

ABSTRACT

Title of Document: DEMOLITION BY NEGLECT IN WEST VIRGINIA: A POLICY ANALYSIS OF A HISTORIC PRESERVATION SCOURGE IN THE MOUNTAIN STATE

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Preservationists in West Virginia consider demolition by neglect the leading threat facing historic structures in the state. Demolition by neglect is the gradual destruction of historic resources through abandonment or lack of maintenance. Demolition by neglect is particularly challenging for authorities in West Virginia, where as many as 1 in 16 properties are vacant or abandoned. Neglected properties deter economic development, increase crime, create safety hazards, lower property values, and reduce public tax rolls.

This paper assesses the efficacy of laws and policies in West Virginia to mitigate loss of historic resources to demolition by neglect. This process of comparative analysis utilized a review of best practices as outlined in the professional and academic literature. This research also evaluated real world examples of laws and policies from other states and jurisdictions.

The research finds West Virginia enabling legislation lacks the necessary prescriptive language to convey authority to municipalities to enact effective ordinances against demolition by neglect. The research also finds state law and local ordinances inadequately promote incentives to make expanded affirmative maintenance requirements more palatable. However, expansion of home rule authority in West Virginia may provide communities greater autonomy to address local preservation. In light of these findings, the author presents recommendations.

DEMOLITION BY NEGLECT IN WEST VIRGINIA: A POLICY ANALYSIS
OF A HISTORIC PRESERVATION SCOURGE IN THE MOUNTAIN STATE

By

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Preface

I've lived in West Virginia on and off for the better part of my adult life. Since 2006, my wife and I have owned a home in the Eastern Panhandle community of Charles Town, the historic county seat of Jefferson County. The state's rugged terrain of natural wonders, rich history of cultural, economic, and political development, and contemporary combination of ubiquitous rural charm and pockets of urbanism have forever influenced my thinking. Part of me will always consider the Mountain State home, no matter where I end up.

In Spring 2020, concurrent assignments in preservation law and planning classes ultimately led to my choosing demolition by neglect in West Virginia as the subject of my final project. In law class, I was required to assess the strengths and weaknesses of a local preservation ordinance from a municipality of my choosing. I selected Shepherdstown, West Virginia, a small historic community a short drive from Charles Town as well as the location of Shepherd University, where I earned my undergraduate degree.

For planning class, I was assigned to conduct a policy analysis on an existing historic preservation policy. I chose demolition by neglect in part because having examined the ordinance in Shepherdstown I noticed that the locality had no explicit language prohibiting the practice in the local historic district. Delving into the issue further I discovered that Shepherdstown was by no means unique. West Virginia law makes no mention of demolition by neglect in state enabling legislation, and I was unable to find a municipality which expressly addressed the issue in its ordinance.

This was troubling for me to learn given the authority I know some states and jurisdictions grant their officials to address demolition by neglect. Historic properties in West Virginia can be especially vulnerable to instances of deferred maintenance, neglect, and abandonment due to the state's challenging demographic and economic trends. These factors place a wide range of unique cultural resources across the built environment at greater risk of irreparable damage and/or destruction. Local authorities in West Virginia would be well-served by municipalities placing greater emphasis on enhanced protections against demolition by neglect in historic districts.

I hope in some way this research can help historic preservation planners in West Virginia deliver on that promise. I offer a series of recommendations and actionable items I consider to be quite practical given the circumstances. It won't be easy, but it is certainly worthy. For me, this project started as a combination of course requirements and personal interest in preserving elements of a valued cultural landscape. Perhaps the conclusions and recommendations reached through this research can help contribute to effectual policy changes that mitigate instances of demolition by neglect in historic districts across West Virginia.

Dedication

There are three people for whom I wish to dedicate this project. First, is my father, Dr. Robert Brammer. Dad, you are the smartest person I know, but also one of the most kind and generous. It is an honor to be able to earn my advanced degree from the same university from which you earned your master's and doctorate in mathematics. You're an invaluable resource of sage advice for which I learn to appreciate more and more the older I get. I can never thank you enough for all that you've done for me. You'll always be an inspiration for me to "do the whole job."

Second, is my mother, Linda Brammer. Mom, you've always provided me with a solid foundation of emotional support. I appreciate your willingness to lend a sympathetic ear whenever the best approach to solving a problem is simply talking something through. You're caring and thoughtful and, like Dad, your advice always seems to make the mark. Thank you for everything and love you much.

Last, but certainly not least, is my wife, Scarlett Brammer. From the Shenandoah Valley, to the Caribbean, to Key West, and back again, you've been the best partner I could have hoped for these past 16 years. We've had an amazing journey thus far and I'm interested in seeing where this course correction leads us. Thank you for allowing me to pursue my dreams and for pushing me toward better things. You are my biggest supporter and for that I am forever grateful. Now on to the next chapter in our lives, and I'm blessed to have you by my side. I love you.

Acknowledgements

I would like to thank the entire faculty in the Historic Preservation Program at the University of Maryland. This project would not have been possible without the understanding of preservation that I gleaned from my coursework and assignments these past two years during each of my classes. The curriculum has granted me a strong foundation of preservation issues, including the philosophy and history of the movement, documentation and designation of historic properties, architectural designs and surveys, and preservation law, planning, technology, and economics.

I especially would like to thank Dr. Dennis Pogue, Dr. Jeremy Wells, and Professor Fred Stachura, Esq. Dr. Pogue for your guidance throughout the program, and for serving as director of my final project and offering constructive and helpful feedback when things were most challenging. Dr. Wells for your classes in preservation economics and preservation policy and planning, where my interests in historic preservation most reside. Professor Stachura for the introduction to preservation law and the relevant legal, advocacy, and public policy issues I'll deal with for years to come as a preservation planner.

I also wish to thank Karen Brown and Historic Annapolis for the opportunity to work on an outstanding project as an intern in Summer 2020. I found developing an emergency management and disaster plan for a leading preservation organization challenging, but extremely important and rewarding work. Finally, I extend a grateful thank you and best wishes to all my fellow classmates and colleagues at Maryland, may your personal and professional dreams come true.

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Chapter 1: Introduction

Preservationists in West Virginia consider demolition by neglect the leading threat facing historic structures in the state.¹ Demolition by neglect is the gradual destruction of historic resources through abandonment or lack of maintenance.² Whether the abandonment or lack of maintenance is intentional to circumvent preservation regulations, or unintentional due to lack of awareness or financial resources, the result is the same: loss of a historic asset.³ Demolition by neglect is particularly challenging for authorities in West Virginia, where as many as 1 in 16 properties are vacant or abandoned.⁴ Neglected properties deter economic development, increase crime, create safety hazards, lower property values, and reduce public tax rolls.⁵

This paper assesses the efficacy of laws and policies in West Virginia to mitigate the loss of historic resources to demolition by neglect. This process of comparative analysis utilized a review of best practices as outlined in the professional and academic literature. This research also evaluated real world examples of laws and policies from other states and jurisdictions. It is the purpose of this research and investigation to provide historic preservation planners and advocates in West Virginia

¹ John Adamik, *Mountain State Legacy: West Virginia Statewide Historic Preservation Plan 2020-2024*, (Charleston, WV: West Virginia Department of Arts, Culture, and History, 2020): 3.

² National Trust for Historic Preservation, "Demolition by Neglect," *Preservation Law Educational Materials*, (Washington, DC: National Trust for Historic Preservation, 2009): 1.

³ Dan Becker, "Establishing a Demolition by Neglect Ordinance," *The Alliance Review (Winter 2016)*, (Athens, GA: National Alliance of Preservation Commissions, 2016): 4.

⁴ Jared B. Anderson, et al., *From Liability to Viability: A Legal Toolkit to Address Neglected Properties in West Virginia*, (Morgantown, WV: West Virginia University College of Law, Land Use and Sustainable Development Law Clinic, 2015): 3.

⁵ Anderson, et al., *From Liability to Viability*, 3.

with a series of recommendations and designed to alleviate the persistent scourge of demolition by neglect in the Mountain State.

The paper is organized into four sections. The first section briefly explores the background of demolition by neglect as a leading concern for historic preservationists nationwide. This first section includes a brief overview of some of the relevant legal issues concerning demolition by neglect and also a review of the professional and academic literature on the subject. The second section explores various approaches for remedying the problem by examining laws and policies in different states, including Maryland, North Carolina, and Rhode Island. This section examines state enabling legislation and local ordinances in these three states as well as the use of incentives and eminent domain to address demolition by neglect.

The third section examines the issue of demolition by neglect in West Virginia, providing important context and a few examples of neglected historic resources. This section also includes an overview of state enabling legislation and local ordinances in Beckley, Shepherdstown, and Wheeling. Furthermore, the section examines the availability and use of preservation incentives to curb demolition by neglect in West Virginia as well as the potential impact of municipal autonomy through home rule on local historic preservation. The fourth section synthesizes this research by providing some brief concluding remarks and recommendations to mitigate demolition by neglect of vulnerable historic resources in West Virginia.

Mitigating instances of demolition by neglect in West Virginia is important for several reasons. West Virginians, like all of us, have deep attachments to historic places which can foster feelings of continuity, memory, identity, and community.

West Virginians, like all of us, can learn from old places, enjoy their beauty and architecture, find creative inspiration within their distinctive spaces, and connect to their ancestors. Historic places can be utilized to support sound, sustainable, and vibrant local economies throughout West Virginia. Finally, keeping and reusing old properties is environmentally sound and can teach West Virginians and the rest of us much about adaptation, sustainability, and resilience.⁶

This research finds West Virginia enabling legislation lacks the necessary prescriptive language to convey authority to municipalities to enact effective local ordinances against demolition by neglect. This research also finds that state law and local West Virginia ordinances inadequately promote existing available financial incentives and resources which could make expanded legal affirmative maintenance requirements more palatable to citizens. However, the expansion of home rule authority in West Virginia may provide many communities with greater autonomy in self-governance to address local preservation. In light of these findings, the author presents preservationists in West Virginia with the following recommendations:

- 1. Amend state law authorizing minimum maintenance protections for “designated historic landmarks” to *also* include “historic properties” and “contributing resources.”**
- 2. Encourage municipalities and Certified Local Governments with “home rule” authority to directly and immediately adopt local demolition by neglect ordinances.**
- 3. Encourage municipalities and Certified Local Governments with “home rule” authority to consider eminent domain to condemn and acquire distressed local historic properties.**

⁶ Thompson M. Mayes, *Why Old Places Matter: How Historic Places Affect Our Identity and Well-Being*, (Lanham, MD: Rowman & Littlefield, 2018): passim.

- 4. Promote available and additional incentives and resources including tax credits, revolving loan funds, preservation grants, and easements to increase acceptance of expanded affirmative maintenance provisions.**

Chapter 2: Demolition by Neglect: The Issue

Demolition by neglect describes the failure to maintain a historic structure over a prolonged period of time so that, as a result of the neglect, the structure's preservation becomes threatened.⁷ Causes of demolition by neglect can include deferred maintenance, developmental pursuits, absentee ownership, and circumstantial outcomes.⁸ Neglect often leads to the deterioration of exterior walls, structural support, character-defining historic features, chimneys, roofing, porches, architectural appurtenances, and tax delinquency. Demolition by neglect risks extend to all portions of the cultural landscape, but especially apply to areas which have experienced development pressures, mass exoduses, and urbanization.⁹

Sometimes the lack of maintenance is deliberate. By disinvesting in the property, the owner hopes, over time, to obtain permission to demolish the resource on public safety grounds and develop the property. Other times, the lack of maintenance may result from circumstances beyond the control of the property owner.¹⁰ Some municipalities take affirmative enforcement actions against the owners of such properties, including pursuing legal remedies. Occasionally the owner of a deteriorating property files suit to challenge a historic designation or some feature of a local preservation ordinance. Yet most often, demolition by neglect controversies

⁷ Julia Miller, *Doing Away with Demolition-By-Neglect*, (Washington: National Trust for Historic Preservation, 2010): 5.

⁸ Galen Newman and Jesse Saginor, "Four Imperatives for Preventing Demolition by Neglect," *Journal of Urban Design* 19, no 5 (2014): 624.

⁹ Newman and Saginor, "Four Imperatives for Preventing Demolition by Neglect," 624.

¹⁰ Miller, *Doing Away with Demolition-By-Neglect*, 6.

fall somewhere in the middle, with localities issuing citations and owners ignoring them.¹¹

Many localities have enacted demolition by neglect provisions in local ordinances to protect aesthetic qualities of historic structures. The efficacy of those efforts depends upon carefully drafted language to require affirmative maintenance standards and provide enforcement authority.¹² The ability to require that historic properties be affirmatively maintained rests on the inherent authority residing in state police powers to regulate, protect, or promote the public health, safety, morals, and welfare.¹³ Citations and civil penalties can serve as a deterrent to failure to maintain historic properties. Incentives and disincentives—including tax breaks, low cost loans, preservation grants, and prohibitions on demolitions without replacement plans—are another important tool for municipalities. Some jurisdictions even authorize the use of eminent domain as a means of protecting historic properties from deterioration or neglect.¹⁴

Property owners using neglect to circumvent preservation laws frequently argue the cost of repairs and upkeep constitute an economic hardship.¹⁵ However, the burden of establishing an economic hardship rests on the property owner and the meaning of “economic hardship” depends on the standard defined in the ordinance. Under many ordinances economic hardship is difficult to establish and often defined

¹¹ National Trust, “Demolition by Neglect,” 1.

¹² Becker, “Establishing a Demolition by Neglect Ordinance,” 4-5; National Trust, “Demolition by Neglect,” 3-7.

¹³ Miller, *Doing Away with Demolition-By-Neglect*, 2.

¹⁴ National Trust, “Demolition by Neglect,” 7.

¹⁵ National Trust, “Demolition by Neglect,” 1.

as consistent with the legal standard for an unconstitutional regulatory taking.¹⁶ A property owner generally will not be able to prove a regulatory taking unless they have been denied all reasonable use or return on the property as a result of the preservation commission's action.¹⁷

Moreover, a finding of economic hardship must be based on the property and not the property owner.¹⁸ The question of whether a property is economically viable does not depend on the financial means of the property owner. If the site is economically viable, it can be sold on the open market. Furthermore, if the property faces code compliance issues the inability to pay is simply not an issue, as public health and safety are deemed at stake. As a practical matter, demolition by neglect cases often mean searching for a new owner who has the financial resources and determination to complete the necessary repairs.¹⁹

Literature Review

The term “demolition by neglect” first gained popularity with historic preservationists in the late 20th century.²⁰ In 1990, the National Alliance of Preservation Commissions devoted an entire issue of its quarterly journal to underline the threat it posed to the nation's historic fabric.²¹ Preservationists noted that as cities expanded, they often left in their wakes—especially in historic centers—vacant lands,

¹⁶ Miller, *Doing Away with Demolition-By-Neglect*, 11.

¹⁷ *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978).

¹⁸ Miller, *Doing Away with Demolition-By-Neglect*, 12.

¹⁹ Miller, *Doing Away with Demolition-By-Neglect*, 12.

²⁰ Newman and Saginor, “Four Imperatives for Preventing Demolition by Neglect,” 623.

