

Passing the Ordinance is Not Enough

Two Examples from Iowa

A local ordinance may be the foundation for preserving and protecting archeological sites. However, as the following two examples from Iowa illustrate, without commitment and a sense of responsibility, the local government will not build the necessary system for administering and enforcing the ordinance. In effect, the adage “pass it and sites will be protected” truly lies in the “Field of Dreams.”

In the 1990s, problems arising from sprawl and uncontrolled development prompted Dallas County and Iowa City, Iowa, to pass ordinances that promised protection and preservation of archeological sites. The two local governments approached archeological site protection through comprehensive land use planning and zoning rather than local historic designation. They crafted ordinances that regulated development in environmentally sensitive areas by encouraging use of plans that minimized or avoided disturbance to natural and cultural resources. Archeological site protection was not the primary purpose of these laws. Rather, it was embedded within broader goals of natural and cultural resource preservation. In a state like Iowa with a laissez-faire tradition of land use regulation, it was easier to get the public and local officials to embrace laws that promised quality environments and green space for recreational use, than laws that focused exclusively on archeological site protection.

Located in eastern Iowa, home to the University of Iowa, with 80,000 residents, Iowa City is a growing metropolitan area. By the 1990s, the city had a nationally recognized historic preservation program, focused on the historic built environment. To preserve historic areas surrounding downtown and the University, the city adopted a model historic preservation plan, embarked on an ambitious, multi-year program of survey/evaluation of historic neighborhoods and an aggressive nomination schedule that would substantially increase the number of local historic districts and landmarks.

At the same time, Iowa City was contending with intensive sprawl and associated environmental mishaps. Initially, the city dealt piecemeal with each crisis, until it became apparent that the scale and complexity of the problems called for a more

comprehensive approach. A citizen's committee was charged with drafting an ordinance that would deal with all aspects of the issue and produced the Sensitive Areas Ordinance (SAO) which was adopted in 1996. The SAO was supposed to alert developers and two state agencies (the State Historic Preservation Office and the Office of the State Archeologist) that a project might affect an archeological site and to provide an opportunity for intervention.

Since the passage of the SAO, the city planning staff has handled over 188 permit requests and requested more than 55 site record searches from the Office of the State Archeologist. Although there have been at least four previously recorded archeological sites within proposed development areas, there have been no archeological site investigations nor have plans been modified to allow for preservation of significant sites.

This situation developed because Iowa City had no sense of responsibility toward archeological sites, even though it has a historic preservation ordinance and participates in the Certified Local Government program (CLG). According to the ordinance and CLG agreement, the city is supposed to identify, evaluate, register, and preserve archeological sites. However, under the SAO, the state and the developer were expected to undertake and fund these activities. Their compliance was voluntary. If the state agencies and developer did not act, a project went ahead and sites were destroyed.

Since the mid-1980s, the Des Moines suburbs have spread westward and annexed portions of Dallas County for residential and commercial development. When this trend started, a farsighted Dallas County Conservation Department took action by compiling data and preparing a management plan for natural, cultural, and recreational resources in the county. The plan focused on the dominant topographic feature of the county, the 137,000-acre Raccoon River Greenbelt, formed by the North, Middle, and South branches of the river.

The plan contained two ways of preserving and protecting archeological sites. First, through planned land acquisition, the Conservation Department would purchase archeological sites. Second, by revising the county zoning ordinance to create a special zoning district for areas within the Raccoon River Greenbelt that contain significant

natural or cultural resources and by establishing a review process for all development plans. In 1991, the county established a local preservation program, received CLG status, and initiated a survey-evaluation process within the Raccoon River Greenbelt. By 1994, the County Board of Supervisors had adopted the plan and a revised zoning ordinance that implemented the plan.

