



HSPV-671-001  
Historic Preservation Law  
Instructor: Anne Nelson

Spring 2022  
Friday, 1:45 to 4:45 PM  
Meyerson Hall B5

## COURSE SYLLABUS + SCHEDULE

### Course Summary:

An introduction to the legal mechanisms used to protect historic resources in the built environment, focusing on the legal principles underlying preservation laws, including constitutional issues related to governmental regulation of real property, as well as federal, state, and local historic preservation laws.

**Instructor:** Anne Nelson, 202-588-6142 (work), 214-734-8952 (cell), [anelson@savingplaces.org](mailto:anelson@savingplaces.org)

**Office Hours:** By appointment Fridays. Accessible by phone, email, and text as well.

### Course Objectives:

1. To provide students with an understanding of the legal platform on which the preservation network is constructed, including a broad understanding of the relevant legal foundations for historic preservation activities; procedures of federal, state, and local historic preservation efforts; and the legal constraints on these activities and procedures.
2. To provide students with a common vocabulary and understanding of policies and programs in historic preservation at the federal, state, and local levels so they can establish a dialogue with peers and allied professionals within the field.
3. To provide students with an understanding of the legal and advocacy tools, strategies, and responsibilities of public and private organizations in the historic preservation field.
4. To provide sufficient information so students will be able to identify legal issues, know resources for information and assistance on those issues, communicate effectively with attorneys, and be stronger advocates.

**Required Course Texts:** *Historic Preservation Law* by Sara Bronin and Peter Byrne (Second Edition)  
Additional readings will be on Canvas.

### Course Requirements & Grading:

- **Class Participation & Attendance (25% of grade)**—Each student should complete assigned readings, assignments (questions & case briefs), and participate actively in class discussions.
- **Mid-Term Examination (25% of grade)**—A short true/false mid-term exam will be administered in class.
- **Final Examination (25% of grade)**—A “take home” final exam will be an essay format.
- **Local Preservation Ordinance Analysis (25% of grade)**—Each student will select a preservation ordinance and prepare: (a) a written summary and analysis of the local law; and (b) an evaluation of the likely effectiveness of the ordinance.
- **Auditors**—Auditors are expected to do all of the reading, participate in class discussion as well as the Local Preservation Ordinance Analysis. Auditors will not be required to take the midterm or final exam.

### Academic Integrity:

Please read the University’s Code of Academic Integrity, which is available at:  
<https://next.catalog.upenn.edu/pennbook/code-of-academic-integrity/>

## SYLLABUS:

### Week #1, Friday, January 14, 2022

#### Introduction to Course

#### Courts, Cases & How (and Why) to Write a Case Brief

#### Who's Who in Historic Preservation

#### Brief Overview of Federal Preservation Laws

- Readings:**
1. United States Constitution (Note especially Article I, clause 7-8; Article II, clause 1; Article III, clauses 1-2; and the First, Fifth, and Fourteenth Amendments.)
  2. Chart of the United States Courts of Appeals (with geographic boundaries)
  3. About the ACHP Fact Sheet
  4. What is a Case Brief?
  5. **Historic Preservation Law in Context**—Bronin + Byrne, pp. 1-16, 18-56 (incl. *US v. Gettysburg Electric Railway Company*)
  6. *A Layperson's Guide to Historic Preservation Law*, pp. 1-7
- Optional:**
7. National Historic Preservation Act, 54 U.S.C. § 300101-307108
  8. Section 106 Regulations, 36 C.F.R. Part 800
  9. Identifying Standards for Review
  10. *U.S. v. Gettysburg* – sample case brief
  11. Explore [achp.gov](http://achp.gov) + [savingplaces.org](http://savingplaces.org)

**Due:** Complete and submit your student profile.

### Week #2, Friday, January 21, 2022

#### The Federal Government's Role in Historic Preservation

- Section 106 & 110 of the National Historic Preservation Act
- Section 4(f)
- National Environmental Policy Act
- Common Legal Challenges under Federal Preservation Laws

