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VIA HARD COPY

April 9, 2021

Laurel M. Lee, Secretary of State  
Florida Department of State  
R.A. Gray Building  
500 South Bronough Street  
Tallahassee, FL 32399-0250

Re: Boca Grande National Historic Register Nomination  
Lee County, FL

Dear Madame Secretary:

I write to you today with great concern regarding an issue of importance to the residents of Boca Grande and Lee County. As head of the Department of State, which oversees the Florida Division of Historic Resources, and as a fellow member of the Florida Bar, my hope is that you may be able to clarify what appears to be a startling lack of due process afforded to certified local governments and affected property owners in the state's National Register of Historic Places nomination proceedings.

By way of background, Mikki Hartig, a historical consultant operating in Sarasota County with no ties to Lee County, filed an application with the Division of Historic Resources to nominate a proposed "Boca Grande Residential Historic District (FMSF#LL02838)" to the National Register of Historic Places. Ms. Hartig does not live or own property within the proposed district, nor does she represent any property owners within the proposed district. Lee County was first notified of this nomination by letter dated October 19, 2020 from Ruben A. Acosta, Survey and Registration Supervisor with the Bureau of Historic Preservation. However, by her own admission, Ms. Hartig has spent over two years preparing the nomination. Since its outset, the nomination has been clouded with a lack of transparency.

First, the nomination was prepared without any input from or notice to the affected property owners or the Boca Grande Historic Preservation Board. All of the homes within the proposed district are already within a locally designated historic district, which is regulated by the Boca Grande

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Historic Preservation Board. Lee County, which is a certified local government under Florida's Certified Local Government Guidelines, has developed a robust regulatory process to protect its historic resources, and its local historic preservation boards are very active in administering these regulations. News that an additional, federally-listed, district was being proposed came as a shock to the residents of Boca Grande, which is a small island community where many residents place a high value on privacy, as well as to the Board of County Commissioners of Lee County. The fact that the nomination sponsor does not live or own property on the island or in Lee County, and did not consult affected property owners in researching or preparing the nomination, has created speculation as to the motivations behind this application. Additionally, the nomination was filed at a time of year when many of Boca Grande's seasonal residents are away from the island, and many who were on the island were not able to attend public meetings due to concerns about COVID-19, which meant fewer property owners would be in a position to object to the nomination.

The originally filed nomination also lacked transparency by including as a contributing resource a median that is owned and maintained by Lee County. The median in question, which the sponsor alleged to have historical significance due to its landscaping design, was not listed by name, but rather identified generically as "Public Space/Plaza." It was not until County staff made further inquiry that this was discovered. As a matter of practice and legal interpretation, Lee County has not treated any road rights-of-way as historic facilities and has not maintained them as such. The plantings within the median have been replaced over time, without regard to any historical landscaping design and cannot in any way be considered historical. Pursuant to the County's strong objection, Ms. Hartig eventually revised the nomination to exclude the median as a named resource, but continues to rely on its historical significance as part of her nomination as a whole.

The nomination, even as revised, also appears to suffer from technical and procedural deficiencies, including questions regarding the historical accuracy of the nomination narrative, whether the proposed district sufficiently represents all of the historic homes in the area, and whether affected property owners were actually notified in accordance with the Florida Certified Local Government Guidelines. For these reasons, as well as an overwhelming show of opposition by Boca Grande residents,



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the Boca Grande Historic Preservation Board voted on March 10, 2021, to oppose the nomination, and the Lee County Board of County Commissioners voted unanimously on April 6, 2021, to support the Historic Board's decision.

When a proposed nomination is opposed by both the local historic preservation board and the chief local elected official, the Florida Certified Local Government Guidelines provide that the State Historic Preservation Officer "take no further action on the nomination proposal unless an appeal is filed within 30 calendar days with the State Historic Preservation Officer." (See Section C.4.; *emphasis added*). The County has been notified, not by the State Historic Preservation Officer but by a local reporter, that the sponsor filed an appeal of the County's decision to oppose the nomination and that the appeal will be heard on May 6<sup>th</sup> at 1:30 p.m. via webinar. Through the date of this writing, we have yet to receive notice of the appeal. Furthermore, to the best of my knowledge, none of the affected property owners have yet to receive notice of the appeal either.

**It is here that I request your clarification on what due process rights will be afforded to the County and to affected property owners who have objected to the nomination.**

I have reviewed the Florida Certified Local Government Guidelines, as well as 36 CFR Part 60, and I am unable to discern how this regulatory scheme serves the interests of anyone other than the nomination sponsor. In my legal experience, appeals require certain elements, such as identification of the final order being appealed, articulation of the grounds for the appeal, a requirement that opposing parties receive notice of the appeal, and an opportunity for opposing parties to present argument. None of those things seem to be provided for in this case. This runs contrary to even a basic understanding of due process under the law. If the certified local government and affected property owners are not considered parties to this appeal, are not provided notice, and are not allowed to participate in the hearing, how can their rights be protected?

The Lee County Board of County Commissioners, as well as the property owners in the proposed district, should be mandatory parties in any appeal of a decision which so greatly affects them. If the Florida Certified Local Government Guidelines do not provide for this essential protection, then perhaps legislative oversight of this process is needed. Star Chamber proceedings have never enjoyed a place in American jurisprudence. Ambiguous, shadowy and amorphous programs are the antithesis of good government.

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I respectfully request you undertake an immediate review of the issues presented herein.

Please also know that this Office stands ready to protect the interests of Lee County and its residents in whatever forum that might be necessary.

Sincerely,



Richard Wm. Wesch  
County Attorney

ALS:tlb

cc via email only:

The Honorable Spencer Roach, District 79  
The Honorable Ray Rodrigues, District 76  
The Honorable Jenna Persons, District 78  
The Honorable Kathleen Passidomo, District 28  
The Honorable Mike Giallombardo, District 77  
The Honorable Ben Albritton, District 26  
The Honorable Adam Botana, District 76  
Mr. Timothy Parsons, Ph.D., SHPO, Director, Division of Historical Resources  
Commissioner Kevin Ruane, District 1  
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Commissioner Brian Hamman, District 4  
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Michael D. Jacob, Deputy County Attorney  
Dave Loveland, Director, DCD  
Anthony Rodriguez, Manager, DCD  
Jerry Edgerton, Boca Grande Historic Preservation Board  
Dennis Maloomian, Boca Grande Historic Preservation Board  
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