point of repair. Property owners may use this kind of long-term neglect to circumvent historic preservation regulations.

The “intentional” aspect of this is important.

It is understood that “ Property owners using demolition by neglect as a tactic to work around preservation laws will often argue that the prohibitive cost of repairs and deferred maintenance creates an economic hardship. Ideally historic preservation ordinances need a safeguard provision to protect against this kind of argument, creating a loophole. Generally, the owner’s own neglect should not be allowed to create an



economic hardship. However, it is often difficult to sort out the extent to which an economic hardship is attributable to an owner's actions, or to things beyond the owner's control (i.e., circumstances that would have existed in any event). In looking at economic hardship and demolition by neglect, it is important for commissions to look beyond simply the relationship between the cost of repairs and the purchase price or the "as is" value."

This website notes that "The most important tool for controlling demolition by neglect is a carefully drafted provision in the local preservation ordinance requiring affirmative maintenance and ensuring that the local commission is equipped with adequate remedies and enforcement authority. Although this authority has been upheld by courts in different parts of the country, this would need to be reviewed under Connecticut's enabling statutes for the HDC and the building official under the building code. In Connecticut the authority to inspect buildings lies with the building official. That would need to be coordinated.

I see the following cases on affirmative maintenance (I have not reviewed them all):

Affirmative maintenance provisions have repeatedly been upheld and enforced by the courts. The leading case is Maier v. City of New Orleans, 516 F.2d 1051 (5th Cir. 1975), cert. denied, 426 U.S. 905 (1976), in which a federal appeals court upheld an affirmative maintenance provision for the French Quarter in New Orleans, ruling that the provision was constitutional as long as it did not have an unduly burdensome effect on the individual property owner. In Harris v. Parker, Chancery No. 3070 (Cir. Ct. Isle of Wight County, Va. Apr. 15, 1985), a case from Smithfield, Virginia, the court actually ordered repairs to be carried out in compliance with the affirmative maintenance requirements in the ordinance. And in Buttnick v. City of Seattle, 719 P.2d 93, 95 (Wash. 1986), the court ruled that requiring an owner to replace a defective parapet on a historic building did not result in unreasonable economic hardship. The D.C. Court of Appeals in District of Columbia Preservation League v. Department of Consumer and Regulatory Affairs, 646 A.2d 984 (D.C. App. 1994), reversed the District of Columbia's approval of the demolition of a historic landmark in dilapidated condition caused by the owner's own actions, because the demolition permit was unauthorized under the District's preservation act. City of New York v. 10-12 Cooper Square, Inc., 793 N.Y.S.2d 688 (N.Y. Cty. 2004)- upholding authority of Landmark's Commission..

In Connecticut one important case on point is Figarsky v. Historic District Commission of the City of Norwich, 171 Conn. 198 (1976). attached. (Note that in this case the repairs were ordered by the building official and health dept which led to a request for demolition which was denied by the HDC):

In Figarsky a property owner filed a lawsuit against Norwich Connecticut's Historic

District Commission, charging that application of the preservation ordinance's affirmative maintenance provision constituted a taking. The Supreme Court of Connecticut disagreed, and ordered the owner to repair the property in question. This ruling was influenced by a noteworthy finding. The court found that the owner had intentionally discontinued maintenance, causing self-inflicted hardship. The Figarsky court following statutes:

‘(General Statutes) s 7-147a. Historic districts authorized. . . . to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of buildings, places and districts of historic **interest by the maintenance of such as landmarks in the history of architecture**, of the municipality, of the state or of the nation, and through the development of appropriate settings for such buildings, places and districts. . . .’

‘(General Statutes) s 7-147f. Considerations in determining appropriateness. If the commission determines that the proposed erection, construction, restoration, alteration, **razing** or parking will be appropriate, it shall issue a certificate of appropriateness. In passing upon appropriateness as to exterior architectural features the commission shall consider, in addition to any other pertinent factors, the historical and architectural value and significance, architectural style, general design, arrangement, texture and material of the architectural features involved and the relationship thereof to the exterior architectural style and pertinent features of other structures in the immediate neighborhood. . . . A certificate of appropriateness may be refused for any building or structure, the erection, reconstruction, restoration, alteration or **razing** of which, or any parking which, in the opinion of the commission, would be detrimental to the interest of the historic district.’

The facts of the case area as follows:

The plaintiffs' property, which they purchased in 1963, \*200 is a two story building zoned for commercial uses and is located just inside the bounds of the district. The property faces the green but is bounded on two sides by a McDonald's hamburger stand and parking lot. The building is in need of some repairs, which the Norwich building inspector has ordered the plaintiffs to undertake. Rather than make the repairs, however, the plaintiffs would prefer to demolish the building. In August, 1972, the plaintiffs applied to the building inspector for a demolition permit. The building inspector informed the plaintiffs that before such a permit could be issued a certificate of appropriateness was required. The plaintiffs, therefore, applied to the defendant for a certificate, filing their application

with the building inspector on November 29, 1972. The defendant held a public hearing on the application on January 25, 1973. The hearing was attended by more than 100 persons, none of whom, except for the plaintiffs and their attorney, spoke in favor of granting the application. On the following day, the commission voted unanimously to deny the plaintiffs' application.

The plaintiffs maintain that the costs of the repairs necessary for the building are prohibitive. The building inspector has ordered the plaintiffs to repair the foundation and replace a door sill and hall floor, and the health department has ordered the plaintiffs to tie in to a newly accessible public sewer. At the hearing before the commission, the plaintiffs offered the testimony of a local contractor to the effect that the cost of these repairs, together with the cost of reroofing the building, would amount to between \$15,000 and \$18,000. The plaintiffs offered no evidence of the value of the house without repairs, its value if repaired, or the value of the lot if the building were razed. Nor did the \*201 plaintiffs disclose to the commission the use which they intended to make of the lot if the building were razed.

The commission also received numerous opinions from the plaintiffs' neighbors and from the Connecticut historical commission, the southeastern Connecticut regional planning agency, and the Connecticut society of architects, as to the historic value of the premises. The consensus of these opinions was that although the building itself is of little historic value or interest, it does, by virtue of its location, perform an important screening function, separating the green from an encroaching commercial district, and its preservation is important in maintaining the character of the historic district. The commission stated its reasons for denying the application as follows: 'The Commission is of the opinion that the building in question significantly contributes to the importance of the Norwichtown Green as an historic landmark, and the Commission would have violated its responsibilities as defined in (ss 7-147a-7-147k) to have permitted its demolition. In weighing all the considerations concerning this Application, the Commission was cognizant of (s 7-147g, pertaining to permissible variations), but concluded that the hardships presented by the Applicant were not of sufficient magnitude to warrant granting approval for demolition.'

In this case the property owners (Plaintiffs) "claim that the Norwich ordinance does not vest the commission with the power to regulate the demolition of structures within the historic district. In support of this

contention, the plaintiffs point out that s 14-20 of the ordinance provides that the commission: ‘shall administer the provisions of (the enabling act) as implemented by this article’ and that the ordinance itself does not mention ‘demolition.’ In the absence of any specific reference in the ordinance to the power to control the demolition of structures, the plaintiffs argue, no such power has been granted the commission.

The court observed:

Section 14-17 of the ordinance, however, provides that the commission ‘shall be empowered to exercise all the powers and duties and functions enumerated in such [sections 7-147a to 7-147k](#), inclusive, as amended, of the general statutes.’ This language incorporates by reference [s 7-147d\(a\) of the General Statutes](#) which declares that ‘(n)o building or structure shall be . . . demolished within an historic district until after an application for a certificate of appropriateness . . . has been . . . approved by said commission.’ Furthermore, s 14-24 of the ordinances provides that ‘(n)o work on any type of building or structure which would change the appearance of any building or structure within the historic district when viewed from the street line shall be begun until the owner has filed an application with the building official and has received a certificate of appropriateness from the historic district commission.’ Certainly the demolition of the plaintiff’s building would qualify as ‘work . . . which would change the appearance of’ a building located within the district.

The HDC ordinance was challenged on a constitutional basis on its face and as applied in this situation—as being a regulatory taking of property without compensation. The court opined: To be constitutionally valid, a regulation made under the police power must have a reasonable relation to the public health, safety, morality and welfare.’ [State v. Gordon, 143 Conn. 698, 703, 125 A.2d 477, 480; DeMello v. Plainville, 170 Conn. 675, 679, 368 A.2d 71](#). No contention is made that the **historic district** ordinance contributes to the health or safety of the public; our inquiry is limited to whether **\*\*170** the preservation of **historic** areas in a static form serves the amorphous concept of ‘the public welfare.’ See [Opinion of the Justices, 333 Mass. 773, 778, 128 N.E.2d 557](#). ‘The concept of the public welfare is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.’ [Berman v. Parker, 348 U.S. 26, 33, 75 S.Ct. 98, 102, 99 L.Ed. 27](#). It is apparent from the language of the enabling statute<sup>2</sup> that the General Assembly, in enacting those statutes, was cognizant not only of

the intangible benefits to be derived from **historic districts**, such as an increase in the public's awareness of its New England heritage, but of the economic benefits to be reaped as well, by augmenting the value of properties located within the old sections of the state's cities and towns, and encouraging tourism within the state. In a number of recent cases, it has been held that the preservation of a **historical** area or landmark as it was in the past falls within the meaning of general welfare and, consequently, the police power. See, e.g., [Maher v. New Orleans, 516 F.2d 1051, 1060 \(5th Cir.\)](#); [Annapolis v. Anne Arundel County, 271 Md. 265, 316 A.2d 807](#); [Lutheran Church in America v. City of New York, 35 N.Y.2d 121, 359 N.Y.S.2d 7, 316 N.E.2d 305](#); [Rebman v. Springfield, 111 Ill.App.2d 430, 250 N.E.2d 282](#); [Opinion of the Justices, supra, 773, 128 N.E.2d 557](#); see 1 Rathkopf, *Zoning and Planning* (4th Ed.), c. 15; [82 Am.Jur.2d, Zoning and Planning, s 40](#).

