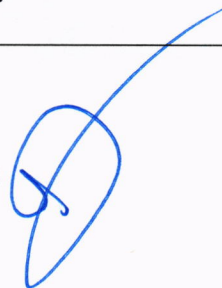


TOWN OF PALM BEACH

Information for Town Council Meeting on:

February 15, 2023

To: Mayor & Town Council
From: Wayne Bergman, Director of PZB
Via: Kirk Blouin, Town Manager
Re: Landmark Program
Date: February 1, 2023



At the December 14, 2022 Town Council meeting, Mayor Moore requested a discussion item to be added to a future agenda regarding the new Landmark Preservation Program. In particular, the Mayor was referring to the change made by Town Council over a year ago to double the budget for the study of Town buildings for possible landmark designations. With this change, in theory, the Town would go from about 10 buildings per year to 20 buildings to be studied and presented to the Landmarks Preservation Commission, and later to the Town Council, for consideration as landmarked buildings.

To date, the Town currently has about 360 landmarked buildings or structures and 36 historically significant buildings (HSB's); within the past five years, 32 buildings out of 71 have received the landmark designation.

Year	Properties Presented for Consideration	Properties Designated a Landmark
2018	8	5
2019	10	5
2020	5	4
2021	28	8
2022	20	10

This designation season, the group of buildings being presented for landmark consideration include many commercial buildings. One reason for this selection is due to the concerns over the new HB 423, which places severe restrictions of the ability to preserve single-family homes in Palm Beach (when such homes are located in special flood hazard areas and when property owners oppose the landmark designation), so a shift was made by the consultants to pursue commercial and multi-family buildings. There are also several single-family homes left over from last year – placed under consideration by the Landmarks Preservation Commission but not yet heard by the Town Council. These homes were deferred to this current season for hearings – most at the request of the owners. These are coming before you now.

Comments have been made by some Landmark Preservation Commissioners and some of the Town Council members that the supply of historically appropriate buildings suitable for future

landmark designation is somehow coming to an end. Therefore, the perception may exist that the recent policy shift to double the number of buildings to be studied each year may no longer be a relevant exercise.

The counterpoint to this line of thinking comes from two primary sources. The first is from the data contained within the Town of Palm Beach Historic Site Survey, December 2020, conducted by Environmental Services, Inc. (ESI). The second source is the current list of properties that were considered, at one time in the past, for landmark designation, but for a variety of reasons were never designated. This is a newly generated list, but one that should be reviewed.

1. The ESI Historic Site Survey - Introduction provides a very compelling snapshot of the Town regarding historic buildings. ESI surveyed 2,240 historic resources and completed a Florida Master Site File (FMSF) form for 1,721 of the resources. Of these 1,721 resources, 936 have the potential for local landmark designation. Further, many buildings were not fully visible during the survey (obscured by hedges or walls) or have not reached fifty (50) years of age. 120 of the surveyed resources were found to [probably] meet the criteria for individual listing on the National Register of Historic Places (NRHP). Therefore, a large number of potential landmark-ready structures exist today.

2. Murphy Stillings and staff completed a list of 61 properties that were considered by the Town in the past but NOT landmarked. Staff then questioned the past and current policy of ignoring buildings forever once they have been presented for landmarking, but the designation was not made (for a variety of reasons). Historically, these properties were not re-visited for landmarking again at any time afterwards, out of fear of *Administrative Res Judicata*. The legal concept of *Administrative Res Judicata* was looked at, and staff questioned whether this was applicable to buildings studied in the past but never landmarked; and more specifically, could the Town re-visit possible landmark designation for properties on the list of buildings that were once studied, and possibly considered, but never designated – this includes a broad span of at least 61 properties dating back to the 1990's. We asked for an independent legal review of the matter.

See attached the legal opinion from Land Use Attorney Seth Behn with Lewis, Longman & Walker. His opinion is that these buildings can be reviewed again when conditions change (change of owner, as an example) or when additional information or facts are discovered, or new background details are found. His letter states “The very nature of historic review is one of evolving scholarship and appreciation. New facts, background information, and admiration for the importance of certain properties is certain to change over time.”

The list of properties once studied and considered, but never landmarked, currently number 61 buildings, and will grow in size as more research is conducted. Staff has asked the Preservation Foundation of Palm Beach to help research this matter and to add properties that they find from their historical archives. Unfortunately, due to the policy of the past, 23% of the known buildings on this list have been demolished since being considered. However, many quality examples of historic architecture remain, and likely some preeminent standout architectural edifices exist.

