

Council, Town Attorney and Mayor:

Thank you Council again for considering the notice and due process rights of we Seas owners at your last hearing. I also thank Mr Randolph for his endeavor to caution the LPC at their last hearing (heard on audio). It seemed he did his best to explain that the LPC action under our town code has the effect of encumbering Seas homes for an unknown amount of time.

But we still do not have a “cure” by the LPC. I had sent the law on this in prior letters, cases on point, with the Supreme Court and appellate Courts themselves explaining *notice* under the Sunshine law; please incorporate by reference in this letter.

Due Diligence:

I always do further due diligence. It was interesting. I inquired of the **First Amendment Foundation (FAF) organization in Tallahassee**, which *authored the **Florida Government in the Sunshine Manual***. The Sunshine manual is the written authority on Sunshine law for municipal governments. FAF also authors other publications for Florida municipal governments, lawyers, and commissioners. Their publications are often in partnership with the Florida Attorney General’s office. The FAF is the foremost *authority* on the Sunshine Law in Florida. They also bring court cases, and file amicus curiae briefs. Members are also asked testify to Courts. Their opinion on the Sunshine law is highly regarded.

Their written response surprisingly came from **its President, Barbara Peterson** who is also an authority on Florida’s Sunshine law. She explains quite well the problem of the LPC vote and second vote to date, as to the Seas. Below is her letter:

***Hi, Mr. Greenwald.** I apologize for the delay in responding — I’ve been on vacation and am only now catching up with the accumulated email.*

I have read the documentation you sent. Given that the LPC held meetings without the required reasonable notice, which is, as you know, a violation of the sunshine law, I recommend that you file a complaint with your state attorney alleging a violation of law.

The Sunshine Law requires that reasonable notice be provided of all meetings; “reasonable” has been defined by the courts as notice sufficient so as to inform those who might be interested in attending. Specific notice to the affected property owners is not required by the SL but there could be other laws or ordinances that require the more specific notice.

Because the LPC failed to hold a cure meeting as directed by the town council, the only way to address the violation is to (1) request an investigation by the state attorney or (2) file suit in civil court. I would suggest the first option; if the state attorney refuses to investigate, then litigation is the only other option. Let me know, please, if you decide to litigate. We may be able to help you find an attorney and I can steer you towards some litigation grants that can help defray costs associated

with the litigation. Of course, if you sue the LPC for a sunshine violation and you win, the LPC will be required to pay your attorney fees and court costs.

Again, my apologies for the delay.

All best,

Barbara Petersen, President

I also inquired of Mark Bannon. He is the **Executive Director of the Palm Beach County Commission on Ethics**. Mr Bannon is also a lawyer with a great deal of knowledge about government ethics, hence his position as Director of our Ethics Commission. His contact is on the Town of Palm Beach website, the first thing you see when you click "Government."

Mr Bannon had an interesting point. He said *"one reason the Sunshine law is not fully taught to those on the many commissions statewide, is that it is very easy to dismiss a commissioner, as they serve at the pleasure of Council."* He then asked me if our town code provides dismissal with or without cause. My answer, our code at [Sec. 54-38](#): ***"members of the commission, including alternates, serve at the pleasure of the town council and may be removed from the commission with or without cause."*** (at 54-38 (a) first sentence).

Mr Bannon also suggested as did Ms Peterson (FAF President) that *I should contact the State Attorney to start an investigation*. Mr Bannon did feel that, given Mr Randolph's good cautionary statement to the LPC at their last meeting (I told him about) that he was sure Mr Randolph will make every effort to caution the Landmarks Commissioners. *But he still felt I should contact the State Attorney to do an investigation, as he felt the LPC had violated Florida Sunshine law.*

I also inquired of the Florida Attorney General's office, as their website has a full Sunshine law page with info. The supervisor I spoke to recommended I contact the *Palm Beach County State Attorney* to file a complaint. He told me if there were too many on the LPC that personally know the Palm Beach State Attorney or otherwise any conflict, that I could re-contact the Attorney General and they would be happy to assist me in contacting the governor's office to have a *Special Prosecutor or other official* appointed to investigate.

I then also inquired of several private attorneys. The new authority on these issues in the West Palm Beach area is the firm of Shullman Fulgate, also recommended by the First Amendment Foundation. Deanna K Shullman, Esq. has handled a thousand or more Constitutional law, First

Amendment, Sunshine law, etc., court cases. I asked the opinion of Deanna K Shullman, Esq., the senior and founding partner. She recently made news representing WPTV Channel 5 against the City of Riviera Beach, and obtained a large fee settlement/award in that Sunshine law court case. She is an outstanding lawyer to speak to.

Deanna Shullman, Esq. opined that the **LPC clearly violated the notice requirements of the Sunshine act**, encumbering many (**\$500 million worth**) properties without proper notice or due process, and that there was no *cure*, as was reasonably recommended to LPC by Council on Sept 11. I will be inquiring of more lawyers this coming week.

I did not even mention to these experts about the audiotape with the LPC's clearly heard statements suggesting their vote may be equally out of **retribution**. The **LPC was quite upset on the audiotape (at both meetings) about the council overruling their Strickland vote** (about 145 Seaspray). It is all on tape. Some neighbors stuck up for the Stricklands. Mike Hertzberg, a retired Seaspray lawyer had written a very strong letter opposing the LPC Strickland vote. ***It is not good government if the LPC voted out of vengeance. And in addition, to do so at a meeting the LPC held in violation of the most important Florida government law, the Sunshine law. It is all on town audiotape.***

But there is more, right on the record:

At page **145 (of 230)** on the backup (exhibits) for this Seas Hearing October 10, 2019 VIII (a) (1) hearing under "Attachments" [Correspondence Received regarding "Sea" Streets Historic District](#), you see the following:

At Page 145 (of 230) downloaded: NEIGHBORHOOD MEETINGS OVERLAY ZONING PROPOSAL FOR THE SEA STREETS **February 27, 2003** Session: 3:00 p.m. to 9:00 p.m. Town Council Chambers, 360 South County Road, Palm Beach. Many council members, zoning members, architects were noted present. It was a very important full hearing.