We cannot deny that the preservation of an area or cluster of buildings with exceptional [Bartlett v. Zoning Commission, 161 Conn. 24, 31, 282 A.2d 907](#); [Dooley v. Town Plan & Zoning Commission, 151 Conn. 304, 311, 197 A.2d 770](#). In regulating the use of land under the police power, the maximum possible enrichment of a particular landowner is not a controlling purpose. [Goldblatt v. Hempstead, 369 U.S. 590, 82 S.Ct. 987, 8 L.Ed.2d 130](#); [Hyatt v. Zoning Board of Appeals, 163 Conn. 379, 383, 311 A.2d 77](#); [Damick v. Planning & Zoning Commission, 158 Conn. 78, 83, 256 A.2d 428](#). It is only when the regulation practically destroys or greatly decreases the value of a specific piece of property that relief may be granted, provided it promotes substantial justice. [Culinary Institute of America, Inc. v. Board of Zoning Appeals, 143 Conn. 257, 261, 121 A.2d 637](#). 'The extent of that deprivation must be considered in light of the evils which the regulation is designed to prevent.' [Chevron Oil Co. v. Zoning Board of Appeals, 170 Conn. 146, 152, 365 A.2d 387, 390](#); see [General Statutes s 7-147f](#). <sup>[14]</sup> <sup>[15]</sup> The plaintiffs had the burden of proving that the **historic district** commission \*\*172 acted illegally, arbitrarily, in a confiscatory manner or in abuse of discretion. [Byington v. Zoning Commission, 162 Conn. 611, 613, 295 A.2d 553](#). This the plaintiffs failed to do. See [Penn Central Transportation Co. v. City of New York, supra, 29](#); [Maher v. New Orleans, 516 F.2d 1051, 1067 \(5th Cir.\)](#). The plaintiffs went no further than to present evidence that their house was unoccupied and in need of extensive repairs. There was no evidence offered that the house, if repaired, would not be of some value, or that the proximity of the McDonald's hamburger stand rendered the property of practically no value as a part of the **historic district**.

The Norwich **historic district** commission, after a full hearing, lawfully,

reasonably and honestly exercised its judgment. The trial court was correct in not substituting its own judgment for that of the commission. [Bora v. Zoning Board of Appeals, 161 Conn. 297, 300, 288 A.2d 89](#) **historical and architectural significance may serve the public welfare.**

The Figarsky court also ruled: Certainly the demolition of the plaintiff's building would qualify as 'work . . . which would change the appearance of' a building located within the district. There is no merit to the plaintiffs' claim that the ordinance does not empower the commission to consider applications of appropriateness pertaining to the demolishing of a building or structure.

A February 2016 CT appellate court case, *EDGEWOOD STREET GARDEN APARTMENTS, LLC v CITY OF HARTFORD*. 163 Conn.App. 219, cites Figarsky as authority for police power on a case that dealt with the power to order demolition of an unsafe structure, but not involving an historic building. This case cites the enabling statute that grants municipalities "the power to ... (7)(A)(iii) ... cause the removal and demolition of unsafe buildings and structures...." [General Statutes § 7-148\(c\)](#). Roxbury operates under these general statutes.

A number of states permit local governments to prevent the "demolition by neglect" of historic properties. For example

- In NC the state statute provides: The governing board of any municipality may enact an ordinance to prevent the demolition by neglect of any designated landmark or any building or structure within an established historic district. Such ordinance shall provide appropriate safeguards to protect property owners from undue economic hardship
- Alabama: Demolition by neglect and the failure to maintain an historic property or a structure in an historic district shall constitute a change for which a certificate of appropriateness is necessary
- RI- Avoiding demolition through owner neglect. a city or town may by ordinance empower city councils or town councils in consultation with the historic district commission to identify structures of historical or architectural value whose deteriorated physical condition endangers the preservation of such structure or its appurtenances. The council shall publish standards for maintenance of properties within historic districts. Upon the petition of the historic district commission that a historic structure is so deteriorated that its preservation is endangered, the council may establish a reasonable time not less than 30 days within which the owner must begin repairs. If the owner has not begun repairs within the allowed time, the council shall hold a hearing at which the owner may appear and state his or her reasons for not commencing repairs. If

the owner does not appear at the hearing or does not comply with the council's orders, the council may cause the required repairs to be made at the expense of the city or town and cause a lien to be placed against the property for repayment."

- San Francisco: Language in the San Francisco ordinance is quite explicit and detailed with respect to the problem of demolition by neglect:  
"Maintenance: The owner, lessee, or other person in actual charge of a Significant or Contributory building shall comply with all applicable codes, laws and regulations governing the maintenance of property. It is the intent of this section to preserve from deliberate or inadvertent neglect the exterior features of buildings designated Significant or Contributory, and the interior portions thereof when such maintenance is necessary to prevent deterioration and decay of the exterior. All such buildings shall be preserved against such decay and deterioration and shall be free from structural defects through prompt corrections of any of the following defects: 1. Facades which may fall and injure members of the public or property. 2. Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports. 3. Members of ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split or buckle due to defective material or deterioration. 4. Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations or floors, including broken windows or doors. 5. Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering. 6. Any fault or defect in the building which renders it not properly watertight or structurally unsafe."
- **Culpeper** VA- "Sec. 28-27.2. Demolition By Neglect. No officially designated historic landmark or contributing structure within the historic district shall be allowed to deteriorate due to neglect by the owner which would result in violation of the intent of this Section. Demolition by neglect shall include any one or more of the following courses of inaction or action: 1. Deterioration of the exterior of the building to the extent that it creates or permits a hazardous or unsafe condition. 2. Deterioration of exterior walls or other vertical supports, horizontal members, roofs, chimneys, exterior wall elements such as siding, wooden walls, brick, plaster, or mortar to the extent that it adversely affects the character of the historic district or could reasonably lead to irreversible damage to the structure. In the event the Culpeper County Building Official, or the agent officially recognized by the Town of Culpeper as serving that capacity, determines a structure in a historic district is being 'demolished by neglect', he shall so notify the Chairperson of the Historic and Cultural Conservation Board, stating the reasons therefor, and shall give the owner 30 days from the date of the notice to commence work rectifying the specifics provided in the notice; or

to initiate proceedings as provided for in Section 28-27. If appropriate action is taken in this time, the Town may initiate appropriate legal action as provided therein."

CT statutes in issue:

§ 7-147d. Certificate of appropriateness: Parking areas

Currentness

(a) No building or structure shall be erected or altered within an historic district until after an application for a certificate of appropriateness as to exterior architectural features has been submitted to the historic district commission and approved by said commission.

(b) No building permit for erection of a building or structure or for alteration of an exterior architectural feature within an historic district and no demolition permit for demolition or removal of a building or structure within an historic district shall be issued by a municipality or any department, agency or official thereof until a certificate of appropriateness has been issued. A certificate of appropriateness shall be required whether or not a building permit is required.

(c) The historic district commission may request such plans, elevations, specifications, material and other information, including in the case of demolition or removal, a statement of the proposed condition and appearance of property after such demolition or removal, as may be reasonably deemed necessary by the commission to enable it to make a determination on the application. The style, material, size and location of outdoor advertising signs and bill posters within an historic district shall also be under the control of such commission. The provisions of this section shall not be construed to extend to the color of paint used on the exterior of any building or structure.

Thus under 7-147d: No building permit or demolition permit may be issued without COA f Commission may require submission of plans, elevations, specifications, materials and other relevant information; in case of demolition may also require statement re: proposed condition and appearance of property post-demolition

Other Solutions:

1. Blight ordinance- with fines for owners who don't maintain their properties. Roxbury does not have one although one was proposed. These ordinances raise complex issues in rural towns.
2. The Connecticut Environmental Protection Act -Conn. Gen. Stat. §22a-19a (CEPA) allows any person or organization to sue to prevent the "unreasonable



destruction" of historic resources — defined as buildings listed on or under consideration for the National Register. I understand this is untested for demolition by neglect. The Environmental Protection Act has given preservationists some notable successes. In 2011, a court ordered Wallingford not to demolish a historic house, which the town recently sold to a private owner. In 2012, the Connecticut Trust sued the Southington YMCA over its plans to demolish a house listed on the National Register. Eventually the Y agreed to preserve the house. Last year, the Milford Preservation Trust sued to prevent the demolition of an 18th-century house. That case also resulted in a settlement in which the owners sold the house to a preservation-minded buyer. Sometimes just the threat of a lawsuit convinces an owner not to raze a historic building. The big difference between these cases and most demolition by neglect situations is that the owners all had taken out demolition permits. So the question is whether CEPA applies to demolition by neglect as well? It may be that it does. In New York and California, preservation agencies have successfully used landmark laws to halt demolition by neglect. The trick would be to prove that the demolition by neglect necessitates a finding that inaction is 'unreasonable destruction' under CEPA— a finding that would be a natural extension of legal precedent. This however, would make new law.

In another case, *Norwalk Preservation Trust, Inc. v. Norwalk Inn & Conference Center, Inc.*, CV074010609S, 2008 Conn. Super. Lexis 286 (Feb. 6, 2008) Preservation organization, joined by CT Commission on Culture & Tourism, intervened under Conn. Gen. Stat. §§ 22a-19 and 22a-19a seeking a temporary injunction to prevent the demolition of an 18th century building included in a National Historic District listed on the National Register. In a case of first impression, the court was asked to decide whether “feasible and prudent” alternatives to demolition existed under Conn. Gen. Stat. §22a-17(a) warranting an injunction. Finding the proposed hotel expansion could be accomplished albeit with a reduction in the number of rooms and creative site planning, the court granted the injunction.

