



TOWN OF PALM BEACH

Town Clerk's Office

REPORT OF THE ORDINANCES, RULES & STANDARDS COMMITTEE MEETING HELD ON THURSDAY, OCTOBER 24, 2019

I. CALL TO ORDER AND ROLL CALL

The Ordinances, Rules and Standards (ORS) Committee meeting was called to order on Thursday, October 24, 2019 at 2:30 p.m. in the Town Council Chambers. On roll call, all committee members were found to be present.

II. PLEDGE OF ALLEGIANCE

Chair Araskog led the pledge of allegiance.

III. APPROVAL OF AGENDA

A motion was made by Committee Member Crampton, and was seconded by Chair Araskog, to approve the Agenda. The motion passed unanimously.

IV. COMMUNICATIONS FROM CITIZENS

Michael Taylor, Port Saint Lucie, provided a speech on the second amendment and spoke regarding the ineffectiveness of gun-free zones and citizens' right to bear arms.

V. REGULAR AGENDA

A. Old Business

1. None

B. New Business

1. [Review of Notice to Property Owners Prior to Landmarks Preservation Commission Placing a Property Under Consideration for Landmarks Designation](#)

Wayne Bergman, Assistant Director of Planning, Zoning and Building

Jay Boodheshwar, Deputy Town Manager, provided opening comments. He announced both the original and supplemental back up, including all communication the Town received from the public and additional information regarding this item, can be found on the Town's website.

Assistant Director Bergman provided a brief historic overview of the Council's decision to direct the ORS Committee study this item and to have staff present recommendations for notice requirements to affected property owners. Mr. Bergman presented staff's recommended changes to Section 54-164 of the Town Code of Ordinances that address the landmark designation process so that notice is required prior to placing a property under consideration for landmark designation, including Historic Districts. Mr. Bergman stated that he incorporated very thoughtful resident suggestions to create additions to the originally proposed changes found in the back up, including those submitted by Jay Serzan, Carol LeCates and Steven Jeffrey Greenwald. The changes were put on the Elmo and discussed.

Chair Araskog expressed concern with making changes to the landmarks ordinance that may potentially conflict with the Bert Harris Act. She commented on the landmark designation procedures from other communities and noted that most of them do not include notice requirements.

Chair Araskog stated that in light of the research staff had provided and her own in the past week, she believed the entire Council needed to make an informed decision on a preferred policy for the process with respect to consideration, notice and designation, because in the last Town Council meeting a recommendation was made without the benefit of detailed research. Chair Araskog discussed her belief in notice and her interest in the City of Miami's process for designating historic districts, including an outreach to property owners before an historic district is put under consideration and evidence that the Landmarks Body must include in the consideration hearing. Chair Araskog discussed different options other municipalities use in their ordinances, including limiting the time period given for the designation process. She preferred to get further direction from the Town Council before drafting changes to a carefully drafted and well-thought out ordinance that had not been changed in forty years., but was open to suggestions from Staff. She was concerned about the effect of making such changes on historic preservation in our Town.

Committee Member Crampton spoke in support of the proposed changes, but stated that if Chair Araskog thought it was important for the entire Council to be educated, look at the other Ordinances, and to discuss this further, he was fine with going in that direction too before drafting an ordinance. Discussion ensued regarding how to proceed with recommending landmark policy changes to the Town Council before drafting and presenting an ordinance.

Deputy Town Manager Boodheshwar recommended looking at the Ordinance conceptually and leave it open to modifications before drafting an Ordinance. He agreed that the Town Attorney's opinion would be needed for any potential issues that could arise due to Bert Harris.

Public Comments:

Ted Cooney, Chair of the Landmarks Preservation Commission, 495 N. Lake Way, expressed concern with the proposed changes to the notification procedure. Currently, Mr. Cooney stated, once a property [or properties] is under consideration, the property [or properties] cannot be demolished until the designation report is complete and a hearing is held. Mr. Cooney stated there may be unintended consequences if the new changes are implemented, by providing property owners with 30 days to initiate the process for obtaining a demolition permit, which per the Town Attorney, would override any ability to stop demolition even if the LPC subsequently votes to put such property under consideration or to designate the property as a Landmark. He said, "the proposed changes severely undercut the ability of the community as a whole to protect a property." Mr. Cooney also mentioned that prior Council's had taken up potential changes to the LPC's demolition procedures, but chose not to change the ordinance.