**Guest Speaker:** Elizabeth Merritt, Deputy General Counsel, National Trust

- Readings:**
1. **National Register Designation**—Bronin + Byrne, pp. 65-84
  2. **Section 106/110**—Bronin + Byrne, pp. 113-162, 162-171 (skim) (incl. *National Mining Association v. Fowler, National Trust for Historic Preservation v. Blanck*)
  3. **Section 4(f)**—Bronin + Byrne, pp. 209-228, 240-255 (incl. *Citizens to Preserve Overton Park, Inc. v. Volpe, Merritt Parkway Conservancy v. Mineta*)
  4. Protecting Historic Properties: A Citizen's Guide to Section 106 Review
  5. **NEPA**—Bronin + Byrne, pp. 173-188 (incl. *Recent Past Preservation Network v. Latchar* (Cyclorama))
  6. Section 106 Regulations, 36 C.F.R. Part 800 (particularly Sections 800.1, 800.5, 800.6) (skim)
- Optional:**
7. Federal Preservation Laws – Comparison Chart

**Due:** Two questions based on reading due by email Thursday before class.  
Case briefs of *National Trust v. Blanck* and *Citizens to Preserve Overton Park v. Volpe* due prior to class.

### Week #3, Friday, January 28, 2022

#### Constitutional Law and Historic Preservation: Takings & Eminent Domain

- Fifth Amendment of the Constitution

- Regulatory Takings (*Penn Central*)
- Evolution of the Penn Central test (*Lucas*)
- Eminent Domain (*Kelo*)

- Readings:**
1. U.S. Constitution: Fifth Amendment (and 14<sup>th</sup> Amendment)
  2. Miller, Julia, *A Layperson's Guide to Historic Preservation Law*, pp. 18-21, 23
  3. **Takings**— Bronin + Byrne, pp. 347-380 (incl. *Penn Central Transportation Company v. City of New York* and *District Intown Properties Limited Partnership v. District of Columbia* (Cathedral Mansions))
  4. *United Artist's Theatre Circuit Inc. v. City of Philadelphia*, 595 A.2d 6 (Pa. 1991), rev'd on reh'g, 635 A.2d 612 (Pa. 1993)
  5. *Kelo v. City of New London*, 545 U.S. 469 (2005)
  6. Duerksen, Christopher and Richard Roddewig, *Takings in Plain English* (skim)
- Optional:**
7. *Amicus Brief in Stahl York Avenue Co., LLC vs. City of New York et al.* (Jan. 26, 2015) (skim)

**Due:** Two questions based on reading due by email Thursday before class.  
Case briefs of *Penn Central Transportation Co. v. City of New York* and *District Intown Properties LP v. DC* due prior to class.

#### **Week #4, Friday, February 4, 2022**

#### **Constitutional Law and Historic Preservation: RLUIPA & Funding of Religious Properties**

**Guest Speaker:** Tad Heuer, Partner, Foley Hoag LLP [to be confirmed]

- Readings:**
1. Bronin + Byrne, pp. 381-414 (incl. *St. Bartholomew's Church v. City of New York* and *Episcopal Student Foundation v. City of Ann Arbor*)
  2. U.S. Department of Justice, *Report on the Twentieth Anniversary of RLUIPA*. Washington, DC: US DOJ, 2020
  3. *A Layperson's Guide to Historic Preservation Law*, pp. 24-28
  4. Brief of *Amicus Curiae*, National Trust for Historic Preservation, *Caplan et al. v. Town of Acton*, Commonwealth of Massachusetts Supreme Judicial Court
  5. *Morris County Board of Chosen Freeholders v. Freedom from Religion Foundation*, Statement of Kavanaugh, J. (Mar. 4, 2019)
  6. Brief of *Amicus Curiae* National Trust for Historic Preservation in Support of Petitioners, *Morris County* (Oct. 22, 2018)
- Optional:**
7. *American Legion v. American Humanist Association*, 588 U.S. \_\_\_\_ (June 20, 2019)

**Due:** Two questions based on reading due by email Thursday before class.  
Case brief of *St. Bartholomew's Church v. City of New York* due prior to class.