This intervention under CEPA is limited as follows:

Intervention under Conn. Gen. Stat. §22a-19a Criteria for Intervention to Protect Historic Resource f Individual property listed or under consideration for listing on National Register; or f Property is part of a district that is listed or under consideration for listing on the National Register, and f State Historic Preservation Board has determined that the property contributes to the historic significance of that district. f Intervention not available for any property nominated to the state register after March 2001 for which a written notarized

objection was filed by the owner. Intervention Standard Upon filing of a petition for intervention, the commission or court must determine whether the administrative proceeding or action for judicial review has or is likely unreasonably to destroy the public trust in such historic structures or landmarks.

Intervention under Conn. Gen. Stat. § 22a-19a “In any administrative, licensing or other proceeding, and in any judicial review thereof made available by law, the Attorney General, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may intervene as a party on the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state.” Conn. Gen. Stat. §22a-19a “The provisions of sections 22a-15 to 22a-19, inclusive, shall be applicable to the unreasonable destruction of historic structures and landmarks of the state, which shall be those properties (1) listed or under consideration for listing as individual units on the National Register of Historic Places ... or (2) which are part of a district listed or under consideration for listing on said national register and which have been determined by the State Historic Preservation Board to contribute to the historic significance of such district.” Conn. Gen. Stat. §22a-19a

3. Village Districts; Village Districts Enabling Statute “The zoning commission of each municipality may establish village districts as part of the zoning regulations adopted under section 8-2 or under any special act. Such districts shall be located in areas of distinctive character, landscape or historic value that are specifically identified in the plan of conservation and development of the municipality.” Conn. Gen. Stat. §8-2j(a).
  - a. The regulations establishing village districts shall protect the distinctive character, landscape and historic structures within such districts and may regulate ... new construction, **substantial reconstruction** and rehabilitation of properties within such districts and in view from public roadways ....” Jurisdiction 1) Design and placement of buildings; 2) Maintenance of public views; 3) Design, paving materials and placement of public roadways; 4) Other elements the zoning commission deems appropriate to maintain and protect the character of the village district. “In adopting regulations, the commission shall consider the design, relationship and compatibility of structures, plantings, signs, roadways, street hardware and other objects in public view.” Conn. Gen. Stat. §8-2j(b)
  - b. Regulations shall establish criteria to help property owners and the commission make reasonable determinations of what is permitted

Regulations shall encourage conversion, conservation and preservation of existing buildings and sites in a manner that maintains the historic or distinctive character of the district. Regulations concerning the exterior of structures or sites shall be consistent with: A) Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings B) Distinctive characteristics of the district identified in the municipal plan if conservation and development Conn. Gen. Stat. §8-2j(b) How to Create a Village District f Identify area consistent with requirements under Conn. Gen. Stat. §8-2j(a) & (c) f Amend Plan of Conservation & Development to identify distinctive characteristics, landscape or historic value of proposed district f Enact zoning regulations consistent with Conn. Gen. Stat. §8-2j under same procedures set forth in §§8-2, 8-3, 8-3a & 8-3b f Task Zoning Commission with administration of Village District. f

- c. Regulations shall provide that: i. Proposed buildings or modifications to existing buildings be harmoniously related to surroundings and terrain in the district and to the use, scale and architecture of existing buildings that have a functional or visual relationship with the proposed building; ii. All spaces, structures and related site improvements visible from public roadways be compatible with the elements of the area in and around the proposed building; iii. Color, size, height, location, proportion of openings, roof treatments, building materials and landscaping of commercial and residential property and any proposed signs and lighting be evaluated for compatibility with the local architectural motif and maintenance of views, buildings, monuments and landscaping; iv. Removal or disruption of historic traditional or significant structures or architectural elements shall be minimized. Conn. Gen. Stat. §8-2j(b)
- d. All development within district shall be designed to achieve compatibility with: 1) Building and layout of buildings and site improvements shall reinforce existing building and streetscape patterns; placement of buildings and site improvements shall assure no adverse impact on the district; 2) Proposed streets shall be connected to the existing road network within the district, wherever possible; 3) Open spaces within the proposed development shall reinforce open space patterns of the district in form and siting; 4) Locally significant features of the site such as distinctive buildings or sight lines of vistas within the district shall be integrated into the site design; 5) Landscape design shall complement the district's landscape patterns; 6) Exterior signs, site lighting and accessory structures shall support a uniform architectural theme (if such theme exists) and be compatible with their surroundings; 7) Scale, proportions, massing and detailing of any proposed building shall be in proportion to the scale, proportion, massing and detailing in the district. Conn. Gen.

Stat. §8-2j(c)

- e. All applications for new construction **and substantial reconstruction** within the district and in view from public roadways shall be subject to review and recommendation by the designated Village District Consultant. Village District Consultant can be: A. An architect or architectural firm, landscape architect or planner who is a member of the American Institute of Certified Planners, or B. An architectural review board whose members shall include at least one architect, landscape architect or planner who is a member of the American Institute of Certified Planners. f The Village District Consultant shall review each application and report to the commission within 35 days of receipt of the application. f Such report and recommendation shall be entered into the public hearing record and considered by the commission in making its decision. f Failure to report within the specified time does not alter or delay any other time limit imposed by the regulation.
- f. How to Create a Village District f Identify area consistent with requirements under Conn. Gen. Stat. §8-2j(a) & (c) f Amend Plan of Conservation & Development to identify distinctive characteristics, landscape or historic value of proposed district f Enact zoning regulations consistent with Conn. Gen. Stat. §8-2j under same procedures set forth in §§8-2, 8-3, 8-3a & 8-3b f Task Zoning Commission with administration of Village District f Identify appropriate candidates to act as the Village District Consultant for design review or create an architectural review board,
- g. Village Districts Administrative Process f Application made to Zoning Commission consistent with Conn. Gen. Stat. §8-3 and applicable Village District Regulations • Property is located within Village District • Applicant seeks permit within Zoning Commission's jurisdiction f The commission may seek the recommendations of any town or regional agency or outside specialist with which it consults. Possible advisors and consultants may include: • Regional Planning Agency • Municipal historical society • Connecticut Trust for Historic Preservation • UConn College of Agriculture & Natural Resources Any reports or recommendations from such agencies or organizations shall be entered into the public hearing record. Conn. Gen. Stat. §8-2j(e) Review Process depends on type of permit • Site Plan only Æ design review • Special Permit Æ design review and public hearing • Text or Map Amendment – design review and public hearing; f

- h. Applicant would apply to Zoning Board of Appeals for a variance and the ZBA would apply the same statutory requirements, regulations and standards as the Zoning Commission and the hardship standard would apply. Variance design review and public hearing. f Decision to grant or deny application; "If a commission grants or denies an application, it shall state upon the record the reasons for its decision. If a commission denies an application, the reason for the denial shall cite the specific regulations under which the application was denied. Notice of the decision shall be published in a newspaper having a substantial circulation in the municipality. An approval shall become effective in accordance with subsection (b) of section 8-3c [concerning filing a copy of the approval with the town clerk and the clerk of the district and in the land records]. Conn. Gen. Stat. §8-2j(f)
- i. Appeal procedure same as for appeal from any decision or action by a zoning commission. See Conn. Gen. Stat. §§8-8 and 8-10 Evidentiary Standards As with other decisions rendered by zoning commissions, the reasons for denial must be supported by substantial evidence in the record. Standards of Review Depending on which type of permit is sought, the same standards of review apply as apply to any decision made by a zoning commission.
- j. Benefits Allows for adoption of flexible aesthetic regulations that are not strictly bound by any specific time period, architectural style or other pattern of development or design established in the past. Appropriate for use in rural areas that lack a geographic concentration of historic buildings and structures, include infill or newer developments, where the pattern of development is changing either through increased development pressure or different patterns of development and where there may not be sufficient community support for the creation of a historic district and corresponding historic district commission.

Other resources to check:

Hill, Miriam. "Philadelphia Cracking down on Owners of Rundown Properties." Philadelphia Inquirer. 27 Oct. 2011. .

- Demolition by Neglect. Issue brief. Preservation Law Reporter Educational Materials. National Trust for Historic Preservation, 1999.


- New York City. New York City Law Department, Office of the Corporal Council. "In a Legal First, City Landmarked Building Is Saved from Demolition by Neglect." News

release, 2004.

Pennsylvania Historic Districts Act of 1961.

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 KeyCite Yellow Flag - Negative Treatment  
**Holding Limited by** [Felician Sisters of St. Francis of Connecticut, Inc. v. Historic Dist. Com'n of Town of Enfield, Conn.](#), January 1, 2008

171 Conn. 198  
Supreme Court of Connecticut.

Abraham A. FIGARSKY et al.

v.

**HISTORIC DISTRICT** COMMISSION OF THE  
CITY OF NORWICH.

June 15, 1976.

Appeal was taken from a decision of a municipal **historic district** commission denying application by plaintiff landowners for certificate of appropriateness to demolish their building located within the **historic district**. The Court of Common Pleas, New London County, Missal, J., dismissed the appeal and, upon granting of certification, plaintiffs appealed. The Supreme Court, Barber, J., held that provisions of the municipal **historic district** ordinance establishing a limitation on the time within which a public hearing must be held on an application for a certificate of appropriateness would be construed as being directory rather than mandatory; that the language of the municipal ordinance incorporated by reference statutory provisions empowering **historic district** commissions to control the **demolition** of structures within the district; that the challenged municipal ordinance did not constitute unconstitutionally vague aesthetic legislation; and that the **historic district** commission exercised its judgment lawfully, reasonably and honestly in denying plaintiffs' application.

No error.

