

TOWN OF PALM BEACH

Information for ORS Committee Meeting on: October 24, 2019

To: Ordinances, Rules and Standards Committee

From: John Lindgren, Planning Manager

Via: Josh Martin, Director of Planning, Zoning & Building

Re: Notice to Property Owners Prior to LPC Placing a Property Under Consideration for Landmarks Designation

Date: October 14, 2019

STAFF RECOMMENDATION

Staff recommends the Ordinances, Rules and Standards (ORS) Committee review the attached proposed ordinance change requiring notice be given to property owners prior to their property being placed under consideration for landmark designation by the Landmarks Preservation Commission (LPC).

GENERAL INFORMATION

The Landmarks Preservation Commission recently placed the “Sea” Streets under consideration as a historic district, which the Town Council ultimately overturned and removed the area from consideration as a historic district without prejudice. During this process, even though all notification requirements within the landmarks code were followed, concern was raised that the property owners were not notified prior to their properties being put under consideration as part of a historic district. At their September 11, 2019 meeting, Town Council directed staff to look at possible code changes that would require notice to property owners prior to their property being placed under consideration for landmark designation, and to take these code revisions to the ORS Committee for their review.

Staff has proposed revisions to Sec. 54-164 of the Town’s code of ordinances that address the landmark designation process so that notice is required prior to placing a property under consideration for landmark designation; this requirement is also applicable for the historic districts designation process.

Attachment – Chapter 54-164 Code Revisions

cc: Wayne Bergman, Asst. Director of Planning, Zoning & Building
John C. Randolph, Town Attorney

Sec. 54-164. - Landmark, landmark site and historic district designation and undesignation procedures.

- (a) The following procedure shall be adhered to by the commission in designating any building, building site or district that is worthy of preservation:
 - (1) The commission shall consider for landmark designation any property proposed by the owner of record or by a member of the commission.
 - (2) Prior to any property being placed under consideration for landmark designation at a Landmarks Preservation Commission meeting, the owner of record shall be notified via certified mail at least 30 days prior to the meeting date. The same notification will also be required for all property owners of record within an area prior to placing the area under consideration as a historic district. Only those properties where the owner or owners of record request that their property be put under consideration for landmark designation will be exempted from this requirement.
 - ~~(2)~~(3) After a property has been placed under consideration for landmark designation, ~~Notice~~ of a proposed designation shall be sent by certified mail to the owner of record of property proposed for designation as a landmark or landmark site and to each owner of record of property in a district proposed for designation as an historic district, describing the property proposed and announcing a public hearing by the commission to consider such a designation to be held not less than 30 days after the mailing of such notice.
 - ~~(3)~~(4) The commission shall also cause notice of each such proposed designation to be posted at least 30 days prior to the public hearing on the bulletin board in the lobby of the town hall, and in addition the commission shall cause such notice to be published in a newspaper having general circulation in the town.
 - ~~(4)~~(5) The commission may retain or solicit expert testimony regarding the historic and architectural importance of the buildings and districts under consideration for designation.
 - ~~(5)~~(6) The commission may present testimony or documentary evidence of its own to establish a record regarding the historic and architectural importance of the proposed landmark, landmark site or historic district.
 - ~~(6)~~(7) The commission shall afford the owner of each affected property reasonable opportunity to present testimony or documentary evidence regarding the historic and architectural importance of such property.
 - ~~(7)~~(8) The owner of each affected property shall be afforded a right of representation by counsel and reasonable opportunity to cross examine witnesses presented by the commission.
 - ~~(8)~~(9) Any interested party may present testimony or documentary evidence regarding the designation of a proposed landmark, landmark site or historic district at the public hearing and may submit to the commission documentary evidence within three days after the hearing.

~~(9)~~(10) Within not more than 30 days after a public hearing, the commission shall render a final decision regarding the proposed designation and give written notice of its decision to each owner of property affected by the designation, setting forth the reasons for the decision.

~~(10)~~(11) The commission shall maintain a record of testimony and documentary evidence submitted to it for consideration of the designation of a proposed or previously designated landmark, landmark site or historic district.

