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PRESERVATION LAWYERS—UNITE!*

ROBERT E. STIPE

This month's column is an unabashed attempt to generate enthusiasm for an idea that I have been turning over for several years. While it is addressed primarily to preservation lawyers, those representing private clients as well as those who serve as legal counsel to public preservation agencies, there are others in and out of the Trust's membership also who ought to be able to lend a hand with it.

It's time to organize.

Among preservation professionals, the attorneys are still "the lonely ones"—the last of the crew to organize themselves effectively to do a better job. Looking at the range of skills involved in any local preservation program, all of the professionals—architects, planners, historians and others—have their own special means of communication with one another: newsletters, publications, conferences and other devices aimed at providing opportunities to sharpen their preservation skills. The attorneys have none of these things.

There are a number of special tasks that preservation lawyers need to undertake, and it is high time we set about them.

EIGHT STEPS SUGGESTED

First, someone needs to prepare an annotated bibliography of published materials on the legal aspects of preservation. A cursory search of the *Index to Legal Periodicals* for the last six or seven years reveals several dozen articles and case notes dealing one way or another with historic preservation. Most of them focus on aesthetic regulation generally, but most also touch on preservation problems somewhere. Add to these the many articles in the popular press, in scholarly journals and elsewhere; there is already a substantial body of useful literature on the governmental and legal aspects of preservation. It needs to be specially pre-digested for lawyers, indexed, made available cheaply and kept up to date frequently.

Second, somebody needs to collect and publish on a selective basis some of the legal documents and forms pertaining to private preservation problems. There is not a month in the year when an attorney somewhere does not write to me to request a sample deed, trust agree-

* Reprinted from *Preservation News*, July 1970, at 5, col. 1.

ment, easement, restriction or what-have-you. These documents are the lawyer's working papers, and normally they remain unpublished and unavailable in the office file unless you just happen to know who has what you need.

Publication or other means of making selected documents of this kind available would be of immense value to the attorney looking for appropriate legal language to use as the starting point in tackling specific preservation problems.

Third, we need to commission some specific research and get out a couple of publications dealing with new preservation techniques. For example, recent literature has made much of the potential usefulness of preservation restrictions as a device for controlling architectural and environmental character. We are now beginning to see a number of good articles, some legislation and a few court decisions involving the uses of these techniques in other fields—primarily highway beautification and conservation generally. These have considerable transfer value to preservation.

One could take Russell Brenneman's brilliant work of several years ago, *Private Approaches to the Preservation of Open Land*, substitute "historic buildings" for "open land" and come up with a very useful manual of private techniques for preservation. The 1968 Wisconsin Scenic Easements in Action Workshop proceedings and documents also might be put to this purpose.

Fourth, somebody should take a look at the beneficial possibilities of *amicus curiae* activity in selected preservation court cases. The American Society of Planning Officials has a committee of attorneys to advise the Society about the need to engage counsel for certain planning and zoning cases, where the principle in a case is an important one and where additional representation in court would be helpful in securing the right decision. On behalf of just such a case, the National Trust earlier this year submitted an *amicus curiae* brief to the Supreme Court of the United States [see *Preservation News*, April and May 1970]; perhaps the Trust also could make good use of such a committee in future important preservation litigation.

Fifth, we need someone to keep careful tabs on new court decisions and to get the word out fast, not only to lawyers, but also to the editors of certain publications on which many lawyers rely, such as *Zoning Digest*. We also need to be able to keep better track of pending litigation in each state.

An inexpensive loose-leaf reporter of preservation cases, similar to the Institute of Government's North Carolina Supreme Court decisions on planning, zoning and urban renewal cases would be extremely useful. We find in this state that the availability of this publication makes

it quite easy for attorneys to stay abreast of decisions they otherwise would not routinely bother to look up.

Sixth, we need to write up and publish case histories on selected legal problems. To take one example, specific knowledge about the detailed workings of historic districts generally is confined to the relatively small number of principals involved at the local level. Given the wide range of experience in the actual operation of such districts (ranging from good to awful), published case histories of these activities would be extremely useful, not only to those cities getting into this activity for the first time, but also to those who are in the process of up-grading or revising their procedures.

Too much of what is known about historic districts and other legal controls is limited to the wording of the ordinances themselves. Too little is written up about how it really is.

Seventh, we need to generate considerably more activity in the general area of legislative drafting, whether for landmarks legislation, historic districts, easements, tax relief and abatement, archaeological site protection, state Section 106 approaches and so on. Even four years after the fact, only a few states are yet prepared to deal with the legal headaches that will inevitably develop when we begin to pump public funds into the private sector in the form of brick-and-mortar projects under P.L. 89-665 [the Historic Preservation Act of 1966].

Eighth, a few of us professors could use some help in gathering and preparing materials for law school and other graduate courses in historic preservation law. Two such courses are in the planning stage already at the University of Kansas and North Carolina, and I suspect that more are just around the corner.