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Title

A Tale of Two Villages

Permalink

<https://escholarship.org/uc/item/5mc519bw>

Journal

Places, 7(3)

ISSN

0731-0455

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Publication Date

1991-07-01

Peer reviewed

A TALE OF TWO VILLAGES

There are some places so special that they set the imprimatur of value on our sense of the American landscape. Their aesthetic qualities and historical associations come together powerfully for us even if we have only experienced them two dimensionally while unfurling the pages of *National Geographic*. However, when these special places are threatened, we are all diminished, even if our memory is only imprinted by images in a magazine.

Such a place is the old village of Deerfield, Mass. — once a frontier outpost, then the site of a brutal massacre during the 1704 French and Indian War, and later the most affluent and elegant of the eighteenth-century Massachusetts towns in the Connecticut River Valley. Today another massacre is in the making. This setting — and others like it across America — are being surrounded by private developers making a quick killing on the sale of house lots, exploiting the values of these special places. The transformation of the surroundings of National Historic Landmark Districts like Deerfield and many of our most historic sites, parks and monuments, is generating national legislative proposals to increase protection of landscape context.

In Deerfield, the colonial past is still palpably present in a mile-long corridor of clapboard houses that salute the street with their pedimented doorways. One hundred fifty years ago, on a gentle mound rising above rich farmland, this street was viewed as handsome. John Quincy Adams, well traveled in his day, could exclaim, “It is not excelled by anything I have seen, not excepting the Bay of Naples.”¹

The street preserves much of its magic because, at least until now, it has retained its setting. It is a setting for all seasons that filters time through the stillness of eventide. The views between the houses look out to the hills where school children might still imagine Indians are lurking, waiting to swoop down during the French and Indian War, taking 50 hostages to Canada.

Photos courtesy Ronald Lee Fleming, the Historic Deerfield Foundation and the Waterford Foundation.

Fields remain close to the old Deerfield street. Intensely green in the summer light, the corn appears like waves, lapping up to the long peninsula of the main street, reminding the viewer that rich agriculture produced the prosperous material culture of these proud houses. From “The Bars,” the elegiac Mill Village road that follows the river south of old Deerfield Village, one can still look out across the meadows and tilled fields to the river, a view that has largely remained the same since the eighteenth century. This road wends its way past tree-lined banks with glimpses of the green river below and through an eighteenth century hamlet flanked with old sugar maples where large wooden houses sit back primly from the street.

Deerfield — nationally recognized for its numerous house museums, which are toured by more than 100,000 visitors every year — is just the sort of place that people assume is forever protected.

But if you stay on the road, climb a slight grade through a stand of trees and pass again into open fields, you will witness the spectacular planting of newly risen condominiums. Outfitted in the standard pseudo-Colonial ranchette amalgam, they flaunt their ungainly shapes against the carefully furrowed fields. The vista despoils the memory we have just stored and robs us of some of its meaning because it intrudes upon the fragile poignancy of this special setting. The condominiums are marching in thuggish rows, shouldering their way along the scenic river road toward Deerfield, and have now advanced to just a little more than a mile south of the village’s main street.

A local landowner erected 11 of these buildings in the first phalanx four years ago after giving local farmers only two weeks to come up with cash to buy the land. In 1989 the landowner built seven more a half mile closer to the village; some stand empty in their cheap particle board construction. Their basements flood in wet weather, which is making it hard to sell them. They overlook the gently rolling fields from a vantage point that affords that classic vista of the Connecticut River Valley — long narrow tobacco barns, expansive fields and the meandering river.

In Deerfield village, most of the buildings along the historic corridor are owned by three private schools or Historic Deerfield, Inc., which Mr. and Mrs. Henry Flynt founded in

1952. The Flynts became interested in Deerfield when their son was a student at the Deerfield Academy (one of the village’s private schools) in the 1930s and began acquiring and restoring the old houses.

But the fields that so handsomely define the mound of the main street are, for the most part, owned by four farming families and remain loosely zoned as residential/agricultural at two acres per residence. Their low-lying meadow land is not clearly demarked as “wetlands” and thus is not subject to special scrutiny for building permits.

Even though the Flynts and their allies went all the way to the White House in the early 1960s to stop the then-new Interstate 91 from dumping its access ramps in the north meadow, the rude arrival of the condos and the subsequent acquisition by developers of a 106-acre parcel of largely wetlands near the condos demonstrates how haphazard and provisional local planning capabilities are.

