

WHITE PAPER: PRACTICE OPPORTUNITIES FOR ARCHITECTS, NO.1

“New Services for Architects: Helping Clients Discover Ways to Pay for Historic Rehab Projects”

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*[The following White Paper is posted in two parts on the author’s website at www.lawarkbuilding.com and will also appear in the September 2010 issue of “Licensed Architect,” published in print and online by the [Association of Licensed Architects](#). **The following is for informational purposes only and should never be constructed as legal or business advice – architects should seek advice only from own their legal counsel and business advisors in advance when considering whether to undertake any of the services discussed in this article.**]*

Ask a roomful of architects what each thinks is the most important element of a successful project and you’ll likely receive as many different answers as there are architects answering. But nearly everyone will agree that the single most *indispensable* element is *financing* – no money, no project. Real estate developers are always searching for two things: quality projects and ways to pay for them. For purposes of this article, the latter is where architects come in.

Though helping developers find ways to finance projects isn’t typically defined in their *scope of services*, architects involved in historic rehab may be able to expand their services and enhance their marketability by helping clients obtain *Historic Rehabilitation Financial Incentives* (Historic Rehab Incentives). In these challenging economic times of reduced demand for traditional architectural services, architects who retool their skill sets and embrace new practice opportunities may gain a competitive edge in the market by providing services with unique economic value which, unlike their traditional design and construction services, can be easily quantified and are always in demand.

1. *Historic Rehabilitation Financial Incentives – Benefits and Availability*

What are Historic Rehabilitation Financial Incentives?

Historic Rehab Incentives are financial incentives offered by local, state or Federal governmental entities for rehabilitating properties that are either *locally landmarked* and/or listed on the [National Register of Historic Places](#), and are intended to encourage reinvestment in historic properties.

While in some ways these incentives represent *found money* to developers, *found money* isn’t exactly the same as *free money* – as in a pot of gold – and in this case the gold *is* often guarded by one or more local, state or Federal governmental entities. But for all the administrative hoops and hurdles government sometimes imposes, the potential bump to a qualifying project’s proforma can make the difference between a successful historic rehab project, or - no project at all.

Historic Rehab Incentives Benefits and Availability

Historic Rehab Incentives take a wide variety of forms and can sometimes be used in conjunction with non-historic development incentives. Depending on the project, developers may simultaneously qualify for incentives that offer income tax credits or deductions, property tax abatements or Federal or state grants or property tax-derived grants from tax-increment financing districts (TIFs). Though less common, incentives could simply be favorable lending terms for construction or long-term financing, or even something as simple as accelerated local permit review which may shorten a project’s loan carry time. Even public financing, such as municipal bonds, should be investigated for availability.

The most common Historic Rehab Incentive programs are the Federal Historic Tax Credit Program, the Property Tax Assessment Freeze Program (Illinois), Class ‘L’ Tax Benefits (Cook County, Illinois), Ad Valorem Tax Exemption for Historic Properties (Florida), and the somewhat misnamed “*façade easement*,” with many states offering their own unique incentives.

Non-historic incentives that can sometimes be used in combination with historic rehab projects include, but are not limited to, Low-Income Housing Tax Credits, New Markets Tax Credits, and environmental and energy efficiency-based incentives. Both historic and non-historic tax credits can sometimes be sold to investors to generate much-needed project equity. Determining the possible combinations of available historic and non-historic incentives and how best to maximize their benefits is as much art as science and part of the creative financial challenge involved in financing historic rehab projects.

Architects should be knowledgeable about the *potential* value of the various Historic Rehab Incentives, but since applying for and receiving incentive approvals can be a lengthy and uncertain process, representations or warranties of their *actual* value should always be avoided – best left to the client’s accountants and legal team. Architects are most valuable in providing services that complement their traditional services by using their in-depth project knowledge to act as facilitators and liaisons between their clients and governmental entities and shepherding applications through the administrative process.

The availability of incentives will depend in part on a project’s geographic location, historic status and planned rehabilitation. Much research will be required to determine the available incentives. The Internet has made this easier, but phone calls and personal meetings with governmental entities are important for building relationships and exploring opportunities not listed online. Once potential incentives are identified, the next step in the analysis should be sorting out the viable from the non-viable programs to create a short list of possibilities for further investigation.