²¹ Oliver A. Pollard, “Counteracting Demolition by Neglect: Effective Regulations for Historic District Ordinances,” *The Alliance Review* (Winter 1990); and Hilary S. Irvin, “The Vieux Carre’ DBN Clause Protecting the French Quarter,” *The Alliance Review* (Winter 1990).

derelict lands, and building stock no longer suited for their original purposes.²² The result was a propensity to remove heritage resources which had deteriorated due to a lack of care and use, a process known as demolition by neglect.²³

In 1993, the State Preservation League of New York held a conference on demolition by neglect.²⁴ The following year, the National Trust for Historic Preservation held panel discussions and presentations on the topic at its national convention in Boston.²⁵ In 1994, the U.S. Preservation Commission Identification Project report listed neglect as the most difficult situation for local commissions to solve, with only 25 percent of commissions reporting they had the authority to protect designated structures from demolition by neglect.²⁶ That year, the National Trust for Historic Preservation concluded, “the most important tool for controlling demolition by neglect” is a carefully crafted provision in a local preservation ordinance requiring affirmative maintenance and providing enforcement authority.²⁷

The literature pertaining to demolition by neglect comes from three main source types: professional guidance, academic scholarship, and student research. Preservation organizations responded throughout the 1990s and 2000s by publishing professional guidance on how to establish demolition by neglect provisions and

²² Alan Berger, *Drosscape: Wasting Land in Urban America*, (Princeton, NJ: Princeton University Press, 2006).

²³ Newman and Saginor, “Four Imperatives for Preventing Demolition by Neglect,” 623.

²⁴ Elizabeth S. Merritt, “Demolition by Neglect, Introductory Comments,” Preservation League of New York State Annual Meeting, (April 23, 1993): 2; and Katherine R. Ridley, “Demolition by Neglect, the New York State Context,” (speaker’s notes from the Preservation League of New York State Annual Meeting, April 23, 1993): 1.

²⁵ National Trust for Historic Preservation Northeast Legal Preservation Network, “Difficult Issues Facing Preservation Commissions: Demolition-by-Neglect,” *Proceedings of the 48th National Preservation Conference*, Boston, Massachusetts, 1994.

²⁶ Pratt Cassity and Connie Malone, “The United States Preservation Commission Identification Project,” (Washington: National Alliance of Preservation Commissions, 1994): 15.

²⁷ National Trust, “Difficult Issues Facing Preservation Commissions: Demolition-by-Neglect,” 1994.

address concomitant issues. In 1999, Dan Becker, executive director of the Raleigh, North Carolina Historic District Commission, wrote “Establishing a Demolition by Neglect Ordinance” for *The Alliance Review*.²⁸ In it, Becker summarizes the legal foundation for affirmative maintenance standards, the key components of a demolition by neglect provision, and strategies for enacting and applying the standards. Becker’s article was republished by *The Alliance Review* in 2016.²⁹

In 2003, James Reap, a University of Georgia preservation professor, wrote one of the few resources focusing on economic hardship, titled “Economic Hardship and Demolition by Neglect: Hard Decisions for Hard Times,” in *The Alliance Review*.³⁰ Reap notes municipalities must include economic hardship provisions in preservation ordinances so that they are legally defensible and acceptable to the community. Commissions should consider multiple factors when assessing hardship claims, including assessed value, purchase price, expenses, revenues, rehabilitation costs, and financing options. Each factor pertains to the property itself and not owner’s financial situation.³¹

In 2007, the NAPC revisited demolition by neglect with another entire issue of its quarterly journal devoted to the topic, including an article by University of North Carolina-Greensboro researcher Rebecca Osborne, titled “Three Demolition-

²⁸ Dan Becker, “Establishing a Demolition by Neglect Ordinance,” *The Alliance Review* (February-March 1999), (Athens, GA: National Alliance of Preservation Commissions, 1999): 1-8.

²⁹ Dan Becker, “Establishing a Demolition by Neglect Ordinance,” *The Alliance Review* (Winter 2016), (Athens, GA: National Alliance of Preservation Commissions, 2016).

³⁰ James Reap, “Economic Hardship and Demolition by Neglect,” *The Alliance Review* (November-December 2003), (Athens, GA: National Alliance of Preservation Commissions, 2003).

³¹ Reap, “Economic Hardship and Demolition by Neglect,” 2003.

by-Neglect Case Studies.”³² Osborne provides examples of municipalities which apply maintenance provisions both conservatively and aggressively, concluding that commissions must tread lightly to achieve public cooperation. In 2009 and 2010, John Weiss, deputy counsel for the New York City Landmarks Commission, wrote articles emphasizing that municipalities work to secure compliance before filing a lawsuit.³³ Weiss notes that though legal remedies are difficult to prosecute, the threat of legal action can be an effective motivator.

Also in 2010, Julia Miller, legal education coordinator of the National Trust for Historic Preservation, published the most comprehensive professional guidance with a publication titled “Doing Away with Demolition-by-Neglect.”³⁴ Miller acknowledges that though there is no “tried and true” solution, several measures can be taken to ensure better survivability of historic resources. Miller writes that by requiring routine maintenance, major repairs, and inspections, adopting and utilizing demolition-by-neglect procedures, committing to a course of enforcement, and working closely with planning officials, properties deemed worthy of preservation can be preserved.³⁵ Today, this booklet remains the authoritative how-to industry resource on the topic.

³² Rebecca Osborne, “Three Demolition-by-Neglect Case Studies,” *The Alliance Review* (May-June 2007). See also, Drane Wilkinson, “Before it Crumbles: Revisiting Demolition by Neglect,” *The Alliance Review* (May-June 2007); and Janine Duncan, “Pinching the Tails and Sucking the Heads: The Organic Development of a Networking Event,” *The Alliance Review* (May-June 2007).

³³ John Weiss, “Pursuing an Owner for Demolition by Neglect: A Tortuous Legal Path,” *District Lines*, Spring 2009; and John Weiss, “Demolition by Neglect Lawsuits: A Powerful Tool to Save Landmarks,” *The Alliance Review* (November-December 2010).

³⁴ Julia Miller, *Doing Away with Demolition-By-Neglect*, (Washington: National Trust for Historic Preservation, 2010).

³⁵ Miller, *Doing Away with Demolition-By-Neglect*, 1.

Several academic papers, masters' theses, and doctoral dissertations have also been devoted to demolition by neglect. In 1989, preservation attorney Oliver Pollard established the legal validity of affirmative maintenance guidelines in a paper titled "Minimum Maintenance Provisions: Preventing Demolition by Neglect," published in the *Preservation Law Reporter*.³⁶ Pollard cites the examples of *Penn Central v. City of New York*, *Maher v. City of New Orleans*, and *Berman v. Parker* as cases in which the U.S. Supreme Court upheld as constitutional a locality's authority to enact municipal preservation regulations, including regulating desirable aesthetic features.³⁷ Since 1978, *Penn Central* has made it nearly impossible to argue that most common local historic preservation laws violate the police powers enshrined in the Tenth Amendment of the U.S. Constitution.³⁸

In 1995, University of Pennsylvania graduate student Andrea Goldwyn offered one of the earlier examinations of the topic with her thesis titled "Demolition by Neglect: A Loophole in Preservation Policy."³⁹ Goldwyn assessed the effectiveness of affirmative maintenance standards in New York, Washington, D.C.,

³⁶ Oliver Pollard, "Minimum Maintenance Provisions: Preventing Demolition by Neglect," *Preservation Law Reporter* 8, (1989): 2001-2011.

³⁷ In *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978) the court validated historic preservation ordinances when it found that an ordinance did not deprive a property owner of all economic value of his property and was not a taking. In *Maher v. City of New Orleans*, 516 F.2d 1051, 1061 (5th Cir. 1975), *cert. denied* 426 U.S. 905 (1976) the plaintiff was denied permission to demolish his property in the Vieux Carre Historic District. The court held that states and cities may enact controls to enhance quality of life by preserving the character and desirable aesthetic features of a city. In *Berman v. Parker*, 348 U.S., 26, 33 (1959) the court found in favor of Washington, D.C. against a complaint from a property owner whose property while in good condition was in a blighted area and scheduled for condemnation. The court extended the meaning of the police powers to include aesthetics.

³⁸ Sara C. Bronin and Ryan Rowberry, *Historic Preservation Law: In a Nutshell (2nd edition)*, (St. Paul, MN: West Academic Publishing, 2018): 221.

³⁹ Andrea Goldwyn, "Demolition by Neglect: A Loophole in Preservation Policy," Master's Thesis., University of Pennsylvania, Philadelphia, 1995.

and Portland, Maine, and applied her findings to Philadelphia. She recommended ordinance improvements, including strengthening enforcement provisions and increased penalties.⁴⁰ She also recommended increased cooperation between local preservation officials and building enforcement.⁴¹

In 2003, University of Georgia graduate student Brandon Brazil explored incentives and concessions in his thesis titled “Non-Traditional Remedies to Demolition-by-Neglect: Private Sector Incentives, Public Sector Municipal Abatement, and Other Approaches.”⁴² Brazil argues that municipalities must be proactive in preventing demolition by neglect by ensuring private sector investors receive competitive returns on investments they make in dilapidated properties. He examines newly-enacted legislation in Alabama that allows municipalities to make municipal improvements on dilapidated structures and provide private sector incentives to prevent demolition by neglect.⁴³

In 2005, research by Georgetown University Law School student Sakina Thompson found that new carefully drafted provisions in Washington, D.C. strengthened the city’s hand in addressing demolition by neglect.⁴⁴ The same year, research by University of North Carolina-Greensboro student Rebecca Osborne asserted that preventing demolition by neglect requires careful interpretation of the law, assistance from watchdog citizens, and a proper balance of private property

⁴⁰ Goldwyn, “Demolition by Neglect: A Loophole in Preservation Policy,” 72.

⁴¹ Goldwyn, “Demolition by Neglect: A Loophole in Preservation Policy,” 74.

⁴² Brandon G. Brazil, “Non-Traditional Remedies to Demolition-by-Neglect: Private Sector Incentives, Public Sector Municipal Abatement, and Other Approaches,” Master’s Thesis, University of Georgia, Athens, 2003.

⁴³ Brazil, “Non-Traditional Remedies to Demolition-by-Neglect,” 80-82.

⁴⁴ Sakina B. Thompson, “Saving the District’s Historic Properties from Demolition by Neglect,” Georgetown University Law School, Washington, D.C., 2005.

rights.⁴⁵ In 2007, following an examination of four large cities, a research paper by Georgetown law student Anna Martin argued that the language of an ordinance is less important than efficient cooperation between entities responsible for dealing with neglected properties and consistent enforcement.⁴⁶

Robust academic research into demolition by neglect has continued in the past decade. In 2010, Clemson University doctoral candidate Galen Newman found that the incidence of demolition by neglect in three Pennsylvania towns was directly proportionate to the degree of local suburban sprawl.⁴⁷ Four years later, Newman and fellow urban planning professor Jesse Saginor identified four imperatives for preventing demolition by neglect: carefully drafted provisions, a multi-scalar regulatory system, legislation which enforces substantial penalties on owners who allow neglect to occur and provides incentives for heritage maintenance, and a local-regional planning approach.⁴⁸

In 2012, University of Pennsylvania graduate student Rachel Hildebrandt revisited demolition by neglect in Philadelphia, 17 years after Goldwyn.⁴⁹ Hildebrandt concluded that every ordinance should contain an affirmative maintenance provision with a precise definition and authorization to impose

⁴⁵ Rebecca Osborne, "Balancing Act: Preventing Demolition by Neglect," University of North Carolina-Greensboro, April 2005.

⁴⁶ Anna Martin, "Demolition by Neglect: Repairing Buildings by Repairing Legislation," Georgetown University Law School, Washington, D.C., 2007.

⁴⁷ Galen Newman, "An Exogenous Approach to Circumventing Demolition by Neglect: The Impact of Agricultural Preservation on the Historic Fabric of Colonial Towns," PhD. Diss., Clemson University, Clemson, SC, 2010.

⁴⁸ Galen Newman and Jesse Saginor, "Four Imperatives for Preventing Demolition by Neglect," *Journal of Urban Design* 19, no. 5 (2014): 634.

⁴⁹ Rachel A. Hildebrandt, "Demolition-By-Neglect: Where Are We Now?" Master's Thesis, University of Pennsylvania, Philadelphia, 2012.

substantial penalties.⁵⁰ She also argues that demolition by neglect may be reduced through a city-sponsored clean-and-seal program and a revolving fund.⁵¹ Cleaning and sealing properties preserves the feasibility of future redevelopment and creation of a revolving fund can finance anything from basic repairs to complete rehabilitations.⁵²

Two recent examples of scholarship examine demolition by neglect in rural areas and consider the use of eminent domain to curb historic resource loss. In 2019, Iowa State University graduate student Dustin Ingram offered a series of recommendations for declining rural communities.⁵³ These include adoption of a demolition by neglect ordinance with hardship provisions, creation of an endangered buildings list, utilization of available financial resources, and promotion of community activism for revitalization.⁵⁴ Ingram found rural communities have an opportunity to mitigate demolition by neglect on an individual property basis, arresting a trend which can worsen a downward economic community spiral.⁵⁵

Also, in 2019, University of Pennsylvania graduate student Sarah Scott examined the legal justifications for using eminent domain to stop the destructive process of historic property abandonment.⁵⁶ Scott found eminent domain is a legal, effective strategy to curtail demolition by neglect for two reasons. First, state enabling

⁵⁰ Hildebrandt, "Demolition-By-Neglect: Where Are We Now?" 74.

⁵¹ Hildebrandt, "Demolition-By-Neglect: Where Are We Now?" 77.

⁵² Hildebrandt, "Demolition-By-Neglect: Where Are We Now?" 78.

⁵³ Dustin L. Ingram, "For Sale or Rent: Preventing Demolition by Neglect in Iowa's Downtowns," Master's Thesis, Iowa State University, Ames, 2019.

⁵⁴ Ingram, "For Sale or Rent: Preventing Demolition by Neglect in Iowa's Downtowns," 41-50.

⁵⁵ Ingram, "For Sale or Rent: Preventing Demolition by Neglect in Iowa's Downtowns," 3-4.

⁵⁶ Sarah M. Scott, "'Eminent Good Sense?': Using Eminent Domain to Curtail Demolition by Neglect," Master's Thesis, University of Pennsylvania, Philadelphia, 2019.

legislation and municipal codes can be written to allow government to condemn neglected historic properties. Second, courts regularly defer to municipalities to make decisions about how to use eminent domain to serve their communities. While eminent domain is not a cure-all, it can be an appropriate tool in certain situations.⁵⁷

It is the purpose of this research to augment the aforementioned scholarship with an examination of demolition by neglect in West Virginia. This includes the exploration of relevant state and municipal legislation and policies, as well as local examples of neglect to illustrate the nature and degree of a statewide problem. Based on the findings of best practices and policies enacted elsewhere this research will provide recommendations and actionable items for review and consideration by preservation officials and activists in West Virginia. The following section will offer a brief exploration of some of those best practices with tangible examples from jurisdictions in other states.

⁵⁷ Scott, “‘Eminent Good Sense?’ Using Eminent Domain to Curtail Demolition by Neglect,” 53-56.

Chapter 3: Demolition by Neglect: Different Approaches

There is no single cure-all approach to remedy instances of demolition by neglect. However, there are tried and true methods to mitigate the loss of historic resources caused by abandonment and/or lack of sufficient maintenance. This section examines four of the most common instruments available to states and municipalities to minimize the loss of historic properties to demolition by neglect. These include powers to regulate private property and enforce controls bestowed upon municipal governments through state enabling legislation and local preservation ordinances. Instruments to alleviate demolition by neglect also include the use of various incentives and the application of eminent domain.

This section includes a brief overview of each instrument and offers examples of effective real-world implementation. The first part briefly examines state enabling legislation in Maryland, North Carolina, and Rhode Island, jurisdictions with robust enabling legislation. The second part describes local ordinances in Annapolis, Maryland, Fayetteville, North Carolina, and Newport, Rhode Island, and portrays how these cities utilize state-authorized powers. The third part explores useful incentives to curb demolition by neglect and provides selected examples, including tax concessions, loans, easements, and regulatory relief. The final part describes the use of eminent domain as a preservation strategy with examples of successful application of property condemnation.