#### **Week #5, Friday, February 11, 2022**

**Travel Week**

#### **Constitutional Law and Historic Preservation: Due Process**

- Understanding and Applying Procedural Requirements

#### **Public Lands Issues, Archaeology + NAGPRA**

- Antiquities Act of 1906
- Wilderness Act of 1964
- Archaeological Resources Protection Act
- Native American Graves Protection and Repatriation Act

- Readings:**
1. White, Bradford, J. and Paul W. Edmondson. *Procedural Due Process in Plain English: A Guide for Preservation Commissions*. National Trust, 2004
  2. *Society Hill Civic Association v. Philadelphia Board of License*, Commonwealth Court of Pennsylvania, 2006
  3. *Metropolitan Baptist Church v. D.C.*, 718 A.2d 119 (D.C. 1998)

4. *Presidential Proclamations and Orders*: Proclamation 9558, 82 Fed. Reg. 1139 (Jan. 5, 2017); Executive Order 13792, 82 Fed. Reg. 20429 (May 1, 2017); Proclamation 9681, 82 Fed. Reg. 58081 (Dec. 4, 2017); Executive Order (Jan. 20, 2021) (*see* Sec. 3)
  5. Wilderness Act of 1964 (selected portions)
  6. *Wilderness Watch*, Building New History in Wilderness, blog (July 27, 2011)
  7. *Wilderness Watch v. Iwamoto*, 853 F. Supp. 2d 1063 (W.D. Wa. 2012)
  8. *Williamson, Sharee*, Olympic National Park: Preserving History in Wilderness Areas, Preservation Leadership Forum (June 2017)
  9. *Wilderness Watch v. Creachbaum*, 225 F. Supp. 3d 1192 (W.D. Wa. 2016)
  10. **Antiquities Act**—Bronin + Byrne, pp. 431-448 (incl. *U.S. v. Smyer, Treasure Salvors, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel, Tulare County v. Bush*)
  11. **Archeological Resources Protection Act**—Bronin + Byrne, pp. 459-478 (incl. *U.S. v. Gerber*)
  12. **Native American Graves Protection and Repatriation Act**—Bronin + Byrne, pp. 479-511 (incl. *U.S. v. Corrow*, and *Bonnischsen v. United States*)
  13. *U.S. v. Diaz*, 499 F.2d 113 (9<sup>th</sup> Cir. 1974)
- Optional:**
14. U.S. Congressional Research Service. Antiquities Act: Scope of Authority for Modification of National Monuments (R44687; Nov. 14, 2016), by Alexandra Wyatt
  15. NAGPRA, ARPA + NHPA Comparison Chart

**Due:** Two questions based on reading due by email Thursday before class.  
Case brief of *Metropolitan Baptist Church v. D.C.* due prior to class.  
Identification of town/city for preservation ordinance analysis.

### **Week #6, Friday, February 18, 2022**

#### **The State Government's Role in Historic Preservation**

- SEPA's
- State 4(f)s
- State Historic Registers
- State Enabling Legislation
- Review of Pennsylvania State Laws (PA Constitution, PA Historic Districts Act, PA History Code)

#### **Midterm Review**

- Readings:**
1. **SEPA's**—Bronin + Byrne, pp. 192-208 (incl. *Architectural Heritage Association v. County of Monterey*)
  2. "State Preservation Laws: Best Practices" by Julia Miller
  3. **State 4(f)'s**—Bronin + Byrne, pp. 258
  4. *Reiter v. The City of Beloit*, 947 P.2d 425 (Kan. 1997)
  5. Pennsylvania Constitution, Article 1, Section 27.5 (skim)
  6. Pennsylvania Historic Districts Act, P.L. 282, No 167, as amended, 53 P.S. § 8001, et. seq. (June 1961) (skim)
  7. Pennsylvania History Code, Title 37 (skim)
  8. PHMC Policy for Determining Historical Significance of Local Historic Districts and Boundary Justification Pursuant to PA Historic Districts Act & Checklist to Establish a Historic District
- Optional:**
9. *Amici Curiae* Memorandum of National Trust et al. for *State of Connecticut, Department of Economic and Community Development v. WMC Realty, LLC*

**Due:** Two questions based on reading due by email Thursday before class.  
Case briefs of *Architectural Heritage Association v. County of Monterey* and *Reiter v. The City of Beloit* due prior to class.

