

**Suggestions for the Historic Preservation Code Committee, March 3, 2011**

*Historic Lafayette Park*

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Prepared by Mark S. Daniel for the Use of the Committee in their Deliberations

We sincerely wish the volunteer code committee members the very best of luck and inspiration as they tackle both the land development code as well as the entrenched positions of the City bureaucracy. Towards that end, we offer some suggestions, based on careful evaluation and experience over the past two years of dealing with what went wrong in the Lafayette Park Historic district process:

**(Tallahassee, FL: March 2, 2011) Some suggested topics and discussions for code revisions for the Historic Preservation Process in Tallahassee:**

**Prepared for the Code Committee, including such topics:**

Who can apply...

Lessons learned from the Lafayette Park HPO war of 2008-2009...

Requiring the ARB meetings to be on video, with minutes accessible online...

Redefining regulated work items to exclude removable building elements...

Provisions for an "OPT OUT" at any time by a property owner...

Requirements for complete applications instead of TTHP-style sham forms...

Dumping the Tallahassee Trust for Historic Preservation from City affairs...

Putting ethics and accountability into the structure of the ARB...

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### **Part 1: Comments upon the physical, actual Applications for Historic Preservation:**

(These are suggestions to improve the application and application process, arising from review of grave problems encountered and identified through the Lafayette Park application process.)

**Suggested** improvements/alterations to the Historic district application procedure, with some applicability to all Historic Preservation applications:

1. a. WHO CAN APPLY: Only an individual property owner should be able to apply for their property to receive historic designation with historic preservation overlay rezoning. Only an individual property owner should be able to apply for their property to be designated as an historic property, without the rezoning overlay. (comment: Is is quite simply wrong to give anyone else the right to modify the personal property rights of any owner.)

b. No application should be changed in any way, without being re-advertised and re-submitted as an entirely new application. (comment: The Lafayette Park application was twice submitted by a two-party applicant, one of whom (in each case) was deemed to be legally barred from submitting an application. In both cases, to the extreme harm to property owners, the applicants were substituted, as well as having modifications inserted into the body of the application. These changes made these documents into new applications which the city attorney allowed to circumvent the procedures for new applications. Such changes are simply wrong: they deny the legal notice to property owners, and they allow a legally-deficient application to move forward, thereby causing great expense to the city as well as property owners.

2. a. No application should be submitted which does not have complete documentation provided, using the most current version of the Florida Department of State Master Site File Forms. Any blank or inadequately-answered sections on a form are irreparable defects and the application must be rejected. An application must be signed and

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certified as being current with all information being researched and verified within the previous 12 months. (comment: The Lafayette Park application, comprised of hundreds of properties, had nearly all the backup forms blank or up to a quarter-century out of date--the entire application was a sham.)

b. No application should be submitted which has not been reviewed by a certified, designated reviewer (qualifications to be determined by the **committee**) who will lose his certifications if it is found the application is improperly researched and completed prior to submittal. (Note: the "blank" application forms provided by the Tallahassee Trust for Historic Preservation on the Lafayette Park HPO application were done by a part-time student employee (ostensibly an "intern", but what sort of internship?) who was nominally under the direction of the TTHP Director/ARB Staff. Apparently the director found that nearly blank forms containing incomplete, inaccurate, invented information are acceptable. Perhaps the **committee** should just request the city to remove the director for utter incompetence, by way of establishing an effective, lasting precedent.)

**Blank forms are not acceptable.** The TTHP, in failing to provide competent direction and completion of the forms did long-term, irreparable harm to every resident of Lafayette Park. The City of Tallahassee spent time and money "reviewing" an application which was invalid to begin with, and the Planning Commission wasted a meeting on the defective application. In addition, hundreds of families had their lives disrupted for a year or more.

c. The application should be reviewed for completeness in addition to the review for substance by the Architectural Review Board, and certified by the Architectural Review Board as to completeness and adequacy of all provided information. Incomplete or inadequate applications may not be forwarded to the Planning Department, but instead must be rejected and returned to the applicants as insufficient with the information that an application for the same property may not be submitted again for a period of 18 months from the date of rejection.

d. The application should be independently reviewed for completeness, in addition to the review for substance by the Planning Department. The Planning Department and the Planning Commissions should not rely on the ARB to have done their job. Inadequate responses to the forms, insufficient responses, missing responses shall be cause for rejection of the application, with prejudice, with censure to the ARB for forwarding poor applications.