State Enabling Legislation

Municipalities assume authority to regulate private property from state enabling legislation. All 50 states have passed legislation enabling towns, cities, and counties to plan and operate zoning controls.⁵⁸ Planning and zoning are exercises of the police powers: the inherent power of a sovereign government to legislate for the health, welfare, and safety of the community. States grant powers to local legislative bodies to accomplish certain functions like creating a planning agency, engaging in comprehensive planning, developing regulations and procedures, and creating a planning commission. Some localities have highly sophisticated planning and zoning systems; some have none at all.⁵⁹

State enabling legislation also allows localities to draft and enact legal ordinances to regulate and protect historic properties.⁶⁰ Understanding how zoning and historic preservation intersect can help explain how localities regulate historic properties. Zoning and historic preservation have different aims. Traditional zoning ordinances focus primarily on building uses. The primary object of zoning is the separation of incompatible uses, e.g., industrial and residential properties. Zoning regulations do not usually address decorative elements, façade features, or fenestration of a house or building.⁶¹

By contrast, historic preservation ordinances focus on aesthetic details. Their primary objective is the preservation of the physical characteristics of historic

⁵⁸ Barry Cullingworth and Roger W. Caves, *Planning in the USA: Policies, Issues, and Processes (4th edition)*, (New York, NY: Routledge, 2014): 110.

⁵⁹ Cullingworth and Caves, *Planning in the USA: Policies, Issues, and Processes*, 111.

⁶⁰ Bronin and Rowberry, *Historic Preservation Law*, 227-228.

⁶¹ Bronin and Rowberry, *Historic Preservation Law*, 212-213.

buildings and districts that are important to their historic character. Preservation ordinances regulate new construction to ensure that it is compatible with the protected historic fabric. To accomplish these goals, municipal preservation ordinances usually create a process for reviewing proposed changes to ensure compatibility with the historic character and restrict other kinds of activities, such as demolition by neglect.⁶²

Although every state has adopted laws which enable local governments to enact historic preservation ordinances, the powers conferred under those laws vary greatly.⁶³ States commonly include provisions in enabling legislation regarding the affirmative responsibilities of owners of designated historic properties such as minimum maintenance requirements. Some states' enabling legislation also allows explicit prohibitions on demolition by neglect. Local provisions to counteract demolition by neglect have been shown to be more effective when guided by state regulations. Robust state laws provide access to funding mechanisms and a sound legal framework to reinforce measures taken locally to mitigate deterioration of historic resources.⁶⁴

Maryland, North Carolina, and Rhode Island are states with detailed enabling laws which explicitly address demolition by neglect.⁶⁵ In Maryland, for an owner to demolish a property within a designated historic district, the applicant requires

⁶² Bronin and Rowberry, *Historic Preservation Law*, 213.

⁶³ Julia H. Miller, "State Historic Preservation Laws from Around the Country," *Preservation Law Educational Materials*, (Washington: National Trust for Historic Preservation, 2008): 12-13.

⁶⁴ Newman and Saginor, "Four Imperatives for Preventing Demolition by Neglect," 634.

⁶⁵ Maryland Code Art. 66B, § 8.01 through 8.17; North Carolina Gen. Stats. § 160A-400.1 through 160A-400.14; and Rhode Island Code § 45-24-1-1 through 45-24-1-23.

approval from the local preservation commission.⁶⁶ In Maryland, the definition of demolition “includes any willful neglect in the maintenance and repair of a structure” which “does not result from a financial inability to maintain and repair the structure and that threatens to result in a substantial deterioration of the exterior features of the structure.”⁶⁷

The assumption is that the owner is capable of maintaining the building but chooses not to do so. Nevertheless, the decision to allow a property to deteriorate is a deliberate act that requires commission approval.⁶⁸ However, unless the commission is satisfied the action will not materially impair the historic fabric of the property “the commission shall reject the application.”⁶⁹ Historic preservation commissions in Maryland may request local authorities institute remedies and penalties against violators.⁷⁰ Remedies include the ability of the government to undertake necessary corrective work and apply a lien on the property for repayment. Penalties include the authority of localities to levy civil fines of up to \$1,000 per day.⁷¹

In North Carolina, localities also have explicit authority to enact an ordinance “to prevent the demolition by neglect of any designated landmark or of any building or structure within an established historic district.”⁷² Furthermore, municipalities in North Carolina are empowered to “institute any appropriate action” to prevent the unlawful demolition, destruction, or material alteration of any property within a

⁶⁶ Maryland Code Art. 66B, § 8.05.

⁶⁷ Maryland Code Art. 66B, § 8.01(a).

⁶⁸ Maryland Code Art. 66B, § 8.05.

⁶⁹ Maryland Code Art. 66B, § 8.09.

⁷⁰ Maryland Code Art. 66B, § 8.14.

⁷¹ Maryland Code Art. 66B, § 8.14; and Maryland Code Art. 23A, Section 3(b).

⁷² North Carolina Gen. Stats. § 160A-400.14(b).

historic district, “whether as the result of deliberate neglect or otherwise.”⁷³ However, as a public protection, state law requires that a demolition by neglect ordinance in North Carolina must protect property owners against undue economic hardship.⁷⁴

Finally, Rhode Island has among the most detailed of any state enabling laws on demolition by neglect. State law defines “demolition” as “an act or process that destroys a structure or its appurtenances in part or in whole, or permanently impairs its structural integrity, including its ruin by neglect of necessary maintenance and repairs.”⁷⁵ Localities in Rhode Island “shall publish standards for maintenance of properties within historic districts.”⁷⁶ Moreover, a commission may require an owner to repair a deteriorated property, and if the owner fails to act, the commission may order repairs and place a lien against the property for repayment.⁷⁷

Rhode Island law also provides robust enforcement measures. For owners who fail to comply with ordinance requirements, “actions shall be brought in the superior court having jurisdiction.”⁷⁸ Commissions may “seek restraining orders and injunctive relief” to address violations or threatened violations.⁷⁹ Like in Maryland and North Carolina, demolition of a property in a historic district in Rhode Island also requires commission approval.⁸⁰ But unless the commission is satisfied that retention of the property constitutes a public safety hazard without reasonable redress, the

⁷³ North Carolina Gen. Stats. § 160A-400.11.

⁷⁴ North Carolina Gen. Stats. § 160A-400.14(b).

⁷⁵ Rhode Island Code § 45-24-1-1.

⁷⁶ Rhode Island Code § 45-24-1-5.

⁷⁷ Rhode Island Code § 45-24-1-5.

⁷⁸ Rhode Island Code § 45-24-1-10(a).

⁷⁹ Rhode Island Code § 45-24-1-10(a).

⁸⁰ Rhode Island Code § 45-24-1-4(f).

commission shall reject the application.⁸¹ However, anyone demolishing a historic building, or portion of a historic building, without the requisite permits is subject to a criminal misdemeanor charge, a \$500 fine, and/or imprisonment of up to one year.⁸²

Local Ordinances

The real protective power of historic preservation is found at the local level. It is only here where legal ordinances may be drafted to regulate and protect historic properties in designated historic districts. These powers are reserved for local governments because of the underlying philosophy that each community should determine for itself what is historically significant, what is of value to the community, and what steps should be taken to provide protection.⁸³ Therefore, preservation ordinances must be tailored to meet the specific needs of a given community.

All local historic preservation ordinances must have some basic components.⁸⁴ They must clearly state a public purpose, create a local preservation commission and delineate their powers and duties, designate historic districts and landmarks, establish criteria to govern design review, establish enforcement mechanisms, and formulate an appeals' process for denials. Successful ordinances must also define key terms, address economic hardship claims, and have affirmative maintenance provisions to prevent the deterioration of valuable historic fabric in the community.⁸⁵

⁸¹ Rhode Island Code § 45-24-1-4(f).

⁸² Rhode Island Code § 45-24-1-10(b).

⁸³ Norman Tyler, Ted Ligibel, and Ilene R. Tyler, *Historic Preservation: An Introduction to Its History, Principles, and Practice (2nd edition)*, (New York, NY: W.W. Norton, 2009): 58-59.

⁸⁴ Richard J. Roddewig, *Preparing a Historic Preservation Ordinance*, (Chicago, IL: American Planning Association, 1983): 6-7.

⁸⁵ Constance E. Beaumont, *A Citizen's Guide to Protecting Historic Places: Local Preservation Ordinances*, (Washington, DC: National Trust for Historic Preservation, 2002): 3-6.

To be effective, a preservation ordinance must comply with five cardinal land-use principles.⁸⁶ First, an ordinance must promote a valid public purpose by advancing public health, safety, morals, or the general welfare. Second, it must not be so restrictive as to deprive a property owner of all reasonable economic use of his property. Third, it must honor a citizen's constitutional right to due process, i.e., residents are entitled to fair hearings and rational procedures must be used to administer the ordinance. Fourth, a local ordinance must comply with all relevant state laws. Finally, it must apply equally to everyone. If a preservation ordinance violates any of these rules it stands at risk of being invalidated by a court.⁸⁷

Local policy is the most impactful method through which to counteract the process of demolition by neglect.⁸⁸ The most significant tool in the process is a carefully drafted provision in the local historic preservation ordinance. The provision must require affirmative maintenance of historic resources and also ensure that the local commission is equipped with adequate remedies and enforcement authority. Minimum maintenance requirements for designated historic properties have repeatedly been upheld and enforced by American courts.⁸⁹

⁸⁶ Beaumont, *A Citizen's Guide to Protecting Historic Places: Local Preservation Ordinances*, 2.

⁸⁷ Beaumont, *A Citizen's Guide to Protecting Historic Places: Local Preservation Ordinances*, 2.

⁸⁸ National Trust for Historic Preservation, "Demolition by Neglect," 1.

⁸⁹ *Maher v. City of New Orleans*, 516 F.2d 1051 (5th Cir. 1975); *Harris v. Parker*, Chancery No. 3070 (Cir. Ct. Isle of Wight County, Va. April 1985); *City of New York v. Cooper Square Inc.*, 793 N.Y.S. 2d 688 (NYC 2004).

Annapolis, Maryland

Annapolis, Maryland, Fayetteville, North Carolina, and Newport, Rhode Island provide examples of robust local ordinances with explicit demolition by neglect provisions.⁹⁰ Historic preservation is an important aspect of local government in each of these jurisdictions. Annapolis, Maryland is significant as the state capital and one of the earliest planned communities in America. The baroque plan of circles and radiating streets features residential and commercial properties dating primarily from the late 18th century to the early 20th century (Figure 1). Stylistically, buildings range from the high-style Georgian of the 18th century, to Colonial Revival houses of the early 20th century, to the vernacular and plain single and double houses from various periods, which comprise the majority of the residential building stock in the district.⁹¹

⁹⁰ Annapolis, MD Code of Ordinances, Chapter 21.56.010 through 21.56.140; Fayetteville, NC Code of Ordinances, Chapter 30-3.H.3; and Newport, RI Code of Ordinances, Chapter 17.80.010 through 17.80.120.

⁹¹ Geoffrey B. Henry and Ronald L. Andrews, "Colonial Annapolis Historic District," National Register of Historic Places Inventory—Nomination Form, (Annapolis, MD: Maryland Historical Trust, 1984): 3.



Historic Annapolis

Figure 1. The baroque plan of circles of radiating streets in Annapolis, Maryland features residential and commercial properties dating primarily from the late 18th century to the early 20th century.

The demolition by neglect provision in the Annapolis preservation ordinance applies to all properties within the historic district, regardless of their individual historic or architectural significance. The provision protects against any neglect that results in the “deterioration of foundations, exterior walls, roofs, chimneys, doors, windows, or any other physical element” of a site or building.⁹² The determination of whether an instance of deterioration constitutes demolition by neglect “shall not depend on or otherwise take into consideration an owner’s financial ability or inability to maintain or repair” their property.⁹³

Annapolis code requires that the preservation commission investigate all incidents of potential demolition by neglect.⁹⁴ The commission shall document the conditions and provide a list of maintenance and repairs required to abate the demolition by neglect. The commission shall provide a copy of this report to the

⁹² Annapolis, MD Code of Ordinances, Chapter 21.56.020.

⁹³ Annapolis, MD Code of Ordinances, Chapter 21.56.020.

⁹⁴ Annapolis, MD Code of Ordinances, Chapter 21.56.090.

property owner and schedule a public hearing before the commission. If the commission determines a case of demolition by neglect, the board shall pass an order of abatement, with a deadline for completion. Property owners wishing to dispute the ruling may seek judicial review by filing a petition in Anne Arundel County Circuit Court.⁹⁵

Finally, anyone who disregards a final decision by the preservation commission will be considered in violation of Annapolis city code. Each day the violation continues “shall be deemed a separate offense.”⁹⁶ Violators may be assessed a fine as established by the City Council for each day that the violation continues. In addition to other remedies and penalties, where there is a violation, the commission, through the City Attorney, “shall institute appropriate action to prevent, enjoin, abate, or remove the violation.”⁹⁷

Fayetteville, North Carolina

Fayetteville, North Carolina, is significant as an important early regional trading center with a remarkably intact town center dating to the late 18th century.⁹⁸ Fayetteville’s historic district spans 59 acres and comprises a variety of architectural styles across its commercial and government buildings, railroad-related structures, residential dwellings, and churches ranging in date from the 1780s to the mid-20th century (Figure 2).⁹⁹ Commercial and residential properties in the styles of Greek

⁹⁵ Annapolis, MD Code of Ordinances, Chapter 21.56.090.

⁹⁶ Annapolis, MD Code of Ordinances, Chapter 21.56.120.

⁹⁷ Annapolis, MD Code of Ordinances, Chapter 21.56.120.

⁹⁸ M. Ruth Little and Michelle Kullen, “Fayetteville Downtown Historic District,” National Register of Historic Places Inventory—Nomination Form, (Raleigh, NC: Longleaf Historic Resources, 1999): 6.

⁹⁹ Little and Kullen, “Fayetteville Downtown Historic District,” 70.

Revival, Second Empire, Queen Anne, Italianate, Colonial Revival, and Art Moderne create a lively downtown historic district.¹⁰⁰



Fayetteville Area Convention & Visitors Bureau

Figure 2. The historic district in Fayetteville, North Carolina spans 59 acres and comprises various architectural styles across residential, commercial, and government buildings.

The demolition by neglect provision in Fayetteville applies to all properties within the historic district, regardless of an individual site’s significance or contributing status.¹⁰¹ The provision requires owners to maintain the exterior features of their property and prohibits any neglect that contributes to the deterioration of the “structural integrity of a structure or architectural details important to a property’s historic, prehistoric, architectural, or cultural character.”¹⁰² This includes foundations, exterior walls, floors, roofs, chimneys, plasters or mortars, windows, doors, stairs, porches, steps, pathways, fences, and accessory structures.¹⁰³

Fayetteville code requires the City Manager to contact the owner of a property in violation, describing the conditions of neglect, specifying a necessary course of action to abate the neglect, and ordering corrective measures to begin within 30

¹⁰⁰ Little and Kullen, “Fayetteville Downtown Historic District,” 70.

¹⁰¹ Fayetteville, NC Code of Ordinances, Chapter 30-3.H.3(e)1.

¹⁰² Fayetteville, NC Code of Ordinances, Chapter 30-3.H.3(e)1.

