



NPT Memorandum  
Best Practices for Historic District Commissions

**Study Purpose:** The Nantucket Preservation Trust recognizes the importance of our island's historic architecture to its economy and identity, as well as the critical role that our Historic District Commission plays in protecting these resources. We believe that any changes to the Historic District should be carefully considered and involve commentary from a wide range of interests that reflects the totality of our community. As a result, and with the goal of helping Nantucket to have the most effective HDC possible, NPT committed funds to undertake an independent study on best practices for historic district commissions, not to provide a legislative proposal, but to open a more thoughtful, balanced discussion of changes to the Historic District and its governing body.

**Scope:** Nantucket is unique in Massachusetts because the entire island and 100% of the town falls within the boundaries of a local historic district. Initially created by a special statute in 1955, the Nantucket Historic District pre-dates statewide enabling legislation (Chapter 40C). Since its establishment, over 100 Massachusetts municipalities have adopted one or more local historic districts. The largest number are found in municipalities where districts make up only a portion of the community and include dozens or hundreds of buildings rather than thousands, as on Nantucket. Consequently, the majority of local district commissions are called upon to review only a handful of applications each month. For this reason, this preliminary study has focused largely on commissions with application volumes similar to those of the Nantucket HDC. Such commissions tend to be found in cities rather than towns in eastern Massachusetts. Although the government structure, size and budgets for these communities differ from that of Nantucket, much can be learned from them with regard to best practices. Major differences in procedures as well as the general level of support were observed when contrasted with Nantucket.<sup>1</sup> The following table provides some basic statistics for comparison with the communities evaluated:

**HDC Comparison Chart:**

Numbers are estimates based on interviews, past studies, and recent agenda reviews

\*per district, \*\*per month based on minutes (less for small districts)

<b>Category</b>	<b>Boston</b>	<b>Brookline</b>	<b>Cambridge</b>	<b>Concord</b>	<b>Salem</b>	<b>Nantucket</b>
Form of Government	City	Town	City	Town	City	Town
Population	625,000	59,000	105,000	18,000	41,000	11,000 50,000 (summer)
Buildings protected	9,000-10,000	600	3,500	300	600	7,000-8,000  US Census identified approximately 3300 pre-1960 structures
Applications per/month	60-80	8-12	15-25	6	10-12	80-100+ (new applications)
Staff	6 plus 1 archeologist	2 (1@ 30 hours/wk)	4 plus 1 part time	1 part time	1 part time	2
HDC meetings/month	1*	1	1*	2	2	4+
Hrs. per commissioner	4-6**	2-4	4**	5-10	4-8	16+
Cases overturned	0	0	0	0	1 (25 yrs. ago)	2 (in recent years)

**Legislation:** Nantucket's legislation, enacted in 1955 and subsequently amended, precedes Chapter 40C (the Historic Districts Act), under which nearly all other districts in the Commonwealth were created.<sup>ii</sup>

- Nantucket, one of the state's two earliest historic district commissions, is the only district with popularly elected commissioners excepting the Old King's Highway Historic District which straddles six towns; the majority of HDCs created under later state enabling legislation (Chapter 40C) contain formulas for identifying nominees with professional qualifications needed to make balanced decisions and require nominees from professional organizations representing architects, lawyers, realtors, historical associations and civic associations.<sup>iii</sup>
- Clear statutes exist for most historic districts which were created in a single ordinance. Over the years Nantucket HDC commissioners and applicants often have found it difficult to determine current governing provisions. In addition, there has been confusion if Nantucket's HDC has formally adopted guidelines and policies under which it operates. Preparing a thorough review of governing statutes and policies, and making it easily available could alleviate a great deal of misunderstanding.<sup>iv</sup>
- Nantucket's authorizing legislation is unique in designating the Board of Selectmen as the group that reviews appeals. In most communities, applicants appeal disputed decisions directly to Superior Court. Nantucket's situation places two town agencies - the Board of Selectmen and the Historic District Commission - in potentially adversarial roles.<sup>v</sup>

**Organization:** Although Nantucket has a higher volume of applications on average than both Boston and Cambridge, each of these communities has significantly more professional staff to carry out their commissions' work (6 full-time preservation planners in Boston and 4 in Cambridge). In addition, Boston and Cambridge as well as Brookline and Salem, have full-time legal departments that can provide guidance and training to commission staff members and commissioners. Based upon information gathered in our interviews, these conditions appear to create a positive, cooperative working environment within related governmental departments. Timely access to legal advice and training appears to have alleviated or eliminated many potential appeals by providing access to legal advice before sensitive decisions are issued in writing by the historic district commissions.