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e. Any rejected application should be able to be corrected and re-submitted, but only after a period of 18 months from the date of the most recent rejection. All data on resubmitted applications must be re-certified as to current information being current. This is a significant penalty being offered to the committee for consideration. Inadequate consequences for incompetence will only encourage more such sloppy work in the future from the TTHP staff. We've had enough of that in the Lafayette Park HPO application to last a lifetime and more.

### 4. Historic Designation Vs. Historic Preservation Rezoning, with maybe a new category: Historic Recognition

a. Historic Designation for neighborhoods (as opposed to individual properties) should be automatic for any part of a neighborhood in which half of the individual properties in the neighborhood have applied for and received historic designation as well as Historic Preservation Re-zoning. Historic neighborhoods must be defined by the area which actually contain historic-designated properties--Thus, a cluster of designated homes at one end of a relatively distinct neighborhood cannot claim to create a whole designated neighborhood. Such could be called the "neighborhood district". e.g. "The historic XYZ neighborhood district"

**However**, Historic Preservation Rezoning should be defined to be applied ONLY to individual properties, and never to a geographic area larger than an individual property; and, **never for non-contributing properties**. (comment: in Myers Park, due to the purpose of Historic Preservation as a "weapon" used by the City Attorney to go after one developer, huge numbers of non-contributing properties were shoved into the Historic Preservation Overlay. These non-contributing properties have to deal with the repugnant task of providing drawings, samples, photos, and more in order to get a "review" which is totally meaningless and totally without merit, and which can be legally ignored. This is government for the sake of government, with no benefit, except to the TTHP paid staff. It has harmed and continues to harm all basic maintenance and ordinary improvements. (FACT: based on data provided by TTHP Chair Laura Corbett, and excluding necessary roof shingle replacement, there were only 35 voluntary projects in Myers Park for 230 homes over a six-year period: an average of ONE project per home every 38 years--what better definition of forced deterioration do you need, **Committee Members?**)

b. The historic designation gives a neighborhood certain benefits, which must be spelled out clearly in the code by the **committee**, but imposes no obligations or

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restrictions upon the individual property owners. No neighborhood historic designation shall apply to individual properties within a neighborhood, unless the individual property owner has formally applied with a properly completed application. Thus, a neighborhood may receive designation, and henceforth be referred to as "the Historic XYZ Neighborhood", and receive the invaluable, coveted, much-sought-after brown street name signs, etc, but it may contain non-designated individual properties which co-exist with no obligations or restrictions of any kind.

Perhaps, we need a clarifying category called "**Historic Neighborhood Recognition**", with no impositions of any kind, but which give the homeowners in a neighborhood the focus and motivation to do more on their individual properties. Recognition is a good, positive, first step. It will encourage further study and learning on the part of homeowners. It will not drive anyone away from Historic Preservation like our current club-over-the-head approach.

c. Only by providing for this co-existing separation of designated, designated-rezoned, and completely non-designated/non-rezoned, but recognized properties can we, in Tallahassee, hope to preserve the very many fragmented neighborhoods we currently have, in which many of the historic properties have been demolished or lost through other means...neighborhoods no longer uniformly historic. Otherwise, these neighborhoods will never achieve "historic designation status", and will not obtain the recognition that serves to improve and encourage the inclination of individual property owners to subscribe to the historic designation and/or re-zoning process.