At pages **148 & 149** (of 230) in **this backup** you see the following in yellow marked words *transcript* from that hearing on **February 27, 2003**. The transcript reads:

*Mr. Tim Frank, **Palm Beach Planning Administrator**, stated: "according to the National Trust for Historic Preservation, **85% of the homes in a district must be of landmark quality for the district to qualify as historic. The Sea streets were previously studied as a possible historic district, but it was determined that only 45%-50% of the structures were eligible individually for landmark status.**"*

Also in this October 10 backup (exhibits) are the minutes of the January 11, 1995 Town Council meeting in yellow: *"Mr. Moore noted that the Landmarks Preservation program is proposed to increase by **\$21,000** to cover special legal costs and additional monies have been set aside for matching funds from a State of Florida grant for a **survey of the "Sea" streets as a potential historic district.**"*

At Page **155** (of 230) in this hearing's **backup** (exhibit) is the testimony under oath at yet another more recent Town Council meeting, under oath. The transcript:

*"... MR. CHOPIN: ... Not Pendleton Avenue. At one point in time, there was a strong desire to consider the question of the **Sea streets** as a historic district. Is that not correct? MR. FRANK: That is correct. MR. CHOPIN: And the town staff, on its own, **acting as prudent professionals** concluded that that was not an appropriate historic district? MR. FRANK: The town staff did not act on its own in that determination. We went back to the Landmarks Preservation Commission, this commission. **We asked them for support to do a study. It was the results of the study that came to that conclusion.** MR. CHOPIN: **And so the Sea streets were, in fact, not recommended as a historic district.** MR. FRANK: **That is correct. That was the result of the study.**"*

In light of all of the above, **why should the council even consider spending a great deal of precious money now on a study based on: (1) a vote at an LPC meeting that was a violation of the most important Florida governmental law, the Sunshine act; and (2) about something that has already been considered fully, at great cost (probably more than once) and firmly proven to be a bad idea.**

It is correct that per the National Trust for Historic Preservation, **85% of the homes in a district must be of landmark quality for the district to qualify as historic.** The testimony by Mr Frank, the Palm Beach Planning administrator was that the **"Sea streets were previously studied as a possible historic district, but it was determined that only 45%-50% of the structures were eligible individually for landmark status."** That is quite a low percentage, and nothing has changed, except that **there are now even less eligible structures in 2019,** as Seas homes have been altered significantly since.

Photographic Proof the LPC idea is absurd, right in this October 10 hearing backup:

There is even photographic **proof right in this hearing backup, that the LPC idea is absurd.** At page **60** (of 230) under *Correspondence received*, The Town of Palm Beach 2010 Historic Sites Survey, and full extensive 60 page report conducted by Jane S. Day, Ph.D. At page **97** (of

230) of this hearing's "correspondence" backup (exhibit) Jane Day begins with **photographs and addresses to make it very easy for all to see: 90 photographed homes**, each and every structure "POTENTIALLY ELIGIBLE FOR A LOCAL REGISTER" as of 2010.

Jane's photos show that, out of the 90 homes you see in pictures/addresses, only **2 Seas homes: 345 and 415 Seaspray** were even potentially eligible for a local register! **ONLY 2 on the Seas, out of 90 homes!** The other 88 properties all located elsewhere in town.

Council's time is valuable. The Town's money is precious. A vote to simply end this time consuming mess, and to simply deny funds for an expensive wasteful Seas streets study, is the only vote that Council needs on **October 10**. This entire matter is causing unnecessary expense and risk to the town. **Council has full authority under Florida law and town code to end it all now.**

Most have no problem with a symposium aimed at residents townwide, and not aimed at the Seas, and truthfully informing about pros **and cons** of **voluntarily** landmarking. It should be as to voluntary landmarking. The symposium must include a truthful account of pitfalls of forced landmarking: the great responsibility owning a landmarked home in a hurricane risk area, where homes are below Sea level, the difficulties obtaining tax credits, and truth as to the limit of grants to cover any large improvement. The symposium must be truthful, and not in any way aimed at the Seas.

As Carol LeCates pointed out, there has been a constant barrage year after year upon Seas residents. This LPC barrage is the last we want to go through, and it will already affect marketability and value of our homes (as the knowledgeable Stricklands cautioned in a Daily News interview). My wife is an experienced Realtor broker/owner with her own company and agents, and is a member of the Palm Beach Board of Realtors. After consulting with many other experienced Palm Beach Realtors, we are sure the LPC action will already affect Seas' marketability and price.

Hence why the Stricklands and their experienced broker always had on their listing boldly the words: "NOT LANDMARKED". It's not because they wanted someone to knock their house down, but rather in areas where land is already very expensive, landmarking is **not desirable**. Rather it is in the near-blighted community areas where landmarking has made sense. Any candid realtor will testify to this. I can also cite more articles on this. Palm Beach is not a near-blighted area.

We are your friends and neighbors who just want to live in peace and tranquility in our retirement. We have done nothing wrong. We have been good neighbors. We on the Seas at **great expense and risk** for decades have done all we can to make our streets: "charming" for all, as the LPC has said. But ***charming* is not legal grounds for landmarking**. I can cite more Court cases if you wish.

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