Dear Council members, Staff:

I have learned the Landmarks Preservation Commission (LPC) a few weeks ago “voted” to place all Seas properties ‘under consideration’ as part of a proposed historic district, **without noticing Seas residents.** And a **un-noticed** hearing is now to be held before Town Council Sept 11, on moving ahead.

What is the **law** on this? The law stated by the Florida Supreme Ct. is that any decision later by Council in favor of landmark district will have already been **voidable** by any Circuit Court. Curing the “defect” is not so simple, as the Courts are very serious about the Sunshine law.

The **Florida Supreme Court** interestingly already explained on this issue in the case of ***The Town of Palm Beach vs Gradison*** *(y*es our Town) in the link below. It is important to read the cases carefully. It is the law:

https://law.justia.com/cases/florida/supreme-court/1974/44099-0.html

See the **Florida Supreme Ct**. repeating the same thing in *Gulf & E Dev. vs Ft Lauderdale:*

https://law.justia.com/cases/florida/supreme-court/1978/49619-0.html

The Sunshine law is perhaps the most important law we have in Florida, and follows Article 1 of Florida’s constitution. To understand the significance of Florida’s sunshine law, perhaps a *news article just a few weeks ago* will make it appear clearer:

https://www.amisun.com/2019/07/22/judge-rules-cnobb-members-violated-sunshine-law/

There was no notice (none whatsoever) of the August Palm Beach Landmarks Commission meeting and vote to move forward to Landmark the Seas streets; in the middle of summer when all are out of town.

I found out about their decision via a neighbor’s email. I am writing this from E. Hampton. My neighbor is in Japan!

Again the **ruling case on point** that is the still the well known law today. It should be noted that *after that Commission in* ***Palm Beach vs Gradison*** *met, full public meetings and hearings of the zoning commission and of the Town Council were conducted and proper procedure followed.* ***The Supreme Court did not care about the later publicly noticed meetings****. It still ruled the resulting council vote void, almost as simply a punishment.* The *Florida Supreme Court pointed this out in* ***Palm Beach vs Gradison:***

“...Thereafter, full public meetings and hearings of the zoning commission and of the Town Council were conducted and proper procedure followed.”

But nevertheless the Supreme Court did not care, and ruled:

"... the zoning ordinance adopted by the zoning authorities and the Town Council after public hearing was rendered invalid because of the non-public activities of the citizens planning committee, which committee was established by the Town Council, active on behalf of the Council in an advisory capacity, and participated in the formulation of the zoning plan."

So the plans of the current Palm Beach Landmarks Commission to make later meetings public are irrelevant.

The Florida Supreme Ct quoting in Gradison explains why: "... An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. There is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to prevent."

*The Florida Supreme Ct in Gradison further explains their reason to simply void the later Council decision: "*One purpose of the government in the sunshine law was to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance. Rarely could there be any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. The statute should be construed so as to frustrate all evasive devices. This can be accomplished only by embracing the collective inquiry and discussion stages within the terms of the statute, as long as such inquiry and discussion is conducted by any committee or other authority appointed and established by a governmental agency, and relates to any matter on which foreseeable action will be taken…"

The Florida Supreme Ct. further in Palm Beach vs Gradison: "…**Mere showing that the government in the sunshine law has been violated constitutes an irreparable public injury so that the ordinance is *void ab initio.*** The Florida Supreme Court then cites: *Times Publishing Co. v. Williams,* 222 So. 2d 470 (Fla.App.2d 1969) and Florida Law Review, Government in the Sunshine by Ruth Mayes Barnes, Vol. XXIII, p. 369 (Winter 1971)."

The Palm Beach Landmark Preservation Commission was already acting as a quasi-judicial authority without noticing any homeowners that would be affected. On this *see also Gulf & E. Dev. Co., 354 So. 2d at 59-60 and Gainesville v. GNV Inv., 413 So. 2d 770, 771 (Fla. 1st DCA*

1982); " We hold the moratorium and resolution, passed without notice, were an ineffective attempt to suspend and amend the City of Gainesville's existing zoning ordinances."

The Supreme Court again later in *Gulf & E. Dev. Co., 354 So. 2d at 59-60 said the same thing, once again the only ruling law today:*

"We hold, then, that lack of notice of the hearing before the Planning and Zoning Board constitutes a violation of Section 176.051(1), Florida Statutes (1971)."

The **Florida Supreme Court** again further stated in ***Gulf & E. Dev.*** *above: "*we construe the phrase "municipal zoning authority" in Section 176.051(1), Florida Statutes (1971) to include boards … which ***make recommendations to the ultimate governing authority,*** in this case the City Commission of the City of Fort Lauderdale. We hold, then, that lack of notice of the hearing before the Planning and Zoning Board constitutes a violation of Section 176.051(1), Florida Statutes (1971). Furthermore, we hold that the City of Fort Lauderdale was bound by the procedural requirements…" This Supreme Court ruling: ***even boards that are simply tasked with making recommendations*** to the Council (ultimate governing authority) must provide due process/notice, *is still the well known law today*.