¹⁰³ Fayetteville, NC Code of Ordinances, Chapter 30-3.H.3(e)1.

days.¹⁰⁴ A property owner may request an administrative hearing to discuss a potential violation, including petitioning for a claim that compliance creates an undue economic hardship. In such a case, a petitioner bears the burden of presenting sufficient evidence to determine that an undue economic hardship exists.¹⁰⁵

On finding that demolition by neglect has occurred, the city may use a combination of remedies and enforcement powers.¹⁰⁶ The city may petition a court to order the property owner to repair the property and bring it into compliance.¹⁰⁷ Furthermore, the city may order and complete repairs themselves and place a lien on the property for repayment.¹⁰⁸ The city may also seek to levy civil penalties against a noncompliant property owner, with the municipality issuing fines in an amount determined by the City Council. Finally, it is also possible to file criminal charges against a property owner who repeatedly refuses compliance, and upon conviction be guilty of a misdemeanor and fined \$500.¹⁰⁹

Newport, Rhode Island

Newport, Rhode Island, is significant as an early seaport settlement and, later, an industrial and military center and summer resort town.¹¹⁰ The district's character is that of a highly distinctive and well-preserved colonial city with an overlay of late 19th and early 20th century development (Figure 3). Contained within the district are

¹⁰⁴ Fayetteville, NC Code of Ordinances, Chapter 30-3.H.3(e)2.

¹⁰⁵ Fayetteville, NC Code of Ordinances, Chapter 30-3.H.3(e)3.

¹⁰⁶ Fayetteville, NC Code of Ordinances, Chapter 30-3.H.3(e)2.

¹⁰⁷ Fayetteville, NC Code of Ordinances, Chapter 30-8.F.1.

¹⁰⁸ Fayetteville, NC Code of Ordinances, Chapter 30-8.F.1.

¹⁰⁹ Fayetteville, NC Code of Ordinances, Chapter 30-8.F.1.

¹¹⁰ Patricia Heintzelman, "Newport National Historic Landmark District," National Register of Historic Places Inventory—Nomination Form, (Washington, DC: Historic Sites Survey, 1999): 7.

singular examples of high-style colonial and 19th century public and domestic architecture as well as rows of small vernacular houses and shops. Highway projects and urban renewal brought changes between the 1950s and 1970s.¹¹¹ But evidence of Newport's first period of exploration and settlement is preserved in the buildings and the irregular grid pattern of streets, first established in the 18th century.¹¹²



Newport Historical Society

Figure 3. Newport, Rhode Island retains the distinctive character of a well-preserved colonial city with an overlay of late 19th and early 20th century development.

Like Annapolis and Fayetteville, the demolition by neglect provision in Newport applies to all properties within the historic district, regardless of significance or contributing status.¹¹³ The provision prohibits any willful “act or process that destroys a structure or its appurtenances in part or in whole.”¹¹⁴ The preservation

¹¹¹ Heintzelman, “Newport National Historic Landmark District,” 8.

¹¹² Heintzelman, “Newport National Historic Landmark District,” 7.

¹¹³ Newport, RI Code of Ordinances, Chapter 17.80.050.

¹¹⁴ Newport, RI Code of Ordinances, Chapter 17.80.010.

commission is also required to “publish standards for the maintenance of properties within the historic district.”¹¹⁵ In cooperation with the preservation commission, the City Council “may identify structures of historical or architectural value whose deteriorated physical condition endangers the preservation of the structure or its appurtenances.”¹¹⁶

Upon discovering potential violations, the council may impose a time limit, “not less than 30 days within which the owner must begin repairs.”¹¹⁷ If the owner fails to act within the allotted time period, the council shall hold a hearing at which the owner may appear to state their reasons for noncompliance. If the owner neither appears nor complies with an order, the city may make repairs and place a lien on the property to recoup expenses.¹¹⁸ The city also has authority to petition any court of competent jurisdiction.¹¹⁹ There, the city may seek “restraining orders and injunctive relief to restrain and enjoin violations or threatened violations.”¹²⁰

Incentives

Many state and local governments provide incentives to encourage private property owners to preserve or rehabilitate historic buildings and properties. Financial incentives that promote historic preservation are one of the most effective methods for counteracting demolition by neglect.¹²¹ The principle is one of *quid pro quo*: a private property owner provides the community with a heritage amenity, which is

¹¹⁵ Newport, RI Code of Ordinances, Chapter 17.80.070.

¹¹⁶ Newport, RI Code of Ordinances, Chapter 17.80.070.

¹¹⁷ Newport, RI Code of Ordinances, Chapter 17.80.070.

¹¹⁸ Newport, RI Code of Ordinances, Chapter 17.80.070.

¹¹⁹ Newport, RI Code of Ordinances, Chapter 17.80.120.

¹²⁰ Newport, RI Code of Ordinances, Chapter 17.80.120.

¹²¹ Newman and Saginor, “Four Imperatives for Preventing Demolition by Neglect,” 629.

deemed a community benefit, and the community gives the owner a benefit in return. Several kinds of financial incentives are commonly used, including tax concessions, grants, low-interest loans, and revolving funds.¹²²

An alternative approach to reducing the cost of preserving a historic place is the use of non-financial incentives to encourage private sector work.¹²³ Incentives of this kind include offering variances to planning regulations in return for a conservation initiative. This type of incentive zoning can be particularly effective in steering commercial development projects which include historic properties worth preserving. Such incentives typically consist of regulatory relaxations and amenity bonuses, which may involve items such as land use, lot coverage, height, massing, and parking. Incentive zoning is applied at the local government level.¹²⁴

Tax credits are the single most effective public program supporting private development and rehabilitation of historic buildings.¹²⁵ They provide an incentive for property owners to rehabilitate historic buildings in the form of a refund equal to a percentage of project costs. Tax credits are attractive because they reduce a taxpayer's tax liability on a dollar-for-dollar basis—unlike tax deductions whose value is reduced according to the margin paid by the taxpayer. Eligibility for tax credit programs varies, but often programs require that a property be listed on the National Register of Historic Places, or a state equivalent register, or as a contributing resource in a registered historic district.¹²⁶

¹²² Harold Kalman and Marcus R. Letourneau, *Heritage Planning: Principles and Process* (2nd edition), (New York, NY: Routledge, 2021): 371.

¹²³ Kalman and Letourneau, *Heritage Planning: Principles and Process*, 377.

¹²⁴ Kalman and Letourneau, *Heritage Planning: Principles and Process*, 31-32.

¹²⁵ Bronin and Rowberry, *Historic Preservation Law*, 441.

¹²⁶ Bronin and Rowberry, *Historic Preservation Law*, 441.

The federal rehabilitation tax credit program offers a 20 percent credit for rehabilitations of income-producing historic buildings. The credit requires a building be listed or eligible for the National Register or designated as contributing resource in a certified historic district. The credit also requires that the work be certified as conforming to the Secretary of the Interior's Standards for Rehabilitation.¹²⁷ Since 1976, the program administered by the National Park Service has leveraged over \$109 billion in private investment on over 46,000 certified historic rehabilitation projects in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.¹²⁸

Thirty-nine state legislatures have passed laws authorizing state rehabilitation tax credits, and state tax credit programs come in many different forms.¹²⁹ Many state rehabilitation tax credits can be combined with federal credits. Many state tax credit programs also offer credits for owner-occupied residences or other projects ineligible for federal historic tax credits. (The West Virginia program will be evaluated in the following chapter.) Whether or not they track the federal credit program, state rehabilitation tax credits share many of the same characteristics. Almost all state programs specify building uses targeted by the credits, and many require projects adhere to the Secretary of the Interior's Standards for Rehabilitation.¹³⁰

¹²⁷ Kalman and Letourneau, *Heritage Planning: Principles and Process*, 376.

¹²⁸ National Park Service, *Federal Tax Incentives for Rehabilitating Historic Buildings: Annual Report for Fiscal Year 2020*, (Washington, DC: National Park Service, Technical Preservation Services, 2021): 2.

¹²⁹ National Trust for Historic Preservation, "Preservation & State Historic Tax Credits," <https://forum.savingplaces.org/learn/fundamentals/economics/tax-credits/state-htc>

¹³⁰ Bronin and Rowberry, *Historic Preservation Law*, 463-464.

The National Trust for Historic Preservation has identified areas that make some state rehabilitation tax credit programs more successful in attracting investment than others.¹³¹ These include a broad definition of eligible properties, making tax credits available for homeowners who are ineligible for the federal credit, and fixing a percentage rate for qualified rehabilitation expenditures between 20 percent and 30 percent, to ensure meaningful assistance. The National Trust also recommends making state tax credits transferable or refundable, eliminating caps, allowing the credit to apply across all taxable incomes, and exercising caution when implementing credits to target specific geographic areas.¹³²

Colorado, one of the first states to implement a rehabilitation tax credit in 1990, provides a strong example of a robust program.¹³³ In Colorado, owners of qualified commercial and residential properties are eligible for a state income tax credit of between 20 percent and 35 percent.¹³⁴ In 2018, the Colorado legislature revised the program to offer a 35 percent credit for projects in rural communities. Between 1991-2015, Colorado saw 1,113 historic rehabilitation projects undertaken with an estimated \$193 million in qualified expenditures. Colorado's historic tax credit projects generated \$2.8 million in state personal income tax revenues, \$1 million in state business income tax revenues, and \$12.6 million in state sales tax revenue.¹³⁵

¹³¹ National Trust for Historic Preservation, *State Historic Tax Credits: Maximizing Preservation, Community Revitalization, and Economic Impact*, (Washington, DC: National Trust for Historic Preservation, 2018): 6.

¹³² Bronin and Rowberry, *Historic Preservation Law*, 465.

¹³³ Colorado State Income Tax Credit for Historic Preservation (§39-22-514 C.R.S.).

¹³⁴ National Trust for Historic Preservation, *State Historic Tax Credits*, 30.

¹³⁵ Colorado Preservation, *Preservation for a Changing Colorado*, (Denver, CO: Colorado Preservation, Inc., 2017).

Maine is another state with a successful historic tax credit program. Maine offers a 25 percent state historic tax credit for qualified commercial and residential properties with a certain minimum level of expenditures.¹³⁶ The credit is limited to \$5 million per project per year for four years. Since its historic tax credit program was reauthorized in 2008, Maine has seen 106 historic buildings rehabilitated, an uptick in rural investment, the creation of more affordable housing, and \$525 million in private investment in older and historic communities.¹³⁷ These renovations have added over \$166 million to local property tax rolls in host communities, and another \$19 million in new income and sales tax revenues.¹³⁸

Individual localities are also known to offer municipal-level tax credits or exemptions for owners to rehabilitate historic properties. For example, San Antonio, Texas has one of the more mature tax incentive programs for historic preservation. Since 1980, taxpayers in San Antonio may have their property tax assessments frozen for 10 years at pre-rehabilitation assessment levels if they substantially rehabilitate historic residences.¹³⁹ Rental properties and owner-occupied residences both qualify. Moreover, rehabilitated commercial properties may be exempted completely from city property taxes for five years. Those properties are then assessed at 50 percent of the building's value during a second five-year period.¹⁴⁰

¹³⁶ Me. Rev. Stat. Ann. Tit. 36 § 5219-BB.

¹³⁷ Charles Lawton and Frank O'Hara, *Maine Historic Tax Credit Economic Impacts Report*, (Portland, ME: Planning Decisions, Inc., 2020): 1.

¹³⁸ Lawton and O'Hara, *Maine Historic Tax Credit Economic Impacts Report*, 2.

¹³⁹ City of San Antonio, "What Do I Need to Do to Receive a Tax Exemption or Credit?" *Office of Historic Preservation*, 2010
https://www.sanantonio.gov/portals/0/Files/HistoricPreservation/Tax_incentive_brochure-8-2010.pdf

¹⁴⁰ City of San Antonio, "What Do I Need to Do to Receive a Tax Exemption or Credit?" 2010.

Yet San Antonio is not unique. In Baltimore, Maryland, since 1997, owners of residential and commercial properties in local historic districts who complete substantive rehabilitation projects qualify for a 10-year tax credit on the increased property value. The credit is stackable with other credits and transferable.¹⁴¹ In Jackson, Mississippi, owners of residential and commercial properties in historic districts who rehabilitate structures qualify for a 7-year tax credit on the increased property value. This abatement is also stackable with other credits.¹⁴² Atlanta, Georgia, Boulder, Colorado, Buffalo, New York, and Seattle, Washington are just a few of the hundreds of other municipalities nationwide with local preservation tax incentives.¹⁴³

Grants are another common form of financial incentive.¹⁴⁴ Money is given to the property owner to assist with the costs of preservation, thereby lessening the financial burden. Grants may be nominal or substantial. Granting agencies often require that applicants provide an equal or greater “matching” contribution to help ensure a positive outcome. Granting agencies also often insist that projects follow best preservation practices. The advantage of a grant is that it is the most direct kind of financial incentive. The disadvantage to the granting agency is that a grant is a direct and non-reimbursable expense.¹⁴⁵

¹⁴¹ PlaceEconomics, *An Analysis of the Baltimore Historic Preservation Tax Credit (Prepared for the Baltimore Commission for Historical and Architectural Preservation)*, (Washington, DC: PlaceEconomics, 2020): 5.

¹⁴² Jackson, Mississippi Code of Ordinances, Chapter 70-7.

¹⁴³ Beaumont, “Local Incentives for Historic Preservation,” 2.

¹⁴⁴ Kalman and Letourneau, *Heritage Planning: Principles and Process*, 372.

¹⁴⁵ Kalman and Letourneau, *Heritage Planning: Principles and Process*, 372.

Governments and nonprofit foundations are the customary granting agencies. (Grant programs in West Virginia will be evaluated in the following chapter.) For example, the largest source of government grant funding for historic preservation projects in the U.S. is the Historic Preservation Fund (HPF), administered by the National Park Service. In Fiscal 2020, Congress appropriated \$118 million to the HPF, nearly \$53 million of which went to state historic preservation offices to fund matching grants for in-state preservation needs.¹⁴⁶ The rest of the funding went to Native American tribal preservation offices and six other historic preservation grant programs.¹⁴⁷

As for nonprofit foundations, one significant example is the privately-funded National Trust for Historic Preservation, which awards grants to fellow nonprofits and public agencies to encourage local preservation. The National Trust awards most of its grant funding through its National Trust Preservation Fund, which provides seed money for local education and preservation planning.¹⁴⁸ These grants are used to help stimulate public discussion, enable local groups to gain technical expertise, introduce the public to preservation concepts, and encourage financial participation

¹⁴⁶ National Park Service, *Historic Preservation Fund: Annual Report 2020*, (Washington, DC: U.S. Department of the Interior, 2020) <https://www.nps.gov/shpo/Reports/HPFReport20.pdf>

¹⁴⁷ The other funded programs included: African American Civil Rights, Historically Black Colleges and Universities, History of Equal Rights, Paul Bruhn Historic Revitalization Program, Save America's Treasures, and Underrepresented Communities.