5. Any application for Historic Designation must indicate whether or not it is also an application for the Historic Preservation Overlay (Rezoning) (HPO). If so, special considerations must be designed to be followed:

a. The application should not be submitted unless the deeded owner of the property has attended at least 10 (ten) Architectural Review Board meetings (gavel to gavel--no partial meetings) to learn the true character and actual disposition of typical issues brought before the ARB. Anyone who observes the ARB in actual practice is going to come away stunned, with a completely different impression of how they really do business--the ARB is a venomous, malicious group with no regard for personal property rights, and they make the most of what authority an owner has ceded to the ARB, in return for a possible short-term improvement grant. (short term versus the current permanent loss of property rights!)

b. The application should not be submitted unless the owner has agreed, in writing,

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with a notarized signature, that they understand that the rezoning of their property will have profound and possibly very negative consequences to their use of the property and value of their property as long as the HPO rezoning is in place.

c. They should need to acknowledge that their desires for any specific forms of maintenance, improvement and landscaping on their property will be largely ignored and will become irrelevant once HPO rezoning is in place. The only considerations for visible physical work on the property will be what the ARB chooses to consider, without regard for the property owner's desires.

d. The property owner must acknowledge that cost considerations will be secondary (or of utterly no consequence) to the Architectural Review Board, and this lack of consideration regarding cost may place them in a position where critical, necessary repairs which come under the auspices of the Architectural Review Board may be delayed for a year or much more while the members of the board discuss the finer points of such things as "sunlight glints" on shingle mineral particles or the "sense of time and place" relating to visible heating chimney pipes of a proposed new gas furnace..

e. The property owner/applicant needs to further acknowledge that should they fail to delay their proposed work (and proceed with what they want to do) while the ARB savors the various architectural finer points which pique their current interest, will, in most cases, require removal of the work-in-place performed prior to complete ARB review.

The owner must be advised that such "unapproved" work will result in ARB determination of violation status, and referral of the matter to a City of Tallahassee Board of Adjustment (where the fines are levied). The owner must acknowledge that such Board of Adjustment inquiries can lead to fines so exorbitant and unconscionable that the owner may lose possession of their home or property.

Comment: What I'm trying to get you **members of the committee** to understand here is that "historic preservation" is a warm, fuzzy, positive thing; when it is coupled with a substantial grant or loan, people may rush in and sign up without doing the necessary research into the reality. Please, include some of these requirements so people can find out what a horrible tie-up of their property they are getting into. Also, be sure to include the following "opt-out" provision. It's the only thing preventing the ARB from the worst abuses:

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### **Part 1-A: Revocation Option: Granting a property owner the ability to renounce the HPO rezoning at any time.**

**A consideration for the committee:** The Historic Preservation Designation and the Historic Preservation Overlay Rezoning should always be revocable by the current owner of a property, through a simple notification process which you shall determine, such as a certified form letter (with notarized signature) to the director of planning, and a copy to the property tax appraiser's office and filed with the clerk of court for recording in the same manner as a deed restriction.

The value of such a feature as revocation will go far in removing the presently-existing situation of abuse by the Architectural Review Board. The ARB currently does not have ANY RESTRAINT on their power to delay work on a property, or their power to deliberately find the worst-cost scenario, and their power to harm and frustrate all historic preservation projects throughout the City of Tallahassee and Leon County through their wide-spread reputation as malicious, evil-intentioned, ignorant, ethically-compromised, incompetent, unsympathetic, jealous bureaucrats guided solely by how far they can stretch the extent and consequences of the harm they inflict.

By giving every owner the right to stand up in an Architectural Review Board kangaroo-court meeting and say, "I shall renounce the Historic Preservation Overlay Rezoning!", the board may be inclined to look around at what suggestions and proposals may be realistic and reasonable to preserve the property that may be under consideration. However, standing up and saying the renunciation should be optional on the part of the property owner--only the certified form recorded in the county clerk's office should be truly required, as long as copies are mailed (with proof of mailing) to director of planning, and property tax appraiser's office.

Renunciation and revocation of the Historic Preservation Overlay by the action of the owner must not become a cause for return of any grant funds which may have been received received prior to the renunciation. If work was done with grant funds to improve a recognized historic property, the money was properly used. The funds should never become a permanent tie which binds the owner and/or the property to a lifetime of servitude to an Architectural Review Board. There should be no demand to return or repay funds which were properly used. There should be no requirement for ongoing ties to historic preservation zoning as a condition of such grant funding.

If an historic property loan was provided, obviously the owner of the property must

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remain obligated to repay the loan in accordance with the terms of the loan agreement. However no agreement for an historic property improvement or repair loan shall include any obligation on the part of the property owner to permanently (irrevocably) commit his property for any historic overlay rezoning.