#### Attorneys and Law Firms

\*\*166 \*199 Milton L. Jacobson, Norwich, with whom were Jackson T. King, Jr., Norwich, and Donald R. Beebe, Fitchville, for appellants (plaintiffs).

Geurson D. Silverberg, Norwich, with whom was Richard N. Ziff, Norwich, for appellee (defendant).

Russell L. Brenneman, New London, filed a brief as amicus curiae.

Before \*198 HOUSE, C.J., and COTTER, LOISELLE, BOGDANSKI and BARBER, JJ.

#### Opinion

BARBER, Associate Justice.

The plaintiffs, owners of a house and lot located within the Norwich **historic district**, appealed to the Court of Common Pleas from a decision of the defendant commission denying their application for a certificate of appropriateness which would permit them to demolish the house. The court rendered judgment dismissing the appeal and the plaintiffs, upon the granting of certification, have appealed to this court.

The undisputed facts of the case are as follows: The Norwich **historic district**, established by the city of Norwich in 1967, pursuant to ss 7-147a through 7-147m of the General Statutes, consists of the Norwichtown green, which dates back to colonial days, and about one hundred buildings and lots surrounding, or in close proximity to, the green. The plaintiffs' rproperty, which they purchased in 1963, \*200 is a twostory building zoned for commercial uses and is located just inside the bounds of the district. The property faces the green but is bounded on two sides by a McDonald's hamburger stand and parking lot. The building is in need of some repairs, which the Norwich building inspector has ordered the plaintiffs to undertake. Rather than make the repairs, however, the plaintiffs would prefer to demolish the building. In August, 1972, the plaintiffs applied to the building inspector for a **demolition** permit. The building inspector informed the plaintiffs that before such a permit could be issued a certificate of appropriateness was required. The plaintiffs, therefore, applied to the defendant for a certificate, filing their application with the building inspector on November 29, 1972. The defendant held a public hearing on the application on January 25, 1973. The hearing was attended by more than 100 persons, none of whom, except for the plaintiffs and their attorney, spoke in favor of granting the application. On the following day, the commission voted unanimously to deny the plaintiffs' application.

The plaintiffs maintain that the costs of the repairs necessary for the building are prohibitive. The building inspector has ordered the plaintiffs to repair the foundation and replace a door sill and hall floor, and the health department has ordered the plaintiffs to tie in to a newly accessible public sewer. At the hearing before the commission, the plaintiffs offered the testimony of a local contractor to the effect that the cost of these rapairs, together with the cost of reroofing the building, would

amount to between \$15,000 and \$18,000. The plaintiffs offered no evidence of the value of the house without repairs, its value if repaired, or the value of the lot if the building were razed. Nor did the \*201 plaintiffs disclose to the commission the use which they intended to make of the lot if the building were razed.

The commission also received numerous opinions from the plaintiffs' neighbors and from the Connecticut **historical** commission, the southeastern Connecticut regional planning agency, and the Connecticut society of architects, as to the **historic** value of the premises. The consensus of these opinions was that although the building itself is of little **historic** value or interest, it does, by virtue of its location, perform an \*\*167 important screening function, separating the green from an encroaching commercial district, and its preservation is important in maintaining the character of the **historic district**.<sup>1</sup> The commission stated its reasons for denying the application as follows: 'The Commission is of the opinion that the building in question significantly contributes to the importance of the Norwichtown Green as an **historic** landmark, and the Commission would have violated its responsibilities as \*202 defined in (ss 7-147a-7-147k) to have permitted its **demolition**. In weighing all the considerations concerning this Application, the Commission was cognizant of (s 7-147g, pertaining to permissible variations), but concluded that the hardships presented by the Applicant were not of sufficient magnitude to warrant granting approval for **demolition**.'

[1] [2] Procedure upon an appeal from any decision of a **historic district** commission is the same as that for appeals from zoning boards. [General Statutes s 7-147i](#). The controlling question which the trial court had to decide was whether the **historic district** commission had acted, as alleged in the appeal, illegally, arbitrarily and in abuse of the discretion vested in it. [Bogue v. Zoning Board of Appeals](#), 165 Conn. 749, 752, 345 A.2d 9; [Byington v. Zoning Commission](#), 162 Conn. 611, 613, 295 A.2d 553. Since the trial court decided the appeal solely on the record returned by the commission and made only a limited finding of facts on the issue of grievement, review by this court must be based on the record of the proceedings before the commission to determine whether the commission's decision is \*203 reasonably supported by the record. [Danseyar v. Zoning Board of Appeals](#), 164 Conn. 325, 327, 321 A.2d 474; [Langer v. Planning & Zoning Commission](#), 163 Conn. 453, 460, 313 A.2d 44.

In their appeal, the plaintiffs allege that they will be forced to undergo economic hardship and loss as a result of not being permitted to demolish their building, and that

the **historic district** commission, in denying their application for a certificate of appropriateness, acted illegally, arbitrarily and in abuse of its discretion. Several claims of law which were overruled by the trial court are assigned as error.

We first consider two claims of error concerning the procedure followed by the \*\*168 **historic district** commission in denying the plaintiffs' application. The plaintiffs contend that the commission did not comply with the notice requirements of the right-to-know law; [General Statutes s 1-21](#); nor did it meet the time limitations set forth in the town ordinances pertaining to the processing of applications for certificates of appropriateness, ss 14-24 and 14-25 of the Norwich code of ordinances. [Section 1-21](#) requires, in pertinent part, that notice be given twenty-four hours before a special meeting is held by a commission such as the defendant, but the same section also provides that an emergency meeting may be held without notice, so long as the minutes of the meeting are quickly made available for public inspection. [Section 14-24](#) of the town ordinances requires the **historic district** commission to hold a public hearing within forty-five days of receiving an application for a certificate of appropriateness, and [s 14-25](#) provides that the failure of the commission to act upon an application within sixty days shall constitute approval.

\*204 The record reveals that the plaintiffs' application was filed with the building inspector (but not with the **historic district** commission) on November 29, 1972. The public hearing was held fifty-eight days later, on Thursday, January 25. At the time of the public hearing, the commission apparently intended to meet for a vote on the application on the following Monday, January 29, and the plaintiffs were so informed. A ruling by the corporation counsel, communicated to the commission, indicated that the sixty-day limitation fixed by [s 14-25](#) might be construed as commencing with the filing of the application with the building inspector, in which case the sixty-day period would expire on January 27. An emergency meeting of the commission was, therefore, held, without public notice, on January 26, and the commission voted to deny the application. On the same day, notice of the decision was given to the plaintiffs' counsel and the minutes of the meeting were made available for public inspection. The commission met as scheduled on January 29, and, in the minutes of that meeting, set out the reasons for its decision to deny the application.

[3] Although the commission did not give the twenty-four-hour notice mandated by [s 1-21](#) for special meetings of a municipal commission, the record clearly indicates, as noted by the trial court, that the commission did comply with the requirements of [s 1-21](#) pertaining to



emergency meetings. The record also clearly indicates that the plaintiffs' counsel received actual notice of the commission's decision within sixty days of the filing of the application. And though the hearing was not held within forty-five days of the filing of the application with the building inspector, s 14-24 sets a time limit which commences with the receipt of the application by \*205 the **historic** commission, the date of which does not appear in the record. In any event, the time limit for a hearing is analogous to similar provisions governing zoning procedures, which provisions we have construed as being directory rather than mandatory. *Morningside Assn. v. Planning & Zoning Board*, 162 Conn. 154, 157, 292 A.2d 893; *Donohue v. Zoning Board of Appeals*, 155 Conn. 550, 554, 235 A.2d 643.

[4] [5] The plaintiffs also claim that the Norwich ordinance does not vest the commission with the power to regulate the **demolition** of structures within the **historic district**. In support of this contention, the plaintiffs point out that s 14-20 of the ordinance provides that the commission 'shall administer the provisions of (the enabling act) as implemented by this article' (emphasis added), and that the ordinance itself does not mention '**demolition**.' In the absence of any specific reference in the ordinance to the power to control the **demolition** of structures, the plaintiffs argue, no such power has been granted the commission. Section 14-17 of the ordinance, however, provides that the commission 'shall be empowered to exercise all the powers and duties and functions enumerated \*\*169 in such sections 7-147a to 7-147k, inclusive, as amended, of the general statutes.' This language incorporates by reference s 7-147d(a) of the *General Statutes* which declares that '(n)o building or structure shall be . . . demolished within an **historic district** until after an application for a certificate of appropriateness . . . has been . . . approved by said commission.' Furthermore, s 14-24 of the ordinances provides that '(n)o work on any type of building or structure which would change the appearance of any building or structure within the **historic district** when viewed \*206 from the street line shall be begun until the owner has filed an application with the building official and has received a certificate of appropriateness from the **historic district** commission.' Certainly the **demolition** of the plaintiff's building would qualify as 'work . . . which would change the appearance of' a building located within the district. There is no merit to the plaintiffs' claim that the ordinance does not empower the commission to consider applications of appropriateness pertaining to the demolishing of a building or structure.

The plaintiffs' principal claim is that the Norwich **historic district** ordinance, implementing the state enabling act, is

unconstitutional as applied to them, and that the denial of their application for a certificate of appropriateness to demolish their building amounts to a taking of their property for public use without compensation. More specifically, they contend that the ordinance is 'vague aesthetic legislation,' incapable of application in accordance with mandates of due process, and that because of the denial of their application they will be forced to expend large sums in the maintenance of their property without being able to put it to any practical use.

[6] Neither the constitution of the United States, amendments five and fourteen, nor the constitution of Connecticut, article first, s 11, deny the state the power to regulate the uses to which an owner may devote his property.