~~(11)~~(12) In accordance with [section 54-163](#)(1), the town council shall, within 90 days of the commission's final decision, hold a public hearing to consider ratification of the determination of the commission prior to the designation of a property as a landmark or landmark site or of a district as an historic district becoming effective. Absent ratification by the town council, the commission's determination shall be ineffective.

~~(12)~~(13) Within 30 days of the date on which the town council ratifies the commission's designation of a landmark, landmark site or historic district, the commission shall cause to be filed in the office of the county recorder of deeds a certificate of notification that such property is designated a landmark or landmark site or is located within a district designated an historic district; and the certificate of notification shall be maintained on the public record until such time as such designation may be withdrawn by the commission and the town council.

(b) Designation and undesignation hearings before the commission shall be held only during the months of November, December, January, February, March and April.

(c) Designation of a landmark, landmark site or a historic district may be withdrawn by following the same procedure as listed above.

(Code 1982, § 16-43)

LANDMARK ORDINANCE EXAMPLES

Town of Jupiter Island - Sec. 1.03. - Landmark designation procedures.

The town commission shall designate landmarks and remove landmark designations according to the following procedures:

A. Potential landmarks shall be identified for consideration by either:

1. Application by the owner of record, or
2. Other means of identification.

B. If a potential landmark is identified by means other than application by the owner of record, notice of a proposed designation shall be sent by certified mail to the owner of record announcing that a public hearing by the town commission to consider such designation on a specific date that is not less than 30 days after the mailing of such notice.

C. The administrative official post notice of each such proposed designation within the Town Hall or other conspicuous place within the town designated for public notices at least 30 days prior to the public hearing.

D. At public hearing, the town commission shall afford the owner of each affected property reasonable opportunity to present testimony or documentary evidence regarding the historic and architectural importance of such property.

E. Within not more than 30 days after a public hearing, the town commission shall render a final decision regarding the proposed designation, and give written notice of its decision to each owner of property affected by the designation, which includes the reasons for the decision.

F. Within 30 days of the date on which the town commission designates a landmark, the administrative official shall file a certificate of notification that such property is designated as a landmark in the Public Records of Martin County. The certificate of notification shall also be maintained on the public record of the town until such time as such designation may be withdrawn.

City of Lake Worth Beach – Sec. 23.5-4. - Historic preservation.

Potential landmark designation.

A. *In general.* The HRPB or the city commission may by a majority vote of its members and without notice to the owner, designate as a "potential landmark" any building, structure or site which is identified in the survey as value being "potentially eligible" for listing in the National Register based on the criteria for designation outlined in subsection b. If such interim designation is made, the HRPB shall within no more than forty-five (45) days complete an application and schedule a public hearing. If the owner of the potential landmark objects in writing to designation, the HRPB shall complete its review of the application within ninety (90) days of its initial designation of potential landmark status. Once a formal application for designation has been filed, the matter shall be reviewed as provided in subsection e). Designation of a potential landmark is to be considered an extraordinary action and its use shall be limited to situations where the HRPB has reason to believe that an imminent threat exists to the maintenance or survival of buildings or structures identified in the survey to be "potentially eligible" for listing in the National Register.

B. Effect of pending applications for designation. When an application for designation is made and notice is mailed to affected parties, no action with respect to the exterior appearance of such site or district shall commence unless approved in accordance with the procedures provided in subsection e). In order to protect the city's general welfare, avoid an irreparable loss and prevent circumvention of the protections of this article, such requirement shall remain in effect until final disposition of the recommended action. The applicant may apply to the HRPB for review of a proposed action prior to final action by the city commission. The HRPB shall review the application using the criteria established herein, including unreasonable economic hardship. Permits may be issued upon HRPB approval of designation. Should the HRPB deny the applicant's request, the applicant may appeal to the city commission as provided in subsection o) below. If the city commission declines to designate the landmark or historic district, all permitting requirements set forth herein shall no longer apply to any proposed action.

City of Boca Raton – Sec. 28-235. - Establishment of historic sites and districts.

