

Wayne Bergman

From: Randolph, John C. <JRandolph@jonesfoster.com>
Sent: Wednesday, September 25, 2019 12:37 PM
To: Joshua Martin; Wayne Bergman; John Lindgren; Paul Castro
Subject: FW: Landmarks Preservation Vote
Attachments: Section 54-41.pdf

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Gentlemen,

Please see the below memorandum sent to the Mayor and Town Council relating to the matter of placing the Sea Streets under consideration as an historic district. Please do not hesitate to call me if you have any questions or comments.

Thank you.

John C. Randolph

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From: Randolph, John C.
Sent: Tuesday, September 24, 2019 4:13 PM
To: 'GConiglio@TownofPalmBeach.com' <GConiglio@TownofPalmBeach.com>; 'DMoore@TownofPalmBeach.com' <DMoore@TownofPalmBeach.com>; 'MZeidman@TownofPalmBeach.com' <MZeidman@TownofPalmBeach.com>; 'jaraskog@TownOfPalmBeach.com' <jaraskog@TownOfPalmBeach.com>; 'lcrampton@TownOfPalmBeach.com' <lcrampton@TownOfPalmBeach.com>; 'BLindsay@TownofPalmBeach.com' <BLindsay@TownofPalmBeach.com>
Cc: 'Kirk Blouin' <KBlouin@TownofPalmBeach.com>
Subject: Landmarks Preservation Vote

Mayor and Town Council,

On September 18th, the Landmarks Preservation Commission voted to place the Sea Streets under consideration as an historic district. On September 20th, Kirk Blouin provided me with a copy of Stephen Jeffrey Greenwald's letter to the Mayor and Town Council sent under an email of September 19th, a copy of which each of you have received. I was asked to review this letter in consideration of my previous advice to Town Council that although the Town Council has the final say in determining whether a historic district is designated, after study and recommendation by the Landmarks Commission, it cannot overturn the decision of Landmarks to place the Sea Streets under consideration.

All of you are fully aware that the Landmarks Commission, after moving to reconsider and after a lengthy discussion at its September 18th meeting, renewed its motion to place the Sea Streets under consideration as an historic district, and the motion passed 5 – 2. John Lindgren and I made presentations to the Landmarks Commission in support of the Council's recommendation to postpone consideration of placing the Sea Streets under consideration until further study and after the symposium planned for December. No members of the public were present to discuss the matter. It has been pointed out by Gigi Tylander that although she and Bill Tylander spoke at the end of the meeting, they had not appeared earlier to address this matter because it had been advertised for consideration at the end of the agenda but had been moved up by the Commission to the beginning of the agenda so that the Town Attorney could be present. It was not an error on the part of the Commission to rearrange the agenda, as consideration of the agenda is always done at the beginning of various commission and board meetings, as well as at Town Council meetings. It is the responsibility of those who wish to speak to be in attendance at the beginning of a meeting in order to determine when the matter will be heard. There are, however, members of the public who felt that their voice was not heard because they relied upon the matter being scheduled at the end of the agenda.

Mr. Greenwald's letter suggests three options to the Town Council which would allow the Council to overturn the decision of the Landmarks Commission. His Option 1 is to vote to end this at the next Council meeting based upon several issues, including a previous Landmark consultant's recommendation that historic properties continue to be designated on a site-by-site basis, unless there is strong neighborhood support for districting; the fact that there were previous public discussion in regard to an overlay district for the Sea Streets; that the Sea Streets had previously been considered for historic designation and were declined, and that based upon lengthy consideration of the Pendelton Historic District, it is apparent that historic districting in the Town is controversial. Staff looked into the issue as to whether the Sea Streets had previously been placed under consideration for historic districting, and found that was not the case.

Option 2 relates to the suggestion that Town Code Section 54-163(8) be eliminated or modified so as to provide for a notice and an opportunity to be heard before the Landmarks Commission places properties under consideration as a landmark district. I understand that is something that is being currently studied and worked on by John Lindgren for subsequent consideration by the Town Council. Nevertheless, that section is now in effect. Mr. Greenwald suggests that this provision is contrary to law because it affects private property owners without giving them notice or an opportunity to be heard, suggesting that the Town could face some legal challenges to placing the Sea Streets under consideration as an historic district without having given notice and an opportunity to be heard.

Mr. Greenwald's Option 3 is to simply strike the LPC vote, as the meeting was without notice, and that it is in violation of The Sunshine Law. I disagree that this meeting was in violation of The Sunshine Law, however, the bottom line issue to the residents is that their properties would be placed under jeopardy without having had notice and an opportunity to be heard. That position is arguable in that placing these properties under consideration simply changes the jurisdiction of oversight of the properties from the Town's Architectural Commission to the Landmarks Preservation Commission. The opportunity for review of proposed renovations or demolitions is still applicable in both instances. Property owners argue, however, that the standard for demolition under Landmarks is much higher than it is under the Architectural Commission.

Mr. Greenwald's letter provides several options to quash, void or strike the LPC's vote to place the Sea Streets under consideration. In his words, "a vote now will preempt any damages." I am not certain what that statement means, but I interpret it to mean that it would avoid any damages to the property owners and any reason for filing suit against the Town for any such damages.

The bottom line comes down to Council Member Zeidman's question as to whether the Town Council has anything to say about the Landmarks Preservation Commission's decision. When this matter was last discussed, I advised the Town Council that it is the Landmarks Preservation Commission's decision, not the Council's, as to whether to place the Sea Streets under consideration as a historic district. I therefore advised that the Council can only "recommend" that the Landmarks Commission reconsider this matter and vote not to place the properties under consideration. Landmarks did not follow that recommendation.

In further review of my previous advice, I have gone to Section 54-41 of the Landmarks Preservation ordinance dealing with appeals and review. Attached is a copy of that section. This section allows any applicant or any interested party to file an appeal to the Town Council on any ruling by the Commission made pursuant to this chapter. The appeal should take the form of a letter addressed to the Town Clerk, shall be based upon the record, and shall be filed within 10 days. The appeal shall set forth the alleged inconsistency or non-conformity with procedures or criteria set forth in this chapter, and the Town Council shall decide the appeal within 45 days of the filing of such appeal. Subsequent to that language, there is additional language which provides as follows:

"The Town Council may review any decision of the Commission or the Building Official, and their disposition of the matter shall be final."

An initial reading of this section may lead one to believe that Council review relates solely to appeals filed by an applicant or an interested party. However, there is argument to be made that even absent an appeal, the Town Council itself may review the decision of the Commission and have final disposition of the matter. This language is identical to the language contained in the ARCOM ordinance which provides in Section 18-177, Appeals and Review, that "The Town Council may review any decision of the Architectural Commission or the Director of the Planning, Zoning and Building Department and its disposition of the matter shall be final."

Whether it was intended or not by the language of Section 54-41, it appears this language could be interpreted to mean that the Town Council, absent an appeal being filed by an interested party, may, on its own, review any decision of the Commission. If that is a proper interpretation, then the Town Council, based upon all of the information provided in regard to this matter, has the ability to reverse the decision of the Landmarks Commission to place the Sea Streets under consideration. After all, it is the Town that faces potential litigation and costs relating thereto, in the event the Sea Streets are placed under consideration as proposed and said action is challenged. A reversal of the Landmarks decision to place the property under consideration need not be a final decision, but could be based upon the fact that the Town Council wishes to go through the symposium in December and the education of the public prior to this matter being further considered by the Landmarks Preservation Commission.

Please do not hesitate to contact me if you have any comments or questions in regard to this matter.

Thank you.

John C. Randolph

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