

## **AGENDA**

### **HERITAGE PRESERVATION COMMISSION MONDAY, AUGUST 7 CITY COUNCIL CHAMBERS 5:00 P.M. AGENDA**

1. Call to Order/Roll Call
2. Approval of Agenda
3. Approval of Minutes
  - April 3, 2017 Regular Meeting
  - May Meeting; No Quorum
  - June Meeting; No Quorum
  - July 10, Meeting Cancelled
4. Public Comment
5. New Business
  - A) Chapter 7 On-Line Training Discussion
  - B) Q3 Grant Proposal Submission – Powerpoint Presentation
6. Old Business
7. Other
8. Information Exchange
9. Next Meeting Date
  - A) Monday, September 4, 2017 @ 5:00 p.m.
10. Adjournment

*Upon request, accommodations will be provided for individuals with disabilities wishing to participate*

# CHAPTER 7: Special Legal Issues

## A Starting Question:

- The owner of a historic house has applied to demolish the building, because otherwise keeping it would be an “economic hardship”
- The building is badly deteriorated as well
- How should you respond?

### In this chapter:

- A. Economic Hardship
- B. Demolition by Neglect
- C. Enforcement



### NOTE:

Please refer to the companion *Minnesota Heritage Preservation Commission Training Manual* which provides more detail on these slides.

# A. Economic Hardship

- A specific condition that can only be determined using adopted criteria and carefully following procedures outlined in the ordinance
- It is not something that commissioners should use their personal feelings about
- Sound legal precedent indicates that a preservation commission can engage in regulations that may raise this question

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**NOTE:**

The Supreme Court ruled in its decision regarding a takings claim by Penn Central in New York City that a taking had not been demonstrated, and that a local preservation commission had the right to regulate a property.

This case is the basis for hardship tests. For more information, see:

***Case Briefs: Penn Central Transportation Co. v. City of New York***

<http://www.casebriefs.com/blog/law/property/property-law-keyed-to-cribbet/regulatory-takings/penn-central-transportation-co-v-city-of-new-york/>

# How Should a Hardship Claim Be Handled?

In this chapter:

- A. Economic Hardship
- B. Demolition by Neglect
- C. Enforcement

- Consider an economic hardship claim separately from an application to demolish the building
- First, decide if demolition is permitted
- If demolition is denied, a second step is to determine whether an economic hardship claim is valid



# The Permit to Demolish

A demolition permit might be issued if:

- The property is a non-contributor in a historic district
- The property, although presently listed as contributing, is found to have lost its integrity and merits reclassification as non-contributing

In this chapter:

- A. Economic Hardship**
- B. Demolition by Neglect
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# Finding Economic Hardship

In this chapter:

- A. Economic Hardship**
- B. Demolition by Neglect
- C. Enforcement

- Is heard separately from the demolition request
- A specific test for hardship is applied



# Demolition Delay

- Some commissions only recommend delay action to council
- Usually for a defined period of time
- Economic hardship claims are not likely in these situations

In this chapter:

- A. Economic Hardship**
- B. Demolition by Neglect
- C. Enforcement



# Evidentiary Checklist

In this chapter:

- A. Economic Hardship**
- B. Demolition by Neglect
- C. Enforcement

1. Current level of economic return
2. Any listing of property for sale or rent, price asked, offers received within the previous two years, including testimony and relevant documents
3. Feasibility of alternative uses for the property that could earn a reasonable economic return
4. Any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property
5. Knowledge of landmark designation or potential designation at time of acquisition
6. Economic incentives and/or funding available to the applicant through federal, state, city, or private programs

The National Trust for Historic Preservation, in its publication *Assessing Economic Hardship Claims Under Historic Preservation Ordinance*, provides this checklist of information that is a useful tool for local commissions, shown to the left.



## B. Demolition by Neglect

In this chapter:

- A. Economic Hardship
- B. Demolition by Neglect**
- C. Enforcement

- If a historic building is allowed to deteriorate, it may lose many character-defining features
- This may lead to a loss of significance
- This may also lead to a dangerous condition, in which demolition is the only remaining option
- Some ordinances address Demolition by Neglect
- Note that some commissions may not have this power



# How Should This Be Handled?

**In this chapter:**

- A. Economic Hardship
- B. Demolition by Neglect**
- C. Enforcement

- **The preservation ordinance may allow for:**
  - ▶ Issuing a citation (usually civil, but sometimes criminal)
  - ▶ The government taking corrective action
  - ▶ Placing a lien on the property
- **The ordinance may limit citations to specific classes of property, such as:**
  - ▶ Unoccupied structures
  - ▶ Structures open to the elements
  - ▶ Major landmarks
  - ▶ Properties in designated revitalization areas



# How Should This Be Handled?

**In this chapter:**

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- B. Demolition by Neglect**
- C. Enforcement

- **Approach a citation carefully**
- **Communicate first**
  - ▶ Give the owner an opportunity to take corrective action
  - ▶ Keep good records of the efforts to communicate



# C. Enforcement

**In this chapter:**

- A. Economic Hardship
- B. Demolition by Neglect
- C. Enforcement**

- **Relates to:**
  - ▶ Non-compliance with issued COAs
  - ▶ Work proceeding without a COA
- **The Commission does not enforce violations**
  - ▶ It may advise or alert officials of a violation
  - ▶ Government staff enforce the violation



# What is the HPC's role in enforcement?

## In this chapter:

- A. Economic Hardship
- B. Demolition by Neglect
- C. Enforcement**

- The commission plays an advisory role
- City or county staff is responsible for issuing citations and penalties
- The HPC may request that enforcement action be taken but it is not their responsibility to police violations