### **Week #7, Friday, February 25, 2022**

#### **Preservation Practice—Taking Direct Action to Save Historic Places**

- Direct Action Case Studies—Union Station (Washington, DC), Shockoe Bottom (Richmond, VA), and Little Havana (Miami, FL)
- Community Outreach and Effective Advocacy

### The Local Government's Role in Historic Preservation

- Designations (generally)
- Reading an Ordinance

### Midterm Exam Review

**Guest Speaker: Rob Nieweg, Vice President, Preservation Services & Outreach & Attorney, National Trust**

- Readings:**
1. A Golden Opportunity to Re-Invest in Historic Union Station (2012)
  2. Washington Union Station Historic Preservation Plan (2015) (skim)
  3. Union Station Expansion Project Section 106 Review, Federal Railroad Administration (2019)
  4. 11 Most Endangered Press Releases for Shockoe Bottom (2014) and Little Havana (2015)
  5. Community Proposal for a Shockoe Bottom Memorial Park (2017)
  6. A Future for Shockoe Bottom: A Vision for Equitable Development (2019) (skim)
  7. Little Havana Me Importa: Revitalization Master Plan (2019) (skim)
  8. **Designation**—Bronin + Byrne, pp. 84-111 (incl. *A-S-P Associates v. City of Raleigh*, *Metropolitan Dade County v. P.J. Birds, Inc.*, *Embassy Real Estate Holdings, LLC v. District of Columbia Mayor's Agent for Historic Preservation*)
  9. **Ordinances**—Bronin + Byrne, pp. 259-283 (incl. *Gondelman v. District of Columbia Dep't of Consumer & Regulatory Affairs*, *Turchi v. Philadelphia Board of License & Inspection Review*)
  10. *A Layperson's Guide to Historic Preservation Law*, pp. 7-13

**Due:** Two questions based on reading due by email Thursday before class.  
Case brief of *A-S-P Associates v. City of Raleigh* and *Turchi v. Philadelphia Board of License & Inspection Review* due prior to class.

### Week #8, Friday, March 4, 2022

### Midterm Exam

### Week #9, Friday, March 11, 2022

**No Class**

### Spring Break

### Week #10, Friday, March 18, 2022

### The Local Government's Role in Historic Preservation (cont.)

- Designations (including objects and interiors)
- Effects of Local Designations & Applying the Ordinance
- Economic Hardship
- Conservation Districts + Other Tools

- Readings:**
1. **Economic Hardship/Demolition by Neglect**—Bronin + Byrne, pp. 286-317 (incl. *Zaruba v. Village of Oak Park*, *900 G Street Associates v. Dep't of Housing & Community Development*)
  2. **Affirmative Maintenance/Demolition Delay**—Bronin + Byrne, pp. 317-324 (incl. *Pansini Custom Design Associates, LLC v. City of Ocean City*)
  3. **New Construction**—Bronin + Byrne, pp. 324-332 (incl. *Sanchez v. Town of Beaufort*)
  4. Preservation Law Reporter Relief in the Regulation of Historic Properties, 15 PLR 1129 (1996)
  5. **Designation as an Object**—*Merriam v. Philadelphia Historical Commission* (Dream Garden) (Commonwealth Court, 2001)

- 6. **Designation of Interior Spaces**—*United Artists' Theatre Circuit Inc. v. City of Philadelphia*, 595 A.2d 6 (Pa. 1991), rev'd on reh'g, 635 A. 2d 612 (Pa. 1993)
- 7. **Preservation + Zoning**—Bronin + Byrne, pp. 332-344 (incl. *City of Tampa v. City of National Bank of Florida*)
- 8. **Conservation Districts**—Bronin + Byrne, pp. 344-345
- Optional:** 9. National Trust's Brief of *Amici Curiae* in Support of the City of Chicago (March 5, 2013)
- 10. *Amicus* Brief for *Powell v. City of Houston* (Aug. 6, 2020)
- 11. *Zaruba* Case Materials
- 12. Neighborhood Conservation Districts: Planning and Administrative Practices prepared for the City of Detroit (Dec. 7, 2018)

**Due:** Two questions based on reading due by email Thursday before class.  
Case brief of *Sanchez v. Town of Beaufort* and *Zaruba v. Village of Oak Park* due prior to class.