At present, the Architectural Review Board members serve at the pleasure of their appointing bodies, either the Tallahassee City Commission, The Leon County Commission, The Tallahassee-Leon County Planning Department and the Tallahassee-Leon County Planning Commission. Without exception, these bodies have failed to exorcise, discipline or remove the overwhelmingly ethically-compromised members of the board who owe (or, more importantly, who have the appearance of owing favors (votes, decisions, you-name-it) to the executive director of the Tallahassee Trust for Historic Preservation, as a result of his service on a financial grant committee which facilitated or promises their receipt of enormous financial grants to improve their own private property. This undeniable appearance, whether or not any real quid-pro-quo exists, is what harms every decision of the ARB, and it further harms the entire government of Tallahassee and Leon County. The whole process is smothered by the perception of bad dealing and bad decisions.

In addition, due to a basic flaw in the designed make-up of the Architectural Review Board, nearly half the board is completely unqualified to make any kind of architectural or historic material or method decision on any property or issue brought before them. The code only requires that four members live in an existing historically designated property. This one criteria further exposes these members to the ethical situation of receiving or hoping-to-receive enormous financial largess from the historic grant committee, on which sits the actual author of many applications, and who basically leads the grant committee... His role in the Tallahassee Trust for Historic Preservation makes him the one person to whom all others defer on matters "historic".

**Members of the committee**, this code-determined ethical breach must stop. Safeguards must be put in place with suitable, functional methods to preserve the separation of grant recipients and petitioners. It could easily be postulated that every single decision of the Architectural Review Board in the past several years has been tainted by these flaws.

I urge the **committee**, as part of their findings, to encourage the city to begin prosecution of the members of the Architectural Review Board who have continued to "serve" and vote after receiving a financial grant in such a compromised manner. By the very definition, and by the guidelines of the Florida Department of State, they have

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deliberately violated the precepts of public service, and continue to do so while **you members of the committee** debate terms of a possible new code.

Also, if we--as a community--cannot sever the ties between the historic financial grants and the system that oversees the historic designation and rezoning process, we need to cease giving grants. We certainly have a large enough, active community that such overlapping memberships do not need to exist.

### **Part 2: The Tallahassee Trust for Historic Preservation (TTHP)**

**"Gosh, Mr. Wolf, are these chickens qualified to go into your hen-house?"**

Regardless of stated ideology and past history and activities and accomplishments, there is one over-riding characteristic of the TTHP--they are a contractor to the City of Tallahassee and Leon County. They reap a financial benefit every time a property becomes designated as an historic property. This increase in the historic properties under their domain is either a direct or indirect influence upon the amount of money they are paid and the sum of their contract renewals. More work--More pay. That's normal and ordinary for contracted work.

This "more work--more money" situation also colors the perception of the ethicality of their activities: By code, TTHP provides one of the members of the Architectural Review Board...a member who cannot function in an impartial manner. That member's decision to become a supporter and member of the Tallahassee Trust for Historic Preservation is proof that they are not impartial in decisions affecting historic preservation. Unfortunately, it is not proof that they are competent. Such a member may be quite likely to be able to provide valuable guidance to other board members and property owners seeking information in regard to an individual property, but as membership in the TTHP is also considered to be a fashionable social role, quality and competency of the membership is as equally dubious as any random choice from a similar economic strata. When an historic district nomination is up for consideration, it has already been demonstrated (in the Lafayette Park HPO situation) that non-historic homes and persons wishing to be left out of the designation nomination are completely ignored. This is the "more work--more pay" function occurring. It harms the credentials of the process of Historic Preservation.

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This demonstrated ethical dilemma and lack of impartiality leaves **you members of the committee** with a problem to solve! Perhaps the Tallahassee Trust for Historic Preservation needs to be cast adrift from the process within the code and left to find more useful functions where their goals remain solely altruistic and cannot be confused with their contract perpetuation, and cannot be confused with their one-sided view of historic preservation at the expense of people who have no voice on the board.