- Unlike other communities with the work load of Nantucket, HDC staff plays a minor role in the substantive review process. HDCs with professional staff should empower and encourage their staff to conduct initial assessments of applications, seek clarification of details from applicants, and give guidance to applicants, all of which speed the process. In studied communities, staff members are empowered to arrange pre-meeting site visits with the applicants for staff and commissioners. Prior to formal HDC meetings, staff members provide detailed written staff comments and/or summary presentations at the meetings. In addition, staffs are authorized to provide approvals for routine

applications that clearly fit within the guidelines.<sup>vi</sup> This is an area where policy changes at the HDC level might improve the process without requiring modification to enabling legislation.

- HDC staff and commissioners in several communities have direct access to staff attorneys who can provide guidance in preparing decisions and ensure that guidelines are applied in a consistent and legally defensible manner. Although Nantucket lacks a full-time legal department, the HDC should be encouraged to gain timely and more routine legal advice. Training and frequent meetings between the town solicitor and Nantucket commissioners and staff may reduce the number of appeals and create greater consistency in decision-making. This change could be made without modification of existing legislation.
- HDC Commissioners and staff in Cambridge receive annual training with regard to their statutory responsibilities, the conduct of public meetings, decorum, application of guidelines and other matters. This regular training and interaction creates a shared culture that continues through the turnover of staff and commissioners, giving consistency to procedures and decisions.

**Process:** All of the HDCs studied have well-established sets of best practices in place to govern the application process. On Nantucket, the HDC's practice of reviewing all applications in detail and not empowering its staff to review and negotiate the majority of routine requests has existed for years. This circumstance contributes to the large work load of the commissioners, unnecessarily long meetings, lack of public participation, and a scarcity of candidates willing to seek the elected office. Below are some best practices that might be considered to improve the process.

- Several communities in the Commonwealth with large numbers of historic buildings have created separate commissions for each local district within the municipality.<sup>vii</sup>
- Meetings are held only once or twice per month per district at comparable HDCs. Although a reduced meeting schedule would appear counterproductive, monthly meetings provide adequate time to review projects (longer lead times for application deadlines—up to a month); eliminate the need for developing quick/arbitrary decisions; reduce paperwork for staff; and provide adequate public notice for projects.<sup>viii</sup>
- Only exterior plans are required in the communities studied reducing paperwork. On occasion Brookline asks for interior plans where the applicant's plan dictates, such as a request for a stairway window. Streamlined applications assist with staff review for completeness and sped the process.
- The practice of other commissions to present routine items on a list for approval *en masse* facilitates the conduct of business in Boston and Cambridge. In Nantucket, this practice exists, but few items are placed without a full review. Meeting preparation for all applications including those on the consent list continues to create a burdensome workload for staff.

- Agendas are posted well in advance of the meeting (some communities require newspaper notices) eliminating uncertainty by proponents and opponents as to when and if an issue will be heard. Last-minute changes can leave commissioners ill-prepared.<sup>ix</sup>
- Alternate commissioners in other communities are able to participate in review discussion as full commissioners even though they may not be voting on a particular application. Prohibiting this participation by alternates can reduce their effectiveness when needed, and deprives the commission of training opportunities.
- Rules of conduct and civil debate as well as rules for public comment are firmly established in other communities and referenced, thereby avoiding contentious levels of debate that contribute to a climate of hostility and devalue the importance of the task with which a HDC is charged.
- Written decisions are an essential part of the process and should cite the district's guidelines. Such practice is standard throughout the country and written decisions provide several benefits:
  - They require that staff and commissioners carefully think through decisions, always applying the guidelines, and providing thoughtful, precise explanations.
  - They allow applicants to understand the basis of decisions, even if they disagree with them.
  - They support decisions when a legal challenge is made. A clear record is available.
  - They provide an essential element of due process within our legal system.<sup>x</sup>

**Application of Standards:** In general Nantucket's HDC applies a single standard of review to the entire island, using one set of design guidelines applied to areas that possess different characteristics. The island is made up of distinctive and different areas: historic cores (Old Town and 'Sconset) and smaller historic areas such as Madaket; and large tracts of former grazing/moor land that has been developed in the past fifty years following a more suburban land-use pattern.

