



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Robert Steinback

**CASE
CLOSED**

Case PI15-018; K15-035	Case Name: Leonard v. Historic Preservation Board	<u>Date Open:</u> Date:	<u>Date Closed:</u> 11/6/15
Complainant(s): Jordan Leonard	Subject(s): Kathleen Kauffman, Mitch Novick		11/6/15

Allegation(s):

Complainant Jordan Leonard (Leonard), Mayor of the Town of Bay Harbor Islands (the Town), alleges three ethics violations on the part of the Executive Director of the Miami-Dade County Historic Preservation Board (HPB), Kathleen Kauffman (Kauffman), and the Board's Chair, Mitch Novick (Novick). All of the allegations arise from the issue of whether or not the Board should designate the Bay Harbor Continental Co-op (the Continental), 1135 103rd St, Bay Harbor Islands, as a designated historical site.

Leonard alleges (1) that Kauffman exceeded her authority by working with preservation activists to build the case for the designation of the Continental and other structures without the authority or knowledge of the HPB, and without the knowledge of either the Town or the owner of the building, Bay Harbor Continental Inc. The Town and the owner opposed the HPB's designation of the Continental.

Leonard also alleges (2) that Kauffman, in a meeting with Town officials, misled those officials by denying that she had helped preservationists build their case for designation of the Continental and other properties on the Town's East Island. Leonard says e-mails obtained by public record requests revealed that Kauffman was, in fact, involved in that effort. Leonard states that Kauffman subsequently denied having ever misled Town officials.

Leonard alleges further (3) that Novick abused his authority as HPB chair by overtly favoring designation proponents, and that Novick may have a conflict of interest in that he has publicly stated that he earns income from restoring historic buildings "in Bay Harbor Islands and elsewhere."

Relevant Ordinances:

Leonard alleges Kauffman violated the Miami-Dade County Conflict of Interest and Code of Ethics ordinance, Sec.2-11.1 (g): *No person [covered by this section] shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others...*

Leonard alleges Kauffman violated the Citizen's Bill of Rights provision (A) 2: Truth in Government. *No County or municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public.*

Leonard alleges Novick violated the Citizen's Bill of Rights provision (A) 5: Right to be Heard. *So far as the orderly conduct of public business permits, any interested person has the right to appear before the Commission or any municipal council or any County or municipal agency, board or department for the presentation, adjustment or determination of an issue, request or controversy within the jurisdiction of the governmental entity involved [...] Matters shall be scheduled for the convenience of the public, and the agenda shall be divided into approximate time periods so that the public may know approximately when a matter will be heard. Nothing herein shall prohibit any governmental entity or agency from imposing reasonable time limits for the presentation of a matter.*

Leonard's allegation against Novick also may encompass Sec. 2-11.1 (v) of the Miami-Dade County Conflict of Interest and Code of Ethics ordinance: (v) Voting Conflicts: Members of Advisory and Quasi-Judicial Boards. *No person included in the terms defined in Subsections (b)(3) (quasi-judicial personnel) and (b)(4) (advisory personnel) shall vote on any matter presented to an advisory board or quasi-judicial board on which the person sits if the board member will be directly affected by the action of the board on which the member serves, and the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor or creditor.*

Investigation:

Interviews

Jordan Leonard, Bay Harbor Islands Mayor, on multiple occasions including April 1, 2015, and June 9, 2015.

Leonard stated that while the Town does not expressly oppose the historic designation of structures in the Town, it has opposed efforts by preservationists and the County to impose such designation contrary to the wishes of private property owners. Leonard said he believes many property owners in town, fearing that an unwelcome designation would thwart plans to raze and replace existing structures, have rushed to get demolition permits, sometimes even in the absence of specific redevelopment plans. Leonard said that 15 building owners in town had recently applied for demolition permits.

Leonard alleged that the County HPB staff, headed by Kauffman, collaborated secretly with preservationists to devise and execute a strategy for strengthening the case for designation of portions of Bay Harbor Islands' East Island. Leonard said the HPB staff worked without any overt direction from the Board – and thus without authority to do so. “They got the idea of making the town an endangered area,” Leonard said.

