

Obtaining Historic Tax Credits Relies on Interpreting Standards

By Michael D. Binette



With the passing of the Tax Reform Act of 1976, Congress made tax incentives available for the historically responsible renovation and reuse of historic buildings and charged the National Park Service with the authority for administering the program. Since that time, commercial and residential real estate developers have availed themselves of the incentives to renovate thousands of historic properties according to the Secretary of the Interior's "Standards for Rehabilitation,"

and in doing so have contributed greatly to the preservation of the nation's architectural heritage. The standards consist of 10 "commandments," each of which contains either shall or shall-nots, which contributes to a certain resemblance to the original 10 commandments. And like those commandments, the standards have not changed. But over the years, the interpretation of the standards has become a skill not to be undertaken by the novice.

The stakes are great. Since 1986, a developer (or any other taxpayer) whose project is certified by the National Park Service as meeting the standards qualifies for a tax credit equal to 20 percent of the qualified rehabilitation expenditures. Thus, a project that can demonstrate \$5 million of construction costs attributable to the adaptive reuse of an historic building may be entitled to \$1 million of federal tax credits. Furthermore, that tax credit may be syndicated to investors. For commercial real estate developers, the hitch is that meeting the requirements of the standards usually incurs additional construction expense. The syndication of tax credits is central to the economic feasibility of the project, but the project cannot be certified by the National Park Service until it is completed.

The process of having a project certified consists of three parts, assuming the candidate building already is listed on the National Register of Historic Places or will be listed within 30 months of claiming the credit. Part one describes the building, its history and significant features. Part two describes the proposed renovation and how the renovation will affect each significant feature. The first two parts often are submitted together and reviewed by the State Historic Preservation Office and then by the National Park Service. If the project is not yet on the National Register of Historic Places, a National Register Nomination Form is filed after parts one and two are approved. Part three is the acid test, the last part of the application process. It is a report consisting mostly of photographs, documenting that the project was constructed consistent with the plans approved in part two.

Practical Application

So where's the challenge? After all, if a developer proceeds with the renovation after getting approval on parts one and two, and if the building is renovated accordingly, there shouldn't be a problem.

"The challenge is that a development timeline is often out of sync with the historic application timeline," said Paul Ferreira, managing principal of Newton-based Blue Hawk Investments. Over the last decade, Ferreira has successfully renovated four historic properties and successfully received historic tax credits. "The development timeline often requires you to complete your drawings and start construction before your part two is officially approved," he said. "In that case you have to make sure you have read the tea leaves properly and met the intent of the standards. An intimate

knowledge of construction, if not an outright integration between developer and the general contractor, is critical to the overall success of the project."

Leslie Donovan of Tremont Preservation Services, a historic consultancy in Boston, described the National Park Service review of parts one and two as typically taking up to three to four months. It is Donovan's job to help developers understand what is likely to be approved, as well as put together the applications themselves. Donovan points out that her recommendations are based on experience and help from the National Park Service itself. "Over time, the National Park Service has put out a lot of information on how to interpret the standards in published form," she said. Some of those publications include "Guidelines for Interpreting the Secretary of the Interior's Standards for Rehabilitation" (<http://www.nps.gov/history/hps/tps/tax/rhb/index.htm>), "Preservation Tech Notes" and "Preservation Briefs," each of which provide guidance in the form of case studies and technical information on a process or feature.

"The mistake a lot of developers make is to assume that because they were able to make this or that alteration to a historic building as part of a tax credit project in the past, they would necessarily be able to make the same alteration on a different project today," Ferreira said.

There is a perception among many developers that the interpretation and application of the standards has become tougher over the years. Taya Dixon, a historic consultant with Maynard's Epsilon Assoc., a firm that has completed numerous successful tax credit applications, said, "the interpretations of the standards by the National Park Service have become more discerning over the years based upon changes in technology and advances in theories of preservation."

Dixon offered the example of masonry products. "Five or 10 years ago people were using certain masonry products to consolidate deteriorated surfaces in historic structures which haven't held up. Obviously, the Park Service is not going to approve them as part of an application today."

But changing technology can work to the advantage of an applicant. "Modern aluminum window manufacturers can match historic windows with an accuracy they couldn't have 15 years ago," Dixon said. "As a result, the Park Service will often consider an aluminum replacement instead of insisting on wood on large projects." Another example is interior paint removal. "The development community consistently wants exposed brick in renovated mill buildings, but paint removal has always been an issue for the National Park Service because sand-blasting, as it used to be done, caused damage to bricks and beams," she said. "Today, modern low-psi techniques, if applied properly, can do the job without causing damage. As the park service has become more familiar with some of these techniques and if the proponent can provide convincing test patches, they will consider some proposals they would previously have rejected outright.

"The point is," Dixon noted, "that the park service looks at each proposal on a case by case basis."

Overwhelmingly, real estate developers working with historic buildings see the challenge of interpreting the standards in a manner that will result in approval and certification as manageable if the National Park Service's process is approached with respect and not taken for granted.

"To renovate a project to a historically certifiable level may typically add between 5 [percent] and 10 percent to the construction cost of a renovation project," said Larry Curtis, managing partner at Winn Development of Boston. "But aside from the benefit of the tax credit is the marketplace receptivity to quality historic structures renovated in a manner that both preserves wonderful architectural detail and is highly desirable to the buying and renting marketplace. That alone more than justifies the incremental added expenditures involved in obtaining a tax credit."

Nonetheless, the prudent developer will make sure the standards have been appropriately interpreted to obtain the credit