A significant number of problems with the existing code seems to stem from the misapplication of idealistic public desires being twisted and manipulated in one way or another in actual practice by TTHP. Every knotty string unraveled passes through the TTHP once or several times. If **you members of the committee** want to get a handle on an honest process to replace the existing one, start with getting rid of the TTHP and all their ties to every aspect of the process. Dismiss them from your code-writing "advisory staff". Dismiss them from the Architectural Review Board Membership. Dismiss them from the Architectural Review Board support staff and executive directorship. Dismiss them from the historic preservation grants committee.

The Tallahassee Trust for Historic Preservation has proven to be a cancer which has metastasized throughout the legal and procedural aspects of historic preservation of our community and threatens to destroy it. Their harm to date is incalculable...just look around at our town and see how many fine old buildings are gone....well...you can't see them anymore! Too bad.

The Tallahassee Trust for Historic Preservation should be an independent foundation furthering the advancement of historic preservation in the private sector. They do not belong as part of our governmental process.

### **Part 3: The Architectural Review Board (ARB)**

1. Every member of the ARB needs to have documented and demonstrated competency in one of the following areas:
  - a. Architecture, with recognition in Historic Preservation issues and properties.
  - b. Historic Renovation Design or Construction (includes hands-on trade work in preservation)
  - c. Historic Preservation Lah-Tee-Dah certification from the local social club? I don't think so.

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- d. Management of historic preservation projects.
- e. Other, as determined by the **code-writing-committee** to be relevant.
- f. Planning Commission and or Planning Department member, who shall provide definitive leadership on code procedures and applications.

Comment--The previous ARB membership roster, required (by code) four members who merely lived in or owned a house previously determined to be historic. The immeasurable harm done by people chosen for their lack of knowledge or skills will continue to have a negative effect on historic preservation for decades in Tallahassee/Leon county. We must make a beginning towards correcting this perception. Every prior Historically Designated property which was determined, in part, by such a board must have the option to opt out.

2. No member of the ARB should have received a financial grant (or loan) for historic preservation, and by a condition of serving, no member of the ARB should be eligible to receive a grant (or loan) for a period of ten years after the conclusion of their service as an ARB member. The appearance of making decisions as a return for a financial favor or as a condition of receiving a financial favor is not acceptable.

3. No member of the ARB who is a member or designee of either the Planning Department or the Planning Commission, or who is a (current or future) member of the City Commission may sit in upon or hear or vote upon an issue brought to the Planning Department, Planning Commission or City commission, if they previously sat in upon, or heard or voted upon the issue/property when it was before the ARB.

Comment--The extreme, damaging bias shown by both the Planning Department designee and Planning Commission designee to the ARB, in their subsequent department/commission actions upon the Lafayette Park issue they heard as members of the ARB make this separation an immediate and essential need. This separation is necessary to prevent further recurrences such as the Cathy Kendall affair, wherein she moved for a yes-vote, with no discussion, before the other members of the planning commission had even received their full copy of the Lafayette Park HPO materials. Such ethical breaches of judicial rights must be prevented by the designed makeup of the ARB and restrictions in the new code to prevent this duality.

4. If the ARB fails to act upon an application within a time frame (to be determined by **the code committee**), it should not move forward, but should be considered to have been rejected and should be subject to the same re-application restrictions as any other

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rejected application.

5. If the ARB begins an enforcement action for the violation of any part of the Historic Preservation codes (e.g. a homeowner doing work on an historic property without obtaining permission and review), and it turns out that the homeowner is not guilty of having violated the codes, the homeowner should be entitled to a minimum payment of \$10,000 from the City of Tallahassee, in addition to expense reimbursement, legal and engineering and research expenses. The City of Tallahassee should also issue a public apology and provide the homeowner with his choice of a round-the-world trip for two or a new 17' fiberglass motorboat. (just checking to see if you're reading...)

Comment: Reparations aside, the current ARB (managed and staffed by the TTHP) is getting a reputation for "going after" people who have done no wrong.

6. The ARB should not be able to restrict or regulate any part of a dwelling except the front facade and visible roof or the first ten feet of the side facades of any building visible as follows:

We require a clear, limited Definition of Visible: during ordinary daylight hours from one hour after sunrise to one hour before sunset, by a person of average vision, standing in the middle of the roadway in front of the property, unaided by ladders, binoculars, digital equipment or cameras, or specialized surveying or observation equipment. Corrective eyeglasses are not restricted, as long as they are normal, everyday wear glasses.

