# **Building Redevelopment 101: Using Tax Credit Financing**

RevitalizeWA 2013 Conference Vancouver, WA May 16, 2013

#### Nicholas Vann

Historic Architect, State of Washington Department of Archaeology and Historic Preservation

Stephen Day, AIA
Stephen Day Architecture PLLC



Farrell Building, Camas, WA

# Tax Credit Essentials – Powerful Tools in Preserving and Revitalizing Historic Architecture

#### Stephen Day, AIA

1326 Fifth Avenue, Suite 654
Seattle, WA 98101
(206) 625-1511
<a href="mailto:stephen@">stephen@</a>
<a href="mailto:stephen@">stephendayarchitecture.com</a>



Arctic Club Hotel, Seattle

# Stephen Day Architecture PLLC focuses on:

- Preservation architecture / law
- Historic properties re-development and partnership structuring
- Design analysis and research related to historic properties redevelopment
- National Register nominations and related tax credit applications

Stephen Day, AIA (206) 625-1511 stephen@stephendayarchitecture.com sday@rp-lawgroup.com.com



Colman Automotive Building, Seattle

# **Tax Credit Segment:**

- I. Background on the Credits
- II. Basic Rules for the Credits
- III. Using the Credits –For-Profit andNon-Profit Users
- IV. Washington Case Studies
- V. Tax Credit Project Checklist



Hotel Carlyle, Spokane

## I. BACKGROUND

Tax Credits and tax credit laws can be great tools to use in architectural preservation

Can produce needed cash equity early in these projects

Credits can turn marginal projects into feasible projects



Fox Theater, Spokane

# I. BACKGROUND – Legal Foundation for the Credits

Historic Preservation is a "legitimate governmental role" (Penn Central v. New York City), upholding incentive programs in exchange for limits on demolition and alteration of landmarks...



Grand Central Station, New York

#### NORTHWEST EXAMPLES: ARCTIC CLUB

- Arctic Club Hotel, Seattle
- Approximately \$29
  million in qualified
  rehab expenses
- Approximately \$5.8 million in tax credits to investors



Arctic Club Hotel, Seattle Weaver Architects + Stephen Day Architecture

#### NORTHWEST EXAMPLES: FARRELL BUILDING

- Farrell Building, Camas, WA
- Approximately \$675,000 in qualified rehab expenses
- Approximately \$135,000 potential in tax credits



Farrell Building, Camas, WA

#### II. THE HISTORIC TAX CREDIT PROGRAM: BASICS

#### A. WHAT IS THE PROGRAM?

#### **Actually, TWO PROGRAMS:**

- A 10% credit for the rehab of "non-historic" (non-certified) and non-residential structures built before 1936
- A 20% credit for the rehab of "certified historic structures"



Harold Poll Building, Seattle

# 20% Federal Tax Credit on Qualified Rehabilitation Expenditures



#### WHO DOES WHAT?

#### STATE HISTORIC PRESERVATION OFFICE

- Technical assistance (consultation)
- Initial contact with property owners
- Reviews Tax Credit Applications



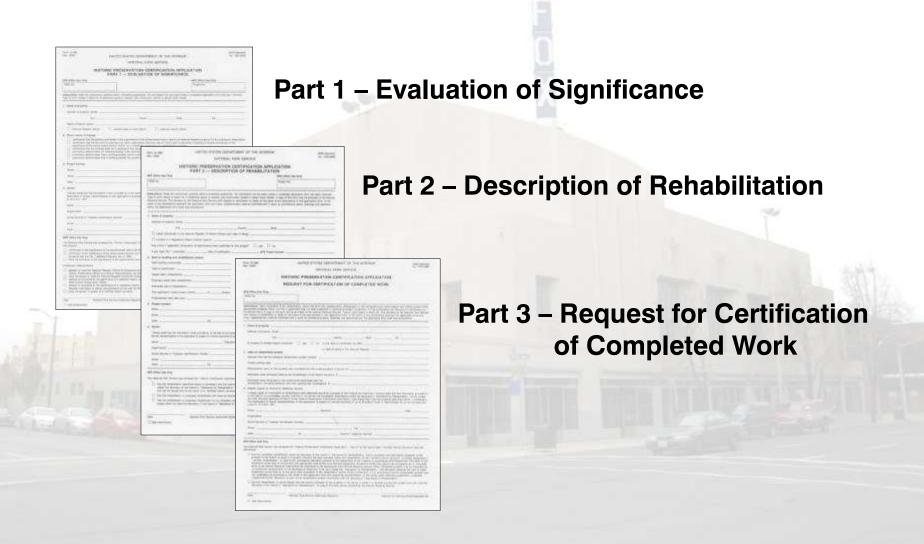
#### NATIONAL PARK SERVICE

- Technical assistance (publications)
- Administers Tax Credit program
- CERTIFIES National Register listings and Rehabilitations for Tax Credit program



# **BECOMING A CERTIFIED PROJECT**

Complete a 3-part application



Since 1976 when the program began:

38,700 projects nationwide \$66 Billion Total Rehab Expend.