- (1) Historic districts and sites shall be established by ordinance by the city council.
- (2) Before the establishment of a historic site or district, the historic preservation board shall conduct studies and research and make a report on the historic significance of the exteriors of buildings, structures, features, sites, objects and surroundings in the city. The historic preservation board report shall contain recommendations concerning the buildings and areas to be included as proposed historic sites or districts. The board shall furnish written notice by mail to all persons or entities who own property being considered for establishment as a historic site or district at least 14 days prior to the meeting at which the board will consider the designation.
- (3) Copies of the report shall be transmitted for review and recommendation to the planning and zoning board, which shall hold a public hearing thereon after 14 days' written notice by mail to the owners of the properties proposed to be established as historic sites or districts.
- (4) After the public hearing, the planning and zoning board shall submit a final report with its recommendations and those of the historic preservation board to the city council.
- (5) The city council may, upon receipt of the final report, introduce an appropriate ordinance establishing 1 or more historic sites or districts. The city council may adopt the ordinance with or without amendments following a public hearing after 14 days' written notice of the time and place of the hearing has been furnished the owners of the properties proposed to be established as historic sites or districts.
- (6) Upon adoption of the ordinance, the owners of properties designated as historic sites or districts shall be given written notification of such designation by the city clerk. One copy of the ordinance shall be filed in the official records of the county, and 1 copy shall be filed in the office of the chief code administrator.
- (7) The ordinance shall also provide for a suitable sign or marker on or near the property indicating that the property has been designated as a historic site or district, and the sign or marker may include a brief explanation of the property's historical significance.

City of Miami – Sec. 23-4. - Designation of historic resources, historic districts, multiple property designations, and archaeological sites and zones.

Procedures for designation. Properties which meet the criteria set forth in section 23-4 may be designated as historic resources, historic districts, multiple property designations, and archaeological sites and zones according to the following procedures:

(1) *Proposals and preliminary evaluation.* Proposals for designation may be made to the board by any one of its members, the mayor, the city manager, resolution of the planning, zoning and appeals board, resolution of the city commission, the property owner, resolution of the county historic preservation board, resolution of any organization that has been a registered non-profit corporation in the state for at least five years with a recognized interest in historic preservation, or the preservation officer. In those instances when a historic district or multiple property designation is being considered, the preservation office shall conduct outreach involving all relevant home owner associations and neighborhood associations, ultimately ascertaining their level of support by way of resolution or vote. Said level of support shall be taken into consideration by staff and members of the HEPB when evaluating any proposed historic district or multiple property designation. The board shall conduct a preliminary evaluation of the data provided in the proposal for conformance with criteria set forth in subsection (a); and shall, if appropriate, direct the planning department to prepare a designation report. The board may require the party initiating such proposal to provide any necessary documentation, and to pay any applicable fees.

a. *Notification.* At least ten days prior to the meeting at which the board will consider the preliminary evaluation, the owner of property or his designated agent or attorney, on file with the city, which is the subject of said proposal for designation shall be notified by certified mail of the board's intent to consider the preliminary evaluation of the property. Should the applicant be a person other than the property owner or designated agent or attorney on file with the city, the applicant shall be notified and the owner of record of the subject property shall be notified. For historic districts or multiple property designations where there are more than 50 properties to be considered, for designation, the owners shall be notified by first class mail and by the published notice. The notice sent by certified mail of the board's intent to consider the preliminary evaluation of the property, when sent to the property owners of involuntarily designated residentially zoned properties in a T3-O designated transect zone that are not the applicants, will state the right to appeal the board's final decision regarding designation to the city commission, and will include in the notification a statement of the fee waiver provision contained in subsection (c)(7) herein.

Landmark Designation Process

Notice Requirements For Other Jurisdictions

Town of Jupiter Island – first notice to a property owner is done after property is put under consideration, and at least 30 days prior to considering the property for landmark designation.

City of Lake Worth Beach – first notice to a property owner is done after interim designation is made.

City of Boca Raton – first notice is sent to property owners at least 14 days prior to considering a property for landmark designation (no notice is required for the initial study done to put a property under consideration).