Leonard said two situations finally brought the HPB staff's actions to the attention of the Town: The inclusion of the East Island on the 2014 listing of the 11 Most Endangered Historic Places by the private National Trust for Historic Preservation in May 2014, and the publication of a Miami Herald feature article on Miami Modern (MiMo) architecture on BHI's East Island which ran on July 13, 2014 (July 12, 2014 online).

Town officials then requested a meeting with Kauffman, which Leonard said included Kauffman, Miami-Dade County Deputy Mayor Jack Osterholt (Osterholt), Sarah Cody (Cody), historic preservation planner for the HPB staff, then-BHI Mayor Robert Yaffe (Yaffe), Town Manager Ronald Wasson (Wasson), and Michael Miller (Miller), consulting town planner. Leonard said he did not attend this meeting, which other testimony suggests occurred on August 7, 2014.

At the meeting, Leonard asserts that the HPB staff denied strategizing with preservation activists about how to build a case for designation of the Continental and/or other East Island properties. Leonard said, “When Yaffe asked, ‘Did you cause the application [to the National Trust for Historic Preservation] to happen?’ he was told, ‘No, we didn’t do it, but we applaud it.’ The next day the attorney representing the developer gave the town the results of the public records request. The e-mails show [the County staff] applied for the designation. Leonard claims the application “generated the initiative, the legitimacy to look at Bay Harbor. ... Why was the Historic Preservation Board looking at Bay Harbor? They used the designation to justify their intervention.” Leonard said the pro-designation activists “colluded with the county to get the results.”

Regarding his third allegation, Leonard said HPB Chair Novick may have an undisclosed conflict of interest. He made reference to public testimony Novick made asserting that he, (Novick), makes part of his living by restoring historic buildings, including some in Bay

Harbor Islands. Leonard said a YouTube video existed of Novick making the remarks. [The Miami-Dade Office of the Inspector General (OIG) determined that these comments by Novick were made before the Board of County Commissioners' Cultural Affairs and Recreation Committee on December 17, 2014 (see reference below).] According to Leonard, Novick "held up Teri [D'Amico's] book and said, "I do work in Bay Harbor Islands."

Leonard then referenced the February meeting of the HPB, saying that no prior notice was given that the Continental was going to be discussed. He said the only thing mentioned on the agenda was "discussion of future projects."

In a subsequent conversation, Leonard stated that Kauffman hosted a town hall meeting about historic preservation in Bay Harbor Islands.

Leonard said that he looked into the county ordinance, and noted that it said nothing empowering the director to have authority to work on her own. He noted an e-mail from January 2014 from Kauffman saying, "We need to start working on Bay Harbor Islands," but that the staff didn't go to the Board for approval until 15 months later. Leonard accused Kauffman of "training" the activists.

Leonard said the HPB in 2010 had decided not to pursue historic designation of the Continental and Bay Harbor Club located next door. Town officials later discovered that the staff was pursuing designation of the same two buildings in 2014. He said the Continental never appeared on an HPB agenda until 11 months after the staff began to work on it. Leonard's question, "Did [the HPB staff] operate in secret?" Leonard said Kauffman "created and fueled the activists in secret."

Ron Wasson, BHI Town Manager, July 16, 2015

Wasson states that the first the Town became aware of renewed efforts to designate portions of the East Island as historically valuable was upon publication of an article by Andres Viglucci in the Miami Herald in July 2014 about MiMo preservation in Bay Harbor Islands. At the time Robert Yaffe was mayor. Wasson said Town officials asked for a meeting with County officials. In attendance at the meeting was Wasson, Yaffe and Miller; Leonard and Price did not attend. Kathleen Kaufman, Sarah Cody (HPB staff) and Osterholt were there.

Wasson said the meeting "took a bizarre turn." Osterholt said, "You don't have to do a survey [historical evaluation survey]. We're doing it." Town officials had not been informed of this, Wasson said. At around the same time, Wasson said, the Town learned that the East Island had been nominated as "One of the 11 most-endangered historic sites" by the National Trust for Historical Preservation, described on its website as "a privately funded nonprofit organization [that] works to save America's historic places." It began as a government initiative, but became fully private in the late 1990s. Wasson said that the town representatives observed, "No one here applied for it."

