

Planning and Zoning Strategies

Protecting Connecticut's Archeological Resources

Archeological resource protection mechanisms in the state of Connecticut are guided by a twofold strategy. The State Historic Preservation Office (SHPO) was established in the 1970s to administer federal and state historic preservation programs. The Office of State Archaeology (OSA) was created in the 1980s to provide technical assistance in the preservation of cultural resources to municipalities in the review of privately funded development projects that do not require compliance with federal or state preservation legislation, but are subject to local regulations.

By abandoning the county government system, the state gave municipalities virtual autonomy in land use decision-making. As a result, 169 separate local governments regulate, through planning and zoning and/or conservation commissions, the review of proposed development projects. To assist the town governments, state enabling statutes guide municipalities as to what they can regulate; and zoning commissions have been given the ability to develop regulations for the "protection of historic factors."*

"Historic factors" has been broadly interpreted to include archeological resources. Hence, the OSA provides technical assistance to town officials, landowners, developers, and others for evaluating private or town-sponsored development projects for impacts to cultural resources. OSA encourages Connecticut towns to develop a local review process that is structured similar to the federal

preservation approach. While projects are usually of a smaller scale than their federally permitted or funded counterparts, compliance is more difficult to monitor due to a lack of legislative mandate or professional staff at the local level.

The OSA has worked with every municipality in the state on preservation issues, often when written planning and zoning regulations are lacking. Without these regulatory mandates, cogent arguments must be made to members of the local land use commission. The success of our arguments is often determined by the commitment of town officials and commission members to effectively balance the dual pressures of preservation and economic development. "Grassroots" advocacy from the local community plays an extremely important role in convincing town officials to support cultural resource protection. State officials can testify about the resource and the need, but it takes local residents and voters campaigning for archeological preservation to make it happen.

The general statutes of nearly 20 states contain enabling language either requiring, or encouraging, written comprehensive land use and development plans by local government. These local area plans serve as a guide not only for planning and zoning boards when adopting land use regulations, but they can also assist the judicial system in determining the constitutionality of a local regulation should it be challenged in court.

For example, the Connecticut Supreme Court has established that planning and zoning boards may consider historic preservation issues in their local land use regulations and decisions, provided that preservation has first been adequately addressed in the town's comprehensive plan. In *Smith vs. Town of Greenwich Zoning Board of Appeals* (227 Conn. 71, 1993), the courts ruled in favor of a municipality that was challenged by a developer who was obligated to comply with cultural resource protection measures. The clear message of the Connecticut Supreme Court, however, is that communities must be pro-active and possess an adopted comprehensive master plan that specifically addresses local historic preservation concerns.

Both SHPO and OSA routinely promote the Town of Ledyard's archeological review process (see regulations, p. 10) to other communities as a workable and successful approach. Ledyard's

Members of the Arthur Basto Archaeological Society conducting Phase I survey for a subdivision approved by the Woodstock, CT, planning commission.



preservation plan contains maps and a list depicting all properties on the National Register of Historic Places. It has four basic objectives:

- **Identify and avoid historic and archeological sites prior to construction.** This is accomplished either pro-actively through broad, town-wide cultural resource surveys, or by detailed archeological investigations of individual properties that are proposed for private development or municipal capital projects.
- **Preserve archeological sites *in situ* rather than excavate or salvage identified remains.** Developers are encouraged to realign or relocate proposed roads, buried utilities and buildings, or to dedicate identified archeological sites to parks and open space. In this regard, the OSA has coordinated with landscape architects and engineers to incorporate cultural resource protection into their initial subdivision designs.
- **List additional properties on the National Register.** Although most listed properties in Ledyard are 18th- and 19th-century homes and farmsteads; this serves to create greater public awareness and broader respect for local preservation initiatives.
- **Obtain Certified Local Government (CLG) designation from the SHPO and National Park Service,** thus becoming eligible for matching federal grants for local preparation of National Register nominations.

Town of Ledyard Subdivision Regulations

SEC. 2.0 General Definitions

CULTURAL RESOURCES: Consists of historic and pre-historic archaeological sites and standing structures; cemeteries, human burials, human skeletal remains, and associated funerary objects; and distributions of cultural remains and artifacts.

SEC 4.7 CULTURAL RESOURCE PRESERVATION.

Subdivisions and resubdivisions shall be laid out to preserve significant cultural resources and unique natural features. Suitable public access to any cemetery may be required by the Commission.

SEC 4.7.1 CEMETERIES AND HUMAN BURIALS. All cemeteries within a proposed subdivision shall be deeded either to the Town of Ledyard, an existing cemetery association, a homeowners association, or other responsible party, as deemed appropriate by the Commission, along with a twenty (20) foot protective buffer, as measured from stone walls surrounding a cemetery, or from any identified human burial in the absence of wall or other demarcated boundary.

SEC 4.7.2 ARCHAEOLOGICAL ASSESSMENT. An on-site archaeological assessment shall be required, if in the opinion of the Commission, there is likelihood that significant cultural resources or undetected human burials will be adversely impacted by construction activities associated with the proposed development. The assessment shall be conducted in accordance with standards outlined in the Environmental Review Primer for Connecticut's Archaeological Resources. Permanent reference copies are on file at the SHPO and Ledyard Planning offices.