City of Miami – first notice is done by certified mail at least 10 days prior to conducting preliminary evaluation of a property to place it under consideration; however, from the date of the notice, no building permit for any new construction, alteration, relocation or demolition that may affect the property proposed for designation shall be issued until completion of the designation review process. Outreach is also done with homeowners associations when considering multiple properties for historic designation; this outreach is done prior to consideration for landmarking, and feedback from this outreach is taken into consideration when evaluating a proposed historic district.

City of Tarpon Springs – first notice is done at least 15 days prior to hearing to consider the property for historic designation, which is scheduled after receiving a petition for designation from the preservation board, the board of commissioners, the owner or the P&Z Department.

Hillsborough County – no notice is required for the initial informal review, because historically for almost every property, the property owner has requested that the property be put through the landmarking review process. For the rare occasions when a property is to go through the initial informal review for landmarking without being requested by the property owner, staff will reach out to the property owner and let them know about the meeting. If the historic board makes a determination to pursue the landmarking process, then notice is sent to the affected property owner.

Miami-Dade County – no notice is done to initiate the designation process (i.e. put a property under consideration for landmarking), because the meeting for this is not a public meeting; therefore no notice is required. However, in practice, staff often notifies the property owner ahead of time in order to provide a transparent process.

City of Oakland Park – first notice to a property owner is done after the property is put under consideration, and at least 30 days prior to being considered for landmarking.

City of West Palm Beach – first notice to a property owner is done after the property is put under consideration through the submittal of an application for historic designation (by historic preservation board, city commission, staff or property owner); notice is done at least 30 days prior to consideration, and is sent to the affected property owner and the property owners within 400 feet of the subject site.

From: [Joshua Martin](#)
To: [Carol LeCates](#); [Wayne Bergman](#); [Julie Araskog](#); [Lew Crampton](#)
Cc: [Kathleen Dominguez](#); [Jay Boodheshwar](#); [John Lindgren](#); [Joshua Martin](#)
Subject: RE: Section 54-164, Landmark Designation...
Date: Tuesday, October 22, 2019 3:14:07 PM
Importance: High

Carol:

Good afternoon. I hope this email finds you well.

By copy of this email, I am sending this to Kathleen Dominguez for the purpose of including this material in the discussion at the ORS meeting this week.

If you have any questions or comments, please let me know.

Thank you all,
Josh

Josh Martin, AICP, CNU-A
Director

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From: Carol LeCates <clecates@comcast.net>
Sent: Tuesday, October 22, 2019 3:07 PM
To: Joshua Martin <jmartin@TownOfPalmBeach.com>; Wayne Bergman <wbergman@TownOfPalmBeach.com>; juliearaskog@aol.com; lewcramptonpb@gmail.com
Subject: Section 54-164, Landmark Designation...

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Hello All,

In reading the proposed text modification to the Landmark designation procedures, I respectfully suggest a few edits to the language (not the substance):

(2) Prior to ~~any~~ a property's being placed under consideration for landmark designation or undesignation at a Landmarks Preservation Commission meeting, the owner(s) of record of such property shall be notified via certified mail at least 30 days prior to the meeting date. The same notification also will ~~also~~ be required for to all property owners of record within an area prior to ~~placing~~ the area's being placed under consideration as a historic district. This notice requirement may be waived for only those properties ~~where the~~ whose owner or owners of record have requested that their property be put under consideration for landmark designation ~~will be exempted from this requirement.~~

Edited version:

"(2) Prior to a property's being placed under consideration for landmark designation or undesignation at a Landmarks Preservation Commission meeting, the owner(s) of record of such property shall be notified via certified mail at least 30 days prior to the meeting date. The same notification will also be required to all property owners of record within an area prior to the area's being placed under consideration as a historic district. This notice requirement may be waived only for those properties whose owner or owners of record have requested that the property be put under consideration for landmark designation."

I assume that the final sentence is due to the fact that this type of owner already would receive notice separately. If that is not the case, then I would suggest that it be deleted.

I hope I have not offended with these suggestions, and I am in favor of the modifications to the notice requirements.