As a reminder, the four criteria for the designation of a landmark building, structure, or site are found on Chapter 54, Section 54-161:

In the Town of Palm Beach, a landmark or landmark site shall meet at least one of the following four (4) criteria:

- (1) Exemplifies or reflects the broad cultural, political, economic, or social history of the nation, state, county or town.
- (2) Is identified with historic personages or with important events in national, state, or local history.
- (3) Embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmanship.
- (4) Is representative of the notable work of a master builder, designer, or architect whose individual ability has been recognized or who influenced his age.

For comparison to another architecturally and historically rich south Florida community, these are the criteria used in Miami Beach for landmark designation of single-family homes (LDR Section 118-592):

- (1) An association with events that have made significant contributions to the city, county, state, or nation.
- (2) An association with the lives of significant individuals in the city's history.
- (3) Embodying the distinctive characteristics of an historical period, an architectural of design style, or a particular method of construction.
- (4) Possessing intrinsically high artistic merit.
- (5) Representing the work of an acknowledged master, such as a master designer/ architect/ or builder who contributed to our common historic/ aesthetic/ or architectural heritage.
- (6) Has yielded, or is likely to yield, important historic information.
- (7) Having a listing in the National Register of Historic Places.
- (8) Be part of a geographically defined and distinct area of similar structures united by similar elements, even if individual components might lack distinction.

Attached: List of Properties Not Designated by LPC
Seth Behn, Esq. Memo, dated January 24, 2023

PROPERTIES NOT DESIGNATED
BY LPC

#	PROPERTY NUMBER	STREET	BUILT	STYLE	ARCHITECT	OUTCOME	YEAR HEARD	NOTES
1	318	Arabian Road	1940	no info	Harding	Removed from Consideration	1993	No report on file
2	162	Atlantic Avenue	1925	Mediterranean Revival	unknown	Removed without Predjudice	2001	**DEMO 2021**
3	240	Atlantic Avenue	1945	Art Deco	Simonson & Holley	No Action taken by LPC	1991	No action taken due to not yet being 50 years old. **DEMO 2015**
4	314	Australian Avenue	c. 1920	Bungalow	unknown/Maass	No Action taken by LPC	1990	
5	318	Australian Avenue	c. 1920	Bungalow	unknown	Not Ratified by Town Council	1990	
6	130	Banyan Road	1924	Tudor Revival	unknown	Removed from Consideration	2000	
7	240	Banyan Road	1929	Mediterranean Revival	William Gordon Beecher	Not Ratified by Town Council	1990	
8	218	Barton Avenue	1924	Mediterranean Revival	W.B. Eckler - builder	Not Recommended by LPC	2017	
9	131	Barton Avenue	1924/1932	Eclectic	unknown/Wyeth	Not Recommended by LPC	1990	**DEMO POOL GUEST HOUSE 2011**
10	337	Brazilian Avenue	1924	Mediterranean Revival	Theodore Eissfeldt - builder	Not Ratified by Town Council	2014	
11	141	Brazilian Avenue	c.1920/1937	Georgian Revival	unknown/Volk	Not Recommended by LPC	1999	
12	Pavilion	Casa Bendita	1921	Mediterranean Revival	attributed to Mizner	Not Recommended by LPC	2010	
13	120	Clarke Avenue	1924	Mediterranean Revival	unknown	Not Recommended by LPC	2016	
14	150	Clarke Avenue	1934	Monterey	Major	Not Ratified by Town Council	1997	
15	107	Dolphin Road	1958	Mid-Century Modern	Shoumate	Not Recommended by LPC	2022	Not recommended due to alterations
16	136	Dunbar Road	1923	Mediterranean Revival	Kitchell	Not Recommended by LPC	2018	
17	211	Dunbar Road	1929-1930	Mediterranean Revival	E.B. Walton	Not Recommended by LPC	2019	
18	320	El Vedado Way	1940	Neo-Classical Revival	Mack	Not Recommended by LPC	2013	
19	222	Everglade Ave	1927	Mediterranean Revival	R.C. Warner - builder	Not Recommended by LPC	2017	
20	115	Flagler Drive	1924	Mediterranean Revival	Cooper Lightbown - builder	Not Recommended by LPC	1992	
21	215	Garden Rd	1936	Monterey	Treanor & Fatio	Not Ratified by Town Council	2016	
22	8	Golf Road	1922	Mediterranean Revival	Wyeth	Not Recommended by LPC	1997	**DEMO 2013**
23								Removed from consideration due to "not yet of an age appropriate". No report written
	1	Golf Road	1951	Mediterranean Revival	Bennett	Removed from Consideration	1997	
24	3	Golf Road	1951	Georgian Revival	Stetson	Removed from Consideration	1997	Removed from consideration due to "not yet of an age appropriate". No report written
25	726	Hi-Mount Road	1938	Colonial Revival	Treanor & Fatio	Not Recommended by LPC	1998	**DEMO 2018**
26	350	Island Road	1940	Moderne	Treanor & Fatio	Not Recommended by LPC	2012	
27	205	Nightingale Trail	1940	Moderne Stylized Ranch	Seelmann	Not Recommended by LPC	2022	
28	475	North County Road	1936	Colonial Revival	Treanor & Fatio	Not Recommended by LPC	2019	
29	130-132	North County Road	1929/1935	Mediterranean Revival	Kitchell	Not Recommended by LPC	1992	
30	126	North County Road	c. 1932	Mediterranean Revival	Kitchell	Not Recommended by LPC	1992	
31	1197	North Lake Way	1937	Monterey	Treanor & Fatio	Removed from Consideration	1994	
32	1127	North Lake Way	1941	British Colonial	Maass/Volk	Removed from Consideration	1994	
33	444	North Lake Way	1969	Modern	Volk	Not Ratified by Town Council	2001	**DEMO 2003**
34	958	North Lake Way	1977-1979	Modern	Richard Meier	Not Ratified by Town Council	2009	
35	1510	North Ocean Blvd	1925	Mediterranean Revival	E. Bartholomew - builder	Not Ratified by Town Council	2022	
36	1438	North Ocean Blvd	1937	Tudor Revival	Maass	Removed from Consideration	2005	No report written
37	980	North Ocean Blvd	1948	British Colonial	Wyeth, King & Johnson	Not Recommended by LPC	2018	**DEMO 2019**
38	977	North Ocean Blvd	1963	Georgian Revival	Volk	Not Ratified by Town Council	2010	
39	1545	North Ocean Way	1937	French Eclectic	Treanor & Fatio	Not Ratified by Town Council	2014	