\*\$106.1 Billion (adjusted for inflation)

~1,100 projects / year

~\$3 billion / year (adjusted for inflation)

STATS IN WASHINGTON STATE

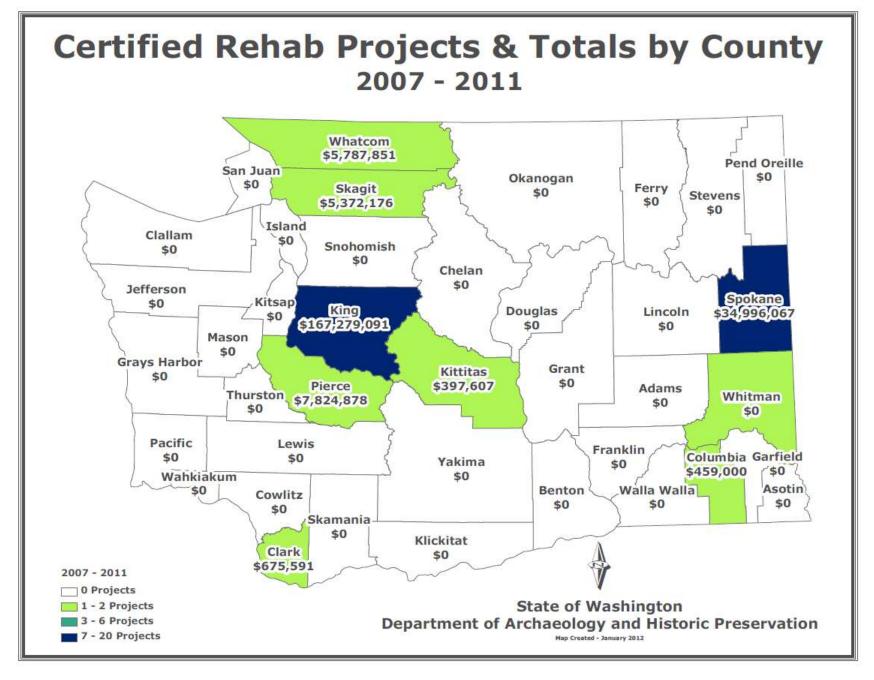
Since 1978 when the program began:

260 projects statewide \$974 million Total Rehab Expend.

120 Seattle projects for \$632 million Total Rehab Expend.

#### SOCIOECONOMIC IMPACTS

- **Jobs created** (2.4 million 1976-2012; ∼60,000 in 2012)
- Increased property values reuse vs. blight
- Cumulative Economic Impact = \$245.2 billion in output
  - GDP = \$121.2 billion Government, Services, Finance/Ins./Real Estate, Retail, Wholesale, Transp/Utilities, Manufacturing, Construction, Mining, Agriculture
  - Personal income = \$89.1 billion
- Cost of program vs. net gain in Federal tax receipts
  - (\$20.5 billion in tax credits vs. NET GAIN \$25.9 billion in Federal tax receipts)
- Environmental impact "the greenest building"
- Social impact maintaining community character / sense of place



#### PROJECTS AT A DISADVANTAGE

- Smaller Projects
- In Communities with little or no knowledge of program
- In areas where technical expertise in preservation and craftsmanship is limited
- Those that do not meet Qualified Expenditure Requirements

#### **Addressing Program Shortfalls**

- Outreach:
  - CLGs reaching out to property owners and developers
  - Encourages development in smaller communities
- Education:
  - Planned workshops with focus on Eastern and Central Washington
  - Learn from other states

FOUR BASIC REQUIREMENTS



FOUR BASIC REQUIREMENTS



# SECRETARY OF THE INTERIOR'S STANDARDS

**3 BASIC PRINCIPLES** 

- 1. Repair or replace in-kind
- 2. Retain historic character
- 3. Compatible, reversible interventions



FOUR BASIC REQUIREMENTS

The project must be **SUBSTANTIAL** — meaning the amount spent on the rehab must be at least \$5,000 and meet or exceed the IRS definition of the adjusted basis of the building.

Normally this means the value of the building itself, minus any depreciation and land value.

FOUR BASIC REQUIREMENTS

The property must be INCOME PRODUCING, including commercial, office, retail, and rental residential.

WHO QUALIFIES?

The applicant must be an active participant in the development of the project, usually the owner, but often a group of investors forming a limited partnership or corporation.

Cannot be a non-profit or government entity unless a private entity is established (limited partnership, LLC, etc.)