2. Administrative Requirements and Working with Governmental Entities

Though most Historic Rehab Financial Incentive programs are administered by one or more local, state or Federal governmental entities, some, such as the *façade easement* usually involve working with preservation-related not-for-profit organizations. At the local level, many cities with historic districts, especially if they’re Certified Local Governments, have historic preservation commissions. The City of Chicago has the [Commission on Chicago Landmarks](#). Each state has a preservation regulatory agency that serves a number of roles such as administering Historic Rehab Incentive programs, preservation advocacy, technical assistance, *National Register of Historic Places* assistance and state and Federal regulatory enforcement. In Illinois, that agency is the [Illinois Historic Preservation Agency](#).

At the Federal level, the [National Park Service](#) provides many of the same services that the state historic preservation offices provide and the two often collaborate on project review. Even preservation-related not-for-profit organizations such as the [National Trust for Historic Preservation](#) should be investigated for possible Historic Rehab Financial Incentives opportunities.

When working with preservation-related governmental entities, a few considerations are offered:

Who and How. Research should be conducted to determine which governmental entities administer which incentives, whether any coordination between local, state and Federal entities is required, the documents required for each incentive application, the correct contact people within each entity, and the administrative procedures that applicants and governmental entities are required to follow under the law.

Attitude and Approach. As an *Historical Architect* with the *Illinois Historic Preservation Agency* prior to law school and embracing the *Dark Side* (according to my architect and preservation friends), I observed that almost without exception, preservation-related governmental entities are both passionate and professional in the services they provide.

As such, architects should always approach these entities with an attitude about historic preservation that encourages mutual respect and cooperation. But architects should also remember that they’re being paid to advocate on their clients’ behalf, which sometimes means taking positions contrary to that of government’s. And while a tactful and professional approach, accompanied by supporting facts and good reasoning is usually most productive, architects should also be familiar with a governmental entity’s chain of command in the event higher-level members are needed to opine on the ultimate approval or denial of incentive applications.

Architects who provide Historic Rehab Incentive services should learn not only the legal and technical aspects of historic preservation, but should become fluent in the vernacular of Historic Preservation. For example, the *Secretary of the Interior's Standards for Rehabilitation* is just “the Standards.” The *National Register of Historic Places* is just “the Register,” the *National Trust for Historic Preservation* is just “the Trust,” and there exists a whole alphabet of acronyms to be learned as well. But to my knowledge, preservationists don't have secret handshakes to identify each other – it's simply a matter of noticing the set jaws and flinty gleams in the eyes of those who recall the fate of *Penn Station* or the old *Chicago Stock Exchange* building – or any local landmark for that matter.

Meetings, Documents and Records. If a picture is worth a thousand words, then a project site visit by a government representative – preferably during a project's planning phase – is worth a thousand pictures. Savvy developers often request site visits prior to taking ownership of a property. Site visits allow government representatives to see projects firsthand and assess the existing conditions and the impact of planned rehabs on their historic character and features.

Problems and solutions should be identified as early as possible and detailed records of meetings and phone calls should be kept, and emails and other correspondence saved. Sharing summary memos is an effective way of tracking important meetings and decisions - and for jogging faulty memories.

3. *The Secretary of the Interior's Standards for Rehabilitation – What They Mean and What They Really Mean*

Central to any project's approval for Historic Rehab Incentives is its compliance with *The Secretary of the Interior's Standards for Rehabilitation* (the “Standards”), which are published by the *National Park Service* (NPS) as a set of guiding concepts to ensure that properties retain their essential historic character during rehabilitation. While complying with the Standards *can* mean qualifying for incentives, failing to comply *almost always* means denial. In addition to denied Historic Rehab Incentives, locally landmarked projects that fail to meet the Standards may also fail to obtain permit approval from local historic preservation commissions.

But despite the importance of a historic rehab project's compliance with the Standards, and, despite some of the Standard's interpretations having become a little calcified over the decades, they most definitely aren't carved in stone. The Standards are not *prescriptive* specifications; they're *performance* guidelines that require interpretation on a case-by-case basis.

The NPS describes the Standards as follows:

“The Standards are a series of concepts about maintaining, repairing and replacing historic materials, as well as designing new additions or making alterations. They cannot, in and of themselves, be used to make decisions about which features of a historic property should be preserved and which might be changed. But once an appropriate treatment is selected, the Standards provide philosophical consistency to the work.”

“The Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.”

Architects should have both a thorough understanding of how the Standards are commonly interpreted by governmental preservation entities, and of their *plain meaning* - the ordinary meaning of their language as gathered from a simple, plain reading of their text – without interpretation.

But of course, the *plain meaning* isn't always that plain. Consider *Standard No. 6*, for example, which states:

“Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.”