¹⁴⁸ National Trust for Historic Preservation, "National Trust Preservation Funds: Guidelines & Eligibility," *Preservation Leadership Forum*, https://forum.savingplaces.org/build/funding/grant-seekers/preservation-funds?_gl=1*bqzjw7*_ga*MjA2NjM3NzEwMi4xNjE4NjY5MjM5*_ga_Z0Y4H4RFKN*MTYxOTA0MTEzNS4xMi4xLjE2MTkwNDlyMDkuNjA.&_ga=2.222734936.214203734.1619017395-2066377102.1618669239

by the private sector. In addition to the National Trust Preservation Funds, the National Trust operates a series of more targeted and specific funds.¹⁴⁹

Special loans to property owners for preservation work comprise a third incentive. A revolving fund for historic preservation is one such kind of loan fund. Typically, revolving funds provide financing for the acquisition and/or rehabilitation of historic buildings. In one model, the fund purchases a threatened building, safeguards it with legal protections, and sells it to a buyer who will preserve it. In a second model, the fund undertakes the preservation work itself and then sells the improved building. In either case, the sale is accompanied by a protective covenant, preservation agreement, or some other protection instrument.¹⁵⁰

Revolving funds are typically managed by a trust or foundation, which may hold title to many buildings or may invest in properties owned by others. The fund is initially built by means of fundraising. One of the attractions of a revolving fund to donors is that funding is reused many times. When a property has been transferred to a new owner, the proceeds from the sale or lease are returned to the fund to be reused for the same purpose. Revolving funds can sustain themselves with a modern return on their investments.¹⁵¹

Revolving funds have long been popular in the U.S., as one of the earliest financial tools utilized by the preservation community. The Historic Charleston

¹⁴⁹ National Trust for Historic Preservation, "Special Grants Programs," *Preservation Leadership Forum*, https://forum.savingplaces.org/build/funding/grant-seekers/specialprograms?_gl=1*7a5vct*_ga*MjA2NjM3NzEwMi4xNjE4NjY5MjM5*_ga_Z0Y4H4RFKN*MTYxOTA0NTA1NS4xMy4xLjE2MTkwNDU0MTAuNjA.&_ga=2.229998943.214203734.1619017395-2066377102.1618669239

¹⁵⁰ Kalman and Letourneau, *Heritage Planning: Principles and Process*, 374.

¹⁵¹ Kalman and Letourneau, *Heritage Planning: Principles and Process*, 374.

Foundation and the Historic Savannah Foundation have pioneered revolving funds with enormous success since the 1950s.¹⁵² Entire neighborhoods of derelict structures have been revived by private purchasers, returning millions of dollars to local tax bases and engendered a lucrative heritage tourism market. The Historic Salisbury Foundation has demonstrated the benefits of a revolving fund for a smaller town, reselling over 100 historic structures in a city of 34,000 in North Carolina.¹⁵³

Since 1980, the Providence Preservation Society in Rhode Island has operated one of the nation's most robust revolving funds.¹⁵⁴ Two capital funds manage over \$8.5 million in assets and owners receive guidance rehabilitating historic properties to revitalize and stabilize neighborhoods. The fund uses community development block grant funds administered by the City of Providence to buy and renovate troublesome properties in low-to-moderate income neighborhoods, reselling them with favorable financing to qualified purchasers. The fund has served as a stabilizing influence in transitional urban neighborhoods.¹⁵⁵

Eminent Domain

Eminent domain refers to the power of government to condemn private property for public use.¹⁵⁶ The federal government—including Congress, as well as duly authorized administrative agencies, officials, and commissions—may condemn

¹⁵² J. Myrick Howard, "Nonprofits in the American Preservation Movement," in *A Richer Heritage: Historic Preservation in the Twenty-First Century*, edited by Robert E. Stipe, (Chapel Hill, NC: The University of North Carolina Press, 2003): 336-337.

¹⁵³ Historic Salisbury Foundation, "About Us: Revolving Fund Properties," <https://historicsalisbury.org>

¹⁵⁴ Providence Revolving Fund, "About Us," <https://www.revolvingfund.org/about.php>

¹⁵⁵ Providence Revolving Fund, "About Us," <https://www.revolvingfund.org/about.php>

¹⁵⁶ Jay M. Feinman, *Law 101: Everything You Need to Know About American Law (5th edition)*, (New York, NY: Oxford University Press, 2018): 249.

private property pursuant to its inherent powers of eminent domain.¹⁵⁷ Through statutes and constitutions, state legislatures have also claimed the power of eminent domain. States' eminent domain powers may be delegated to political subdivisions—counties, cities, towns, regional bodies, and special-purpose governments—and private entities such as railroads and utilities.¹⁵⁸

However, federal and state constitutions provide limitations on the power of eminent domain. The Fifth Amendment to the U.S. Constitution requires that government must provide just compensation to aggrieved property owners.¹⁵⁹ Just compensation typically takes the form of fair market value, calculated through a comparable sales approach, income approach (particularly for commercial properties), or cost approach.¹⁶⁰ Some jurisdictions require extra compensation for the taking of homes. Some state statutes regulate the exercise of eminent domain by requiring the entity exercising the power to make certain findings.¹⁶¹

The key issue in the use of eminent domain is whether there is a “public use” justifying the condemnation.¹⁶² Early on, courts interpreted the public use requirement narrowly, requiring public ownership of, or public access to, the condemned property.¹⁶³ Valid public uses under this narrow interpretation typically included roads, bridges, parks, and public buildings.¹⁶⁴ However, courts have evolved to adopt a broader view of the public use requirement, allowing exercises of eminent

¹⁵⁷ Bronin and Rowberry, *Historic Preservation Law*, 237.

¹⁵⁸ Bronin and Rowberry, *Historic Preservation Law*, 237.

¹⁵⁹ U.S. Const. amend. V.

¹⁶⁰ Bronin and Rowberry, *Historic Preservation Law*, 235.

¹⁶¹ Bronin and Rowberry, *Historic Preservation Law*, 237.

¹⁶² Feinman, *Law 101: Everything You Need to Know About American Law*, 250.

¹⁶³ Bronin and Rowberry, *Historic Preservation Law*, 240.

¹⁶⁴ Feinman, *Law 101: Everything You Need to Know About American Law*, 250.

domain that achieve a public benefit without necessarily granting public use or access.¹⁶⁵ Today, U.S. courts accept historic preservation as a valid public purpose and exercise of police powers.¹⁶⁶

For decades, municipalities nationwide have authorized the use of the eminent domain to protect historic resources from deterioration or neglect. In 1950, Baltimore, Maryland acquired the Star-Spangled Banner Flag House—where Mary Pickersgill made the flag which flew over Fort McHenry during the British bombardment of 1814—in order to preserve it. In the process, the City of Baltimore condemned an adjacent three-story red-brick rooming house to house office space for the new museum.¹⁶⁷ The Maryland Court of Appeals later upheld the city use of eminent domain over the objections of rooming house property owner Annie Flaccomio.¹⁶⁸

In 1973, Louisville, Kentucky seized two Victorian townhouses owned by the local Women's Club, which planned to demolish the buildings for a parking lot.¹⁶⁹ The city then resold to a developer the high-style Richardsonian Romanesque houses, with preservation covenants attached. The Women's Club filed suit against the city, arguing there was no constitutional authority to condemn the properties in order to preserve. The state supreme court upheld the municipality's action and the City of Louisville ultimately awarded the Women's Club \$175,000 compensation for the prime examples of Victorian architecture.¹⁷⁰

¹⁶⁵ Bronin and Rowberry, *Historic Preservation Law*, 240-244.

¹⁶⁶ *Penn Central v. City of New York*, 438 US 104 (1978).

¹⁶⁷ The Associated Press, "Star-Spangled Banner Made in Brewery, Court Told in Suit," *The Baltimore Sun*, December 15, 1949.

¹⁶⁸ *Flaccomio v. City of Baltimore*, 71 A.2d 12 (Md. 1950).

¹⁶⁹ Carson P. Porter, *City of Louisville v. The Women's Club of Louisville*, 1 Pace L. Rev. 647 (1981).

¹⁷⁰ Porter, *City of Louisville v. The Women's Club of Louisville*, 649.

In 1988, Rochester, New York, condemned the 1840s-era Hoyt-Potter House for preservation after the Greek Revival building had endured years of neglect.¹⁷¹ The state supreme court upheld the municipality's use of eminent domain and the city resold the building to a developer who specialized in troubled historic properties.¹⁷² In 2004, the New York State Supreme Court similarly upheld the City of Albany's use of eminent domain to preserve the 17,000 square-foot St. Joseph's Church.¹⁷³ The church closed in 1980 and was purchased in 2001 by an owner who wished to use the property as a nightclub.¹⁷⁴ Public outrage over the proposal led the city to condemn the property, located within a registered local historic district.¹⁷⁵

In West Virginia, the power of eminent domain may be exercised through the process of condemnation. State law has designated three fundamental requirements for the physical appropriation of private property in West Virginia.¹⁷⁶ First, it must be exercised by a governmental entity or an entity given eminent domain authority under law. In addition to the federal government and state and local governments in West Virginia, Urban Renewal Authorities, and even some private entities, such as utilities and railroads, may exercise eminent domain.¹⁷⁷

Second, the property must be put to public use. West Virginia law sets out the public uses for which private property may be taken, including development of public infrastructure, communication systems, utilities, public buildings, and outdoor

¹⁷¹ Scott, 'Eminent Good Sense?:' *Using Eminent Domain to Curtail Demolition by Neglect*, 39.

¹⁷² *Lubelle v. City of Rochester*, 145 A.2d. 954 (1988); and Scott, 'Eminent Good Sense?:' *Using Eminent Domain to Curtail Demolition by Neglect*, 43.

¹⁷³ *In re Acquisition of Real Property by the City of Albany*, 9 A.3d. 551 (N.Y. App. Div. 2004).

¹⁷⁴ Scott, 'Eminent Good Sense?:' *Using Eminent Domain to Curtail Demolition by Neglect*, 44.

¹⁷⁵ Scott, 'Eminent Good Sense?:' *Using Eminent Domain to Curtail Demolition by Neglect*, 48.

¹⁷⁶ West Virginia Code §§ 54-1-1-2.

¹⁷⁷ West Virginia Code §§ 54-1-1-2.

spaces.¹⁷⁸ However, the specific purposes for which the power of eminent domain is conferred to local governments are not limited to those enumerated in the West Virginia Code.¹⁷⁹ Third, just compensation must be paid to the property owner. In West Virginia, this is calculated as the difference between the fair price market value of the property before the condemnation and the fair market value of the property after the condemnation.¹⁸⁰

In West Virginia, a local government or condemning authority must attempt to enter into negotiations and make an offer in good faith to purchase a property before exercising eminent domain.¹⁸¹ Condemnation proceedings begin with an application made by petition to the circuit court with jurisdiction.¹⁸² The petition must describe with reasonable certainty the property proposed to be taken and the interests of the parties.¹⁸³ If the circuit judge determines proper notice was given and that the applicant has a lawful right to take property for the stated purposes, five disinterested landowners are appointed to determine the amount of just compensation and any damages.¹⁸⁴ Typically, the amount of “just compensation” and the existence of a “public use” are the main issues for dispute.

¹⁷⁸ West Virginia Code §§ 54-1-1-2(a).

¹⁷⁹ West Virginia Code §§ 54-1-11.

¹⁸⁰ *Tennessee Gas Transmission Co. v. Fox*, 134 W.VA. 106, 115-116, 58 S.E.2d 584, 590-591 (1950); *State Road Commissioner v. Board of Park Commissioners*, 154 W.VA. 159, 166, 173 S.E.2d 919, 924 (1970); *Syl. Pt. 5, Wheeling Elec. Co. v. Gist*, 154 W.VA. 69, 173 S.E.2d 336 (1970); and *Gomez v. Kanawha County Commission*, 237 W.VA. 451, 461, 787 S.E.2d 904, 914 (2016).

¹⁸¹ West Virginia Code §§ 54-1-2(a).

¹⁸² West Virginia Code §§ 54-2-1.

¹⁸³ West Virginia Code §§ 54-2-2.

¹⁸⁴ West Virginia Code §§ 54-2-5.

Since the 1950s, eminent domain has been used to address neglected properties in slum and blighted areas nationwide.¹⁸⁵ West Virginia has done the same for decades. In 1997, the Charleston Urban Renewal Authority acquired a privately-owned commercial parking lot by eminent domain.¹⁸⁶ The owner sued, claiming the agency improperly exercised its power of eminent domain by not stating a legitimate public use in its application. The West Virginia State Supreme Court held that the agency did state a legitimate and adequately specific public use because the property was within an area designated as slum or blighted. The court determined acquiring the property was necessary to accomplish the purposes of a duly approved development plan.¹⁸⁷

¹⁸⁵ *Berman v. Parker*, 348 US 26 (1954).

¹⁸⁶ *Charleston Urban Renewal Authority v. Courtland Co.*, 203 W.VA. 528, 509 S.E.2d 569 (1998).

¹⁸⁷ *Charleston Urban Renewal Authority v. Courtland Co.*, 203 W.VA. 528, 509 S.E.2d 569 (1998).

Chapter 4: Demolition by Neglect: West Virginia

There are 1,075 properties listed on the National Register of Historic Places in West Virginia.¹⁸⁸ These listings include individually nominated buildings, structures, objects, sites, and over 170 historic districts consisting of groups of resources. Sixteen of the state's historic resources have been identified as National Historic Landmarks, the highest designation for a historic property in the United States. All totaled over 20,000 heritage resources representing various themes and time periods in West Virginia history have been listed.¹⁸⁹

This section examines demolition by neglect in West Virginia, identified by preservationists as the leading threat facing historic properties in the state.¹⁹⁰ The first part provides a brief overview of the issue, providing important context and a few examples of neglected historic resources in West Virginia. The second part examines the instruments available to municipalities in West Virginia to minimize the loss of historic resources to demolition by neglect. These include powers to regulate private property and enforce controls through state enabling legislation and local preservation ordinances. This part also includes a brief discussion of the available financial incentives, including state tax credits, grants, and preservation easements. The final part explores the potential for home rule authority to assist with preservation in localities.

¹⁸⁸ National Park Service, "National Register Database and Research," (Accessed April 27, 2021) <https://www.nps.gov/subjects/nationalregister/database-research.htm>

¹⁸⁹ Adamik, *Mountain State Legacy: West Virginia Statewide Historic Preservation Plan 2020-2024*, 1.

¹⁹⁰ Adamik, *Mountain State Legacy: West Virginia Statewide Historic Preservation Plan 2020-2024*, 3.

West Virginia Neglect in Context

There are thousands of neglected, abandoned, and dilapidated buildings and structures across West Virginia. In 2015, a report by the West Virginia University College of Law Land Use and Sustainable Development Law Clinic estimated that as many as 1 in 16 properties in West Virginia were vacant or abandoned.¹⁹¹ Some of these abandoned and neglected buildings and structures are either individually listed as historic resources on national and local registers or as contributing resources in historic districts. These historic resources generally fall into two categories and represent various resource types and periods significant to state history.¹⁹²

The first category includes the remains of once productive industries such as factories, farms, mills, and coal mines. The second includes residences and commercial buildings in both rural and urban areas.¹⁹³ As time passes, the condition of these buildings often deteriorate to such a degree that they become eyesores and safety concerns. In many cases, state agencies, county commissions, and town councils view demolition as the only feasible solution.¹⁹⁴

Many historic areas haven't received the support they need to maintain viability, protect architectural integrity and heritage value, and stimulate local economies.¹⁹⁵ Communities across West Virginia cling to the unsuccessful urban renewal model of the 1960s.¹⁹⁶ Yet the belief that blight removal and the creation of

¹⁹¹ Anderson, et al., *From Liability to Viability*, 3.

¹⁹² Bryan Ward, *The Past Matters Today: The West Virginia Statewide Historic Preservation Plan 2009-2014*, (Charleston, WV: West Virginia Division of Culture and History, 2010): 11.

¹⁹³ Ward, *The Past Matters Today*, 7.

¹⁹⁴ Ward, *The Past Matters Today*, 7.

¹⁹⁵ Newman and Saginor, "Four Imperatives for Preventing Demolition by Neglect," 624.