7. No visible improvement which remains "undiscovered" or undocumented, or for which no action has been taken by the ARB for one year after the commencement of said improvement should be subject to any enforcement action, and should be considered to have been fully approved by the ARB.

Comment: People must be able to sell their property without hidden encumbrances. Potential fines "hanging out there" for unauthorized modifications which may be unapproved could devastate a subsequent home buyer, and result in extraordinary efforts for clarification being required on every property sold from title insurance companies, or else, the ARB staff would have to begin issuing "certifications of approval". With a one-year discovery clause, a reasonable center-road situation can be found, which allows a seller and buyer to know they are in the clear after one year.

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8. People need to be able to learn just what the ARB is really all about. All ARB meetings need to be broadcast on the City TV and offered as video files to any citizen, as well as kept available, like other public meetings. Video copies of meetings should be for a nominal cost of less than \$5. All meeting minutes should be transcribed accurately and posted online. Right now, it is impossible to review ARB meeting minutes without a FL Chapter 119 request through the City Attorney's office. This is wrong! This secrecy is certainly partly responsible for their extreme abuses of authority.

### **Part 4: Regulated items and regulated work:**

Code Committee Members, we need a recognition by the City of Tallahassee that the "regulated work items" of the National Historic Register guidelines are ridiculously punitive, intrusive, and constitute a severe deterrent to the encouragement of historic preservation. These guidelines were designed for "living museum towns" such as Harper's Ferry and Williamsburg, Virginia. They do not reflect the reality of everyday towns that have historic resources.

Our continued adherence to such restrictive items as identified in the existing code are no doubt one of the reasons we have so few historic properties remaining in Tallahassee, compared to other communities of similar size, similar age and of such similar distinguished usage and occupancy (state capitol and universities) over the decades. Tallahassee would probably be on the bottom of a comparison list. We need to make a dramatic change and bring more property owners into the right way of viewing historic preservation as a positive thing.

Improvements which do not substantially affect the original historic property and for which no pre-approval is necessary need to include the following:

1 -any landscape feature, permanent or otherwise, including walls, fountains, decks, excavations, plants, walks, drives, sculpture, storage sheds, wood sheds, well-pumps; free-standing garages, carports, guest cottages; pet facilities, including fenced runs, and dog houses, and other similar outdoor features not specifically named and which are not attached directly to an historic home or building. Such features do not detract from the integrity of an original house or building.

2 -any addition or change to accommodate handicap access: This would include railings, ramps, step-elevators, and any other such mobility-assistance devices that are

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found useful to a person who wants or needs them for access to the building. Such changes should be encouraged to be "similar" or "matching" to the existing historic structure, but requiring ARB review or approval of any kind becomes a tax upon the handicapped and cannot be justified. Even if some kind of permit fees are waived, the time and effort of seeking any approval before the ARB must be recognized as an onerous task involving extensive personal stress, planning, time and cost. It is a major burden and a substantial impediment to even modest work.

3 -any easily removable modification to a building to accommodate an owner's whims, including solar panels, metal or fabric awnings or shades, hardware decorations, shutters, screen doors or windows, security grills, decks (which are adjacent to, or connected to the structure), electromagnetic or solar reception antennas or devices, sculptures and anything else which can be removed simply and easily, leaving behind only screw holes, fastening devices or piping penetrations, without materially affecting the long-term historic authenticity of the structure's facade. We need to get real and let people have fun with their property without outside "policing" interference.

4 -any paint or decorative coloring or covering, but not including vinyl or aluminum siding or similar "cover-up" siding.

5 -any roofing material needs to be exempt. However, structural changes to a roof must require approval, including the addition of dormers, change of pitch, etc. Skylights should not required to be approved, or submitted for approval. Prior ARB approval experience on roofing materials has been an exercise in futility, causing severe distress to property owners, added expense, substantial increases in the timing of roof-covering replacement, all without any benefit towards preserving the historical aspect of any property. It constitutes a ridiculous waste of time and exercise (abuse) of power. There is no roofing material in Tallahassee which is not on one kind of building or another and which looks just fine. Again, we need to get real.