- Most communities have standards developed specifically by an historic district study committee for each distinct area or district; Nantucket's single standard may not serve the different circumstances of the town's historic centers, moorlands and mid-island development. Slightly different focuses might be considered for each of these areas along the following suggested lines:
  - Design standards within historic cores such as the Old Town and 'Sconset might focus on the large stock of historic buildings and their unique setting. Efforts might aim more explicitly at protecting original historic

exterior fabric and require precise in-kind replacement only when absolutely necessary. In addition, proposed work should be reviewed for its impact on surrounding buildings.<sup>xi</sup>

- Design standards at the peripheries of historic districts such as the Old Town and 'Sconset might be tailored to protect the scale and pattern of development of adjacent historic cores.
  - Design standards in less historic areas such as the former grazing/moor land could recognize that the lack of neighboring historic structures permit a different, more flexible interpretation seeking to protect the historic landscape and low scale of construction on island, rather than seeking to re-create features and buildings like those found in the historic cores.
- Guidelines in other communities are noted by section and paragraph in the denial letters and in other written memoranda, such as staff reviews. Although *Building with Nantucket in Mind* provides excellent guidelines, its narrative format makes reference to its provisions cumbersome. Distilling this document into a more easily cited set of guidelines might enhance its clarity and reduce misunderstanding by applicants.

### **Recommendations:**

Nantucket Preservation Trust recommends that:

- a historic district study committee/task force be convened to review current legislation, the operation of the HDC, and all factors that bear upon the HDC's effectiveness in light of the community's long-term goal of preserving Nantucket's unique historic character. The committee should be charged with reviewing and discussing best practices found elsewhere, and developing recommendations for improving the practices of the Nantucket HDC. The Board of Selectmen is the logical body to convene and appoint such a committee;
- the study committee consist of members selected from various groups to assure diversity of informed opinion with nominees from groups such as: the Nantucket architect/building design community; the Nantucket Association of Real Estate Brokers; the Nantucket Bar Association; the Nantucket preservation community; the Nantucket Town Association or the 'Sconset Civic Association, or similar civic association; the Nantucket conservation community; the Board of Selectmen; the Town Manager; and the HDC;
- the committee develop recommendations through research, civil discussion and debate, and that it seek to achieve a consensus report. Additional research may include more in-depth study of best practices in communities not identified in this study;

- should a consensus report prove difficult, then the committee should seek to present a report and recommendations that also includes a description and presentation of dissenting opinions within the group; and
- the study committee present a report, or an interim report within six months of its appointment; if an interim report is presented, then the committee shall recommend also the additional amount of time needed to make a definitive report.

## Additional Information

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<sup>i</sup> Work began in January 2013 and included identifying HDCs with similar workloads and scheduling meetings with their staff to gather general information. In addition, interviews with HDC staff in several other towns and cities that share other characteristics with Nantucket were completed in March 2013. A cursory review of HDCs in other communities in the country was also conducted throughout the study period (Annapolis, Philadelphia, Charleston, Savannah, and New Orleans). Our work also included studying HDC legislation in Massachusetts and consultations with representatives from the Massachusetts Historical Commission and Preservation Massachusetts. This report is not meant to be all inclusive, but a guide which could be used by the HDC and a study committee. Additional research of other HDCs in Massachusetts may reveal information.

<sup>ii</sup> In 1955 Nantucketers were the first in the region and among the first in the nation to create a local historic district. As development pressures mounted in the 1970s, the local district was expanded from the Old Historic District and the 'Sconset Historic District to cover the entire island. Expansion of the district outside the historic cores and increased building activity significantly increased the workload of the HDC.

The Massachusetts Historical Commission's publication "Establishing Local Historic Districts," notes:

Massachusetts General Law Chapter 40C provides a variety of advantages which may not be present in local historic districts established through special legislation. Local Historic Districts enacted pursuant to Massachusetts General Law Chapter 40C possess a sound procedural and substantive base. The review process under G.L. c. 40C provides protective measures which are generally more comprehensive than those found under special laws. Also, because Massachusetts General Law Chapter 40C is a statewide enabling statute, favorable legal precedent and legislative initiatives to improve and strengthen the operation of the Local Historic Districts Act will directly benefit local historic districts created under it.