#### II. BASICS

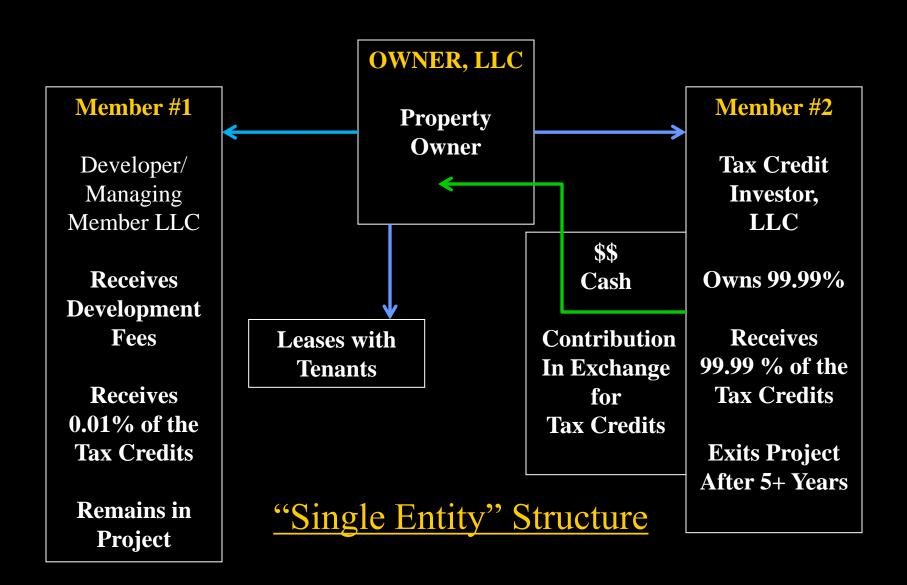
#### HOW DO THESE PEOJECTS GENERATE CASH?

- Rehab tax credits used by owners or long term lessees of certified historic structures
- Can only be used in limited circumstances by individuals
- <u>Taxable corporations</u> are typical credit users

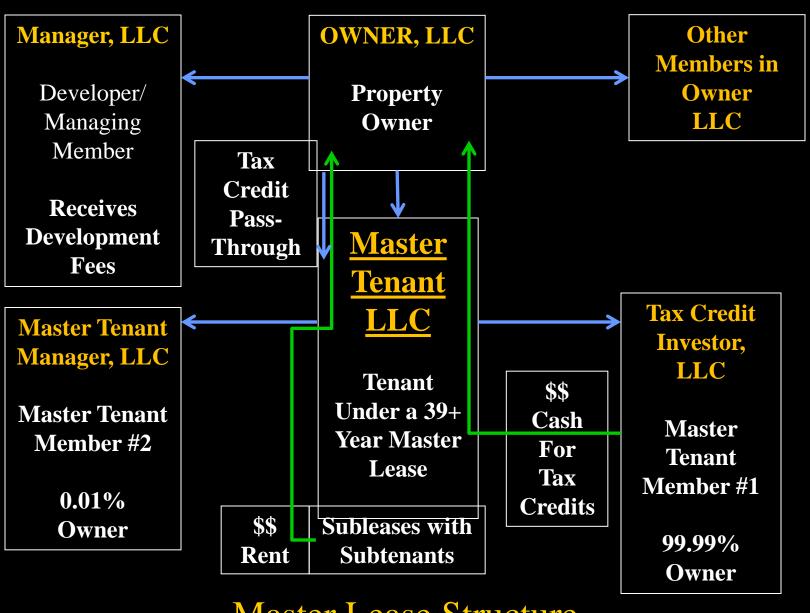


Lowman Building, Seattle

#### **TYPICAL DEAL STRUCTURE #1**



#### **TYPICAL DEAL STRUCTURE #2**



Master Lease Structure

# SIMPLEST STRUCTURE: OWNER USES THE CREDITS INTERNALLY

OWNER, LLC

Property Owner is the User of the Historic Commercial Building

Owner uses the credits to offset tax liability of Owner's company

Owner/User Structure

#### **BASICS**

#### **ALLOCATING OR TRANSFERRING CREDIT:**

- Tax credits are not freely transferred
- Cannot be allocated without the underlying ownership interest or under a qualifying lease
- User must be an owner or master tenant
   credits not "sold" to outside parties



Arctic Club Hotel, Seattle

#### **BASICS**

# HOW LONG MUST TAX CREDIT USER BE IN PROJECT?

- Tax credit user must be owner or lessee for at least the minimum 5 year holding period
- Must be owner or lessee before the rehab is placed in service – cannot come in later



Holley Mason Building, Spokane

#### **BASICS**

#### • TAX CREDIT RECAPTURE

Can take place if tax credit user sells interest (or master lease is terminated) before end of 5 year holding period



Holley Mason Building, Spokane

### III. OPPORTUNITIES IN USING THE CREDITS

- Typically taxable corporations
- Often local lenders on smaller projects
- Can be individuals, if they are "real estate professionals"...more later