Despite the acquisition of some open space easements by Historic Deerfield, advice from a plethora of consultants (including state agricultural extension agents, the American Farmland Trust, Trustees of Reservations, the executive office of Communities and Development, and the Center for Rural Massachusetts), consciousness raising during land use conferences and an emerging land trust movement, this very special place is being ruined bit by incremental bit before our eyes.

How could this happen in a nation that has had a national preservation act on its books since 1966?

Deerfield has long been recognized as a National Historic Landmark, the highest category on the National Register of Historic Places. But that listing only requires that there be an environmental impact assessment for certain federal actions affecting such property. It does not require that local land use laws be compatible with the national recognition of a district’s historic character (probably fewer than half the 362 districts with National Historic Landmark status have local land use protection), and even when the two do overlap, in most cases local historic districts are drawn so narrowly that they do not protect the environmental context. Deerfield still has no local historic district; four attempts at forming one have failed, beaten back by residents who fear that such designation would dictate the color they must paint their houses (a myth, as the choice to regulate paint color is a local option).



Deerfield, Massachusetts.



Our sense of the historic character of America's rural towns is framed by the landscape that surrounds them.

Another part of the answer is that the very nature of small communities that possess these extraordinary scenic assets usually prevents them from establishing effective zoning, or establishing it in a timely fashion. In Deerfield, the part-time administrative assistant who responded to requests for planning changes was one of only a handful of paid professional employees; the township relies heavily on overworked volunteer boards. These boards have some able members, but like most small town boards they operate on a reactive basis, with rivalries between villages, inhibition among neighbors about stepping on the toes of anyone who wants to make money out of land and a fear of getting involved in what is perceived as “other people’s business.”

Deerfield’s open space plan remains unfinished, even though the area has been on a state inventory of significant visual resources since the early 1970s. Until the plan is completed, Deerfield cannot obtain federal or state funds for purchasing open space. (In any event, Massachusetts is broke right now after allocating more money for open space acquisitions than any other state.)

The various private schools, which are the town’s principal property owners, have been slow to share information about their plans; they are only now developing a joint land trust though their holdings comprise several of Deerfield’s most important viewsheds.

Is there hope of stronger state regulatory review? Massachusetts has an environmental bill of rights dating from 1972 that states that people shall have a right “to the natural, scenic, historic and aesthetic qualities of this environment,” but not many specific laws to help preserve places like the fields around Deerfield. There has been talk of designating what remains of the river byway as a “scenic road,” but the state enabling legislation for scenic roads makes this decision a local responsibility that can be pursued or not; there is no requirement that localities protect what is handsome and has been handsome for hundreds of years.

Massachusetts also has statutory authority to create “critical environmental areas”; 11 have been designated along the state’s coastline (because of more aggressive action by the federally authorized coastline management agency) but only three elsewhere — thus imposing stricter standards for wetlands permitting. The commonwealth’s Department of

Environmental Management, with a broader mission than the Federal coastline agency, is now taking responsibility for inland sites.

With more condos looming on the Deerfield horizon, the urgency of the situation finally manifested itself in the spring of 1990. Historic Deerfield organized a very local and (intentionally) non-threatening land use conference, conducted for local property owners by the well respected Conway School of Landscape Design. Located nearby, the school has been deploying its students to prepare open space guidelines for the village that would encourage open space conservation.

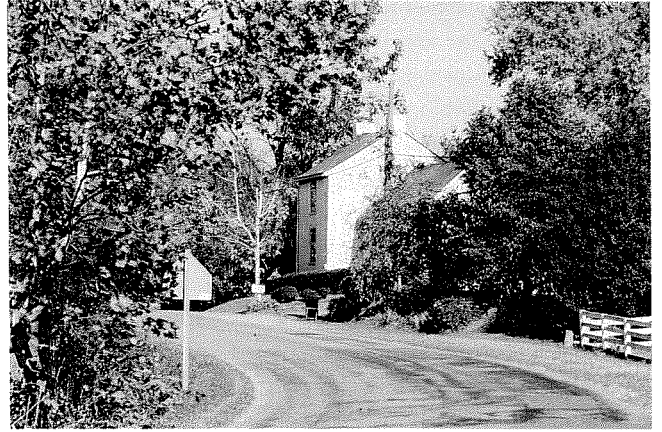
The Deerfield Conference may, in fact, lead to a compact between some of the landowners, though the largest farmer, with holdings in the north meadows, has not yet expressed any interest. A local court, acting on suit filed by Historic Deerfield, enjoined the zoning board to stop a developer with plans for an industrial park on the large acreage south of the condos. The organization asked the developer to meet a requirement of the 1972 state law that an environmental impact statement be filed for the project, and thus delayed any precipitous action. Findings are bearing out the contention that most of this acreage is wetlands, but sentiment among town selectmen and planning board members is still pro-growth.