PROPERTIES NOT DESIGNATED
BY LPC

40	1565	North Ocean Way	1938	Mediterranean Revival	Wyeth & King	Removed from Consideration	1993	No report on file **DEMO 2017**
41	334	North Woods Road	1936	Georgian Revival	Major	Removed from Consideration	1993	
42	256	Orange Grove Rd	1949	Mid-Century Modern	Stetson	Not Ratified by Town Council	2022	
43	District	Parc Monceau HD	1959-1961	Regency	Mack	Not Ratified by Town Council	2016	
44	269	Park Avenue	c. 1923	Shingle	unknown	Not Recommended by LPC	1991	PART OF HISTORICALLY SIGNIFICANT BUILDING PROGRAM
								PART OF HISTORICALLY SIGNIFICANT BUILDING PROGRAM **DEMO TEA HOUSE 2003**
45	341	Peruvian Avenue	1931	Mediterranean Revival	Wyeth	Removed from Consideration	1983	
46	153-155	Root Trail	c. 1920s	Frame Vernacular	unknown	Not Ratified by Town Council	1999	
47	255	Royal Poinciana Way	c. 1915	Mission Revival	unknown	Not Recommended by LPC	2015	
48	335	Seabreeze Avenue	1925	Mediterranean Revival	Eckler	Not Recommended by LPC	2017	**DEMO 2021**
49	357	Seabreeze Avenue	c. 1900	Shingle	unknown	Not Ratified by Town Council	1990	
50	120	Seabreeze Avenue	c. 1910's	Bungalow	unknown	Removed from Consideration	1993	
51	165	Seaspray Avenue	1919	Colonial Revival	City Builders	Not Ratified by Town Council	2015	**DEMO 2018**
52	145	Seaspray Avenue	1919	Colonial Revival	City Builders	Not Ratified by Town Council	2019	
53	255	Seaspray Avenue	1933	Mediterranean Revival	Wyeth & King	Not Recommended by LPC	2020	
54	535	South County Road	1937	Monterey	unknown	Removed from Consideration	2000	**DEMO 2014**
55	755	South County Road	1941	Mediterranean Revival	Shoumate	Not Recommended by LPC	2022	
56	15	South Lake Trail	c. 1921	Colonial Revival/Eclectic	not listed	Not Recommended by LPC	1991	
57	1410	South Ocean Blvd	1926	Mediterranean Revival	Wyeth	Removed without Predjudice	1998	
58	224	South Ocean Blvd	c. 1922	Shingle	unknown	Not Recommended by LPC	1991	
59	241	Tangier Avenue	1936	Monterey	Major	Not Recommended by LPC	1999	**DEMO 2019**
								PART OF HISTORICALLY SIGNIFICANT BUILDING PROGRAM
60	10	Tarpon Island	1931	British Colonial	Major	Not Recommended by LPC	2011	
61	272	Wells Road	1928	Moorish Revival	Charles E. Snyder	Not Recommended by LPC	2012	

62
63
64
65
66
67




Attorneys at Law
llw-law.com

Reply To: West Palm Beach

MEMORANDUM

TO: Wayne Bergman; James Murphy

CC: Jennifer Hofmeister-Drew

FROM: Seth Behn, Esq., AICP 

DATE: January 24, 2023

SUBJECT: Landmark Designation Review and Administrative Res Judicata

I. Question Presented

You asked: "Does the denial of a request to designate a landmark property preclude that request from coming again before the Town Commission?"