Now as to the merits of the Landmarks Commission action:

I have been a fierce defender of the Seas and its preservation, currently owning on Seaspray Ocean block for 22 years. I have heard both sides of the argument clearly, as though I was sitting as a sort of a mediator. One side has it won. *We already have a method that can work fine:*

We already have ARCOM (Architectural Review Committee) and careful and dedicated people on the ARCOM board. We already have a careful TOWN COUNCIL that can set policy as to what ARCOM should or should not approve. Under the extensive ARCOM rules we have now, *Council can simply require ARCOM to only approve newly built homes that are in concert with the style and nature of the "Seas" (or other involved Street).* For example Old Florida style, Old Mizner, etc. (The Seas actually have a number of architectural looks, not just one).

We also already have a *notice* to neighbors requirement. Neighbors are sent (via certified mail) notice of plans to build before hearings. Any neighbor can object to a planned house style in writing by email, or live at hearing if they prefer. ARCOM and Council will always listen to any neighbor objections. We also already have an experienced ARCOM and Town building staff that know the ARCOM strict rules and procedures.

Can a new home on the Seas be built to look like it fits right in the community, and even look like an older home?

Yes of course, and this can be required by ARCOM and the Town Council via its staff. Architects and builders working in the Town have favorably amazed me. One new home on the Seas I walked by required me to look carefully to see it was actually a *brand new home*. And some others in planning show a house can be designed to look as though it was built in 1924, yet can be totally new from the ground up. New materials and architectural methods exist that make it not so difficult to design and build an older historic *looking* home from the ground up.

Recently a Seaspray Ocean block owner through their architect showed that a brand new home *can* be built to fit right in the Seas community. Their plans were rightfully passed by ARCOM/Council a few months ago. Construction will begin shortly.

Some homes are not really repairable:

We have all been in older homes on the Seas. Some are not repairable in any reasonably way. Some have strange dangerous winding staircases, dangerous electrical, impossible plumbing and natural gas issues. The cost to properly restore and maintain could be impossible to bear, and may never be done correctly in some older Seas homes. This ends up being a great burden and risk to neighbors.

Most new buyers will want to properly restore without landmarking, not knock down

The unwarranted claim that *all* Seas homes sold are being knocked down we all know is *not* true. Not all homes are being knocked down. Just ask Town Building and Zoning. Most recently sold Seas homes are actually being restored. Most buyers will make a reasonable choice. Seas buyers are interested in the look of the home and community. For example, of the five homes recently sold on our Seaspray Ocean block, only one new owner who tried to find a way to restore, found it impossible and eventually had to demolish. The other four new owners are restoring.

Under current strict Town ARCOM rules we have now, if a new buyer knocks a home down, ARCOM can simply make sure a new home is built that fits right in with the Seas community. And we already have on record Town Council decrees, orders, edicts, and that ARCOM can rely on, that the Seas are a special historic area to be protected.

The act of landmarking can qualify as an Eminent Domain taking under Florida law. So if there is blanket landmarking of the Seas, the town can expect future lawsuits from homeowners. These are expensive homes, so damages claims could be substantial.

One example of landmarking that may still be going wrong is the situation with the Strickland home on Seaspray Ocean block. What this family continues to go through is an unfair unnecessary nightmare. Landmarking the Seas streets is an impossible burden for the aging (both persons and homes) community on the Seas located near the ocean, with salt air, extreme heat, mildew, and flooding. Many Seas homes are in flood areas. Those in favor of blanket historic landmarking who do not live in the Seas have no stake. And by law historic preservation is required to be more than a vague community wish. It needs to reflect community priorities.

Owners relate their valid concerns of landmarking making their homes less marketable. These are stated below:

Neighbors relate their valid concerns that if suddenly hundreds of homes on the Seas are landmarked all at once, there will be a problem. Less buyers are willing to take on a project that they fear will require far too extensive variances and rules to follow due to landmarked status. Few new buyers will be interested, as builders and architects will explain added costs of restoration involved.

The town should not waste money hiring experts to try to move this along. There is a reason many (including the Stricklands) fought so hard to stop a forced landmarking of their homes.

In an area where land is already very expensive forced landmarking makes a property difficult to sell, thus lowering selling prices. In our area that could be a significant loss. We and just about any candid appraiser or broker all know this is true. There are many articles warning of the significant problems and expense redoing or owning a landmarked home. (Depending on what you are looking for, there are research articles on both sides.) In semi-blighted areas, which we are not, landmarking districts are helpful to raise value. We are not a semi-blighted area.

Many insurance companies don't even offer the type of coverage one will need to insure a landmarked home. An owner will have to go with "historic property insurance" which is far more expensive. Moreover, many builders balk at doing a landmark project. Builders do not want unnecessary trouble. Many builders are not capable of handling a landmarked project, or will charge far more for redoing landmarked homes.