Waterford, Virginia

Waterford, nestled in a bowl of soft hills in western Loudoun County, is approximately an hour’s drive from Washington. Its main street of brick, stone, clapboard and log houses reflects 250 years of continuity. Settled by the Quakers, the village is also a National Historic Landmark District with handsome viewsheds of rural landscape from its main street.

The protective Waterford Foundation has sought to acquire easements on buildings since 1944 and more recently on the land in and around the village. But its bucolic setting remains at risk. Even places like this, with constituencies that have cared about them for decades and non-profit foundations to encourage their preservation, find it a full-time chore to remain vigilant.

The Loudoun County supervisors have yet to align the local zoning with a county preservation plan (funded by the



Waterford, Virginia. Towns, fields, forests and creeks combine into an archetypal landscape.

Foundation) that called for limiting development on the five farms that form the viewshed around the village and preserving some of the open space. Meanwhile, as development pressure sparked by Dulles Airport grows, four of the farms are either under contract agreement or for sale.

In September 1988 the National Trust for Historic Preservation put Waterford on its list of the 11 most endangered landmarks, along with old Deerfield, because one these farms (the 77-acre Huntley farm) was finally sold — to a developer who planned 64 houses on pastureland at the east end of the village. After negotiations and national publicity, a compromise was reached in October, 1988. The developer agreed to reduce the number of units in the project to 14, to nestle them in two clusters in woodland that surrounds the



pastures adjacent to the village, and to preserve 55 acres in open viewshed. The Foundation, in exchange, paid the developers \$200,000 for the scenic easements; half the money came from the state.

Has Waterford been saved? “Not so,” declared Catherine Ladd, executive director of the Foundation:

As the zoning stands today, 292 new structures could be built within the landmark's 1,420 acres, on one to three acres per dwelling unit. This would more than double the current number of structures [110], thereby obliterating the character and integrity of the landmark and causing instant de-designation. We can either fight in court or purchase to own. The county won't downzone as the Waterford Area Management Plan recommends, or extend the local historic district beyond the village to encompass the viewsheds within

the National Historic Landmark District because it simply doesn't have the staff, tools and resources to do it.

A year later, in October, 1989, a consortium of 132 Japanese investors acquired the 2,800-acre Firestone Farm, which is just west of the national landmark district and constitutes a major piece of the viewshed, for \$26 million. By October, 1990, four new houses were nested on the ridgeline of the Bishop Farm, rising above the village to the east and within the landmark district. And by year's end, the 1,440-acre Hutchison Farm, which includes 300 acres in the northern hillside of the landmark district, came on the market. The land was priced at \$10,000 to \$13,000 an acre; the Foundation would have needed more than \$17 million to acquire the farm. Although a sluggish real estate market has put the sale on



hold, the Hutchisons may begin developing lots themselves to generate income.

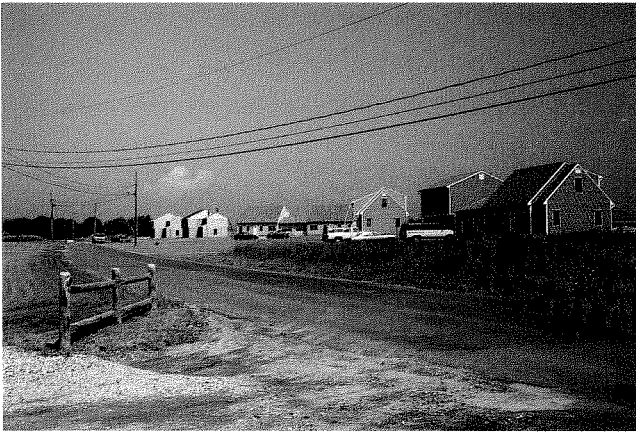
The Foundation's urgent appeals to national conservation groups like the American Farmland Trust went unanswered (except for the possibility of a bridge loan at the prime lending rate) because the land was priced too high. The Trust for Public Land said it might be willing to make a bridge loan if permanent financing were arranged by someone else. But the purchase figure is staggering to the Foundation, strapped as it is by having to buy one large in-town property already and by its struggle to reduce the proposed development on the Huntley Farm. The Waterford Foundation continues to look desperately for sources of money and creative financing options, but so far has had no success.