¹⁹⁶ Stephanie Ryberg-Webster, "Combatting Decline: Preservation and Community Development in Pittsburgh and Cincinnati," in *Giving Preservation a History: Histories of Historic Preservation in the*

vacant lots are key economic drivers is misguided. Historic downtowns and industrial buildings statewide have been leveled in hopes of redevelopment. But in reality, many lots remain undeveloped, paved as parking lots, or developed as sprawl which undermines community aesthetics.¹⁹⁷ Pressures for development in decaying areas make historic areas especially vulnerable to razing and building via demolition by neglect.¹⁹⁸

In 2019, preservationists in West Virginia identified demolition, neglect, and abandonment as the biggest threat to historic and cultural resources in the state and local communities.¹⁹⁹ Between September 2018 and March 2019, 224 surveys were completed by members of local preservation commissions and municipal officials across the state to get an overall sense of the practice of historic preservation in West Virginia.²⁰⁰ When asked about the biggest threat facing historic properties, demolition by neglect was the top response on most survey forms, gathering over 400 points (5 points for first, 4 points for second, etc.). For comparison, lack of public interest in preservation rated second with about 300 points.²⁰¹

Respondents said demolition by neglect is one of the issues that is most evident in each of their areas and causes the most contention within their communities.²⁰² Everyone can see the problems, however, how to tackle the issue becomes problematic when residents, citizens, civic groups, and politicians have

United States (2nd edition), eds., Randall Mason and Max Page, (New York: Routledge, 2020): 227-248; and Ward, *The Past Matters Today*, 7.

¹⁹⁷ Ward, *The Past Matters Today*, 7.

¹⁹⁸ Newman and Saginor, "Four Imperatives for Preventing Demolition by Neglect," 625.

¹⁹⁹ Adamik, *Mountain State Legacy: West Virginia Statewide Historic Preservation Plan 2020-2024*, 2.

²⁰⁰ Adamik, *Mountain State Legacy: West Virginia Statewide Historic Preservation Plan 2020-2024*, 1.

²⁰¹ Adamik, *Mountain State Legacy: West Virginia Statewide Historic Preservation Plan 2020-2024*, 3.

²⁰² Adamik, *Mountain State Legacy: West Virginia Statewide Historic Preservation Plan 2020-2024*, 5.

differing ideas. Even when everyone agrees, getting property owners to comply with the community's wishes can be a long and costly process. Better educating the community about historic preservation is one approach to help reduce the instances of neglected and abandoned properties. Another method would be streamlining laws and creating more expansive penalties for violating zoning laws.²⁰³

When asked what tools or activities would be most effective for preserving historic properties in local communities, the most popular answer was designating additional local landmarks and districts.²⁰⁴ Respondents also believed that increasing historic preservation education at all levels and promoting places to receive information on historic preservation activities was necessary. The lack of awareness about historic preservation by the general public and by elected officials was one of the most frequent comments by survey respondents.²⁰⁵ Furthermore, respondents believed that promoting heritage tourism would be a way to add resources to local government coffers.²⁰⁶

Challenging demographic and economic trends are the leading factors driving instances of demolition by neglect in West Virginia. Overall, the West Virginia population is shrinking due to several factors, including long-term outmigration of young adults, fewer births, increased mortality among working-age adults, and an aging population.²⁰⁷ Since 2012, West Virginia's population has declined each year,

²⁰³ Adamik, *Mountain State Legacy: West Virginia Statewide Historic Preservation Plan 2020-2024*, 5.

²⁰⁴ Adamik, *Mountain State Legacy: West Virginia Statewide Historic Preservation Plan 2020-2024*, 3.

²⁰⁵ Adamik, *Mountain State Legacy: West Virginia Statewide Historic Preservation Plan 2020-2024*, 4.

²⁰⁶ Adamik, *Mountain State Legacy: West Virginia Statewide Historic Preservation Plan 2020-2024*, 3.

²⁰⁷ Sean O'Leary, "The Where and How of West Virginia's Population Decline," West Virginia Center on Budget & Policy, April 29, 2019. <https://wvpolicy.org/the-where-and-the-how-of-west-virginias-population-decline/>

equaling a cumulative loss of an estimated 51,000 people.²⁰⁸ Both urban and rural counties in West Virginia saw population declines, with a sharper decline in rural counties.²⁰⁹ Rural employment has not returned to its pre-recession level, and job growth since 2011 has been well below the urban growth rate.²¹⁰

Rural economies, like those in West Virginia, have historically relied on goods production, including farming, mining, and manufacturing, whereas U.S. job growth as a whole has been service oriented for several decades. Agriculture and mining are still major rural industries in terms of production and revenue. But due to productivity gains within those industries and more rapid growth in other sectors, they now provide less than 5 percent of wage and salary jobs in rural areas.²¹¹ Declining population and small personal incomes make it difficult for governments to fund all of their priorities, including preservation activities.

Recent Cases of Neglect

Three recent examples illustrate the potential impacts of demolition by neglect on various historic resource types in West Virginia. The first two scenarios resulted in the loss of significant historic and cultural assets. The third example shows how the threat of demolition by neglect doesn't apply solely to individual structures.

²⁰⁸ Brian Lego, et al., *West Virginia Economic Outlook 2020-2024*, (Morgantown, WV: West Virginia University, Bureau of Business and Economic Research, 2019): 18.

²⁰⁹ O'Leary, "The Where and How of West Virginia's Population Decline," April 29, 2019.

²¹⁰ Sean O'Leary, Rick Wilson, and Ted Boettner, *State of Rural West Virginia: October 2018*, (Charleston, WV: West Virginia Center on Budget & Policy, 2018): 22.

²¹¹ O'Leary, et al., *State of Rural West Virginia*, 24.

The Tyler County Home, Middlebourne

In February 2020, the historic Tyler County Home, aka “Poor House” or “Poor Farm,” near Middlebourne was demolished after preservationists’ lengthy efforts to save the structure went for naught.²¹² Built in 1915, the grand red brick residence wrapped in ornate woodwork provided destitute and disabled residents with housing for decades until it closed in 1960 (Figure 4). The main house with 22 rooms and several porches was the central fixture of the property’s 190-acre working farm.²¹³ After closing, the property remained in government hands and was leased to the county fair association as the county fairgrounds. Later, the property housed storage for surplus county equipment and the Tyler County Office of Emergency Services.²¹⁴



The Charleston Gazette-Mail

Figure 4. The Tyler County Home, aka ‘Poor House’ or ‘Poor Farm’ near Middlebourne was demolished in February 2020 after years of neglect.

²¹² Rick Steelhammer, “Preservation Effort Ends in Cloud of Dust as Historic Tyler County Property Razed,” *The Charleston Gazette-Mail*, February 29, 2020.

https://www.wvgazettemail.com/news/preservation-effort-ends-in-cloud-of-dust-as-historic-tyler-county-property-razed/article_b9ed510f-3454-584f-9e48-f3e18843a174.html

²¹³ Rick Steelhammer, “Resurrection or Demolition? Future of Historic Tyler County Poor Farm in Doubt,” *The Charleston Gazette-Mail*, February 1, 2020.

https://www.wvgazettemail.com/news/resurrection-or-demolition-future-of-historic-tyler-county-poor-farm-in-doubt/article_90c48b12-49e0-5cbf-9f38-a10bb504cef8.html

²¹⁴ Steelhammer, “Resurrection or Demolition?,” February 1, 2020.

In 2008, the property was vacated after decades of deterioration due to neglect, insufficient funding, water damage, and vandalism.²¹⁵ The following year, Preservation Alliance of West Virginia placed the Tyler County Home on its Most Endangered Properties List.²¹⁶ The building required extensive roof repairs and gutter and porch replacements; its brickwork, stairs, and interior walls remained in satisfactory condition. The building could be stabilized, and further deterioration averted with partial and temporary fixes.²¹⁷

Concerned local citizens formed the Tyler County Restoration Committee in 2016, launched fundraising efforts, and sought to place the property on the National Register of Historic Places.²¹⁸ In 2019, the West Virginia State Historic Preservation Office reported that the property was likely eligible for designation. But a consulting firm hired by the county concluded that restoration would cost nearly \$6 million. In June 2019, county commissioners voted to seek bids to demolish the structure.²¹⁹

The Silas P. Smith Opera House, West Union

In November 2019, the Silas P. Smith opera house in West Union was demolished to make way for a new county courthouse annex (Figure 5).²²⁰ The two-story Romanesque Revival style brick building was built in 1900 as a theater for

²¹⁵ Steelhammer, "Preservation Effort Ends in Cloud of Dust ...," February 29, 2020.

²¹⁶ Preservation Alliance of West Virginia, *Endangered Properties List: Tyler County Home 'Poor House'*, <https://www.pawv.org/endanger/tyler-county-home>

²¹⁷ Steelhammer, "Resurrection or Demolition?," February 1, 2020.

²¹⁸ Steelhammer, "Resurrection or Demolition?," February 1, 2020.

²¹⁹ Steelhammer, "Resurrection or Demolition?," February 1, 2020.

²²⁰ Candice Black, "Crews Demolish Doddridge County Opera House," *The Parkersburg News and Sentinel*, November 17, 2019. <https://www.newsandsentinel.com/news/local-news/2019/11/crews-demolish-doddridge-county-opera-house/>

operas, dramas, musicals, and lectures.²²¹ The round hooded arch details of the window openings and doorway added to the design features of a simple box-like structure. After the theater closed in 1905, the building continued to serve Doddridge County in many capacities. Over the years, the structure housed classrooms, apartments, the county historical society, and the county public library.²²² Most recently, the building served as a county courthouse annex.²²³



The Parkersburg News and Sentinel

Figure 5. The Silas P. Smith opera house building in West Union was demolished in November 2019 after years of neglect to make way for a new Doddridge County courthouse annex.

The former opera house was listed on the National Register in 2001 and was included in the West Union Downtown Historic District.²²⁴ But the building suffered neglect as a result of deferred maintenance brought on by county budget cuts

²²¹ Hazel Wysong, "Silas P. Smith Opera House," National Register of Historic Places Inventory—Nomination Form, (New Milton, WV: West Virginia State Historic Preservation Office, 2001): 11.

²²² Wysong, "Silas P. Smith Opera House," 11.

²²³ Black, "Crews Demolish Doddridge County Opera House," November 17, 2019.

²²⁴ Wysong, "Silas P. Smith Opera House," 7.

following the Great Recession. Exterior brickwork showed open signs of spalling, cracking, and flaking, and the interior was plagued by mold and mildew.²²⁵ In recent years, as the county explored options for new public space, an architecture firm determined it would be more cost effective to demolish than rehabilitate.²²⁶ The local historical society pleaded in vain to save the structure, but secured a promise for space in a new facility for historical interpretation of local history, which included the story of the razed theater.²²⁷

The Courthouse Square Historic District, Beckley

In 2015, the Courthouse Square Historic District in Beckley was placed by Preservation Alliance of West Virginia on its Most Endangered Properties List.²²⁸ Preservationists became alarmed after the West Virginia State Historic Preservation Office warned the City of Beckley that years of demolitions and inappropriate alterations could cost the district its historic designation. Designated in 1994, the 70-acre, eight-block downtown area featured buildings mostly built between 1912 and 1935, including many of locally-quarried sandstone (Figure 6). The heart of the city earned historic designation for development that occurred between 1900-1945, when

²²⁵ Black, "Crews Demolish Doddridge County Opera House," November 17, 2019.

²²⁶ Chad Adkins, "Doddridge County to Tear Down Former Opera House," *The Parkersburg News and Sentinel*, July 3, 2019, <https://www.newsandsentinel.com/news/local-news/2019/07/doddridge-county-to-tear-down-former-opera-house/>

²²⁷ Adkins, "Doddridge County to Tear Down Former Opera House," July 3, 2019.

²²⁸ Rick Steelhammer, "Beckley Downtown Historic District Tops State Endangered Properties List," *The Charleston Gazette*, March 6, 2015. https://www.wvgazettemail.com/news/beckley-downtown-historic-district-tops-state-endangered-properties-list/article_ef2b3fc5-52e5-5464-8f7e-ce6622853c51.html

the community grew from a small village to a county seat and major urban center in the southern West Virginia coalfields.²²⁹



The Register-Herald

Figure 6. The Beckley Courthouse Square Historic District has suffered the loss of dozens of downtown commercial properties to demolition by neglect.

Since its National Register listing, the integrity of the district had suffered through the demolition of 22 of its 106 contributing buildings.²³⁰ Business leaders and property owners responded to the imminent danger of delisting—namely the elimination of state and federal financial assistance—with steps to protect the district and encourage revitalization.²³¹ The community formed a workgroup and held charrettes to present investors with opportunities to benefit from their inclusion in the historic district. The city landmarks commission, previously rebuked for nonfeasance which allowed the situation to fester, later denied applications to demolish three more

²²⁹ Preservation Alliance of West Virginia, *Assessment and Recommendations: Beckley Courthouse Square Historic District*, (Elkins, WV: Preservation Alliance of West Virginia, 2015): 4.

<https://www.pawv.org/uploads/1/0/8/6/108636755/beckley-historic-district-report-8-11-15.pdf>

²³⁰ Steelhammer, “Beckley Downtown Historic District Tops State Endangered Properties List,” March 6, 2015.

²³¹ Preservation Alliance of West Virginia, *Assessment and Recommendations: Beckley Courthouse Square Historic District*, 3-4.

buildings to make way for a parking lot and retail space. Today, the local preservation commission applies oversight more stringently.²³²

State Enabling Legislation

Local preservation ordinances assume their authority to regulate private property from state enabling legislation. In West Virginia, this authority for control comes through the broader context of land use regulations and resides in Article 26A, Chapter 8A of the West Virginia Code.²³³ This legislation recognizes in statute that it is state policy to acknowledge that West Virginia is endowed with many historic properties with significant architectural and cultural value which deserve protection and preservation.²³⁴ The state has determined that historic preservation not only safeguards unique local heritage, but stabilizes and improves property values, fosters civic beauty, strengthens local economies, and promotes historic and cultural resources for education and pleasure.²³⁵ West Virginia law also provides a brief glossary of definitions to help explain the legislative intent of the enabling statute.²³⁶

West Virginia law delineates ways municipal and county legislative bodies can establish local regulatory frameworks to identify, recognize, and protect historic assets.²³⁷ State code provides municipalities authority to form a preservation commission, survey and inventory resources, and establish local historic districts.²³⁸

²³² Preservation Alliance of West Virginia, *Assessment and Recommendations: Beckley Courthouse Square Historic District*, 5-6.

²³³ West Virginia § 8-26A-1-11. <https://code.wvlegislature.gov/8-26A/>

²³⁴ West Virginia § 8-26A-1.

²³⁵ West Virginia § 8-26A-1.

²³⁶ West Virginia § 8-26A-2.

²³⁷ West Virginia § 8-26A-3-4.

²³⁸ West Virginia § 8-26A-5.

West Virginia law also empowers local governments to establish criteria for designating historic properties and standards for review for new constructions and exterior alterations.²³⁹ Commissions are eligible for assistance from state agencies and required to submit a brief annual report to state authorities.²⁴⁰ State code allows for enforcement with penalties for violations and an appeals process for property owners.

West Virginia code attempts to address concerns over loss of historic resources due to demolition by neglect with a provision allowing for the adoption of locally-enforced minimum affirmative maintenance requirements.²⁴¹ State law authorizes local historic landmark commissions to “establish standards for the care and management of designated historic landmarks and withdraw such certification for failure to maintain the standards so prescribed.”²⁴² However, this provision is neither mandatory nor comprehensive, leaving a significant majority of historic resources in West Virginia with no legal protections.

