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## Can You Speed Up a Historic Tax Credit Project Review?

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Few things are more critical in real estate than the speed of getting a project to market. Timing can make the difference between success and failure. For historic tax credit (HTC) projects, the time when the application is under review is vexing. Program standards call for two sequential 30-day review periods: one at the State Historic Preservation Office (SHPO) and one at the National Park Service (NPS). During this time, there is nothing for the developer to do but wait.

Developers are disinclined to sit on their hands, however. They are more likely to ask to move to the head of the line. The developer usually has a good reason for his or her request, but when one developer cuts, everyone else waits longer. For the most part, SHPOs and NPS have addressed this situation by rigorously maintaining the queue.

Some think that allowing simultaneous submission to the SHPO and NPS would speed application review. The thought is that by so doing, the 60-day period would become 30 days, but this thinking is flawed. First, such maneuverings don't work for projects using state tax credits. Apart from that, NPS relies on SHPO's input to review the applications. Simultaneous submission would not allow the applicant to "skip" SHPO review. Reviews would still require 60 days. Because of this, NPS does not allow simultaneous submissions of initial applications. When it does allow simultaneous submissions in follow-up work, NPS clearly states that materials are to be submitted directly to the agency.

Another strategy developers sometimes use to speed the review process is to incorporate the SHPO's

recommendations into their designs before submitting the application to NPS. Many SHPOs provide applicants with copies of their project recommendations before they send them to NPS. Some developers are inclined to revise the project design in response to the state's critique. Developers think that by so doing, the NPS review will move faster. This actually backfires. SHPOs need to review any design changes, so the revisions actually restart the review process. It is best to allow the review to simply proceed and wait for the NPS decision.

So what can a developer do to speed the review process? The answer is actually pretty simple: submit a good timely application.

For its part, NPS has recognized that many projects will only move forward if the 20 percent HTC is viable. As such, the agency has allowed developers to submit applications based on schematic designs. While this enables developers to get conditional HTC approval and incorporate that funding source into their development plans, it can result in developers submitting flawed, insufficient applications. By submitting a considered, complete application, a developer can effectively speed up the application review.

So what makes a good application?

### Address All Aspects of the Projects

Developers need to understand that SHPO/NPS has 100 percent design approval on a project. Sometimes applicants think there is little that is "historic" in the building and so there is little for SHPO/NPS to review. Or, a developer may think that if the work does not qualify for the credit (e.g., new

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construction), then SHPO/NPS has no authority over the work. These thoughts show a lack of program understanding. SHPO/NPS has design review authority over all aspects of a project: exterior, interior, design build systems, rooftop mechanicals, new construction, landscape – everything. It is not simply a question of whether historic materials are being properly preserved, but also whether the new material is compatible with the old. There is no design aspect of a project that is outside SHPO/NPS's review.

### Document Existing Conditions

A tax credit project is about taking a building and changing it. To evaluate that change, the SHPO/NPS reviewer needs sufficient documentation of its existing condition so that they understand how the building appears today. Sufficient documentation includes having complete and accurate drawings of existing conditions (including elevations and all floor plans), supplemented by ample exterior and interior photography. Sometimes, existing conditions can be identified in demolition plans used for permitting, provided these drawings are accurate. SHPO and NPS have shown a willingness to use historic plans or those from the most recent renovation. However, often these plans are grainy, hard to read and usually inaccurate, sometimes showing features that have long since been removed. Bad documentation slows the review. Producing quality existing-condition drawings is an added expense, but these drawings accelerate the review and can help get approvals. Questions about existing conditions can result in back-and-forth correspondence, which translates into weeks, if not months, of delays. Without adequate documentation, NPS may put the project on hold and only restart the review clock after the requested material is received.

### Time Submissions Properly

There is an art to timing an HTC application. The developer doesn't need to wait until construction drawings are ready to submit an application. At that point, the project clock has been ticking and changes cost time and money. NPS has shown a willingness to review projects at the schematic level. The challenge is that "schematic" means different things to different people. There has to be enough content in the submission so that there is something to review. If there is no content, then at best, the applicant will receive an approval with a long list of conditions. Each condition will require follow-up submissions, each requiring 60 days to review. If the condition list is too long or too substantive, it will be difficult to secure a tax credit investor. At the same time, the developer takes on the responsibility to ensure that design changes are submitted in subsequent amendments, each with a 60 day clock.