[7] "All property is held subject to the right of government to regulate its use in the exercise of the police power, so that it shall not be injurious to the rights of the community, or so that it may promote its health, morals, safety and welfare. The power of regulation by government is not unlimited; \*207 it cannot, as we have stated, be imposed unless it bears a rational relation to the subjects which fall fairly within the police power and unless the means used are not within constitutional inhibitions. The means used will fall within these inhibitions whenever they are destructive, confiscatory, or so unreasonable as to be arbitrary. *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303. Regulations may result to some extent, practically in the taking of property, or the restricting its uses, and yet not be deemed confiscatory or unreasonable. Courts will not substitute their judgment for the legislative judgment when these considerations are fairly debatable. They will regard their validity . . . from the standpoint of existing conditions and present times.' *State v. Hillman*, 110 Conn. 92, 105, 147 A. 294, 299. When, as here, a legislative enactment is challenged in its application as beyond the scope or as an abuse of the state's police power, two issues are raised: first, whether the object of the legislation falls within the police power; and second, whether the means by which the legislation attempts to reach that object are reasonable. *Windsor v. Whitney*, 95 Conn. 357, 369, 111 A. 354.

[8] "To be constitutionally valid, a regulation made under the police power must have a reasonable relation to the public health, safety, morality and welfare.' *State v. Gordon*, 143 Conn. 698, 703, 125 A.2d 477, 480; *DeMello v. Plainville*, 170 Conn. 675, 679, 368 A.2d 71. No contention is made that the **historic district** ordinance contributes to the health or safety of the public; our inquiry is limited to whether \*\*170 the preservation of **historic** areas in a static form serves the amorphous

concept of 'the public welfare.' See *Opinion of the Justices*, 333 Mass. 773, 778, 128 N.E.2d 557. 'The concept of \*208 the public welfare is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.' *Berman v. Parker*, 348 U.S. 26, 33, 75 S.Ct. 98, 102, 99 L.Ed. 27. It is apparent from the language of the enabling statute<sup>2</sup> that the General Assembly, in enacting those statutes, was cognizant not only of the intangible benefits to be derived from **historic districts**, such as an increase in the public's awareness of its New England heritage, but of the economic benefits to be reaped as well, by augmenting the value of properties located within the old sections of the state's cities and towns, and encouraging tourism within the state. In a number of recent cases, it has been held that the preservation of a **historical** area or landmark as it was in the past falls within the meaning of general welfare and, consequently, the police power. See, e.g., *Maier v. New Orleans*, 516 F.2d 1051, 1060 (5th Cir.); *Annapolis v. Anne Arundel County*, 271 Md. 265, 316 A.2d 807; *Lutheran Church in America v. City of New York*, 35 N.Y.2d 121, 359 N.Y.S.2d 7, 316 N.E.2d 305; *Rebman v. Springfield*, 111 Ill.App.2d 430, 250 N.E.2d 282; *Opinion of the Justices*, supra, 773, 128 N.E.2d 557; see 1 Rathkopf, *Zoning and Planning* (4th Ed.), c. 15; 82 *Am.Jur.2d*, *Zoning and Planning*, s 40. We cannot deny that the preservation \*209 of an area or cluster of buildings with exceptional **historical** and architectural significance may serve the public welfare.

[9] The plaintiffs argue that the Norwich ordinance constitutes 'vague aesthetic legislation,' and point to our statement in *DeMaria v. Planning & Zoning Commission*, 159 Conn. 534, 541, 271 A.2d 105, 108, that 'vague and undefined aesthetic considerations alone are insufficient to support the invocation of the police power,' and our dictum to the same effect. *Gionfriddo v. Windsor*, 137 Conn. 701, 704, 81 A.2d 266. The 'aesthetic considerations' involved in the Norwich ordinance are not, however, 'vague and undefined'; s 7-147f of the *General Statutes*, incorporated by reference into the ordinance, sets out with some specificity the factors to be considered by the commission in passing upon an application for a certificate of appropriateness.<sup>3</sup> Nor, as we pointed out in the preceding discussion, do 'aesthetic considerations alone' provide the basis for the ordinance. Furthermore, as long ago as \*210 \*\*171 *Windsor v. Whitney*, 95 Conn. 357, 368, 111 A. 354, we commented that the question of the relationship between aesthetics and the police power was not a settled question. In *State v. Kievman*, 116 Conn. 458, 465, 165 A. 601, we stated

that a land use regulation was not invalid simply because it was based in part on aesthetic considerations. And in *Murphy, Inc. v. Westport*, 131 Conn. 292, 302, 40 A.2d 177, we indicated that aesthetic considerations may have a definite relation to the public welfare. Although we need not directly decide the issue in the present case, we note that other jurisdictions have recognized that 'aesthetic considerations alone may warrant an exercise of the police power.' *People v. Stover*, 12 N.Y.2d 462, 467, 240 N.Y.S.2d 734, 737, 191 N.E.2d 272, 274, appeal dismissed, 375 U.S. 42, 84 S.Ct. 147, 11 L.Ed.2d 107; see 1 Rathkopf, op. cit., c. 14.

[10] Having determined that the ordinance creating the Norwich **historic district** constitutes a valid exercise of the state's police power, we are left with the question of whether the application of that ordinance to the plaintiffs' property amounts to an unconstitutional deprivation of their property without compensation. In this context, it has often been noted that the police power, which regulates for the public good the uses to which private property may be put and requires no compensation, must be distinguished from the power of eminent domain, which takes private property for a public use and requires compensation to the owner. See, e.g., *DeMello v. Plainville*, 170 Conn. 675, 679, 368 A.2d 71, and cases cited therein. The difference is primarily one of degree, and the amount of the owner's loss is the basic criterion for determining whether a purported exercise of the police power is valid, or whether it amounts to a taking \*211 necessitating the use of the power of eminent domain. See *Sax, 'Takings and the Police Power,'* 74 *Yale L.J.* 36. 'A regulation which otherwise constitutes a valid exercise of the police power may, as applied to a particular parcel of property, be confiscatory in that no reasonable use may be made of the property and it becomes of little or no value to the owner. . . . See, e.g., *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 43 S.Ct. 158, 67 L.Ed. 322; *Brecciaroli v. Commissioner of Environmental Protection*, 168 Conn. 349, 354, 362 A.2d 948; *Horwitz v. Waterford*, 151 Conn. 320, 323, 197 A.2d 636; *Dooley v. Town Plan & Zoning Commission*, 151 Conn. 304, 311-12, 197 A.2d 770; *Vartelas v. Water Resources Commission*, 146 Conn. 650, 657, 153 A.2d 822.' *DeMello v. Plainville*, 170 Conn. 675, 679, 368 A.2d 71. See *Penn Central Transportation Co. v. City of New York*, 50 A.D.2d 265, 377 N.Y.S.2d 20.

[11] [12] [13] Whether the denial of the plaintiffs' application for a certificate of appropriateness to demolish their building has rendered the Norwich ordinance, as applied to them, confiscatory, must be determined in the light of their particular circumstances as they have been shown to exist. *Bartlett v. Zoning Commission*, 161 Conn. 24, 31,

282 A.2d 907; *Dooley v. Town Plan & Zoning Commission*, 151 Conn. 304, 311, 197 A.2d 770. In regulating the use of land under the police power, the maximum possible enrichment of a particular landowner is not a controlling purpose. *Goldblatt v. Hempstead*, 369 U.S. 590, 82 S.Ct. 987, 8 L.Ed.2d 130; *Hyatt v. Zoning Board of Appeals*, 163 Conn. 379, 383, 311 A.2d 77; *Damick v. Planning & Zoning Commission*, 158 Conn. 78, 83, 256 A.2d 428. It is only when the regulation practically destroys or greatly decreases the value of a specific piece of property that relief \*212 may be granted, provided it promotes substantial justice. *Culinary Institute of America, Inc. v. Board of Zoning Appeals*, 143 Conn. 257, 261, 121 A.2d 637. 'The extent of that deprivation must be considered in light of the evils which the regulation is designed to prevent.' *Chevron Oil Co. v. Zoning Board of Appeals*, 170 Conn. 146, 152, 365 A.2d 387, 390; see *General Statutes* s 7-147f.

[14] [15] The plaintiffs had the burden of proving that the **historic district** commission \*\*172 acted illegally, arbitrarily, in a confiscatory manner or in abuse of discretion. *Byington v. Zoning Commission*, 162 Conn. 611, 613, 295 A.2d 553. This the plaintiffs failed to do. See *Penn Central Transportation Co. v. City of New York*, supra, 29; *Maher v. New Orleans*, 516 F.2d 1051, 1067 (5th Cir.). The plaintiffs went no further than to

present evidence that their house was unoccupied and in need of extensive repairs. There was no evidence offered that the house, if repaired, would not be of some value, or that the proximity of the McDonald's hamburger stand rendered the property of practically no value as a part of the **historic district**.

The Norwich **historic district** commission, after a full hearing, lawfully, reasonably and honestly exercised its judgment. The trial court was correct in not substituting its own judgment for that of the commission. *Bora v. Zoning Board of Appeals*, 161 Conn. 297, 300, 288 A.2d 89.

There is no error.

In this opinion the other Judges concurred.