West Virginia law simply states that commissions “shall be authorized, but not required” to enact minimum affirmative maintenance standards within their jurisdictions.²⁴³ Furthermore, the provision explicitly limits the scope of the application of such standards to protect “designated historic landmarks.”²⁴⁴ The state defines a “historic landmark” as a site, building, structure, or object designated as a

²³⁹ West Virginia § 8-26A-6-9.

²⁴⁰ West Virginia § 8-26A-11.

²⁴¹ West Virginia § 8-26A-5.

²⁴² West Virginia § 8-26A-5.

²⁴³ West Virginia § 8-26A-5.

²⁴⁴ West Virginia § 8-26A-5.

“Landmark” either on a national, state, or local register.²⁴⁵ The state defines a “historic site” as the location of a significant event, or a building or structure which possesses historical, cultural or archaeological significance regardless of value.²⁴⁶

If these standards aren’t met, the commission reserves the right to impose a substantial fee on owners.²⁴⁷ In West Virginia, violations of preservation ordinances are punishable with a fine of up to 10 percent of the total cost of the project requiring approval, or \$500, whichever is greater.²⁴⁸ These provisions are limited, however, since they have no impact on any historic structure that isn’t considered a certified landmark.²⁴⁹

In West Virginia, the vast majority of historic resources are not certified historic landmarks. There are 1,075 properties listed on the National Register of Historic Places and over 170 historic districts consisting of groups of resources.²⁵⁰ These include homes, schools, commercial buildings, courthouses, churches, barns, industrial resources, and fortifications.²⁵¹ All told, the state recognizes over 20,000 listed resources representing a wide range of categories and time periods. But the vast majority of individually-listed and contributing resources are not considered certified historic landmarks and granted extra protections.²⁵²

²⁴⁵ West Virginia § 8-26A-2(c).

²⁴⁶ West Virginia § 8-26A-2(d).

²⁴⁷ West Virginia § 8-26A-8-9.

²⁴⁸ West Virginia § 8-26A-11.

²⁴⁹ West Virginia § 8-26A-5.

²⁵⁰ National Park Service, “National Register Database and Research,” (Accessed April 27, 2021) <https://www.nps.gov/subjects/nationalregister/database-research.htm>

²⁵¹ Adamik, *Mountain State Legacy: West Virginia Statewide Historic Preservation Plan 2020-2024*, 1.

²⁵² Ward, *The Past Matters Today*, 7.

The historic landmarks commission in Jefferson County, one of 55 counties in West Virginia, has designated 106 buildings and structures certified landmarks.²⁵³ However, in Shepherdstown alone—one of several historic municipalities in Jefferson County, including Harpers Ferry and Charles Town—there are 369 listed and contributing resources.²⁵⁴ Most of the historic resources are small Federal, Queen Anne, Craftsman, Greek Revival, Gothic Revival, and Italianate style residences and commercial structures.²⁵⁵ Fewer than two dozen of them are certified historic landmarks granted extra protections.²⁵⁶

Local Ordinances

Local preservation ordinances represent the frontline of regulatory controls against demolition by neglect. Unfortunately, municipalities in West Virginia lack the necessary guidance and authority from state enabling legislation to be appropriately effective. A sampling of preservation ordinances from across the state reveal common inadequacies in the local coverage necessary to adequately protect historic properties from demolition by neglect. Preservation ordinances from Beckley, Shepherdstown, and Wheeling all highlight similar prescriptive deficiencies in statewide local regulations.

²⁵³ Jefferson County Historic Landmarks Commission, “County Landmarks,” <http://jeffersoncountyhlc.org/index.php/landmarks/county-landmarks/>

²⁵⁴ David L. Taylor, *Shepherdstown 2009 Historic Resource Survey*, (Prepared for the Corporation of Shepherdstown, Shepherdstown Historic Landmarks Commission), (DuBois, PA: Taylor & Taylor Associates, Inc. 2010).

²⁵⁵ Paula S. Reed, “Shepherdstown Historic District (AMENDED) (Boundary Increase),” National Register of Historic Places Nomination Form, (Hagerstown, MD: Preservation Associates, 1987): 39.

²⁵⁶ Jefferson County Historic Landmarks Commission, “County Landmarks,” <http://jeffersoncountyhlc.org/index.php/landmarks/county-landmarks/>

Beckley, West Virginia

Beckley is significant as the county seat and largest city in Raleigh County, West Virginia. Planned and laid out in 1838, Beckley grew from a small village to an early 20th century boomtown in the southern coalfields following the arrival of the railroad. Today, the streets and lots of the downtown historic district are the same as originally planned. The private commercial buildings are built of local sandstone and brick. The public buildings—i.e., banks, churches, government offices—are constructed of local sandstone, brick, and limestone (Figure 7). The buildings range in height from two to three stories, and they are two to six bays wide. The district is an eclectic mix of late 19th and early 20th century commercial and residential architecture.²⁵⁷



The Charleston Gazette-Mail

Figure 7. Beckley is an eclectic mix of late 19th and early 20th century commercial and residential architecture.

²⁵⁷ Kim A. Valente, "Beckley Courthouse Square Historic District," National Register of Historic Places Registration Form, (Charleston, WV: Cameras in Architecture, 1994).

The Beckley preservation ordinance does not specifically address demolition by neglect. However, the ordinance does require the local preservation commission to “establish standards for the care and management of certified landmarks and withdraw such certification for failure to maintain the standards so prescribed.”²⁵⁸ The ordinance also requires the commission to coordinate with state authorities to develop a program for the “identification, study, preservation, and protection of all historic buildings, structures, and sites in the City of Beckley.”²⁵⁹ But the preservation ordinance makes no explicit mention of enforcement mechanisms or penalties for non-compliance.

Instead, Beckley enforces its design guidelines and architectural review processes through its zoning ordinance.²⁶⁰ The zoning ordinance requires that owners wishing to make exterior alterations to any existing structure in the historic district obtain approval from the preservation commission. The zoning ordinance establishes the procedure for a review process before the preservation commission and allows an applicant denied approval to appeal to the Raleigh County Circuit Court within 30 days.²⁶¹ Owners who fail to follow procedure or violate commission decisions are subject to fines of between \$10-\$300 each day they are in non-compliance.²⁶²

There is no language codifying prohibitions on the willful neglect of any properties not designated a “certified landmark.” Neither the preservation ordinance nor the zoning ordinance mentions any prohibitions on willful neglect of

²⁵⁸ Beckley, WV Code of Ordinances, Article VIII, §§ 2-727(d).

²⁵⁹ Beckley, WV Code of Ordinances, Article VIII, §§ 2-272(p).

²⁶⁰ Beckley, WV Code of Ordinances, Chapter 15, Section 15-16.

²⁶¹ Beckley, WV Code of Ordinances, Chapter 15, Section 15-16(g).

²⁶² Beckley, WV Code of Ordinances, Chapter 15, Section 15-30.

maintenance, nor do they grant the city authority to order the repair of historic resources or cause such repairs to be made at the owner's expense if they fail to act. The Beckley Courthouse Square Historic District recognizes 134 parcels subject to regulation administered by the local historic preservation commission.²⁶³ Yet the local historic district is home to just four historic properties deemed "certified landmarks" given their status on national, state, or local registers.²⁶⁴

Shepherdstown, West Virginia

The lack of regulatory protections against demolition by neglect is similar in Shepherdstown, located along the Potomac River in Jefferson County. Chartered in 1762, Shepherdstown is significant as the oldest town in West Virginia and a prominent stop on the early colonial trade route from Baltimore to the west.²⁶⁵ The community became a thriving 19th century manufacturing hub as the C&O Canal and B&O Railroad traversed the area.²⁶⁶ Extant late 18th and early 19th century buildings range from one to three stories in height with predominantly brick, sided log, and balloon frame construction (Figure 8). The architecture styles include Federal, Greek Revival, Queen Anne, and Italianate residences and commercial buildings.²⁶⁷

²⁶³ Beckley, WV Code of Ordinances, Chapter 15, Section 15-16(a).

²⁶⁴ National Park Service, "National Register Database and Research," (Accessed April 27, 2021) <https://www.nps.gov/subjects/nationalregister/database-research.htm>

²⁶⁵ Millard Bushong, *A History of Jefferson County, 1719-1940*, (Charles Town, WV: Jefferson Publishing Company, 1941): 15-16.

²⁶⁶ Bushong, *A History of Jefferson County, 1719-1940*, 81-84.

²⁶⁷ Reed, "Shepherdstown Historic District (AMENDED) (Boundary Increase)," 6-38.



Historic Shepherdstown

Figure 8. Shepherdstown, West Virginia is the oldest town in the state and still contains an assortment of extant late 18th and early 19th century buildings.

Like Beckley, the Shepherdstown historic preservation ordinance does not specifically address demolition by neglect.²⁶⁸ The Shepherdstown ordinance requires that the local preservation commission “shall be authorized” with the powers and duties “specified in (the state enabling legislation).”²⁶⁹ Therefore, the Shepherdstown preservation commission “shall be authorized, but not required” to enact affirmative minimum maintenance standards for the district.²⁷⁰ However, the local preservation ordinance omits any specific mention of affirmative minimum maintenance standards for the upkeep of properties in the district.

The Shepherdstown ordinance does recognize an architectural review and permitting process for planned exterior alterations to properties within the historic district, including those on the National Register and all contributing resources.²⁷¹ Only with approval from the commission may owners of such properties proceed with

²⁶⁸ Shepherdstown, WV, Code of Ordinances, 9-301—9-911.

²⁶⁹ Shepherdstown, WV, Code of Ordinances, 9-304.

²⁷⁰ West Virginia § 8-26A-5.

²⁷¹ Shepherdstown, WV, Code of Ordinances, 9-309.

projects which may impact exterior aesthetic features. The review is subject to design guidelines approved by Town Council in 2010.²⁷² Those denied a permit during review may appeal to the Jefferson County Circuit Court within 30 days of the ruling.²⁷³ The commission is authorized to “institute any appropriate action or proceeding in a court of competent jurisdiction to prevent any material in the appearance of a designated historic property.”²⁷⁴ The commission is also authorized to levy fines on violators of up to 10 percent of the total cost of the project, or \$500, whichever is greater.²⁷⁵

It’s worth noting that the Shepherdstown design guidelines define demolition by neglect in its glossary as “any willful neglect in the maintenance or repair of an individually designated landmark, site, or structure; or a site or structure within a designated historic district.”²⁷⁶ However, there is no language in the preservation ordinance codifying prohibitions on the willful neglect of any properties within the historic district. Nor is there any specific language granting the municipality authority to order the repair of historic resources or cause such repairs to be made at the owner’s expense if they fail to act. The Shepherdstown Historic District is comprised of 386 contributing resources, including 16 certified landmarks.²⁷⁷

²⁷² Shepherdstown, WV, Code of Ordinances, 9-309(4)(a)(1).

²⁷³ Shepherdstown, WV, Code of Ordinances, 9-309 (10).

²⁷⁴ Shepherdstown, WV, Code of Ordinances, 9-310.

²⁷⁵ Shepherdstown, WV, Code of Ordinances, 9-311.

²⁷⁶ Corporation of Shepherdstown, *Shepherdstown WV Historic District Design Guidelines*, (Shepherdstown, WV: Corporation of Shepherdstown, 2010): 27.

²⁷⁷ Reed, “Shepherdstown Historic District (AMENDED) (Boundary Increase),” 6; and Jefferson County Historic Landmarks Commission, “County Landmarks,” <http://jeffersoncountyhlc.org/index.php/landmarks/county-landmarks/>

Wheeling, West Virginia

Wheeling is significant as the county seat of Ohio County and the first capital of West Virginia. Due to its location along the Ohio River, National Road, and B&O Railroad, Wheeling became a commercial and transportation center in the 19th century.²⁷⁸ Wheeling's early architectural development was as impressive as its industrial growth. Today, Wheeling is home to 12 National Register Historic Districts, including the North Wheeling Historic District.²⁷⁹ Most of the North Wheeling Historic District is composed of mid-to-late 19th century residential buildings, with a few antebellum houses interspersed (Figure 9). Except for a few small frame houses, the buildings in the district are brick with stone foundations. Several architectural styles are represented including Italianate, Greek Revival, Queen Anne, Romanesque, and vernacular.²⁸⁰

²⁷⁸ Otis K. Rice and Stephen W. Brown, *West Virginia: A History (2nd edition)*, (Lexington, KY: The University Press of Kentucky, 1993: 81-85.

²⁷⁹ National Park Service, "National Register Database and Research," (Accessed April 27, 2021) <https://www.nps.gov/subjects/nationalregister/database-research.htm>

²⁸⁰ Paul D. Marshall, "North Wheeling Historic District," National Register of Historic Places Registration Form, (Charleston, WV: Paul D. Marshall and Associates, Inc., 1988); and Jennifer Loustau, "North Wheeling Historic District (Boundary Amendment)," National Register of Historic Places Inventory—Nomination Form, (Wheeling, WV: Loustau Williams, LLC., 2008).



Wheeling Heritage

Figure 9. Wheeling, West Virginia is home to 12 National Register Historic Districts, many composed of mid-to-late 19th century residential buildings.

As with Beckley and Shepherdstown, the Wheeling historic preservation ordinance does not specifically address demolition by neglect. The Wheeling ordinance does require the local preservation commission to “establish standards for the care and management of certified landmarks and withdraw such certification for failure to maintain the standards so prescribed.”²⁸¹ The commission is also required to survey and designate “historic landmarks, buildings, structures, and districts which constitute the principal historical and architectural sites” and “prepare a register of buildings, structures, sites, and districts” which meet the requirements.²⁸²

However, the local preservation ordinance omits any specific mention of affirmative minimum maintenance standards for the upkeep of properties in the historic districts.

The Wheeling ordinance requires that owners wishing to make exterior alterations to “private buildings, sites, or structures designated as historic” in the

²⁸¹ Wheeling WV, Code of Ordinances, Article 173.01—173.99.

²⁸² Wheeling WV, Code of Ordinances, Article 173.07.

historic district obtain approval from the preservation commission.²⁸³ The city defines “historic site” as the location of a significant event, or a building or structure possessing historical, cultural, or archaeological significance regardless of value.²⁸⁴ The ordinance establishes a review process before the commission and allows an applicant denied approval to appeal to circuit court.²⁸⁵ The commission is authorized to “institute any appropriate action or proceeding in a court of competent jurisdiction to prevent any material in the appearance of a designated historic property.”²⁸⁶ The commission is also authorized to levy fines on violators of up to 10 percent of the total cost of the project or \$500, whichever is greater.”²⁸⁷

However, there is no explicit language in the Wheeling preservation ordinance codifying prohibitions on the willful neglect of any properties within the local historic districts. Nor is there any specific language granting the municipality authority to order the repair of historic resources or cause such repairs to be made at the owner’s expense if they fail to act. The North Wheeling Historic District is comprised of 136 contributing resources located in a 2 ½-block area of the city with a well-preserved collection of 19th century architecture. The area includes a handful of “designated landmarks” including the two-story brick mansion Henry K. List House circa 1858.²⁸⁸

²⁸³ Wheeling WV, Code of Ordinances, Article 173.08.

²⁸⁴ Wheeling WV, Code of Ordinances, Article 173.02.

²⁸⁵ Wheeling WV, Code of Ordinances, Article 173.09(k).

²⁸⁶ Wheeling WV, Code of Ordinances, Article 173.10.

²⁸⁷ Wheeling WV, Code of Ordinances, Article 173.99.

²⁸⁸ Rodney S. Collins, “Henry K. List House,” National Register of Historic Places Inventory—Nomination Form, (Charleston, WV: West Virginia Department of Culture and History, 1978).