Lastly, local historic district commissions, operating under the authority of the Massachusetts General Law Chapter 40C, have a state-wide network of commissions who operate under a shared legislative framework, and can provide legal, technical, and practical information and advice. For these reasons, some communities may wish to convert their local historic districts created under special law to Massachusetts General Law Chapter 40C by accepting its provisions. To do so the historic district commission having jurisdiction over the district should recommend the conversion to the city council or town meeting and obtain their 2/3 vote. The validity of the historic district under special law will not be affected, and all previous decisions will remain valid.

<sup>iii</sup> In Cambridge the Historical Commission is comprised of seven members and three alternates, all appointed by the City Manager. The Commission includes nominees from the Boston Society of Architects, the Boston Society of Landscape Architects, the Greater Boston Real Estate Board, and the Cambridge Historical Society. There must also be at least one lawyer and one resident of a historic district. Two candidates from the various groups are selected for consideration. The HDC staff makes recommendations on the candidates to the city manager who is required to select a candidate from the individuals proposed.

In Boston a similar process is used. Five commissioners and five alternates form each of the ten commissions. In the Back Bay one commissioner and one alternate is selected from 2 nominated commissioners and 2 nominated alternatives by the following groups: the Neighborhood Association of Back Bay; Greater Boston Real Estate Board; Boston Society of Architects; Back Bay Association; and the Mayor. In Beacon Hill the preservation organization Historic New England nominates in lieu of one civil/neighborhood group.

The Old Kings Highway Historic District on Cape Cod (the largest historic district in area in the nation) is composed of six communities each with their own HDC. All but one member of each commission is elected by the individual municipalities. For each district the corresponding Board of Selectmen appoints an architect, or in the event an architect is not available, a building contractor. In addition, a commission with the chair of each individual HDC forms the Old Kings Highway Historic District Commission which makes decisions that affect more than one community and also serves as the review board for appeals within the six communities.

Like Nantucket, Concord's HDC was established by a special act. It has six historic districts and an appointed board with term limits. Appeals go directly to Superior Court. Salem and Brookline were both established under 40C.



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<sup>iv</sup> The town counsel is currently working with the HDC to clarify jurisdiction, identify amendments and provide general guidance.

<sup>v</sup> According to staff at both Boston and Cambridge the HDCs function independently with only minor interaction with elected officials.

<sup>vi</sup> In Boston there are certain applications that are approved at staff level. For applications that fall into a gray area the HDC staff identifies items they can handle on the agenda, queries the chair on agreement, and then provides a consent list at the meeting. Items can be called out by commissioners for review. In Cambridge the consent list is also determined by the staff in consultation with the chair. Commissioners or any member of the public can ask for a full review of a project from the consent list. Approximately 70% of the applications are handled at the staff level. In Brookline, a “10 day rule” allows staff to identify minor revisions, in-kind replacement or items only partially visible that might be easily approved without commission review. A 10 day period is available for the public or a commissioner to request the application be placed as a hearing item, and if not it is approved without further review. In addition, Brookline staff determines the visibility of the work prior to the meeting.

<sup>vii</sup> Boston has 9 different commissions each with 5 commissioners and 5 alternates. In Cambridge there are also individual commissions for two 40c districts, and 4 neighborhood conservation districts. A large portion of Cambridge is not under HDC jurisdiction, but every building 50 years or older falls under demolition review by the Cambridge Historical Commission.

<sup>viii</sup> The Old Kings Highway Historic District on Cape Cod holds bi-monthly meetings. Commissioners in other districts often hold workshops for review prior to the official meeting. Neither Boston nor Cambridge hire outside experts such as engineers to assist in the review process. Brookline has initialed sub-committees to assist in the review of large projects. The sub-committee may be empowered to approve the project outright or the final application brought back to the full commission.

<sup>ix</sup> A review of the various HDCs indicate that deadlines for the monthly agendas have a lead time of approximately 21-30 days to allow for staff review, viewings, and for study by the commissioners.

<sup>x</sup> All written reviews are based on appropriateness and reference guidelines. Boston now has an electronic notification system to streamline work.

<sup>xi</sup> Back Bay Historic District established in 1966 closely reviews original materials. There are high standards for repair and replacement. For example, removal or demolition of an original feature can be denied. If replaced that feature must be closely duplicated—in material, decorative features and craftsmanship. High standards make replacement of important/original features unlikely unless due to extreme deterioration. In all districts, only exterior features visible from a public right of way are reviewable.