To some degree, the discussion about when and how to submit the application is informed by the documentation of existing conditions. For example, window replacement is a major concern

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for both developer and SHPO/NPS. Windows are a major cost item and a character-defining feature with associated code issues relating to fire safety, Americans with Disabilities Act accessibility and energy efficiency. The decision to replace windows is actually a two-step process: “Can the windows be replaced?” and then, “What will the new window look like?” As much as developers may wish to jump to the second question, the first question is more important. To address the question, the original application should have sufficient information to justify the window replacement, but does not necessarily need to wait for the design of the new window. Not having an evaluation of the existing windows in the Part 2 submission will only mean that it will need to be addressed in a later amendment. This will ultimately slow the review.

### Carefully Schedule SHPO Tours

Many SHPOs consider a building tour an integral part of the review process. Again, timing a SHPO tour is an art. A developer should not delay the application submittal until the tour. Given staff and budget limits, scheduling may take a week or more. From our experience, a pre-application tour is far less effective than a post-submittal tour. Early tours often lack purpose and may end up more as a show-and-tell of interesting historic elements, rather than an informative examination of the property. It is best to do the tour after the application has been submitted, as even with the best project, there is a dynamic tension between the realities of markets and codes and the Secretary of Interior’s Standards. Conducting the tour after SHPO has had the opportunity for at least initial review of the application, allows for an on-site, thoughtful discussion of actual conditions and design problems.

### Limit Requests for Preliminary Design

Similar to tours, often a developer may need SHPO/NPS input on a design issue on a particular building. In some instances, this early input can define the project. As an example, fraternal buildings often have multiple ballrooms and meeting rooms, often in excess of what can be used in an adaptation; can these spaces be sub-divided? A 1950s era department store may have few or no windows; can windows be inserted? Answers to these fundamental questions may determine if a project moves forward. Here, preliminary design input from SHPO/NPS is critical.

By contrast, preliminary discussions about whether a storefront can be replaced or if a canopy can be installed are unproductive when asked in isolation. Projects are evaluated for their cumulative effect. Asking narrow questions in isolation puts the reviewer in a difficult position and can be counterproductive. Without seeing the rest of the project, an initial “yes” may later turn out to be a “no” and, conversely, given other work, a “no” could actually have a been a “yes.”

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### **Provide Sufficient Detail; Discuss Why Not Just What**

Some applicants believe that the architectural drawings are the primary source of information in the review and that there is little need to discuss proposed work in detail. In fact, the drawings are supplemental. If a work item is in the drawing but not called out in the narrative, it would be incorrect to consider it approved. Superior applications provide a full and detailed narrative of proposed work. For work items that bend the Secretary of Interior's Standards, it is important to discuss the why as well as the what. The better thought-out a project is, and the more SHPO/NPS understand each action the developer is taking, the greater the chance of approval. Common justifications for work that pushes the Secretary's Standards are "market conditions" or "code." Particularly, on the latter, there is a thought that "code" trumps the Secretary's Standards, which is not necessarily the case. In all instances, a thoughtful, clear and detailed discussion of why a change is needed, what alternatives have been explored and why the proposed action is the best possible solution help the reviewer appreciate the design challenge and open the door for, if not approval, then discussions about creative solutions. All this said, it is important that the developer have an explanation to support his or her position rather than just an argument against an unfavorable decision.

### **Conclusion**

The bottom line is that the best way to ensure a quick review is to produce a complete, good quality, well documented application that clearly documents existing conditions, articulates what you are doing and explains why it is appropriate. Requests for additional information invariably add months of review time. Submission of unrequested additional information mid-review only lengthens the review process. Tours are valuable tools but do not delay the submission to accommodate a tour. There are no true short cuts. Address the entire project and all of its aspects to receive project approval as quickly as possible. ❖



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