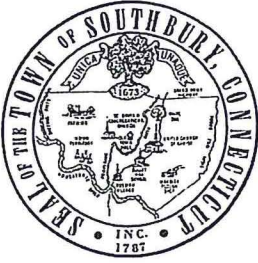
#### All Citations

171 Conn. 198, 368 A.2d 163, 6 Envtl. L. Rep. 20,654

#### Footnotes

- 1 A communication from the state **historical** commission stated, in part: 'Competent authority has placed the date of construction in or about 1760 and identified the owner at that period as keeping an inn where lawyers at the nearby Court of Norwich were accommodated. On the exterior at least, the structure has undergone considerable alteration over the years but still retains its essential form and proportions, wholly in keeping with the scale and appearance of numerous other old buildings that border the Green area. Aside from the house proper, its site is of **historic** interest as occupying the original home lot of the Reverend James Fitch, religious leader of the first settlers. It often happens that buildings forming a recognizable grouping, as around a green, may not individually be especially notable for architecture or **historical** association. But together as a unified whole they constitute a significant entity, no part of which can be removed without a definite and usually adverse effect upon the character and appearance of the entire area. This is the condition that obtains in Norwich town.  
'The commercially zoned district south and southeast of the site under consideration exhibits the unattractive characteristics of so many such areas, with disparate structures of poor design uncoordinated with one another and obtrusive advertising signs. It stands close upon the boundaries of the local **historic district**. If the property at 86 Town Street were demolished, it would remove the most important screening element between these evidences of low-grade commercialism and the attractiveness of the largely unspoiled Green. State recognition of the importance of this land has recently been affirmed by the erection of a **historical** marker under auspices of this Commission, which details the **history** of early years in Norwich and the central role of the Green in that **history**. Nomination of the entire area has been made to the National Register of **Historic** Places maintained by the Office of Archeology and **Historic** Preservation, National Park Service, United States Department of the Interior, under the National **Historic** Preservation Act of 1966, Public Law 89-665.'
- 2 '(General Statutes) s 7-147a. **Historic districts** authorized. . . . to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of buildings, places and **districts** of **historic** interest by the maintenance of such as landmarks in the **history** of architecture, of the municipality, of the state or of the nation, and through the development of appropriate settings for such buildings, places and districts. . . .'
- 3 '(General Statutes) s 7-147f. Considerations in determining appropriateness. If the commission determines that the

proposed erection, construction, restoration, alteration, razing or parking will be appropriate, it shall issue a certificate of appropriateness. In passing upon appropriateness as to exterior architectural features the commission shall consider, in addition to any other pertinent factors, the **historical** and architectural value and significance, architectural style, general design, arrangement, texture and material of the architectural features involved and the relationship thereof to the exterior architectural style and pertinent features of other structures in the immediate neighborhood. In passing upon appropriateness as to parking, the commission shall take into consideration the size of such parking area, the visibility of cars parked therein, the closeness of such area to adjacent buildings and other similar factors. A certificate of appropriateness may be refused for any building or structure, the erection, reconstruction, restoration, alteration or razing of which, or any parking which, in the opinion of the commission, would be detrimental to the interest of the **historic district.**'



# TOWN OF SOUTHBURY

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July 17, 2015

TO: Board of Selectmen  
FROM: Blight Solutions Committee

Attached are the recommendations of the Blight Solutions Study Committee that recommends a Property Preservation and Conservation Ordinance be established.

We spent a lengthy period of time arriving at this decision and it is well supported in the attached documents.

We are happy to discuss the details of our recommendation with you at your earliest convenience.

John Geheran, Chair  
Anne Westerman, Secretary  
John Dwyer  
Alan Hull  
Ed Platt

Attachment #1 to Board of  
Selectmen Mtg. 08.06.2015

## Section VIII: Accomplishments of this task force

Demolition delay increased from 90 days to 180 days, as allowed by State statute, if requested for a historically significant property. This adds time to investigate ways to help save historic structures.

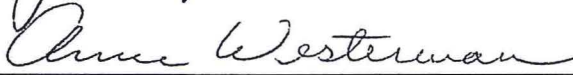
A few specific properties were brought to our attention, passed on to the appropriate authorities, and resolved before the time of this recommendation. Toll House garage was demolished (unsafe), and Kettletown Road house hole in the roof was boarded up.

Public hearing made clear to citizens that their concerns are important to the Town, and that complaints about neighboring properties, if severe enough, can benefit an entire neighborhood and the Town overall once they are improved.

Southbury's budget for 2015 includes additional 14 hours for Zoning enforcement within the Land Use Department; and additional 28 hours for an Assistant Building official within the Building Department. These requests were strengthened by the discovery and testimony of this task force that there is insufficient staff for enforcement.



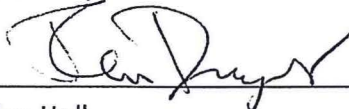
John Geheran, Chair




Anne Westerman, Secretary



John Dwyer



Alan Hull



Ed Platt

# Recommendations of Blight Solutions Study Committee

## June 2015

**Important Note:** All of the proposed recommendations and wording in this document create a starting point, and will be accepted, refined or elaborated on at the discretion of the Town of Southbury Board of Selectmen.

### **Recommendations for a proposed Property Preservation and Conservation initiative:**

- 1) Refrain from using the word “Blight” in any discussions because of negative connotations associated with that term. Instead, identify specific issues to be addressed under a consolidated strategy:
  - Neglect, dilapidation, decay or disrepair that can lead to imminent structural failure;
  - Structure no longer capable of servicing intended purpose;
  - Abandoned and unsecured structures or buildings that are capable of attracting criminal activity;
  - Failing structures (and concurrent vegetation) that threatens public safety and right of way.
- 2) Follow the evolving municipal practice of taking a more proactive approach to problem properties, thus the term “**Property Preservation and Conservation.**” It is a considerably more positive orientation.
- 3) Create a comprehensive Property Maintenance ordinance that cross-references regulations and codes already in existence, clarifying definitions of violations, what actions can be taken to remedy a perceived violation, and expanding enforcement efforts.
- 4) This ordinance would create a Property Preservation and Conservation review board of volunteers and town officials that would receive complaints, consult with property owners or neighbors about the situation, and make recommendations on how to remediate the situation before enforcement is required.
- 5) Use existing resources better to produce positive outcomes for homeowners and their aging properties. See the list in Appendix B for more ideas about actions that the Town of Southbury could take to enhance or add resources for remediation.
- 6) Allow exceptions for agricultural properties, because the benefits of farming and open space are detailed in the 2012 Southbury Plan of Conservation and Development under “Community Character” 5-4. Therefore, properties covered by the Connecticut General

Statutes – “Definition of Agriculture” section 1-1 (q) and “Right to Farm” section 19a-341 should be exempt from any proposed ordinance on this subject.

## How we got there . . .

### Section I: Town Mandate

In April 2014, the Blight Solutions Study Committee (the “Committee”) received a mandate from the Board of Selectmen to investigate the feasibility of a Town of Southbury Blight Ordinance. The study was to identify the purpose and objectives of such an ordinance and the benefits accruing from any potential enactment.

### Section II: Consistency with Connecticut State Statutes

**Guiding Philosophy:** To be consistent with Connecticut State Statutes, particularly the Municipal Powers Act – Section 7-148 (and encouraged by the Connecticut Trust for Historic Preservation), which encourages the adoption of municipal blight ordinances. This Statute recommended any such ordinance enable subject jurisdictions to leverage a “carrot and stick” approach that allows not only the ability to levy fines and other penalties, if necessary, but also to offer financial incentives and other solutions to address problem properties. For instance: the use of tax incentives by either outright property tax reductions, or adjustments to property assessments, for structures that undergo rehabilitation (Particularly relevant to encourage historic preservation).

Thus, in accordance with the Municipal Powers Act, “... communities are encouraged to define, prohibit, and abate blight and nuisances and to protect, preserve, and promote public health, safety, and welfare;.... and to preserve and protect property values. “

It should be noted that the 2012 Southbury Plan of Conservation and Development also recommends that the Town “consider adopting a blight ordinance.”

### Section III: Preliminary Findings

- 1) The term “Blight” engendered many preconceived notions and outright hostility. As such we began to address our goals as part of a larger “Property Preservation and Conservation” effort. This nomenclature much more precisely indicates our objectives, and is consistent with the trend throughout the State in this regard. Our neighbor, Middlebury, has recently adopted a Property Maintenance measure and appointed a town official with responsibility for enforcement.



Our term is broader as we reinforce our desire to find a way to more aggressively preserve the historic structures that provide Southbury with so much of its character. Again, the Town's 2012 Plan of Conservation and Development recommends ongoing historic preservation.

2) The Committee quickly came to realize that discussing this subject in a vacuum was ineffective. The Committee kept bumping into the goals, objectives and CONCERNS of other constituencies in the Town:

- Building Department
- Economic Development Committee
- Fire Marshall
- Health Department
- Land Use Department
- Historic Preservation Committees
- Certified Local Government
- Police Department
- Tax Assessor
- Zoning Department

The Committee concludes that a well thought out and coordinated Property Preservation and Conservation initiative would benefit MULTIPLE TOWN OF SOUTHURY CONSTITUENCIES.

#### **Section IV: Immediate Reasons to Enact a Property Preservation and Conservation Strategy**

Reason 1: To protect and enhance the Town of Southbury's property values for the purpose of preserving, and long term, rebuilding property assessments, and thus the Grand List and resultant Tax Base.

Every time a home sells for less, that home is used as a comp for mortgage lenders to provide finance for future home purchases in the Town. It pushes home prices downward because it reduces the amount of money a financial institution will lend for a like property. Now if the home is blighted (see definition) or an eyesore it will sell for even less and will ALSO BE used as a comp AGAINST every like home in the Town, lowering prices even further.

There is a correlation with foreclosed homes with neglect and blight *and* thus a reduced selling price. **MORE CRITICALLY**, a home for sale situated next to an eyesore or blighted property, foreclosure or otherwise, will itself according to the National Association of Realtors sell for upwards of 10% to 20% less than if the blighted condition, or perceived eyesore did not exist. (See attached Fact Sheet – Appendix A).

Reason 2: To ensure the Town is attractive to new economic development.

No new business or corporate venture is likely to situate itself next to a blighted property, but more relevantly, larger or more high tech related enterprises will prioritize locales with low taxes and good schools. Southbury must MAINTAIN the standards of the past and improve on them, particularly as relates to the schools. **THAT takes money!**

Reason 3: To preserve more of the town's historic structures and their resources.