6 -changes of any kind or scope to "Non-contributing property". (Please note, that all "non-contributing" properties need to be subject to the opt-out provisions which are recommended, and that non-contributing properties should not be in any overlay rezoning, by definition, which should only be applied to individual properties,not neighborhoods.)

7 -Maintenance items which normally involve the replacement, rather than the repair, of a building component, and which are substantially the same size as the original,

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regardless of design or material, including such items as doors, windows, garage doors, chimneys, etc.

### **Part 5: Existing Historic Districts and Historic Properties**

All of the findings of **the code-committee** needs to be retroactively applicable to all existing historic properties and districts. Uniformity of process must be a given end result of your work.

It is a fact that the City of Tallahassee cannot produce any record of the specific process by which they took Myers Park and created an historic district, much of which is neither in Myers Park neighborhood nor historic in any way, shape or form. It was applied solely as a method of wrongful control over land development which legally met the zoning and building codes of the time. It did not work but it left a staggering toll upon the property owners who suddenly found themselves under an impossible burden to justify any kind of yard modification, building modification or construction or maintenance.

I suggest that the Myers Park Historic district be formally suspended or abandoned and required to re-apply under the terms of the new code which you shall devise. There is no other fair way to do it. Tallahassee must admit to, and come to terms with their failures and faults regarding historic preservation, if the new code is to have any semblance of integrity.

Institution of the "opt out" provision will go a long way towards removing an unconscionable burden to owners of "non-contributing" properties which have to jump through hoops even though they do not have any provision of any code they must comply with--the hoops are an exercise in futility for no purpose whatsoever, except to suppress even the most basic innovation and repair and maintenance.

### **Part 6: The defining language of the code--the definition of an historic district or property**

**Code-committee members**, by it's very nature, it is impossible to limit your task solely to historic preservation districts. There must be uniformity of criteria and

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applicability of legal requirements and restrictions. Therefore your work will, of necessity, include revision of the entire Historic Preservation process.

1. The definition of what constitutes an historic property must be addressed.
2. The definition of an historic district must be addressed.
3. There must be a cessation of the use of ambiguous terms such as our code currently uses: location, design, setting, materials, workmanship, feeling, and association.
4. The National Register identifies these same seven elements of integrity: location, design, setting, materials, workmanship, feeling, and association.
5. The High Court of Illinois agreed with these descriptions of the seven elements and others words within our own code as being **unreasonably vague**: Our own Florida High Court should be asked to agree or disagree with the findings on vagueness and the impossibility of consistent applicability by reasonable people.

Selected Excerpts from the Appellate court's decision, which the Illinois Supreme court let stand:

*"plaintiffs alleged that the Ordinance was facially vague in violation of article IV, section 2, of the Illinois Constitution"*

*"the seven criteria the Commission should use in considering a designation. Those seven criteria are characterized as (1) critical part of the City's heritage, (2) significant historic event, (3) significant person, (4) important architecture, (5) important architect, (6) distinctive theme as a district, and (7) unique visual feature"*

*"Plaintiffs are correct that "[a]n ordinance or statute violates due process guarantees when its terms are so incomplete vague, indefinite and uncertain that men and women of ordinary intelligence must necessarily guess at their meaning and differ as to their application." "*

*"Plaintiffs point to numerous provisions within the Ordinance that they claim are vague and arbitrary. They argue that the seven criteria used to guide landmark designation are vague and uncertain due to the Ordinance's use of phrases like "may or may not," "or other," "value," "important," "critical," "historic," and "significant." Plaintiffs allege that the seven criteria are so rife with vague, ambiguous, and overly broad language that they could conceivably describe any property in any city."*

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*"We believe that the terms "value," "important," "significant," and "unique" are vague, ambiguous, and overly broad. We are unpersuaded by the City's argument that the Commission members can be well guided by these terms. This is especially true in light of the fact that the qualifications of a Commission member are equally vague."*

*"When a legislative body grants an administrative agency discretionary authority to act, it must provide intelligible standards to guide the agency in the exercise of that authority."*

*"The seven criteria outlined in the Ordinance to assist the Commission in recommending buildings or districts for landmark status remains unconstitutionally vague"*

*"an ordinance which is so vague that persons of common intelligence must necessarily guess at its meaning is unconstitutional"*

*"Plaintiffs properly stated a cause of action for vagueness...."*

### 6. Tallahassee has to recognize the futility of moving forward with such vague terms.

This is a scenario doomed to failure by way of serious, costly legal actions and other actions by people fed up with improperly taking of the rights of citizens and property owners. One high court decision will lead to another...it's the very same wording. We should not be building a trap that we know we will fall into at some point in time.