The Hastings Building, Port Townsend, WA

• T.C. Investor must have an ownership interest in project or be a master tenant under a permitted long-term lease



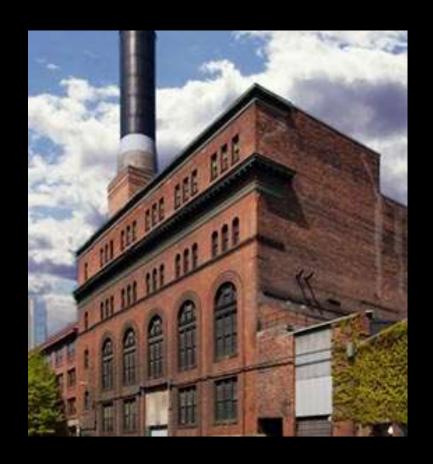
Lowman Building, Seattle

- Tax credit investor typ. Pays anywhere between 65-95 cents per \$1 dollar of tax credit
- Tax credit "price" varies depending upon size, location, complexity and nature of the project



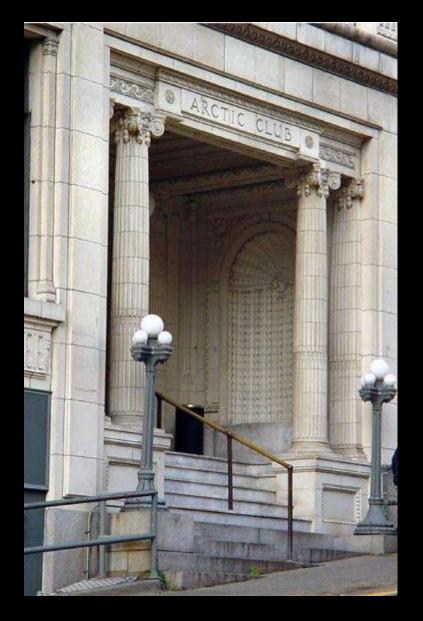
Seaboard Building, Seattle

- The tax credits must be allocated within the partnership in the same proportion as profits/losses are allocated
- If 99% of the credits are allocated to an investor, so must 99% of the profits/losses



Seattle Steam New Post Building, Seattle

- The minority owner is typically the developer and project manager – and the owner with day-to-day control
- The minority owner is paid fees that absorb the great majority of net cash flow



Arctic Club Hotel, Seattle

• A "put-call" agreement between the partners sets out the terms for buying out the tax credit investor at some point after the minimum 5-year holding period



Hale Building, Spokane

- Tax credits can be used by tenants under a long term lease (39 + years)
- Then: use the "put-call" agreement to buy out the tax credit investor after the 5-year min. holding period



Fox Theatre, Spokane

#### SIGNIFICANT RECENT COURT DECISION

August 2012 Case (3rd Circuit):

"Historic Boardwalk Hall" Case

The Tax Credit Investor MUST have some level of financial risk in the project —

Cannot be totally insulated from the partnership risk

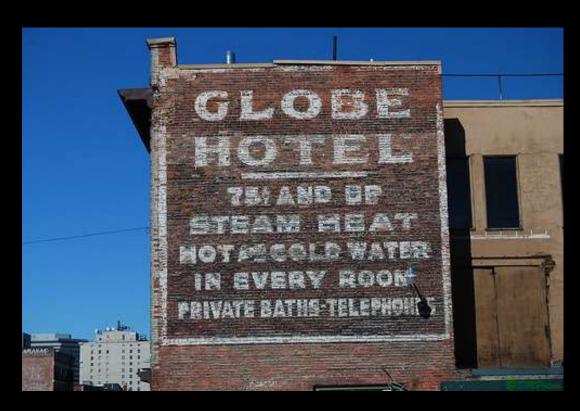
TC Investor must have SOME upside/downside reward/risk



Historic Boardwalk Hall, Atlantic City

CHANGES IN THE TAX
CODE WITH THE
"STIMULUS ACT"

- Net effect is that more individuals can use the tax credits to reduce their personal income tax
- Increases the pool of potential tax credit investors



Globe Hotel, Spokane

- ARE YOU A "REAL ESTATE PROFESSIONAL"? YES IF:
- More than half of the personal services you performed during the tax year were performed in real property trades / businesses in which you materially participated AND
- You performed more than 750 hours of services during the tax year in those real property trades / businesses.



Alaska Building, Seattle

- A "REAL ESTATE PROFESSIONAL" CAN BE A:
- Developer
- Broker
- Contractor
- Property Manager
- Again if you are a qualified real estate professional, you may qualify to personally use the tax credits. Otherwise you need to partner with a qualified investor...