Dallas County issues permits for various development activities and uses a review process

to determine if projects will involve archeological sites. There is a two step approach. First, all developers are required to submit "concept plans" to the County Director of Planning and Community Development. The concept plans should indicate if significant archeological sites lie within the proposed development as well as show how the site will be treated so as to minimize disturbance but still promote the site's recognition and enhancement. This review

Steps in Sensitive Areas Ordinance Process

1. Developer applies for permit
2. City staff consults:
 - a. Site Distribution Map (outdated information, no process for updating)
 - b. Office of State Archaeologist (by policy, OSA provides only locational information, does not maintain information on SHPO evaluations)
3. Based on consultation, possible actions:
 - a. There is no site reported:
 - 1) OSA can pay for and undertake investigation to determine if site is present
or
 - 2) Developer can pay for and undertake investigation to determine if site is present
 - b. Unevaluated site is present:
 - 1) OSA can pay for and undertake investigation to determine site significance
or
 - 2) Developer can pay for and undertake investigation to determine site significance
 - c. Significant site is present:
 - 1) OSA can have additional time to study site and determine if *in situ* preservation is needed (OSA underwrites this effort)
 - 2) Iowa City Historic Preservation Commission can locally designate site
4. Significant site is present and should be protected:

Developer asked to design around and place site in green space (What happens with a 200-acre development and a 150-acre significant site?)

applies to all concept plans regardless of where the property is located.

Second, any request to rezone A-2 land, to develop it in tracts of less than 10 acres, or any other variation, prompts an additional review of the developer's concept plan by the Director of the Dallas County Conservation Department with an opportunity to recommend approval or denial of the plan. It should be noted that the A-2 zoning district encourages large lot development and assumes that improvements on lots of 10 acres or more will only be localized in effect and create minimal disturbance to archeological sites.

This promising start was not sustained. The Director of Planning and Zoning and his assistant are responsible for administration and enforcement of the Dallas County zoning ordinance. Since the passage of the revised zoning ordinance, the county has handled approximately 100 requests for permits relating to development. The records suggest that *pro forma* approval was given to concept plans. Applicants did not have to document their efforts to determine if a tract contained archeological sites by submitting inventory reports, they could simply assert there were none. When a project involved lands classified as A-2, the Director of the Conservation Department reviewed and commented on the plans. There was no follow up mechanism to insure incorporation of his recommendations in final plans. In summary, it appears that the zoning ordinance provisions applying to archeological sites are not being implemented or enforced.

At present, neither ordinance has resulted in archeological site protection. Analyzing the reasons suggests what must be done to develop an effective local archeological preservation program. There should be an effective system in place for administering and enforcing the ordinance. Developers, staff, and historic preservation commissioners should know their role and responsibilities in the process. There should be formal means for communicating information and tracking reviews.

Although Dallas County had all the ingredients, e.g., staff and commission members with experience and interest in archeology; a newly initiated survey, evaluation, and registration process that included archeological sites; a computerized inventory; and utilization of the GIS system, these were not organized for administration of the ordinance. Instead, the system rested on the Director of Planning and Zoning and the Director of Conservation, two staff members with

divergent views on how the system should operate. The differences were not resolved and the fledgling historic preservation program has faltered.

Many of the problems encountered stemmed from the fact that neither local government had completed its archeological site surveys and evaluations. Consequently, they could not furnish developers with information about site location or significance. Moreover, staff did not seem to understand site inventory data and thus were unable to explain to developers how to use the information for planning purposes. In addition to helping a local government construct its inventory of historic properties, survey and evaluation projects can be powerful tools for instructing staff, commission members, and the public about the meaning and interpretation of resources.

Finally, there should be a sense of local commitment and responsibility toward archeological sites. This means that there is an effort to educate all players—staff, commissioners, developers, officials—on their value and the need to protect sites. It means that the local government through CLG grants, fees, or other means assumes responsibility for implementing those activities that will accomplish preservation and protection.

Passing the ordinance is simply the first step in the process. To work, a local government has to commit to the same array of activities it undertakes when trying to preserve the built, historic environment—maintain and update the inventory, educate and train those who administer the ordinance, and most importantly, communicate the results of its work with officials, developers, and the general public. Only by continuously sharing the wealth of information gained through archeological research will we be able to insure protection of sites.

References

Dallas County, Iowa, Title V – Property and Land Use, Chapter 45 – Zoning Code, November 8, 1994 Ordinance No. 95-3699, amended March 5, 1996, September 10, 1996, October 22, 1996. An ordinance amending the zoning chapter by incorporating a new section 14-6K-1, entitled “Sensitive Areas Ordinance,” to regulate development in environmentally sensitive areas in Iowa City, Iowa.

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