II. Brief Answer

The review of whether a single property should be designated for Landmark Status is *quasi-judicial* in nature. The inquiry is fact based, and a determination is made based upon the record information and status, as is available at that time. However, such a determination does not have the finality that a judicial ruling might carry. *Administrative Res Judicata*, while applicable in certain circumstances, does not preclude reconsideration when changed conditions or additional facts are brought to light. The discretion to determine when changed conditions are found is within the discretion of the Town Council. As a policy decision, however, the Town Council could provide limitations on how often it is willing to reconsider a property previously reviewed.

01878130-1

JACKSONVILLE
245 Riverside Ave.
Suite 510
Jacksonville, Florida 32202
T: 904.353.6410
F: 904.353.7619

ST. PETERSBURG
100 Second Ave., South
Suite 501-S
St. Petersburg, Florida 33701
T: 727.245.0820
F: 727.290.4057

TALLAHASSEE
106 East College Avenue
Suite 1500
Tallahassee, Florida 32301
T: 850.222.5702
F: 850.224.9242

TAMPA
301 West Platt St.
Suite 364
Tampa, Florida 33606
T: 813.775.2331

WEST PALM BEACH
360 South Rosemary Ave.
Suite 1100
West Palm Beach, FL 33401
T: 561.640.0820
F: 561.640.8202

III. Discussion

The actions of the Town Council in carrying out its police powers in matters of land development broadly fall into two categories, legislative and quasi-judicial. The distinction is best understood as legislative actions are those rulings which will have a broad application, versus quasi-judicial are those that apply to only a limited number of sites.¹ Examples of legislative actions would include the adoption of a future land use map, the implementation of new zoning code regulations, or the approval of a historic district. Such actions constitute policy-setting activities and will be found lawful so long as the adoption was “fairly debatable”, a highly deferential standard.

When a Town Council makes decisions that impact specific defined parties and their rights, the review is quasi-judicial and a higher standard must be met. Examples of this might include the rezoning of a single property, a request for a variance from the zoning code standards for one structure, or the designation of a single home as a landmarked property. Quasi-judicial rulings must be based upon the facts and evidence presented to the Town Council. The legal standard for quasi-judicial proceedings is “strict scrutiny”, and the ruling must be supported by “substantial competent evidence.”²

Quasi-judicial decisions in Florida are subject to the “doctrine of administrative res judicata.”³ This doctrine holds that, barring any changed circumstances or new facts, prior decisions of the ruling body should not be revisited. However, the courts have found that the application of administrative res judicata “should be applied in zoning cases with great caution.”⁴ In zoning matters, the ability to consider a project anew should be “liberally construed...to provide the necessary flexibility to the zoning ordinance.”⁵ Furthermore, the discretion to determine when such changed facts or circumstances exists lies with the Town Council itself.⁶

Turning to the specific application of administrative res judicata to the process of historic designation, it is clear this doctrine would not bar the Town from reconsidering a property previously rejected for landmark designation. The very nature of historic review is one of evolving scholarship and appreciation. New facts, background information, and admiration for the importance of certain properties is certain to change over time. Accordingly, a Town Council is vested with the power to reconsider a property previously reviewed for landmarking, upon a finding that changed circumstances and facts are present.

¹ Board of County Com'rs of Brevard County v. Snyder, 627 So.2d 469, 474 (Fla. 1993).

² Id.

³ Coral Reef Nurseries, Inc. v. Babcock Co., 410 So. 2d 648, 651 (Fla. 3d DCA 1982).

⁴ Miller v. Booth, 702 So. 2d 290, 291 (Fla. 3d DCA 1997).

⁵ Coral Reef Nurseries at 654.

⁶ Miller at 291.

In reviewing the Town's code of ordinances, there does not appear to be any specific regulations addressing the question of timing for reconsideration of a historic designation. The code does provide for "undesignation procedures", which necessarily implies the right to bring a property back before the Town Council. With that said, there is nothing to prevent the Town Council, as a matter of policy, to provide for explicit guidelines on when it is willing to reconsider, if at all, a property previously reviewed for landmark designation.⁷

⁷ While no examples were found in the Town of Palm Beach Code, the Palm Beach County Unified Land Development Code provides a typical policy stating, "An application for a [Development Order] for all or a part of the same land shall not be considered for a period of one year after the date of denial." (PBC ULDC Art. 2.A.10.D.1.)