But thoughtless development ignores this landscape tradition.

This fragile and beautiful place, perhaps the most unspoiled historic village setting near a major metropolitan area, remains in grave peril because there is no apparent political will at the state or county level in Virginia to limit growth effectively — even though roads and sewer systems are inadequate to accommodate it, a majority of the inhabitants of the village do not want it, and it is a county policy to maintain the rural quality of western Loudoun County.

Looking for National Solutions

Once special resources like Deerfield and Waterford are gone, they are gone for all of us. We need to give these places immediate protection as “areas of critical environmental con-



cern” where permits for changes in use, density and design are reviewed. We must allow the broader public interest to prevail where there are values that are identified as of state or national importance, rather than allowing selfishness or short-sightedness to reign.

Reacting to a local planning system that is designed to fail, as Deerfield and Waterford poignantly illustrate, and finding states as yet unprepared to meet the problem, preservationists are increasingly looking for national solutions. They have drafted a National Heritage Conservation Act to protect the context of National Historic Landmarks as well as areas around national parks, monuments and battlefields — the goal that could catalyze a needed land use alliance between those who wish to preserve historic and natural resources.

The strongest version of the bill would allow preservationists to nominate nationally significant properties by petition, require the review of existing National Historic Landmarks so that those that do not meet current criteria for national significance can be taken off the list, and afford stronger and more consistent review of actions by other federal agencies. The Secretary of the Interior would be authorized to enter into preservation agreements with private property owners whose lands are endangered, require a “cooling-off period” before those owners could proceed with development plans, and provide planning grants for local communities. The bill also would provide funds for emergency acquisitions and penalties for “deliberate and knowing” destruction of nationally significant sites. Importantly, it would also provide citizens with the



right to sue the government or the property owner for failure to protect resources.

But the proposed legislation still has a critical weakness: It would grant the federal government authority to negotiate only when there is “owner consent.”

If the situations in Deerfield and Waterford have any message, it is that we cannot expect private property owners to preserve and enhance, voluntarily, the character of an area. We cannot count on local land use regulation as a national preservation policy tool. Nor can we rely upon any level of government to pay the enormous quantities of money that these owners claim their property rights are now worth.

American zoning case law provides many precedents for the right of government to reduce the speculative value of

property through regulatory action without paying compensation to the owner. There is no “taking” of property under the Fifth Amendment as long as the owner retains some use and therefore some value in the land. And a more comprehensive accounting of the cost of development would calculate the amount by which public values are diminished if any of these precious lands were developed and their special qualities sacrificed for private gain.²

The federal government could prod localities by acknowledging the importance of protecting areas that surround designated “national landmarks.” What is the sense of making such a designation if the areas around such sites can be converted to uses that erode the historic character of the sites? We have a very limited and discrete number of National Historic Landmarks, so we ought to require that local land use regulations, particularly zoning, be compatible with the character of these sites and that local actions preserve and enhance that character.

After all, the escalating value of land is the result of many kinds of public decisions and investments — in Deerfield the cornfields are valuable for condo sites because of access to an interstate highway that allows isolated condo owners to commute an hour to jobs as far away as Hartford. In Waterford, part of the value of buying a manor house in the pasture would be the exquisite pleasure of looking at historic Waterford’s hard-fought-for investment in a handsomely preserved town.

But it takes a certain courage to downzone — to risk the displeasure of neighbors, or perhaps to deprive a brother-in-law of a job as a contractor. It is questionable whether the town meeting in Deerfield or the Loudoun County supervisors will find that courage or that sustaining wisdom in a majority who makes these decisions, no matter how many public interest consultants come to town to talk about the common good. That is why these issues have to be addressed by other levels of government where a broader review of what constitutes the public interest can prevail.

