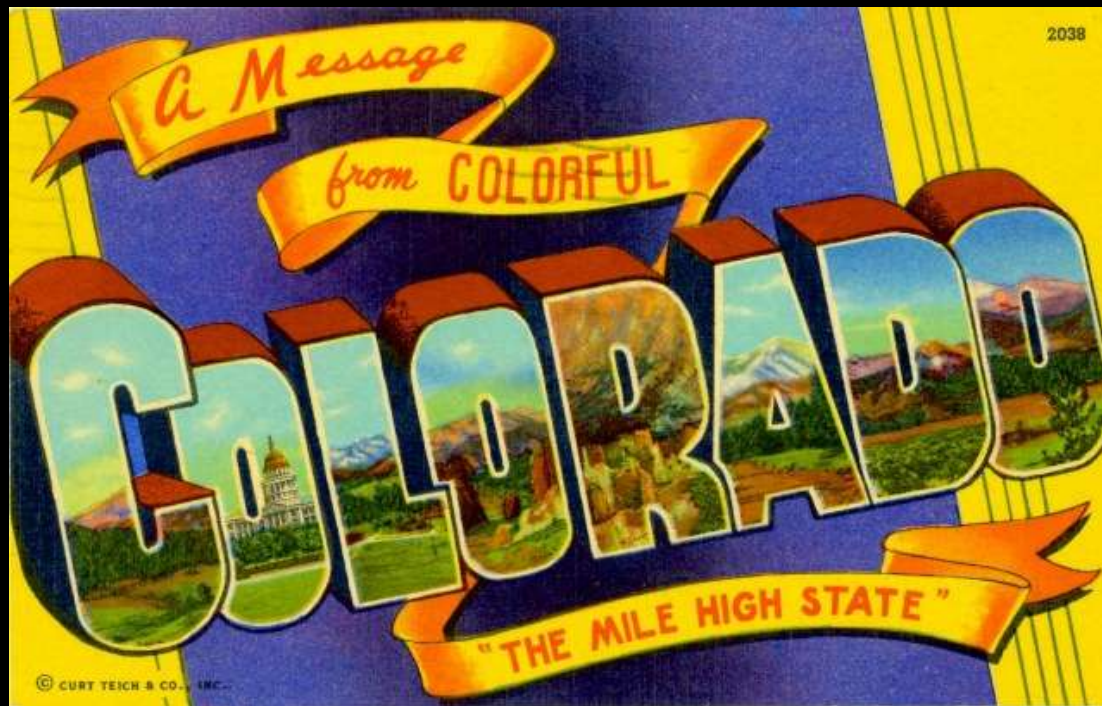


Legal Issues for Colorado Preservation Commissions

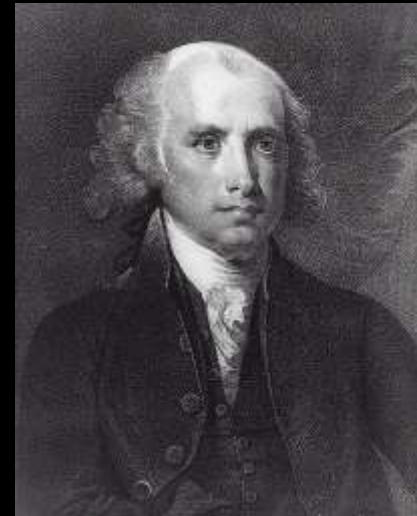


U. S. Constitution Bill of Rights

10th Amendment

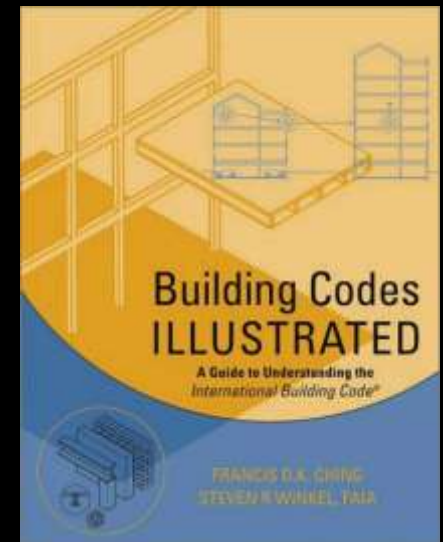
“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

James Madison



Police Power

- The authority reserved to the states by the Tenth Amendment and, in turn, delegated to local governments, that enables states to regulate the activity of the individual, in particular in his or her use of property.
- Examples include: public health and building regulations, zoning ordinances, subdivision regulations, sign regulations, and pollution or environmental controls **AND HISTORIC PRESERVATION ORDINANCES.**



In general . . .