Holley Mason Building, Spokane

#### **OPPORTUNITIES IN USING THE CREDITS:**

# TAX EXEMPT ENTITIES AS OWNERS/DEVELOPERS

- TAX EXEMPT ENTITIES CANNOT USE THE CREDITS DIRECTLY
- So...tax exempt entity must either co-own the property with taxable entity or long term lease the property to taxable entity



MOHAI (Naval Reserve Building), Seattle

#### TAX EXEMPT ENTITIES AS OWNERS/DEVELOPERS

- TAX EXEMPT ENTITY
   CAN BE A CO-OWNER
   IN A TAXABLE ENTITY
- Tax exempt entity can in this way participate as an owner in a tax credit project



MOHAI (Naval Reserve Building), Seattle

#### TAX EXEMPT ENTITIES AS OWNERS/DEVELOPERS

- Tax exempt partner
  will typically own
  only a small portion of
  the entity –
- The tax credits must be allocated according to percentage of profit/loss interests



MOHAI (Naval Reserve Building), Seattle

#### TAX EXEMPT ENTITIES AS OWNERS/DEVELOPERS

• Tax exempt entity cannot own the property before rehab, then immediately lease back to itself after rehab — will result in loss of the credits



The New Central, Chinatown, Seattle

### TAX EXEMPT ENTITIES AND "DISQUALIFIED LEASES"

- "Disqualified leases" include leases to tax exempt entities that are:
- Longer than 20 years
- Contain extension options with predetermined price (ok if "at market price")



Cadillac Hotel, Seattle

#### TAX EXEMPT ENTITIES AND "DISQUALIFIED LEASES"

- "Disqualified leases" also include leases to tax exempt entities that:
- Include an option to purchase at a set price
- Involve development financed with tax-exempt financing, under some circumstances



Holley Mason Building, Spokane

### TAX EXEMPT ENTITIES AND "DISQUALIFIED LEASES"

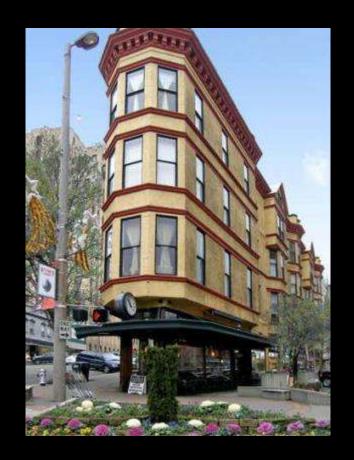
• A project can still fully utilize the tax credits even if up to 50% of the space is leased under "disqualified leases"



Spokane Dry Goods Company Building, Spokane

#### FINDING THE RIGHT TAX CREDIT INVESTOR

- Different projects will attract different investors
- Some national groups will be interested only in larger projects
- Other investors are open to small projects, but usually pay less per credit



Bostwick Building, Tacoma

### SECURITIES REGULATIONS AND INVESTORS

- Pay attention to securities law requirements
- Soliciting investors in your projects will typically bring up securities issues
- There are limited exemptions to filing but need to be aware of these

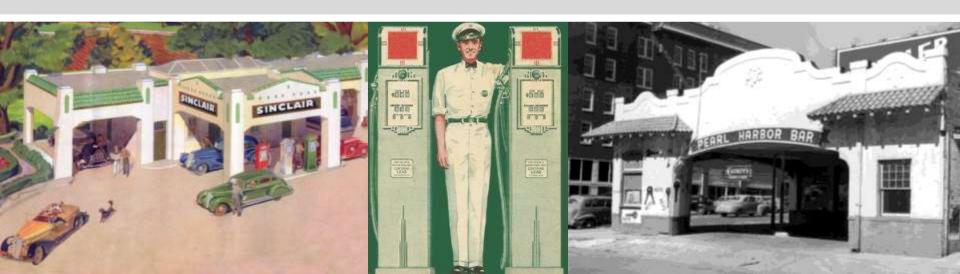


Colman Automotive Building, Seattle

## **POTENTIAL PITFALLS**

#### **Common Fails**

- Proceeding with work before Part 2 approved
- Refusing to negotiate project changes in response to SHPO and NPS guidance and conditions
- Assuming local review / approval = certification of rehabilitation for tax credits



# **LEADING CAUSES OF DENIAL**

# Step One is Admitting You Have a Problem

- Insufficient pre-rehab photographic documentation
- Completing work that does not meet the Standards before contacting the SHPO or beginning the application process
- Program that is too intense for building and site
- Substantial interior demolition



Project denied for incompatible work completed prior to Part 2 review.