Chair Araskog thanked Mr. Cooney for bringing his concerns forward and pointed out the information provided from most other communities who for this same reason do not provide notice for the consideration of properties.

Chair Araskog asked Mr. Cooney if it would be a problem to resume a past practice of only putting properties under consideration only during the period of in-season. Mr. Cooney stated that there needs to be enough time to perform the designation report during season, but he did not see an issue with putting properties under consideration during the in- season months too. Additionally, he stated he is in favor of a creating a more inclusive and participatory process but he wants to "make sure we do not unintentionally weaken what we have which is a really strong ordinance that has served us well for about 40 years."

Amanda Skier, Executive Director of the Preservation Foundation, expressed her agreement with Ted that “today’s agenda item stems from the Town Council’s desire to enhance communication efforts with property owners and promote greater understanding of the Landmarking process.” In regard to giving notice to property owners before putting a property under consideration, Ms. Skier said, “I strongly urge this committee to explore changes in procedure rather than changes to the ordinance itself. The Town’s Landmark Ordinance has served the Town well since it was adopted in 1979 and opening the ordinance [to changes] will weaken its ability to withstand legal challenges.” Ms. Skier discussed staff’s research of other municipalities’ Ordinances and the fact that noticing property owners before consideration is not standard practice. “I think the clear take away is that the ordinance should not be changed for this reason. I also think it is important to note that there is a difference in the impact of placing a historic district under consideration as opposed to a single property. Any change in procedure should recognize this distinction rather than treating the two equally.”

Ms. Skier discussed her research of the Landmark’s Ordinance for the exhibition celebrating its 40th Anniversary last year [at the Preservation Foundation] and that she noticed discussion of properties for consideration took place in season. She stated that only having consideration discussions in Season is a change “that could easily be implemented and would lead to greater transparency for property owners so they feel they have an opportunity to engage in the process.” She requested that if our Committee and the Town Council should choose to explore changes to procedure instead of the Ordinance that we wait for discussions until after the symposium and after the completion of the historic site survey in February.

Her recommendation is to have as much information possible to decide the path forward and one that takes all of the issues into consideration. She commended the town for providing a historic district educational symposium. Ms. Skier discussed the benefits of the current code with respect to preserving historic resources and the work and contributions of former preservation and town landmarks consultant Jane Day.

In response to questions from Chair Araskog, Ms. Skier spoke regarding her view on potential landmark notices, the Town’s lack of experience with historical districts, the needed for greater education and the need for understanding the benefits of the historic districting. She stated there are other neighborhoods in Town that can be considered a historic district. She is grateful to the Council for bringing the symposium on Historic Districts forward. She also discussed the Historic Survey and the information that it will bring to Landmark’s and the Town.

Ms. Skier spoke about Barbara Hoffstot and the research, time and information used to design our Ordinance.

Committee Member Crampton stated that he has not made up his mind, that there are a bundle of procedures for the council to discuss but if not he would support changing the statute to give proper notice.

Steven Jeffrey Greenwald, 128 Seaspray Ave., spoke regarding “forced landmarking” and the current ordinance not taking citizen’s rights to due process into consideration. He discussed that in the past, they did not have forced Landmarking. They would work to educate the owners and to convince them, but in the end the owners decided. He thought the Miami Ordinance sounded interesting. He disagreed that most cities are forcing landmarking and stated they are moving away from them. He stated that Florida’s Constitution requires notice and due process. He does not think anyone will destroy a homes in 30 days. He thinks the fears are unrealistic.

Chair Araskog spoke regarding landmark cases and that notice is not required except when the final designation hearing is held.

Discussion ensued about the municipalities who do not give notice.

Mr. Greenwald discussed more cases. Chair Araskog pointed out that most of those cases were zoning cases, not landmarking cases. Chair Araskog stated that law and municipal landmark ordinances appear to have been found without the parameters of the law in regard to not providing notice, but she would like to hear from the Town Attorney on the case law. She pointed out that she was not stating that she opposed notice or favored it, but she needed more case law.

The Miami Ordinance was discussed along with Community Outreach. Chair Araskog discussed the opposing forces of preservation of historic properties and property owners wanting the right to demolish. Chair Araskog also discussed having a maximum time period for the process of designation and consideration to limit the affected private property owners.

Marsha Fick, 230 Seaspray Ave., stated that “having your house landmarked is one of the most if not most impactful thing on your property rights that the Town can impose on you as a homeowner. The fact that discussion on the fate of your home takes place without knowledge is just not right.” The first time people learn of it is when a package arrives saying “ Congratulations you are under consideration and that your whole neighborhood could be locked down under some lengthy study period, again with no notice, is not right.” She spoke in support of providing more notice to property owners whose homes are under potential landmark or historic district designation and finds the current lack of notice disconcerting.