One of many immediate and pressing examples would be the possibility of finding a way to preserve the Methodist Episcopal Church in the Historic District of South Britain.

## **Section V: Property Preservation and Conservation Strategy**

The Town of Southbury does not have a "blight" ordinance, but in fact has most of the regulations, rules and enforcement capabilities usually associated with such a blight ordinance already in place under the Town's legislative codes, such as the Building Code regulations and Land Use policies. For instance, Southbury has an Anti-Litter Ordinance. The weakness found with the current Town arrangement was a lack of oversight when a major situation arose, insufficient cross-department coordination, and little or no timely enforcement, and vague wording about what constitutes a violation. Equally critical from the Committee's point of view, there was no specified Town resource or policy outlined whereby a distressed property owner could come to the Town to seek assistance or clarification, or where an aggrieved neighbor could seek counsel and redress. The Committee would like community prevention to be an integral part of any solution.

### **Strategies: (in order of priority)**

- Ensure focus and accountability for all efforts with a newly defined team which includes all interested parties; enforcement accountability.
- Establish the Property Preservation and Conservation Review Board. (See below for further description) This Board would be fundamentally a mediation board and resource for the town – a place where both property maintenance complaints could be lodged, and more importantly where a resident could consult about a resolution of the complaint in a non-punitive manner. (Assuming a complaint has been judged valid).
- To accomplish these goals, offer options such as community volunteerism or availability of housing grants (the carrot approach) before resorting to financial penalties (the stick).
- Plan and enact strategies that encourage and foster responsible property maintenance in the general public interest.

- Take early, proactive initiatives on unchecked neglect leading to property deterioration (Avoid losing properties to “demolition by neglect”).

## **Section VI: Property Preservation and Conservation Review Board**

The genesis for this Board is twofold: 1) the almost universal sentiment expressed by the Community at large for the Town to proactively address issues of property neglect; and 2) the Committee’s desire to ensure that the only solutions were not simply recommendations of fines, court orders and the like. The goal is to build community. A model for this board is the Town’s two Historic District Commissions that review applications for changes relating to a property within their purview.

Assign at least one staff person to serve as a liaison with enforcement personnel/departments.

At least 5 people would serve on the Board, both volunteers and relevant enforcement personnel from the Town.

Meet monthly at first to review the backlog of properties under consideration already. Could meet less frequently once there are fewer problem properties on the list.

## **Section VII: The Public Hearing, April 30, 2015**

While not every attendee at the Public Hearing was in favor of an initiative of this nature, many were encouraged by the fact that building codes, land use restrictions, anti-litter ordinances and the like already exist. The effective consolidation and clarification of these regulations was strongly encouraged by most. It was also agreed by most of the attendees (especially those who had property maintenance complaints not resolved) that additional town staff was strongly needed. The use of a Review Board was also looked upon highly favorably.

In addition, of course, there were some easily implemented solutions suggested such as: conduct a “free bulky waste day” at the Transfer Station once or twice a year, where accumulated debris could be left at no cost. Apparently this was done in Southbury in the past.

Preservation of property values was viewed more cynically, but it was understood that doing nothing, changed nothing. It was noted that 65 municipalities in Connecticut already have an ordinance of this nature, but ironically tended predominately to be towns where real estate values have truly collapsed, or at the opposite end of the spectrum, towns with exceptionally high property values.

## Appendix A: Fact List

- 1) In 2011 there were 23 foreclosures in Southbury, a number already on the rise. In 2012, there were 77 foreclosures; in 2013 and 2014 there were 103 and 102 foreclosures, respectively. Foreclosure does not mean the property has been sold; only that it is bank owned.
- 2) Building and Zoning Departments in Southbury indicate an average of 100 man-hours to resolve a property maintenance issue, once it has been brought to their attention. Many remain unresolved to date.
- 3) Tax revenues from IBM were \$661,297, down by approximately 54% from a peak year in 2002.
- 4) A large majority of the Town tax revenues (**approximately 81%**) come from Residential Real Estate. This is higher than County and State Averages.

Residential	\$1,510,273,401	81.2%
Commercial	\$280,096,180	15.1%
Industrial	\$7,438,120	0.4%
Vacant Land	\$37,296,100	2.0%
Farms	\$1,024,220	0.1%
Apartments/Hotels	\$24,021,320	1.0%
<b>Total Property</b>	<b>\$1,860,149,341</b>	
Personal Property (cars, boats, office equipment)		
<b>Total Grand List</b>	<b>\$2,120,339,529</b>	

- 5) In 2012, the Town of Southbury increased its mill rate to 27.6 because of home prices being reassessed 20 % lower (Heritage Village reassessed 30% lower). The mill rate has increased even further, to 28.4, since then. Note for comparison, Roxbury has a mill rate of 13.7, Woodbury has a mill rate of 25.69, and Middlebury has a mill rate of 30.1.
- 6) After the reassessment, the typical Property owner in Southbury saw his real estate property taxes increase around 8 to 12% (excluding Heritage Village).
- 7) The average price of a home sale in Southbury in 2014 was \$351,000. This is consistent with 2012 but is a 7% decrease from 2013. The number of homes sold is down 9% year over year.
- 8) This is a downward trend that started in 2006 with local sales predictions flat to negative in 2015.
- 9) 65 towns in Connecticut have adopted Blight Ordinances; and 4 towns proposed Blight Ordinances that were defeated by voters. One Blight Ordinance was defeated by a legal challenge after it was enacted.

# Appendix B: Brief Reference of Existing Regulations and Programs and Resources

## Existing Rules

- Litter Ordinance  
Officials find definition and enforcement methods to be unclear.
- Building Department  
Rules on “Unsafe Structures”. (Section 115). May serve notice and citation, but not fines.
- Zoning Enforcement  
Land use only. Enforces the Zoning Regulations, such as “dumping” rules. Can levy fine.
- Fire Marshall  
Fire safety only.

## Resources

- Funds and Grants.
  - Low income
  - Municipal or nonprofit. Matching grants for Historic property owned by a municipality or a 501(c)3 or 501(c)13
  - Affordable housing Revolving Fund CTHP Connecticut Housing Finance Authority (CHFA) for historic rehabilitation projects that create 1-4 units of in an historic building.
  - Historic industrial places Grant and Technical Assistance. *New Connecticut Trust for Historic Preservation* “Making Places Grants”
- Historic Districts  
Limited areas. Alterations and demolition to be approved by respective commission.
- Demolition Delay - 180 day delay may be applied to historic buildings.
- Barn Tax Relief (SB 114)  
*New Connecticut* statute for qualifying properties involving preservation easement. Mechanism would need to be enacted by the town.
- EPA “Unreasonable destruction or demolition of historic structures.”  
Connecticut Environmental Protection Act (CT General Statutes Sections Title 22a, Chapter 439, Section 22a-15 to 22a-19b) allows the public to file suit.

## Appendix C: Draft Blight Definitions

It was much more difficult to ascertain a universally agreed upon definition of Blight than was originally anticipated. We reviewed ordinances that have been enacted in neighboring towns in Connecticut, and agreed to the following draft wording:

Blighted premises shall mean any residential and/or housing structure and/or outbuildings and/or parcel of land in which one of the following conditions exist:

- A) In the opinion of the fire marshal or the local fire department, the premise is deemed a fire hazard.
- B) It is determined by the "Property Maintenance Officer" (as the position in Middlebury is described), building inspector, zoning enforcement officer, fire marshal, police department, health officer, or authorized party from the Town of Southbury (Responsible Parties yet to be determined) that:
  - 1. a structure or structures on a premise, or a parcel of land, is in a condition which poses a serious threat to the safety, health, and general welfare of the community at large, and/or the inhabitants of the structures, and/or
  - 2. seriously contributes to the economic deterioration of the Town and the property values of its neighborhood.
- C) The following represents such serious threats or contribute to economic deterioration:
  - 1. Structures including out buildings, garages, and porches that are dilapidated; have collapsing and/or missing walls and/or roofs; and/or structurally faulty or collapsing foundations.
  - 2. Garbage that is not contained or covered, and accumulated debris that is randomly found on the premise, and/or stored or abandoned outside a physical structure.
  - 3. Landscaping including but not limited to trees, brush, shrubs, hedges and plants which physically hinder or interfere with the lawful use of abutting premises or block or interfere with the use of any public sidewalk, public street, public right of way, public road sign, and/or private street or private right of way.
  - 4. More than one abandoned or unregistered motor vehicle or transportation conveyance that would normally be registered as taxable personable property situated on the premise.

5. One or more pieces of non-operational mechanical equipment abandoned or stored outside a physical structure.

Definitions would be included such as:

1. Dilapidated: shall mean any building or structure or swimming pool or any part thereof, that would not qualify for a certificate of compliance/occupancy, or which is deemed an unsafe structure, and any dwelling or unit which is designated as unfit for habitation as defined in the State of Connecticut Basic Building Code and the Ordinance Codes of the Town of Southbury.
2. Dilapidated: shall also mean no longer adequate for the purpose or use for which it was intended, or having fallen apart into partial or total ruin or decay.
3. Debris: shall mean material which is incapable of immediately performing the function for which it was designed, including but not limited to abandoned, discarded or unused objects; junk comprised of equipment such as more than one motor vehicle or lawn mowers, one or more boats or recreational vehicles, which are unregistered and missing parts, not complete in appearance, and in an obvious state of disrepair; parts of automobiles, unused indoor furniture, appliances, cans, boxes, scrap metal, tires, containers, and garbage which are in ordinary public view or in view of neighbors.



# TOWN OF ROXBURY CONNECTICUT

Historic District Commission

29 North Street • P.O. Box 203 • Roxbury, CT 06783-0203

## ROXBURY HISTORIC DISTRICT COMMISSION REGULAR MEETING OCTOBER 19, 2016

### MINUTES

#### CALL TO ORDER

The meeting was called to order at 7:35 pm.  
Present: C. Haver, G. Miller, C. Raymond, W. Walker

#### APPROVAL OF MINUTES

The minutes of the 21 September meeting were accepted as submitted.