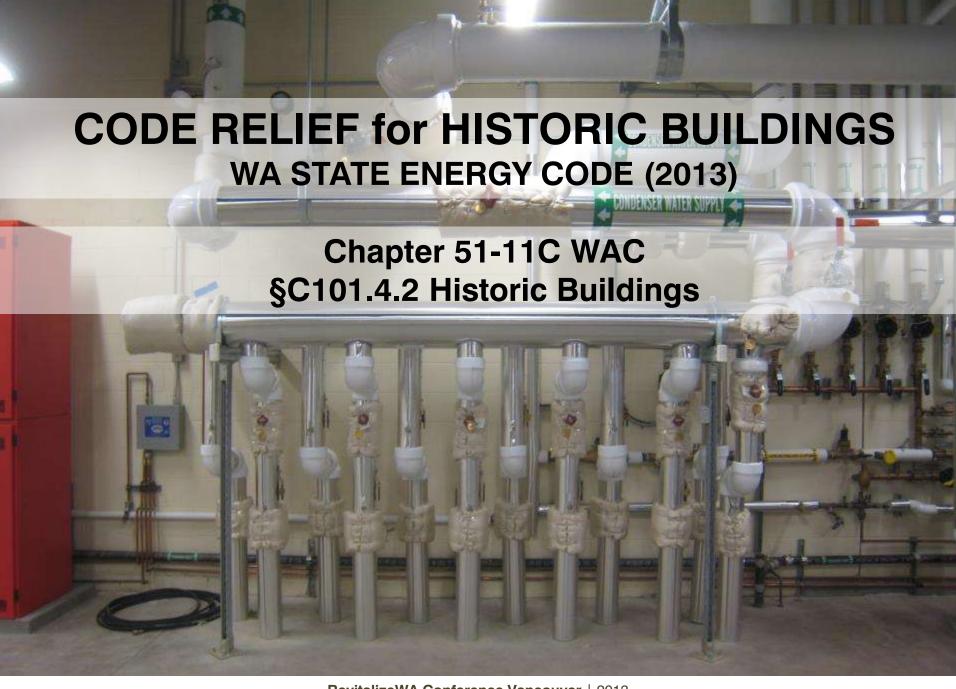


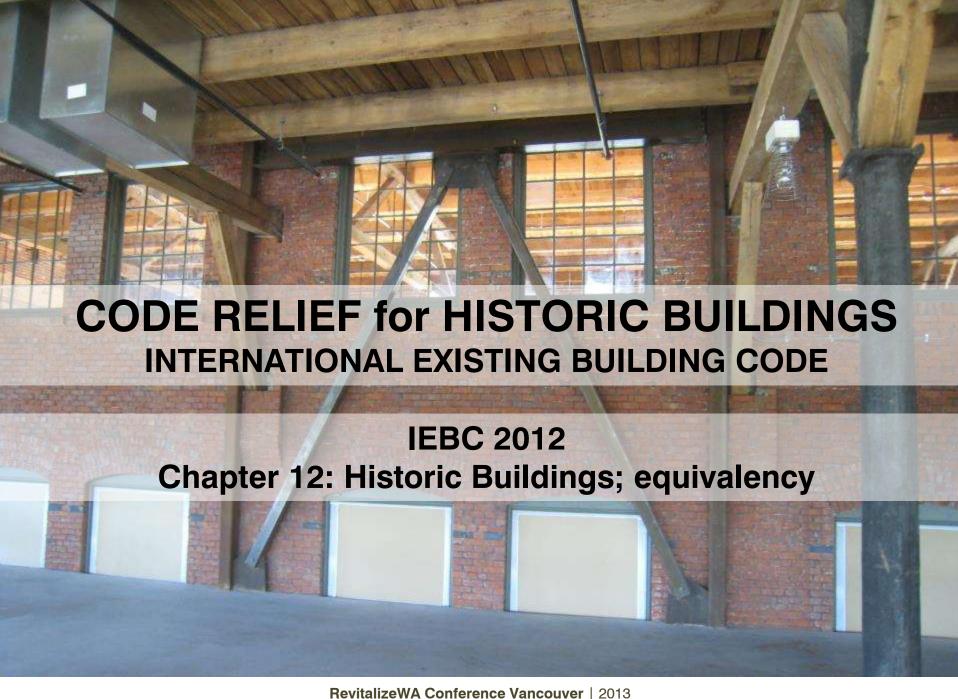
ADA / Accessibility: Elevators



§206.2.3 Multi-story buildings and facilities







# **CODE RELIEF for HISTORIC BUILDINGS**

**IEBC: Sprinklers** 



Provide sprinklers in open areas or for materials not meeting fire rating requirements.