Rene Silvin, 422 Australian Ave., Landmarks Preservation Commission Vice Chair, thanked the Committee for this forum and for the research done. He concurred with Landmarks Chair Ted Cooney being concerned about demolition applications being made if notice is given and in his opinion the issue is to the degree that could happen. He also was happy to hear from Ms. Skier. He believes there is great confusion amongst people as to the difference between landmarking a single property and a historic district. He will support whatever the Council decides. He discussed the different criteria and processes involved with landmarking a single property versus designating a historic district. He added that these are two separate subject matters and suggested that the public notice requirements for both matters be handled separately.

Discussion ensued regarding what it means to own a home in a historic district, the difference between contributing versus non-contributing properties, restrictions, tax benefits and options for homeowners with contributing homes in a historic district.

Landmark Vice- Chair Silvin stated he would support notice for Historic Districting. He recommended a separate process for Historic Districts vs. single property landmarking. He also discussed the fact that many times Landmarks will listen to owners and not Landmark a home when there is vehement opposition. He also discussed the make-up of the Commission and stated they work closely with owners on changes to Landmarked structures to help them accomplish what they desire.

A long discussion ensued about the difference between a Historic District and a single property due to confusion including the time it takes to prepare a designation report and study, notice, and other differences. In a Historic District all homes are not considered landmarked. There are contributing and non-contributing homes. Non-contributing can be torn down. When they rebuild they must fit in with the character of the Historic District. If you are contributing, then you cannot generally demolish the home. Chair Araskog discussed the ease at which Landmark's assesses changes versus ARCOM which is a much tougher Commission for changes.

Emily Stillings, Landmark Consultant, clarified the options property owners have with respect to making home alterations during a historic designation study period. She stated that alterations, potential demolitions and changes are allowed during the study period. The only difference is that they go to Landmarks. She added that the historic district process is most successful when it is noticed and when it is a grass roots effort to get the homeowners engaged with proper community outreach so there is more of a consensus. She supports notice for Historic Districts.

Jay Serzan, 353 Seabreeze Ave. He stated more notice is better and sooner is better than later. He believes this gives a homeowner time to come to the Commission and present facts as to reasons why the home does not meet the criteria and is not worthy of a Landmark or Historic District Designation. He spoke of the cost of the study. He pointed to two homes where a study was done and then homeowners came forward with the reasons their homes did not meet the criteria, the Commission agreed, and the homes were not landmarked. His point: with notice and time for the homeowner to present at a consideration hearing could have saved time and money.

Mr. Serzan spoke in support of a notification period for potential landmark or historical designations and disagreed with Ted Cooney's earlier comments about the notification period serving as an unintended loophole for demolition permits. He discussed the process not being easy to apply for a demolition permit and does not believe residents will rush to file. He recommended the notice be changed from 30 days to 15 and in Season if there is concern about demolition applications being applied for quickly after notice is given. He does not agree with two different processes for a single home and historic districting. He does not like the coercive nature of no notice and the repercussions of consideration. He does not want the Council to wait on adding the notice. He also commented that a contributing building in a historic district has the same result as an individual landmarked property.

Chair Araskog stated she is a strong proponent of notice. She stated that the research she read considered a single home for designation an extraordinary move and the research showed notice is not common for such designation of a single property.

Eric Leiner, 159 Seaspray Ave., spoke in support of a notification period for potential landmark properties and historic designations. He stated that when he learned of the consideration that had occurred on the Sea Streets, he felt it was very heavy-handed and oppressive. "I did not enjoy part of the summer knowing what had happened in our neighborhood." He stated he agrees with all of the neighbors who spoke about notice being important and "found it amazing that the Landmarks had the power to do that" and to "lay those restrictions on a neighborhood literally overnight." There appears to be confusion here between Landmarking and Historic districts and I think there needs to be regarding more education on these subject matters and of a neighborhood before a Committee can put a neighborhood under consideration. He expressed his dismay with the lack of notice he received when the Landmarks Preservation Commission considered studying the "Seas" streets for historic designation and thinks it was patently unfair. He had concerns that the neighborhood and property owners do not know the difference between landmarking and historic

districting and they were “shocked and scared” and “wondered what just happened to the values of our properties and what do we do here.”