The police power may be exercised, provided it :



- is not clearly arbitrary and unreasonable; and
- has a reasonable relation to the public health, safety, morals, peace and quiet or general welfare.

The Police Power and Land Use Control in Colorado

- Municipalities are granted broad police powers to enact ordinances with respect to any subject which appears necessary and proper for the security, general welfare and convenience of the municipality.
- Colorado Revised Statutes 29-20-104: Each local government within its respective jurisdiction has the authority to plan for and regulate the use of land by: (c) Preserving areas of historical and archaeological importance

The Police Power and Land Use Control in Colorado

Colorado Revised Statutes 30-11-107

- To provide for the preservation of the cultural, historic, and architectural within the county by ordinance or resolution;
- --designate historic preservation advisory board
- --designate historic landmarks and districts
- --accept dedicated and deeded easements
- --expend moneys to maintain deeded land, facilities, and structures
- --receive contributions and support from public/private entities for the maintenance

Magna Carta



Constitutional Protection of Persons and Property

5th Amendment

“No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”



14th Amendment

“. . . Nor shall any state deprive any person of life, liberty, or property without due process of law . . .

Colorado Constitution

Article I Section 3

... nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Article I Section 13

(A) Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property. ...



THROW
THE
BUMS OUT!!





- The regulation of private property will not constitute a taking, as long as:
 - the regulation advances a legitimate governmental interest
 - the property owner retains some viable use of the property
- Property owners may *not* establish a taking “simply by showing that they have been denied the ability to exploit a property interest that they heretofore had believed was available for development.”

Penn Central

- In deciding whether a particular governmental action is a taking, a reviewing court must examine the effect of the regulation on the *entire* property, and not focus on any one specific segment or interest.



Owner Consent

Property owners have no right under the constitutions of the United States or any state to stop the local nomination or designation process simply because they object to landmark or district designation.



DEMOLITION BY NEGLECT



What Is It?

• An owner intentionally allows a property to deteriorate, sometimes beyond repair.



- Owner defers maintenance beyond a reasonable point.
- Owner abandons a property.
- An active strategy to redevelop the property in the face of preservation or zoning laws.

Define It!

- Broomfield's ordinance includes a detailed list.

It shall be unlawful for owners of historic landmarks to allow:

- *The deterioration of exterior walls or other vertical supports*
- *The deterioration of roofs or other horizontal members*
- *The deterioration of external chimneys*
- *The deterioration or crumbling of exterior plasters, mortars, brick, stone or wood siding*
- *The ineffective waterproofing of exterior walls, roof and foundation, including windows and doors*
- *The peeling of paint, rotting, holes and other forms of decay*
- *The lack of maintenance of surround environment, e.g. , fences, gates, sidewalks, steps, signs, accessory structures and landscaping that produce a detrimental effect . .*
- *The deterioration of any feature so as to create or permit . . . unsafe conditions . . .*

Identify specific problems that will constitute demolition by neglect, such as:

- Foundation
- Exterior walls
- Roofs
- Windows & Doors
- Hardware
- Stairs, Porches & Appurtenances
- Door Frames
- Protective treatment



- Who initiates?
- How is property owner notified?
- Who conducts hearing? What is hearing process? Is HPC involved?
- Time frames for corrective actions.
- Appeals?



Enforcement!

... starts with *CONSISTENCY*.

Maintain a checklist of how enforcement is supposed to work in your community . . . And follow it!



Incentive Programs and Other Forms of Assistance Mitigate Criticisms

- Tax (state or local) incentives
- Low or zero interest loans
- Grants
- Volunteer programs



314 - GEORGETOWN LOOP, COLORADO.