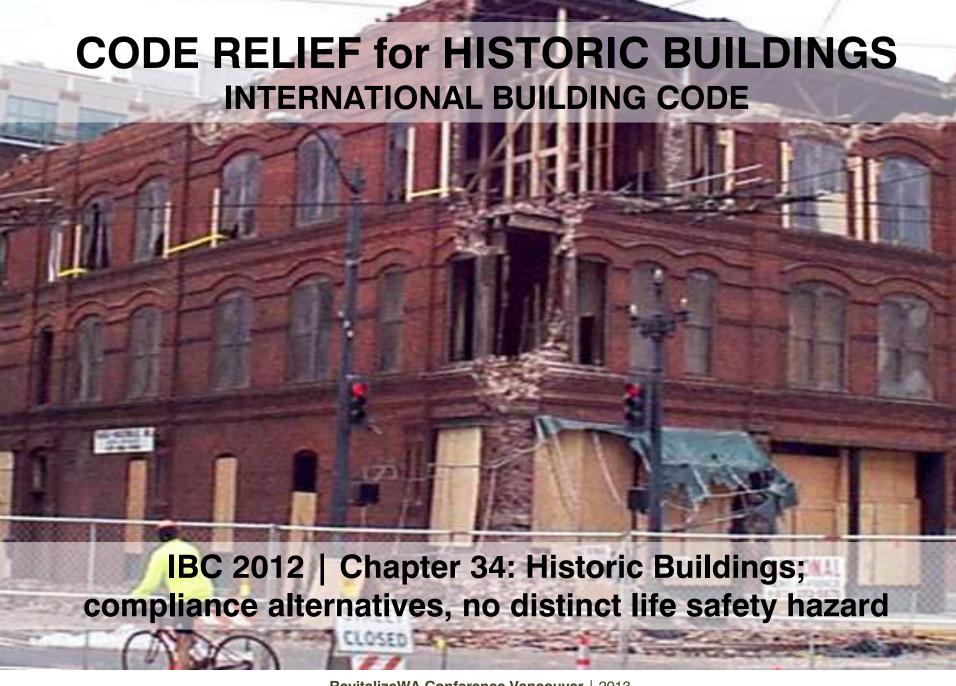


# CODE RELIEF for HISTORIC BUILDINGS

**IEBC: Archaic Materials, Fire Ratings** 



IEBC Resource A, Chapter 12 Historic Buildings §1203.5 Interior Finishes



### "MAIN STREET" CASE STUDIES: CLARKSDALE, MS

Clarksdale,
Mississippi – a
main street town
focusing on its
place in the
history of
American music
and literature to
draw visitors and
new residents



#### "MAIN STREET" CASE STUDIES: THE "FIVE & DIME"

- FW WOOLWORTH
  BUILDING converted to
  restaurant and small hotel
- Approximately \$1.3 million in qualified rehab expenses
- \$260,000 in federal tax credits to investors in single entity structure



The Five & Dime, Clarksdale, Mississippi

### "MAIN STREET" CASE STUDIES: THE "FIVE & DIME"



The Five & Dime (Former Woolworth's, Clarksdale, Mississippi)

# "MAIN STREET" CASE STUDIES: THE "FIVE & DIME"

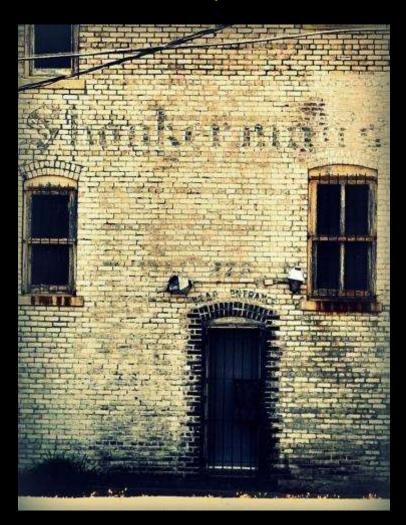


Five & Dime Hotel/Lofts, Clarksdale, Mississippi

### CASE STUDIES: SHANKERMAN'S BUILDING,

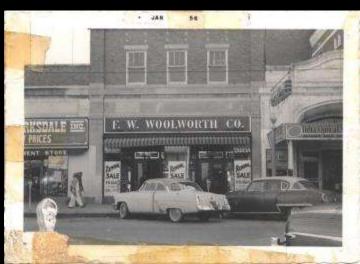
Clarksdale, Mississippi

- Rehab and conversion of upper floor of this historic shop to residential use
- The first of several new projects in Clarksdale that feature residences above commercial storefronts



Shankerman's alley facade, prior to rehab of historic building

### "MAIN STREET" CASE STUDIES: SHANKERMAN'S







- Approximately \$300,000 in qualified rehab expenses
- \$60,000 in federal tax credits to investors in single entity structure

#### OPPORTUNITIES FOR SMALLER TAX CREDIT PROJECTS

- 1. Look for local banks as tax credit investors and lenders on same project
- 2. Look for ways to minimize consultant costs (local professionals? Any pro bono help possible?)
- 3. If your building is already a contributing building in a historic district, will simplify the NPS Parts 1, 2 applications
- 4. Look for local partners (or long term tenants) who can use the tax credits internally

#### V. HISTORIC TAX CREDIT BASIC CHECKLIST

- 1. Is the building on the National Register or a contributing building in an NR listed historic district?
- 2. If not, does the building have the potential to be listed on National Register?
- 3. Will there be substantial rehab costs? Are rehab costs in excess of adjusted basis (basically = cost of building minus land, plus improvements made since purchase)
- 4. Is the new plan compatible with re-use of significant historic elements?