#### BUSINESS

##### PMO

The HDC discussed the material G. McTaggart sent re: Southbury's exploration of the issue of demolition by neglect. W. Walker remarked that the Plan of Conservation and Development highlights saving the rural character of the town. The HDC agreed that any Roxbury ordinance would focus only on the houses listed in the Survey. The unresolved issue is deterioration of historic houses when the owner cannot afford repairs. C. Raymond suggested that the town have a specifically set aside line item in the budget to finance repairs. The town would use the fund to make necessary repairs and place a lien on the house. At the sale of the house, the town would be repaid with interest. The initiation of such a fund would require the approval of the Board of Selectmen and the Board of Finance. It would probably be administered by the same bodies with input from the HDC. There was no discussion of the how much money would be available in this fund. The existing Small Cities Grant offers a program managed by a non-profit organization to offer interest-free loans for homeowners to make necessary repairs to a primary residence. This also involves a lien. The process is confidential and no one in town has access to the information provided by the applicant. The HDC unanimously approved a motion that W. Walker discuss with B. Henry the three options for preserving the town's historic houses from terminal disrepair: (1) a revolving fund as line item in the town's budget; (2) the SCG to save a specific house that the HDC has identified as endangered; and (3) the PMO which needs to be written as an ordinance by town counsel.

##### Roxbury Station

W. Walker completed the National Register nomination for the Mine Hill Distillery building. There is a reference to the building as a cigar factory in a diary "Time and the Land" by Michael Bell and Diane B. Mayfield. The diary was Col. A.L. Hodge's. W. Walker will track down the citation. The nomination form is now at the State Preservation office. The Station will be moved 8 feet inward on the property disqualifying it from tax rebate.

#### PUBLIC HEARING

Although there is a quorum for the meeting, two members (G. Miller, applicant and C. Haver, adjacent neighbor) must step down for the hearing, leaving the HDC one member short of a voting quorum. The public hearing is postponed until the November meeting.

#### ADJOURNMENT

The meeting was adjourned at 8:45 pm.

Respectfully Submitted,

*Georgette Miller*

Georgette Miller

The next meeting of the HDC is:

Wednesday 16 November 7:30 pm Roxbury Town Hall.





# TOWN OF ROXBURY CONNECTICUT

Historic District Commission

29 North Street • P.O. Box 203 • Roxbury, CT 06783-0203

## ROXBURY HISTORIC DISTRICT COMMISSION REGULAR MEETING NOVEMBER 16, 2016

### MINUTES

#### CALL TO ORDER

The meeting was called to order at 7:35 p.m.

Present: C. Haver, J. Huber, M. Jonker, E. Lacy, G. Miller, C. Raymond, W. Walker

#### APPROVAL OF MINUTES

The minutes of the 19 October meeting were accepted as submitted.

#### PUBLIC HEARING

W. Walker chaired the hearing. (G. Miller stepped down as applicant; C. Haver as adjacent neighbor.) The application is for a cellar door on the Amasa Lathrop house. A wooden one, same size and pitch as the existing door, will replace the metal two door Bilco with the addition of two vertical posts at the sides to prevent the doors from opening more than 90 degrees. W. Walker passed photos of the cellar door to the HDC. W. Walker asked for comments or questions; as there were none, the public hearing was closed.

The HDC discussed the application. There were no objections. C. Raymond made a motion to accept the application as submitted; J. Huber seconded. W. Walker called for a vote: Aye – Huber, Jonker, Lacy, Raymond, Walker; Nay – none. The motion was passed unanimously.

#### PRE-HEARING

(C. Haver stepped down as applicant; G. Miller as adjacent neighbor.) Chas. Haver Antiques had a 16 X 33 sign with a bracket approved by the HDC. It was mounted on a tree which has been removed. The exact sign with the same style lettering will be reused and sited on the barn to the left above the light fixture. The wording of the sign will depend on the ZBA to permit the second floor to be rented to a business other than the antiques store. The property has been grandfathered as an antique business which includes the barn and the main house. To encourage the ZBA to give a variance for a business other than antiques, C. Haver will suggest that the designation be removed from the house and pertain only to the barn. The HC agreed that in the long term, having the house permitted as only residence would be beneficial to the HD. The ZBA meeting is scheduled for 15 December and W. Walker will write a note as per the HDC's view. The HDC will hold a public hearing on the sign's wording when the issue has been settled.

#### BUSINESS

##### Roxbury Station

The hearing for the National Register District nomination (which encompasses 22 contributing structures, 45 contributing resources and 4 non-contributing structures) will be held on 30 November at the State Preservation Office in Hartford. The railroad station has been dismantled and there seems to be nothing salvageable. The re-creation of the station will be set back 8 feet from its original site. A new concrete foundation (the original had none) will be hidden by the re-created platform. Since the demolition occurred after the hearing was scheduled, W. Walker is concerned that the newly reconstructed station should be considered "non-contributing". She will be attending the hearing with E. Davis.

W. Walker met with B. Henry re: strategies for saving historic houses from demolition by neglect. The PMO concept was tentatively received with approval. Citing the available Small Cities Grant, she contacted the homeowner of a threatened structure in the HD but has not received a response. W. Walker will call B. Henry to

follow up. B. Henry will read the PMO material again. The HDC will wait for her go-ahead before contacting G. McTaggart to write up the ordinance.

#### Survey/Barn books

E. Lacy reported that all invoices have been paid. She noticed that almost all copies of the Barn Books have been sold and suggested that it be reprinted. Unfortunately, the cost of the original print run of 750 is prohibitive. J. Huber will look into printing costs in Hong Kong. W. Walker will check with Town Hall to see how much money is in the preservation fund to contribute to that cost.

#### State Register

The state preservation office has pre-approved 10 properties. A sample form was submitted and the feedback suggests that additional research is required including interior descriptions, sociological importance and other aspects outside the HDC's expertise. E. Lacy proposed that the homeowners pay for the research done by a professional historian familiar with the process. Mary Donohue, formerly of the state preservation office, has established a business for that purpose. E. Lacy will contact and enquire as to the cost.

#### Preservation Books

A number of books about historic preservation and other topics of interest to old house owners are available in the Minor Memorial Library. They are noted on a bookplate as donations from the HDC.

#### Candidate for HDC

W. Walker spoke to B. Henry who was supportive of the change. W. Walker will follow up and report at next meeting.

#### Lathop Hat Shop

The hat shop has been sold and the new owner will be contacted with information about the HD.

#### **ADJOURNMENT**

The meeting was adjourned at 9:15 p.m.

Respectfully Submitted,

*Georgette Miller*

Georgette Miller, Clerk

The next meeting of the HDC is:

Wednesday 21 December 7:30 pm Roxbury Town Hall



# TOWN OF ROXBURY CONNECTICUT

Historic District Commission

29 North Street • P.O. Box 203 • Roxbury, CT 06783-0203

## ROXBURY HISTORIC DISTRICT COMMISSION REGULAR MEETING DECEMBER 21, 2016

### MINUTES

#### CALL TO ORDER

The meeting was called to order at 7:35 p.m.

Present: J. Huber, M. Jonker, E. Lacy, G. Miller, W. Walker, K. Yovan

#### APPROVAL OF MINUTES

The minutes of the 16 November meeting were accepted as submitted.

#### NEW BUSINESS

##### 2017 meeting dates

There was a correction: 16 August not 176 August. J. Huber made a motion to approve the meeting dates; M. Jonker seconded. The motion was passed unanimously.

##### Election of officers

J. Huber nominated W. Walker, Chair; C. Haver, Vice-Chair; G. Miller, Clerk. M. Jonker seconded. The slate was voted in unanimously.

#### OLD BUSINESS

##### Lights

B. Henry proposes to change the 18 streetlights in town to LED. W. Walker reported on a meeting with Eversource in New Haven November 2015. J. Hanley, who installs these lights, remarked that the lights could be adjusted. The HDC was concerned that the lights be a true soft white and not overly bright. Also, since the street lamps are in the HD, a Certificate of Appropriateness is required. W. Walker will advise B. Henry.

##### National Register

W. Walker and E. Davis along with other interested residents of the proposed district attended a hearing on 30 November in Hartford. The State committee voted to approve the application and forward it to the Dept. of the Interior for designation. However, after the meeting a crucial number of residents expressed disapproval of the proposal. E. Davis withdrew the application and will reapply for the distillery, train station and Land Trust structure.

##### PMO

An ordinance must be drawn up. In her last meeting with B. Henry, the First Selectman expressed interest since it will protect the town's historic houses, but said she wanted to read the material again. W. Walker will speak to her again to let her know that the HDC will instruct Town Counsel, G. McTaggart, to begin the process.

##### Survey/Barn Books

Maple Bank will close for the season and sell 2016 remaining books when the farm stand opens in the spring. The Roxbury Market will continue to sell the barn books.

##### State Register

E. Lacy contacted M. Donohue, formerly of the State Preservation Office who now researches and fills out applications. Her charge, per application, is \$3500. The HDC reviewed the list of pre-approved historic homes. These homeowners had said that they were interested in a register listing. The HDC will send out a letter outlining

the process to date, the advantages of state registration and explain what M. Donohue's fee encompasses. G. Miller will prepare a draft letter.

Barn Book reprint

J. Huber will be contacting printers in China this month.

**ADJOURNMENT**

The meeting was adjourned at 8:45 p.m.

Respectfully submitted,

*Georgette Miller*

Georgette Miller, Clerk

The next meeting of the HDC is:

Wednesday 7:30 pm 18 January 2017 in the Roxbury Town Hall