7. Specific guidelines and definitions must be written and tried out for applicability prior to adopting any definite set of criteria. **As code-committee members**, this will be part of your task. It will be difficult. I hope you're up to it.

## Part 7: Funding

### The Architectural Review Board Fund

Funding must be paid for by the historic property owners.

All expenses of funding the Architectural Review Board, including contracts, (such as the existing contract with the Tallahassee Trust for Historic Preservation), staffing, expenses of operation and all other expenses (including legal fees), office rental or pro-rata office costs of existing City property need to be paid for through a special fund, to be known as the Historic Preservation Fund of Tallahassee.

## **Suggestions for the Historic Preservation Code Committee, March 3, 2011**

This fund should be provided with money through the County Property Tax Appraiser's office, which should collect an additional tax upon all "contributing" historic properties in the municipality through the use of a formula to be devised approximately as follows:

The projected annual ARB budget of total expenses + 10% shall constitute the annual sum to be acquired through the tax. The property appraiser's valuation of each properly designated historic property, which has the Historic Preservation Overlay (HPO) shall be determined to be the gross historic property valuation. Each individual taxable property's percentage of the Gross Historic Property Valuation shall equal their percentage of the tax to be collected for that year. The collections and all regulations relating to the collections shall be similar to procedures for property tax, for privately-owned properties. For publicly owned properties, the percentage of the tax represented by those properties shall become a mandated budget item payable by the municipality.

Note: For normally property-tax-exempt properties such as sororities, fraternities, churches, etc. the exemption should not apply, as it is not a true property tax but an administrative fee for historic purposes (merely collected through the property tax office).

In no case, should any funds be used from the general fund for the purpose of funding the Architectural Review Board.

Donations from civic-minded local trusts and individuals, as well as non-local sources should be encouraged, with such encouragement coming from a marketing fund within the Architectural Review Board's budget.

### **Grab Bag of comments & thoughts:**

1 Throw out the fifty-year building age. Re-write it to make it "prior to 1950". Otherwise, every house in Tallahassee will be included, including all the cracker-box mass-produced ones made of particle board and Masonite. We'll end up with the same problem that happened with "antique cars", where all the junkers on the road get protected status.

Right now, we all recognize the 1940s and earlier properties as historic. Lets keep it that way.

## Suggestions for the Historic Preservation Code Committee, March 3, 2011

### 2. Silence must not be considered to be a vote.

At present, in the Architectural Review Board, whenever there is an issue involving more than one property owner, the ARB hears public comment and if a few people speak out against an issue, they make their decision the way they intended to, and sum up by saying something to the effect, "500 people are affected, but only 14 spoke against--the issue passes".

Somehow we need to protect the silent majority from all these issues that never cease coming before the boards. As far as the ARB is concerned, in regard to neighborhood designation, we need to recognize in the code that silence is not a vote for an issue. However care is needed in the wording, or else the issues will take on a reverse-negative wording to make the silent, non-participating majority appear to have supported the change. Perhaps, wording which defines the silence of the majority as being in favor of the status-quo would be helpful.

### Conclusion

I would like to think the **code committee members** have volunteered to work on this project out of a desire to improve a badly-broken historic preservation system in Tallahassee, and can see this as a gentler approach which may have better results.

We need to completely eliminate the club approach and provide positive incentives. Punishments never work, and the proof is in the huge number of properties in Tallahassee which have been demolished.

Watch out for being steered by the city Attorney's office. That office may not be a friend of **your committee's** goals.

Thank you.  
Mark S. Daniel  
March 2, 2011  
Tallahassee, Florida