#### V. BASIC HISTORIC TAX CREDIT BASIC CHECKLIST

- 5. Does the new plan require alterations (or users) that could jeopardize approvals?
- 6. Does the project schedule allow time for SHPO/NPS review and approvals?
- 7. Will tax credit investors be invested in the project by the time the renovated building is placed in service?
- 8. Experienced professionals on the team?



#### V. HISTORIC TAX CREDIT BASIC CHECKLIST

- 9. Is the lender involved early on in the project?
- 10. State tax credits available?
- 11. Property tax abatement available?
- 12. Are New Markets Tax Credits (or) Low Income Housing Tax Credits possible for the project?



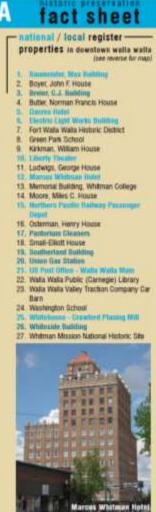
#### **Financial Incentives in Walla Walla**

#### WALLA WALLA fact sheet



# historic register FACTS

- Listing on the Ninow. Reaster or Historic Puzzes does not limit your
  use of the property, it is an benerary designation, recognizing that a
  property is of significance to the nation, the state, or the community.
- There are no regulations and no reviews associated with Necessa.
   Reserves listing. Conversely, that also means there are no protections against insensitive changes.
- The National Resource does not protect a property or limit an owner's ability to do what they wish with their property with personal funds. Only when state or federal funds are used does work require consultation.
- There are financial incentives available for income producing National.
   Resistes listed buildings, a 20% Federal income tax credit of qualified rehabilitation expenditures (see reverse for more information).
- Walta Walta is a Certified Local Government (CLG), which means any Local Reserve property is eligible for Special Valuation (a revised property tax assessment), no matter what its use is.
- . Design review can only occur for Local Reason listed properties.
- Preperty values often increase when a property is listed on the Norowa, Resorte of the Look, Russian. There is an implied series of value of a historically designated property as opposed to something that is not officially listed.
- Federal tax credits and Special Valuation help pay for life safety code and accessibility upgrades, and provide funds to make upper floor development profitable.





**Financial Incentives in Walla Walla** 

260 projects statewide \$974 million Total Rehab Expend.

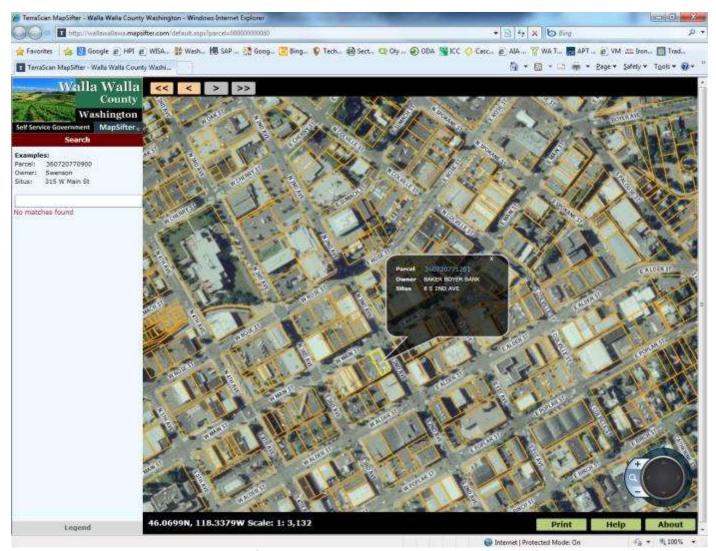
3 Walla Walla projects for \$1.8 million Total Rehab Expend.

0.2% of total rehab expenditures

#### **Financial Incentives in Walla Walla**



#### **Financial Incentives in Walla Walla**



Walla Walla County Assessor Parcel Search

**Financial Incentives in Walla Walla** 

# Since 2001 in downtown Walla Walla:

18 projects potentially eligible for Tax Credits \$4,175,590 unclaimed rehab expenditures

6 additional **projects** potentially eligible for Special Valuation \$1,388,000 additional unclaimed rehab expenditures

24 total projects \$5,563,590 missed opportunity

\*\$231,816 per project

# You Can Make Great Tax Credit Projects Happen.

Questions?

Stephen J. Day, AIA (206) 625-1511 <a href="mailto:stephen@stephendayarchitecture.com">stephen@stephendayarchitecture.com</a> sday@rp-lawgroup.com

Nicholas Vann (360) 586-3079 nicholas.vann@dahp.wa.gov



Arctic Club Hotel, Seattle

and the contract of the contra - Little -- spring to El Wilhengton Orte Dept.

ARCHAEOLOGY &







THE RESERVE WALLS TO SHARE THE LAST

**DAHP Website:** 

www.dahp.wa.gov