### **Week #11, Friday, March 25, 2022**

#### **Why Old Places Matter—The Right to Preserve and the Development of Preservation Laws**

- Relationship to Other Themes of the Class—Property, Societal Rights, Religion

#### **Legal Issues with Confederate Monuments**

**Guest Speaker:** Thompson Mayes, Chief Legal Officer and General Counsel, National Trust

- Readings:**
- 1. Mayes, Tom, *Blog Series: Why Do Old Places Matter?* (read at least 2)
  - 2. National Trust's Statement on Confederate Monuments (June 18, 2020)
  - 3. National Trust's FAQ on Confederate Memorials
  - 4. ACHP Policy Statement on Controversial Commemorative Works (Mar. 22, 2018)
  - 5. Executive Order on Protecting American Monuments, Memorials, and Statues and Combatting Recent Criminal Violence (June 6, 2020)
  - 6. Executive Order on Building and Rebuilding Monuments to American Heroes (July 3, 2020)
  - 7. *City of Charlottesville v. Payne* (April 1, 2021)
  - 8. *Gregory v. Northam*, S. Ct. Va (Sept. 9, 2021)
  - 9. *Taylor v. Northam*, S. Ct. Va (Sept. 2, 2021)
  - 10. *National Monument Audit*, Monuments Lab
- Optional:**
- 11. "Etched in Stone: Historic Preservation Law and Confederate Monuments" by J. Phelps and J. Owley (skim)

**Due:** Two questions based on reading due by email Thursday before class.

### **Week #12, Friday, April 1, 2022**

#### **Federal and State Tax Incentives**

- Intro to Federal Historic Tax Credit
- Legal Structures for Syndication of Credit
- Tax Reform Changes to HTC/Saving the Tax Credit
- State Tax Credits, including the Pennsylvania credit

#### **Final Exam Discussion**

- Readings:**
- 1. Bronin + Byrne, pp. 603-632
  - 2. *A Layperson's Guide to Historic Preservation Law*, pp. 30-32
  - 3. NPS Statistical Report and Analysis for Fiscal Year 2016
  - 4. NPS Annual Report for Fiscal Year 2020
  - 5. One-pager on the Secretary's Standards for Rehabilitation
  - 6. IRS Procedures (12/2012)
- Optional:**
- 7. *Historic Boardwalk Hall v. IRS* (Aug. 27, 2012) (skim)
  - 8. Rehab Tax Credit ATG from IRS

**Due:** Two questions based on reading due by email Thursday before class.

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**Week #12, Friday, April 8, 2022**

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**Preservation Easements + Other Preservation Real Estate Tools**

**Guest Speaker:** Ross Bradford, Deputy General Counsel

- Readings:**
1. Bronin + Byrne, pp. 539-602 (incl. *Browning v. Commission, Herman v. Commissioner*)
  2. "Easements that Protect the Built Environment" (excerpt from The Conservation Easement Handbook)
  3. Fisher-Kahn House Deed of Preservation and Conservation Easement

**Due:** Two questions based on reading due by email Thursday before class.  
Case brief of *Herman v. Commissioner* due prior to class.

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**Week #13, Friday, April 15, 2022**

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**Historic House Museums: Issues and Legal Considerations**

- Restrictions on historic sites
- Co-stewardship and Shared Use Agreements
- Legal Considerations for reimagining and reuse of historic sites (art installations, artist-in-residence programs, event rentals, filming, etc.)

**Final Exam Discussion + Review (Cont.)**

- Readings:**
1. Bronin + Byrne, pp. 633-658, 661-681
  2. *A Layperson's Guide to Historic Preservation Law*, pp. 29, 33-37
  3. Nelson, Anne, *Co-Stewardship at Historic Sites and the Path to Local Governance*, Preservation Leadership Forum Blog (Feb. 13, 2015)
  4. Artist Agreement Template (skim)
  5. Nelson, Anne and Carrie Villar, *Getting It in Writing: Negotiating Agreements with Artists at Historic Sites*, Preservation Leadership Forum Blog (May 25, 2016)
  6. Mayes, Tom, *The 25<sup>th</sup> Anniversary of the Americans with Disabilities Act*, Preservation Leadership Forum Blog (Dec. 2, 2015)
  7. Malone-France, Katherine, *When Buildings and Landscapes are the Collection*, Forum Journal (Summer 2014)
- Optional:**
8. Sample Co-Stewardship Agreements
  9. Sample Shared Use Agreements

**Due:** Two questions based on reading due by email Thursday before class.  
Preservation ordinance analysis and brief class presentations.

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**Week #14, Friday, April 22, 2022**

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**Local Ordinance Presentations**

**Historic Preservation Law Tour of Philadelphia**

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**Friday, April 29, 2022**

**No Class**

**Reading Day**

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**Friday, May 6, 2022**

**No Class**

**Final Exams Due via E-Mail by 5:00 PM EST**