SEC 4.7.3 DETERMINATION OF NEED. The Commission's determination of need for an archaeological assessment shall be based on:

- a) proximity to identified cemeteries, human burials, archaeological sites, historic sites; and/or
- b) natural terrain features such as proximity to wetlands or watercourses, soils, slope, aspect or rock shelters,

where these factors reflect scientifically documented settlement patterns preferred by Native Americans or European Colonists.

In making this determination, the Commission shall seek advice and comment from the Office of State Archaeology and/or State Historic Preservation Officer. A letter seeking such advice shall be mailed within two (2) working days after the Commission's subdivision preliminary review, as defined in Section 3.1.2 of those regulations.

SEC 4.7.4 MANAGEMENT PLANS. Cultural resource management plans submitted to the Commission by the applicant shall consist of:

- a) a written investigative report prepared by a professional archaeologist, containing appropriate historic documentation, a description of research design methods and techniques, and a description of sites, features, and artifacts discovered as a result of the archaeological investigation. A list of accredited professional archaeologists is maintained by SHPO and OSA;
- b) an evaluation of impact of the proposed subdivision on identified cemeteries, human burials, archaeological sites and historic sites;
- c) a description of measures to be undertaken by the applicant to mitigate adverse impacts of construction activities, on identified cultural resources. This may include an estimate of mitigation costs and time required for more extensive investigations. Measures may include open space dedication; conservation easements; redesign or relocation of roads, drainage features, or buildings so as to minimize adverse impacts; or excavations and removal of cultural remains supervised by a professional archaeologist;
- d) copies of all investigative reports and management plans shall be submitted to the Office of State Archaeology and State Historic Preservation Officer for review and comment prior to any Planning Commission public hearing. Comments received from state officials shall be incorporated into the public hearing record.

Phase III data recovery excavations at a Late Woodland site in Ledyard, CT.

Based on our experiences in developing archeological preservation strategies at the municipal level, we present a number of recommendations:

- **Generate local public support.** Local officials respond well to the concerns of town residents and their neighbors. Special interest groups, like archeologists, alone are usually not enough to persuade a town to go through the labor of amending, enacting and enforcing additional regulatory mechanisms. The preservation community, local historic and archeological societies, and environmental groups may be willing to offer guidance and support.
- **Search out and work with a municipal planning and zoning official that is especially supportive.** No matter how well archeological preservation regulations are written, you'll need an enlightened municipal official that will be willing to oversee compliance and day-to-day implementation and serve as the local point of contact with the SHPO and OSA. Archeological protection measures may get written into the regulations, but in time, they may not be adequately implemented unless someone in a position of authority oversees enforcement (see McGrath, p. 15).
- **Encourage town officials to incorporate the archeological process as early as possible within the land use decision-making process.** Attempt to coordinate site sensitivity information with design professionals prior to initial layout of the subdivision, with the goal of site avoidance and still permit the developer to place the same number of house lots without undergoing redesign of the project later. This is a cost-efficient and effective strategy, but works only at the early design stage. Town planners' hands become tied as engineering studies and design projects near completion.
- **Be as creative as possible in finding solutions for archeological site protection.** Create partnerships in preservation, not confrontations. Work with developers and municipal land use decision-makers to resolve preservation issues. If local officials perceive CRM as an administrative headache or economic burden, they will not effectively enforce what you have worked so hard to implement. Demonstrate that the system can work as the project proceeds through the design and regulatory review process. Success with a first "test case" of local regulatory procedures is critical for establishing respect in the treatment of historic properties on subsequent projects.

Photos courtesy Office of Connecticut State Archaeology.



- **Encourage town officials to seek outside professional opinion in the site plan or subdivision review process.** Local officials should be comfortable seeking technical assistance from the SHPO, OSA, or other members of the archeological community. However, be careful to avoid any appearance of a conflict of interest. It is okay to provide testimony and professional guidance to local decision-makers, but if so, do not conduct CRM studies in your town of residence.
- **Clearly define such terms as "cultural resources."** This will prevent a court challenge based on vagueness, and can be used as a guidepost by local land use commissions and developers alike.

It is the archeological community, both amateur and professional, that must take the lead and carry the banner of archeological protection to the public, to city hall, and planning and zoning commissions who, hopefully, in turn will adopt comprehensive community plans, pertinent regulations, and positively interact with the state's archeologists toward saving cultural resources. The archeologist who lives in the community is a taxpayer and a voter who carries a lot of weight with their neighbors and town officials. We encourage archeologists to get a seat on a planning or zoning commission, and to become one of the so-called "insiders."

Note

* Connecticut General Statutes, Sec 8-2.

Nicholas F. Bellantoni serves as the Connecticut State Archeologist with the Connecticut State Museum of Natural History at the University of Connecticut.

William R. Haase, AICP, is Director of Planning for the Town of Ledyard, Connecticut. He was an archeologist for the Bureau of Land Management in Utah and Colorado.