While this seems fairly straightforward, ambiguity and interpretation lurk everywhere – and just in the first sentence. What does “deteriorated” mean? How much deterioration is too much? What’s an “historic feature?” What constitutes a proper “repair”?

Who knows? Since no two projects are the same, interpretations of the Standards must be adapted to each project – but it’s important that it’s done in a consistent, logical and *legally defensible* way. Neither developers nor governmental preservation agencies can lay claim to correct interpretations and applications of the Standards if they can’t back up their conclusions with well-grounded reasoning that doesn’t rely on past interpretations which may, or may not be factually similar. Repeating wrong interpretations over a long time won’t eventually make them right.

Architects who assist owners in obtaining Historic Rehab Incentives will need to be fluent in both the plain meaning and the common interpretations of the Standards. But the good news is that mastering the Standards isn’t too difficult, and some guidance exists.

The NPS publishes “[*Interpreting The Secretary of the Interior’s Standard’s for Rehabilitation*](#),” a series of bulletins that use case studies to illustrate their interpretations of the Standards. While helpful in understanding the NPS’s mindset, their reasoning can be a bit skimpy between premises and conclusions, without a deeper explanation of the underlying reasoning. But on the whole the NPS’s *Interpretations* can be useful for at least understanding how the NPS, state preservation agencies and local preservation commissions may interpret the Standards.

A better starting point in applying the Standards to any given project is to examine the legal documents that conferred historic status on the property – usually the *National Register of Historic Places* nomination and/or the local designation ordinance. If these documents make specific reference to certain features, materials and spaces as the basis for a property’s historic designation, then the Standards will be particularly concerned with those aspects of the property. If they don’t, then there may be more room for interpretation when applying those Standards.

There may be disagreements between government and owners when interpreting the Standards. In such cases, it’s entirely appropriate for architects to ask governmental entities to clearly articulate their positioning in writing referring to both the plain meaning of the Standards and the legal documents that conferred historic status on the property, and, without undue reliance on their past interpretations as *binding authority* – which they’re not.

Architects should be able to present their positions logically and persuasively on their clients’ behalf using the Standards to their benefit. Failing to do so may require owners to perform work not required by a reasonable reading of the Standards but nonetheless required by a governmental entity. Succeeding in doing so may actually save clients money and improve both a project’s bottom line and an architect’s value to the project and the client.

4. *Practice Considerations for Architects*

The following is a list – though by no means an exclusive one - of practice considerations:

Scope of Services. The way in which services are described in written agreements will depend on which services are being provided. If an architect is asked to investigate the range of Historic Rehab Incentives available for a given project, then all the steps of this investigation should be clearly described.

If an architect’s services progress beyond this stage to assisting clients in obtaining Historic Rehab Incentives, then great care should be given to drafting contract language which includes, among other things: describing exactly which Historic Rehab Incentives they’re assisting the client in obtaining; the steps involved for each incentive; service milestones (coordinated with compensation provisions); a list of other professionals the architect may be required to work with; and, exactly what services the architect is *not* providing.

Working With Other Professionals. The successful utilization of Historic Rehab Incentive benefits usually involves working with other professionals such as accountants, attorneys, appraisers or specialty consultants. Architects

might enhance their marketing efforts by identifying for their clients other useful professionals with Historic Rehab Incentive experience.

Compensation. Compensation will depend on exactly what services are being provided and a wide range of possibilities exists from hourly rates, to lump sum (or a combination of the two), or even a percentage of the benefits might be considered. How architects are compensated for their services should be analyzed with the same considerations as their other services.

Professional Liability. Obviously, new services entail new evaluations of risk versus benefit. Not all professional liability policies will expressly cover the services described in this article, so architects should thoroughly discuss liability coverage with their risk managers, insurance carriers and attorneys. As with any other services, much of the risk and potential liability can be reduced through proper contract drafting and ensuring that contracts contain – to the extent permitted by law – express limitations of liability, a disclaimer of representations or guarantees of the value of the benefits or success in obtaining them, acknowledgement by the client that no results are guaranteed, and other provisions that limit an architect’s risk for outcomes that are often beyond their control.

5. *Conclusion*

For architects unfamiliar with historic preservation, there may be a bit of learning curve in mastering the services discussed in this article. For others with experience working on historic properties, it’s probably more of a retooling of skills, rather than an overhauling. But historic preservation is not a difficult subject to master and architects who are already guiding the rehabilitation of historic projects are already knowledgeable about the details and information needed to help owners improve the financial performance of their projects.

Plus, working on historic buildings can be just plain *fun*.

About the author:

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