Chair Araskog stated that she believes notice for a Historic District is important and believes having the preliminary [as Miami does] might be a way to have communication and involvement and to stop it from having a designation report if $\frac{3}{4}$ of the neighbors say no way. It would save the cost of the study, which is substantially more for an historic district than the \$5,000 designation report of a single property.

Mr. Leiner stated what he learned here is that no notice is given to prevent an owner from having time to react and it seems so unreasonable that a homeowner is going to rush to tear the house down. He said most neighbors would want to learn more about it than tear down their house that is worth millions because of being under consideration. He just does not want to be surprised without notice.

Committee Member Crampton commented on the notification practices of the Town versus other cities and the process involved for historical designation and landmarking. He stated that we have to look at our Town individually and in looking at all of the resources that have gone into these homes that notice whether it is a historic district or an individual house these things have to be done upfront and he prefers that historic districts be done in a much broader context and not just pick out the Sea Streets and District it. “To me that is wrong.” He proposed that overlays be done in context with the comprehensive plan or something that takes into account the entire Town and the rights of property owners and not just “pluck this thing off of the shelf and say it goes here.” He agreed with Chair Araskog that there should be Community Outreach and notice for Historic Districts and supports more education.

Chair Araskog recommended a robust discussion on this subject matter and all of the different options at the next Town Council meeting before recommending any changes and needs to hear from Skip if this should be changed within the Ordinance or under a notification protocol so as not to cause any issues with Bert Harris.

Planning and Zoning Director Josh Martin stated that he did not think that notice is a Bert Harris issue.

Committee Member Crampton asked for different options to be shown in the backup. Chair Araskog asked that the backup include other municipalities’ ordinances when notice and anything that is triggered upon consideration or designation occurs.

Deputy Town Manager Boodheshwar summarized that the following key issues for discussion at the November Town Council meeting:

1. Should the notification procedures for landmarking individual properties and historic district designations be handled separately?
2. How should we memorialize the changes? Should the Town modify the existing code or adopt a new procedure?

Mr. Boodheshwar stated that Skip does want us to tread carefully when it comes to changing the Ordinance, but if they are not substantive changes it can be done within the code without triggering Bert Harris

Chair Araskog asked that minutes from the meeting when the Hoffstot's created the Ordinance or newspaper articles be included in the backup to give the Council an idea of the reasoning behind the different decisions that were made and the historical background information on the existing Landmarks Ordinance while still understanding this was 40 years ago and circumstances can change.

Staff was directed to include all the back up from today's meeting and the supplemental information to the ORS Committee Report for discussion during the November 12, 2019, meeting.

2. Review of Special Events Ordinance to Establish Town Council Approval Criteria for Walks, Runs and Other Types of Races

Deputy Town Manager Boodheshwar provided opening comments and background information on the proposed changes to the Town's Code of Ordinances to address the approval of races, walks, and runs in the Town of Palm Beach. He complimented Ms. Dominguez for her detailed work on this Ordinance.

Town Clerk Kathleen Dominguez presented the proposed language and sections to add to the Special Events code for approving races, walks and runs. Ms. Dominguez researched other Ordinances to provide a comprehensive Ordinance with protections for the Town and its residents.

Chair Araskog asked that the approved routes be removed to prevent all applicants from using the same route and disturbing the same residents. It was the consensus of the Committee to remove all suggested routes. She recommended Town Staff set the maximum number of participants and not the applicant. Ms. Araskog also suggested we limit the number of races allowed. Mr. Boodheshwar agreed there should not be a number allowed. She recommended removing the words "designated time" to be required for walks/races and or runs.

Chair Araskog and Committee Member Crampton recommended some other changes with Mr. Boodheshwar providing input.

It was the consensus of the ORS committee to approve the language, as amended and allow staff to come up with the correct verbiage where the word “prevention” is noted, and then present the changes to the Town Council.

Deputy Town Manager Boodheshwar clarified that this would be sent to the Town Attorney for review before an Ordinance is written.

It was the consensus of the ORS Committee to direct staff to present the proposed code changes with the input provided in strikethrough and underlined format to present to the Town Council at the November 12, 2019, meeting.

VI. ANY OTHER MATTERS - *None*

VII. ADJOURNMENT

There being no further business, the Ordinances, Rules and Standards Committee Meeting of October 24, 2019 adjourned at 4:30 p.m.

APPROVED:

Julie Araskog, Chair

ATTEST:

Kathleen Dominguez, CMC, Town Clerk