Incentives

Incentives can be an important complement to regulatory controls embodied in local preservation ordinances. The main incentives to combat the scourge of demolition by neglect in West Virginia are tax credits, grant funding, and preservation easements. In West Virginia, both federal and state income tax credits apply to property owners located in historic districts who rehabilitate their properties in accordance with the Secretary of the Interior's Standards. The federal tax credit equals 20 percent of the amount spent on rehabilitation for income-producing properties.

In West Virginia, there are also two types of state income tax credits for the rehabilitation of qualified historic properties. The first is a 25-percent state income tax credit for commercial buildings, office buildings, agricultural buildings, residential rental properties, bed and breakfasts, and any other depreciable uses.²⁸⁹ These benefits are available to the owner or long-term lessee of any depreciable building that is rehabilitated according to the Secretary of the Interior's Standards. The building must be listed on or eligible for the National Register or as a contributing resource in a listed historic district. To qualify, the owner must undertake a rehabilitation expenditure of over \$5,000, or more than the adjusted basis in the building.²⁹⁰

²⁸⁹ West Virginia Department of Arts, Culture, and History, "Historic Rehabilitation Tax Credits: Income-Producing Commercial," (Charleston, WV: West Virginia Department of Commerce). <http://www.wvculture.org/shpo/tccommoverview.html>

²⁹⁰ Ibid.

The second type is a 20-percent state income tax credit for homeowners who make approved rehabilitations on historic private residences.²⁹¹ These benefits are applied directly against taxes owed by the owner of a private residence that is rehabilitated according to the Secretary of the Interior's Standards. The building must be listed on or eligible for the National Register or as a contributing resource in a listed historic district. To qualify, the owner must undertake "material" rehabilitation which is an expenditure of more than 20 percent of the assessed value of the building, not including the value of the land. The expenditure necessary to qualify as "material" rehabilitation must take place within the 24-month period ending December 31 of the taxable year for which the credit will be claimed.²⁹²

In West Virginia, there are also two types of grants available for owners of properties that are either individually listed in the National Register or are contributors to historic districts. The first type are survey and planning grants funded by the West Virginia State Historic Preservation Office and the National Park Service. These grants are devoted to historic preservation planning and historic survey work. Allowable activities include preservation plans, historic context statements, historic structure reports, feasibility studies, and technical specifications.²⁹³ Survey and planning grants also fund heritage education and

²⁹¹ West Virginia Department of Arts, Culture, and History, "Historic Rehabilitation Tax Credits: Residential," (Charleston, WV: West Virginia Department of Commerce). <http://www.wvculture.org/shpo/tcresoverview.html>

²⁹² Ibid.

²⁹³ West Virginia Division of Culture and History, *Grants Program Manual: State Historic Preservation Office*, (Charleston, WV: West Virginia Division of Commerce, 2017): 21-22.

scholarships. Survey and planning grants are awarded for no more than 60 percent of the total project costs, with project sponsors providing at least a 40 percent match.²⁹⁴

The second type of grants are development grants funded by the State of West Virginia.²⁹⁵ These grants are devoted to the preservation, protection, rehabilitation, restoration, and stabilization of historic resources. These grants may also include emergency funding for threatened and endangered historic resources.²⁹⁶ To qualify, properties must be listed on or eligible for the National Register or as a contributing resource in a listed historic district. Development grants are awarded for no more than 50 percent of the total project costs, with project sponsors providing at least a 50 percent match. The sponsor must provide at least 25 percent in cash while the remaining 25 percent can be in-kind contributions.²⁹⁷

West Virginia state law also authorizes the creation of preservation easements.²⁹⁸ An easement is a voluntary legal agreement between a property owner and a qualified preservation organization or public agency used to protect a sensitive property.²⁹⁹ The property owner agrees to protect the property's historic resources from changes that are inconsistent with the character of the property. In turn, the easement holding agency is granted the right to monitor the property and enforce the covenants of the easement. In exchange for voluntarily restricting private property rights, an owner receives benefits, including cash payments and federal and state

²⁹⁴ WV Division of Culture and History, *Grants Program Manual*, 19.

²⁹⁵ WV Division of Culture and History, *Grants Program Manual*, 13-15.

²⁹⁶ WV Division of Culture and History, *Grants Program Manual*, 24.

²⁹⁷ WV Division of Culture and History, *Grants Program Manual*, 14.

²⁹⁸ West Virginia § 20-12-1-8.

²⁹⁹ Bronin and Rowberry, *Historic Preservation Law*, 417-418.

income tax credits and deductions.³⁰⁰ In West Virginia, any public agency or qualified charitable, tax exempt organization may be authorized to hold a preservation easement.³⁰¹

Certified Local Governments

Local governments play a critical role in identifying, protecting, and enhancing historic places and culturally significant sites. The Certified Local Government Program is a nationwide initiative providing technical assistance and grants to local governments seeking to preserve significant aspects of their heritage.³⁰² In 1980, the National Historic Preservation Act was amended to allow local communities to request their state government to give them the status of certified local government. This designation ties the local government more closely with state authorities administering preservation programs. To qualify, local governments must give evidence of a preservation commission worthy of identifying and surveying historic properties.³⁰³

In West Virginia, there are 54 localities and counties with Certified Local Government status.³⁰⁴ The CLG program provides these communities exclusive benefits, including a dedicated grant program, specialized technical assistance, and participation in the National Register of Historic Places nomination process. Grant funds may be used for studies, plans, programs, and tools that help a community build

³⁰⁰ Bronin and Rowberry, *Historic Preservation Law*, 417-418.

³⁰¹ West Virginia § 20-12-3.

³⁰² Tyler, et al., *Historic Preservation*, 187-188.

³⁰³ Tyler, et al., *Historic Preservation*, 188.

³⁰⁴ West Virginia Division of Arts and Culture, "Certified Local Governments and Historic Landmark Commissions," http://www.wvculture.org/shpo/hlc_list.html

capacity and implement preservation programs. CLG status also affords communities guidance from state and federal authorities on various issues, including design guidelines, reuse strategies, preservation planning, and code compliance analysis. Moreover, beyond such tangible benefits, CLG status provides a community's historic preservation program with greater credibility and distinction.

Home Rule

Municipalities can be characterized as being a “general law” city or a “home rule” or “charter city.” A general law city is regulated by state law. It is limited by the powers and duties authorized or given to it by the same. A home rule or charter city establishes a charter with its own ordinances and resolution under the procedures established by state law or charter. Voters must approve the charter and any changes made to it. Home rule and charter cities have less interference from the state than general law cities.³⁰⁵

“Home rule” is a generic term for statutory and state constitutional provisions that attempt to bestow on local governments some degree of local autonomy. Home rule laws vary widely in design and form, but they basically either bestow the ability to initiate policies at the local level or protect against state override—or both.³⁰⁶ The West Virginia Home Rule Act offers municipalities in the state the opportunity to fashion local solutions to local problems in a broad range of matters that do not implicate statewide interests and in spite of what otherwise might be constrictive state

³⁰⁵ Cullingworth and Caves, *Planning in the USA: Policies, Issues, and Processes*, 77.

³⁰⁶ Robert M. Bastress, Jr., “Home Rule in West Virginia,” *West Virginia Law Review* 122, no. 3 (Spring 2020): 723.

laws or policies.³⁰⁷ Moreover, the act confers this opportunity without initial exposure to judicial nullification, as has occurred with previous constitutional and statutory efforts to enhance local control.³⁰⁸

In West Virginia, home rule began as a pilot program with four cities—Bridgeport, Charleston, Huntington, and Wheeling—in 2007 and became permanent in 2019. Today, there are 48 home rule municipalities in West Virginia, with authority to implement ordinances, resolutions, rules, and regulations that fit their specific dynamics.³⁰⁹ The most popular action taken by home rule municipalities has been implementing a 1 percent municipal sales tax, something 39 municipalities have already done.³¹⁰ Jurisdictions have also enacted ordinances to address issues such as public nuisance, dilapidated and blighted properties, Sunday alcohol sales, hunting regulations, and municipal fees for emergency services.³¹¹

³⁰⁷ West Virginia Code § 8-1-5a

³⁰⁸ Bastress, Jr., “Home Rule in West Virginia,” 739.

³⁰⁹ Dave Hardy, *West Virginia Municipal Home Rule Pilot Program: Summary Report 2020*, (Charleston, WV: West Virginia Department of Revenue, 2021): 2.

³¹⁰ Hardy, *West Virginia Municipal Home Rule Pilot Program*, 36-37.

³¹¹ Hardy, *West Virginia Municipal Home Rule Pilot Program*, passim.

Chapter 5: Conclusion and Recommendations

Building materials inevitably decay and the longer a structure exists the more pronounced the decay becomes. Demolition by neglect begins when an owner disregards a property to the point that the property suffers damage and must be demolished. This process can be either intentional, when an owner allows decay of a historic property maliciously, or unintentional, when an owner simply doesn't have the knowledge or finances to maintain the resource.³¹² Historic properties in West Virginia can be especially vulnerable given the shifting demographic and economic landscape in the 21st century and the persistence of high rates of absentee ownership of private property.³¹³

Mitigating demolition by neglect is important because there are many reasons to preserve the historic built environment of West Virginia. People often have deep attachments to old places which leads to feelings of belonging, continuity, stability, heritage, memory, and community. Societies have also deemed the preservation of historic places to be important for more traditional reasons such as history, architecture, and civic, state, and national identity.³¹⁴ Old places are beautiful, embody our collective identities and memories, and give us an understanding of our history that no other documents or evidence can.³¹⁵

³¹² Michael A. Tomlan, *Historic Preservation: Caring for Our Expanding Legacy*, (New York: Springer, 2015): 122-123.

³¹³ Ted Boettner, *Who Owns West Virginia in the 21st Century?*, (Charleston, WV: West Virginia Center on Budget & Policy, 2013): passim.

³¹⁴ Mayes, *Why Old Places Matter*, xxiii-xxvii.

³¹⁵ Mayes, *Why Old Places Matter*, 23, 31, and 39.

Preservation is also an important driver of economic development and environmentally sound. Historic preservation and economics are essentially about the same thing—careful management and thrifty use of scarce resources.³¹⁶ Keeping and reusing old buildings benefits local economies in areas of job creation, property values, heritage tourism, community revitalization, and business incubation. The job sectors most often influenced by preservation are heritage tourism and construction, but employment is more broadly distributed throughout the private, public, and non-profit sectors.³¹⁷ Rehabilitation compares favorably as a cost-competitive alternative to new construction while creating greater demand for local laborers and suppliers, for which direct and indirect expenditures accrue and reverberate locally.³¹⁸

Unfortunately, society doesn't fully acknowledge the green values in keeping and reusing buildings. But the greenest buildings are truly those ones already built.³¹⁹ This is true for two reasons. First, is embodied energy—the notion that existing buildings have value because of the energy expended for their construction.³²⁰ Discarding these materials in a landfill, extracting raw materials for new construction, and releasing stored carbon into the atmosphere contributes to pollution, resource depletion, and climate change.³²¹ Second, vintage buildings, particularly those built

³¹⁶ Donovan Rypkema, *The Economics of Historic Preservation: A Community Leader's Guide*, (Washington, DC: PlaceEconomics, 2014): 7-9.

³¹⁷ Rypkema, *The Economics of Historic Preservation*, 11-12.

³¹⁸ Rypkema, *The Economics of Historic Preservation*, 13-14.

³¹⁹ Preservation Green Lab, *The Greenest Building: Quantifying the Environmental Value of Building Reuse*, (Washington, DC: National Trust for Historic Preservation, 2016).

³²⁰ Richard Wagner, "Finding a Seat at the Table: Preservation and Sustainability," in *Sustainability & Historic Preservation: Toward a Holistic Future*, ed. Richard Longstreth, (Newark, DE: University of Delaware Press, 2011): 10; and Amalia Leifeste and Barry L. Stiefel, *Sustainable Heritage: Merging Environmental Conservation and Historic Preservation*, (New York: Routledge, 2018): 22-27.

³²¹ Wagner, "Finding a Seat at the Table: Preservation and Sustainability," 11; and Leifeste and Stiefel, *Sustainable Heritage: Merging Environmental Conservation and Historic Preservation*, 22-27.

before World War II, use less energy than those built more recently. Original low-energy features such as operable windows, shutters, porches, and, in the case of masonry, thermal mass, modify interior climate with little to no energy consumption.³²²

In light of the findings of this research and the importance of mitigating instances of demolition by neglect in West Virginia, the author presents the following recommendations:

- 1. Amend state law “to require” affirmative minimum maintenance protections for “designated historic landmarks” and *also* include “historic properties” and “contributing resources.”**

The vast majority of historic buildings and structures in West Virginia receive no affirmative minimum maintenance protections against demolition by neglect. West Virginia law mandates that local historic preservation commissions “shall be authorized, but not required” to enact minimum maintenance standards to protect historic resources within their jurisdictions.³²³ State code explicitly limits the scope of such protections to apply only to “designated historic landmarks.”³²⁴ This provision should instead stipulate that preservation commissions, “shall be required” to enact minimum affirmative maintenance standards for local “designated historic landmarks,” and local “individually listed and eligible historic properties and contributing resources.”

³²² Wagner, “Finding a Seat at the Table: Preservation and Sustainability,” 11; and Leifeste and Stiefel, *Sustainable Heritage: Merging Environmental Conservation and Historic Preservation*, 22-27.

³²³ West Virginia § 8-26A-5.

³²⁴ West Virginia § 8-26A-5.

2. Encourage municipalities and Certified Local Governments with “home rule” authority to directly and immediately adopt local demolition by neglect ordinances.

Home rule authority allows municipalities greater self-determination to be creative in addressing local problems through ordinances, resolutions, rules, and regulations that fit specific community dynamics. Certified Local Government status grants municipalities greater control of local preservation issues and access to funding, expertise, and guidance in resource management. The 34 local governments in West Virginia with home rule authority should directly and immediately adopt local demolition by neglect ordinances. The ordinances must include specific standards, petition and action procedures, economic hardship provisions, appeals, and enforcement. Precise language should be used to clearly define terms over what is considered deterioration.³²⁵

3. Encourage municipalities and Certified Local Governments with “home rule” authority to consider eminent domain to condemn and acquire distressed local historic properties.

Eminent domain is a rarely used tool of last resort for local governments to address neglected properties. Yet eminent domain may be necessary to implement part of a community’s approved and ongoing historic preservation plans. Municipalities with home rule authority and Certified Local Government Status should explore their dominion for condemnation and acquisition of local historic properties suffering demolition by neglect. Upon acquisition, these jurisdictions should divest themselves of these formerly abandoned and neglected properties to

³²⁵ Becker, “Establishing a Demolition by Neglect Ordinance,” 1-2.

new ownership who will commit to investing in their preservation, rehabilitation, and reuse.

4. Promote already available incentives, i.e., tax credits and grants, and explore the feasibility of creating additional preservation resources, e.g., revolving funds, to increase acceptance of expanded affirmative maintenance provisions.

Financial incentives and educational resources are important complements to regulatory controls in preservation ordinances. Localities across West Virginia should facilitate existing tax incentives, rehabilitation grants, regulatory relief, and zoning incentives to promote better preservation outcomes. Municipalities should assist in the establishment of revolving loan funds or preservation trusts where feasible to preserve threatened local historic resources. Communities should examine the feasibility of subsidizing preservation easements to protect historic properties, landscapes, wetlands, and open space. Commissions should encourage development of volunteer maintenance crews to defray rehabilitation costs for historic properties. Commissions should organize community charrettes and workshops to promote awareness of preservation incentives and educational materials.

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