Thank you and best regards,

Carol

From: [Jay Boodheshwar](#)
To: [Kathleen Dominguez](#)
Cc: [Joshua Martin](#); [Wayne Bergman](#); [John Lindgren](#); [Antonette Fabrizi](#)
Subject: FW: Clarification re: LPC Notification
Date: Wednesday, October 23, 2019 12:45:38 PM

Kathleen,

Please include this email in the ORS supplemental back up as well. Thanks. Jay

Jay Boodheshwar
Deputy Town Manager

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Town Manager's Office
360 S. County Road
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From: Julie Araskog <jaraskog@alumni.nd.edu>
Sent: Tuesday, October 22, 2019 6:57 PM
To: Jay Boodheshwar <JBoodheshwar@TownofPalmBeach.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>
Subject: Fwd: Clarification re: LPC Notification

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Jay or Josh,

Will you please clarify the question Jay raises below?

Thank you,
Julie

Begin forwarded message:

From: "Jay Serzan" <jayserzan@comcast.net>
Subject: Clarification re: LPC Notification
Date: October 22, 2019 at 6:49:35 PM EDT
To: <juliearaskog@aol.com>

Hello Julie

I will need some clarification re: the proposed change.

I want to be sure that the *existing* language in newly numbered Paragraph #7

(7) The commission shall afford the owner of each affected property reasonable opportunity to present testimony or documentary evidence regarding the historic and architectural importance of such property.

will apply to the new Paragraph #2

(2) Prior to any property being placed under consideration for landmark designation at a Landmarks Preservation Commission meeting, the owner of record shall be notified via certified mail at least 30 days prior to the meeting date. The same notification will also be required for all property owners of record within an area prior to placing the area under consideration as a historic district. Only those properties where the owner or owners of record request that their property be put under consideration for landmark designation will be exempted from this requirement.

Meaning to say that an owner is able to present testimony or evidence at this initial phase.

Otherwise, just giving notice really does not accomplish much.

The benefit of allowing an owner to address the item at the initial phase may give information to the LPC that would cause them to not place the property under consideration, thereby saving time and money.

Such information could include architectural changes that have been made to the building that would preclude it from being a landmark, etc.

I don't need to know the answer now as I will attend the ORS meeting on Thursday.

Just want you to be thinking about this.

Thank you for your attention.

Regards,

Jay Serzan

John Lindgren, AICP Planning Manager

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From: Steven Jeffrey Greenwald, Esq. <3102724@gmail.com>

Sent: Tuesday, October 22, 2019 8:33 PM

To: John Lindgren <JLindgren@TownofPalmBeach.com>; John (Skip) C. Randolph <JRandolph@jonesfoster.com>; Julie Araskog <jaraskog@TownOfPalmBeach.com>; Kirk Blouin <KBlouin@TownofPalmBeach.com>; Town Council <TCouncil@TownofPalmBeach.com>; Jay Serzan <jayserzan@comcast.net>

Subject: Proposed changes to 54-164 a little add needed; ORS meeting October 24 at 2:30

*******Note:** This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

John Lindgren, Julie Araskog, John Randolph, and Town Council: Sorry to bother you, but the Ordinance, Rules and Standards (ORS) Meeting on this is Thursday at 2:30PM. Jay Serzan also just made some points known to Julie just today and asked for my assistance.

Looking at the attached proposed changes to 54-164 (attached) all looks fine to me except a couple little but important things need to be added to make for proper due process (a chance to be heard) under Florida's constitution.

These are the suggested simple adds to facilitate this, with the adds **underlined in bold**:

54-164 Subsection (a)(9) should now read: "Any interested party may present testimony or documentary evidence regarding the designation **or placing under consideration** of a proposed landmark, landmark site or historic district at **a** public hearing and may submit to the commission documentary evidence within three days after the hearing."

Reason for the above: Simply notice without a chance to be heard is of little use. A chance to be heard is also necessary under Florida's Constitution, to facilitate the required notice *and due process*. Furthermore all may benefit early, if an owner has info showing why a property is not landmarkable, thus saving the Town and owner time and money.

and **54-164 (b)** should also now read:

"Designation, undesignation **and placing under consideration** hearings before the

commission shall be held only during the months of November, December, January, February, March and April."

Thank you so much for your kind consideration.
SJG

Steven Jeffrey Greenwald, Esq.

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