Landmarking is a legal tool that places serious restrictions on what can happen to the property.. This inherently makes the property less marketable to the greater population, and thus affects its value. (See Note 2 below).

Prospective buyers are aware landmarked houses are going to require a lot more effort, both after purchase and endlessly thereafter. From water damage and electrical issues to structural problems and termite damage, many Seas historic homes are in disrepair. Buyers who take on

this kind of historic home must be the type who have added finances and dedication to continue to endlessly restore and keep up the property. These buyers can be rare.

Having to cut through all this extra red tape just to do minor changes to a home is the reason why most prospective buyers choose not to buy a landmarked home, even if they intended to restore. The already strict extensive ARCOM and other Town development rules are fine and only need to be followed.

Summary: ***There is no need to have a surge in coerced landmarking imposed on an innocent and mostly retired community that has for decades shown it is doing a fine job of preserving the Seas streets.***

****Notes:** There was **no notice (none whatsoever) of the August Palm Beach Landmarks Preservation Commission meeting and vote to move forward to Landmark the Seas streets.**

Notes on the *Florida Supreme Court/Palm Beach case. All Courts and municipalities today are required to follow the Palm Beach vs Gradison case.* The defining ruling is law today.

It should be noted that *after that Commission met, full public meetings and hearings of the zoning commission and of the Town Council were conducted and proper procedure followed.* ***The Supreme Court did not care about the later publicly noticed meetings of either the Commission or Council****! That is explained in the first few paragraphs of the ruling:*

"...Thereafter, full public meetings and hearings of the zoning commission and of the Town Council were conducted and proper procedure followed."

The Florida Supreme Court nevertheless ruled the resulting council vote void, almost as simply a punishment. The *Florida Supreme Court said in Palm Beach vs Gradison:*

"... the zoning ordinance adopted by the zoning authorities and the Town Council after public hearing was rendered invalid because of the non-public activities of the citizens planning committee, which committee was established by the Town Council, active on behalf of the Council in an advisory capacity, and participated in the formulation of the zoning plan."

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these evasive devices. As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to prevent."

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Creation of a Historic Landmark District is essentially a "Rezoning". Such a landmark or historic "Rezoning" has been broadly interpreted by Florida Courts such that the *due process requirements for rezoning apply* whenever the use of property is "substantially restricted" by local government action. *Sanibel v. Buntrock, 409 So. 2d 1073, 1075 (Fla. 2d DCA 1981).* The Court in *Sanibel* (cited above) also stated: *"To ... prohibit a person from building upon his property even temporarily is a substantial restriction upon land use. Consequently, it is not too much to ask (they) ... follow the same procedures with respect to notice and hearing…"*

The law on this is the Supreme Court in *Gulf & E. Dev. Co., 354 So. 2d at 59-60:* The Florida Supreme Court stated: "We hold, then, that lack of notice of the hearing before the Planning and Zoning Board constitutes a violation of Section 176.051(1), Florida Statutes (1971)."

The **Florida Supreme Court** again stated in ***Gulf & E. Dev.*** *above: "*we construe the phrase "municipal zoning authority" in Section 176.051(1), Florida Statutes (1971),[5] to include … boards … which ***make recommendations to the ultimate governing authority,*** in this case

the City Commission of the City of Fort Lauderdale. We hold, then, that lack of notice of the hearing before the Planning and Zoning Board constitutes a violation of Section 176.051(1), Florida Statutes (1971). Furthermore, we hold that the City of Fort Lauderdale was bound by the procedural requirements…" This Supreme Court ruling: ***even boards that are simply tasked with making recommendations*** to the Council (ultimate governing authority) must provide due process/notice, *is still the well known law today*. So yes, even the Palm Beach LPC must follow the well known law.

Section 166.041(3)(c), Florida Statutes (1979) contains specific limitations that apply to a quasi-judicial arm of the Town, such as the Landmarks Preservation Commission (notice, opportunity to be heard, etc.). There are strict requirements on the use and power of Landmarks Commission or any issue related to creation of a Historic Landmark, *ab initio,* from the very beginning.

Notes (2): Rezoning for a Historic Landmark District is not a game. In case anyone is wondering if declaration of a historic (landmark) district is **serious business,** understand the serious penalties imposed for violating historic preservation ordinances. These include large fines, liens and penalties to pay fines, requirements to restore landmarks even the smallest things altered without complete permission, and denial of any permits to build or rebuild. Homeowners need to consider the **risks** of being made part of a Historic District. *See, e.g., Parker v. Beacon Hill Architectural Comm'n, 27 Mass. App. Ct. 211, 536 N.E.2d 1108 (1989).*

The above was based on information and belief.

Respectfully, Steven Jeffrey Greenwald, Esq.
128 Seaspray Ave., Palm Beach FL

Sept 8, 2019