British land use case law shows how cleverly worded legislation can expand the grounds upon which objectionable projects can be challenged. Obviously, wellcrafted legislation can result in a different flow of court interpretations. The British Town and Country Planning Act of 1971 uses the words “conservation” and “enhancement” together; a recent legal test of

this language in a conservation district found a judge denying a building permit while interpreting the word “enhancement” as requiring the evaluation of whether a proposed change in density would enhance the character of a district. This interpretation means that the issues raised by new development would include not only the attractiveness or siting of new development, but whether a change in use or density would damage the very character of a place.³ One outcome in areas where the survival of rural values are at stake could be limiting the number of houses in a historic village, rather than trying to hide them cleverly in the trees (as a recent award-winning and beautifully illustrated book by the Center for Rural Massachusetts suggests).⁴

Building a Larger Constituency

We must do more than draft legislation. We must build the public and governmental awareness that will result in demands for stronger protective legislation. Certainly, having additional funds for interpreting sites (something that Waterford does now in the old one-room schoolhouse used in the 1880s for the village’s African-American children) is essential if preservationists are to build a constituency for major landmark districts. Just as a percentage of public funds is allocated for public art at federal, state and local levels, a percentage of funds should be earmarked for interpreting national historic landmark districts or other critically important sites.

The way to temper resistance is to show the owners what is happening and how rhetoric about property rights is being misused. We need traveling exhibitions that show Congress and state legislatures the visual impacts of defilement and the spiritual desolation that accompanies it.⁵ We need to know what is being done elsewhere so we can give state and national legislators a sense of urgency and perspective. Conservatives should want to conserve the values of this country as they are inculcated in the landscape just as much as liberals should.

Preservationists need to orchestrate the creative labors of writers and artists to evoke the values of these places — as Tom Wicker and Russell Baker have done and as Oliver Wendell Holmes did so effectively with his poem about “Old Iron Sides” 150 years ago. This will require conviction, dramatic flair, a precise passion and a comparative command of

the facts — knowing what other countries are doing in order to give Congress a sense of urgency and perspective.

Making sites physically accessible also strengthens and builds the constituency for preserving the character of these areas. The Waterford plan includes an easements program for trails along the creek so that people can walk through the district. Similar ideas have been proposed for Deerfield.

Most preservationists do not understand that by maximizing the pleasure, accessibility, informativeness and attractiveness of historic sites, they can reach the far greater constituency that is not inclined to visit historic sites. State historical commissions, preoccupied with the tedium of listing properties on the National Register and running (usually) individual-building grant-in-aid programs, often suffer from the same single-purpose fixation that afflicts the highway engineers or insurance lawyers.

Preservation advocates at all levels will have to take a more assertive role. Preserving Waterford means going far beyond setting up a National Heritage Education Center in the old village school. If we are to deflate all the flummery about the sanctity of private property rights that masks so much raw greed and stupidity, and with it the erosion of public values in the land, we need to know about the specialness of the Deerfields and the Waterfords, which so palpably evoke the unique contributions, the substantial achievements — even the aesthetic power — of our culture.

We do not want that special experience, that power of place, to be fragmented through the kaleidoscopic views of tract housing or the detritus of the commercial strip. The time for comprehensive preservation legislation is now. It's time to go beyond drafting plans and updating lists of threatened sites; it's time to present our story — the living story of places — to the nation in a dramatic way. The Deerfields and Waterfords of the U.S. cannot wait. Using national authority to defend our national identity does not take away our freedom; it affirms common values, and it is a common-sense response to the paralysis at the local level.

Notes

1. *History of Deerfield, Vol. 1.* (1895), p. 29.
2. Pace University Professor John Humbach, an authority on the “takings” issue of the Fifth Amendment, is quite clear on this. He writes, “No such private sovereignty in the use of land was ever premised in the law, certainly not in the common law.... The claims, moreover, are inconsistent with the social obligation of property that is inherent in the structure of American law.” (From “Law and a New Land Ethic,” an unpublished essay).
3. Denzil Millichen, “Steinberg and the Importance of Enhancement,” *Heritage Outlook* 6:2 (1989).
4. Robert Yaro and Randall Arendt, *Dealing with Change in the Connecticut River Valley: A Manual for Conservation and Development* (Amherst: Center for Rural Massachusetts, 1988).
5. The Townscape Institute, a public interest planning organization, recently organized such an exhibit, entitled *What So Proudly We Hailed*. It visually documents, with 347 photographs and a 14-minute video, the land-use despoilation in and around places like Civil War battlefields, Native American Petroglyphs near Albuquerque and Amish farmlands in Pennsylvania. It also shows alternatives — heritage corridor systems and effective use of design review authority in proposals for the Hudson River Greenway. Co-sponsored by local preservation organizations, it is travelling the country to draw attention to the need for national policy change.