Wasson said, "We asked, who put us up for this designation?" The County said, according to Wasson, "We don't know, but we applaud it."

Wasson said that the very next day, information was sent to him – he didn't specify the sender – containing e-mails detailing conversations between Kauffman and Teri D'Amico. The e-mails were "very telling," with lots of communications between the staff office and D'Amico regarding "how to get the building designated, and the [County] staff's application to the Trust. Wasson said, "I called Yaffe that day and said, 'They did say they had nothing to do with it, didn't they?'"

The Town representatives scheduled another meeting with the County, which became a telephone conference. The town's message was, "How can we take your word when you've told us one thing and were doing another?" Wasson said, "They denied having said [anything] about not being involved." Wasson specifically said Osterholt denied having said anything to that effect.

According to Wasson, Yaffe said, "It's not fair, you're treating us badly." Wasson said, "Our issue is the people who are affected are the last to know."

Wasson said, "the preservationists will claim being on the National Register" to support their efforts. He added that the application "is not filled out accurately." He said, "They characterize us as a town being replaced with 'high rise buildings.'"

Wasson said that normally, a designation application comes into the HPB. The Board then directs the staff to do a report. A report is generated, and then the matter goes on the agenda again. The Board discusses the matter, and then typically says it will accept the staff report and have designation hearing. Wasson said only then does a 30-day notice go out to the owner re: a hearing on the staff report, and during those 30 days a moratorium is in effect. Wasson says the HPB has never turned down a recommendation from staff. Wasson called it a "kangaroo process."

Wasson complained that HPB chair Novick gave him, the town manager, only one minute of time each to comment on the case before the board. Those in favor of the application were given as much time to speak as they desired, he claimed.

Wasson said the Board tried to use the 2010 designation report, and by accepting it then and there impose a moratorium on demolition, but the board attorney said they could not.

Wasson said the meeting in Osterholt's office was on August 7, 2014. A follow-up meeting conference call was Sept. 4, 2014. In the conference call were the three Town officials plus Stanley Price, talking with Osterholt. On Sept. 15 they met with County Commissioner Sally Heyman.

Wasson argues that the actions of the Board have "indirectly lead to people panicking and tearing buildings down."

Wasson referred to YouTube video of Novick saying "he makes a very good living restoring historic buildings in Miami-Dade County and Bay Harbor Islands. Wasson said that during the Historic Preservation Board meeting of April 2015 he was told by Novick to hurry up and

finish his remarks. "If you were speaking for [the County overturning the HPB], you got the bum's rush." Wasson stated.

Wasson explained that in 2010, the HPB presented a plan to designate the Bay Harbor Continental as historic. But he said that "pretty much no one" would support the plan, and so the HPB withdrew it.

Neisen Kasdin, attorney for Bay Harbor Continental Coop and for developer P3 Investments. July 21, 2015, by telephone, about 5:20 p.m. Attorney **Steven Wernick**, Kasdin's colleague, also was present.

Kasdin said he wasn't sure if the HPB staff exceeded the legal scope of its duties by initiating the East Island designation application to the National Trust for Historic Preservation. He called the efforts to designate the Bay Harbor Continental "a very biased process" during which the parties involved were not treated fairly. He said "the genesis of the designation itself is highly suspect."

Kasdin said the Historic Preservation ordinance provides that a process for designation can be initiated by either the county staff or the owner. He said the "owner" under the ordinance is the "one in title," which he argues would be the co-op itself, not individual unit owners, even though they are the parties legally responsible for taxes on the units.

Kasdin's primary concern is that there was no notice for the February 17, 2015, HPB meeting that anything regarding the Continental would be on the agenda. And yet, at the Board's meeting, Chairman Mitch Novick said, "We have a petition to designate BHC by Carlos de la Torre. Kasdin said Novick brought up the petition, and then stated that the Board should instruct staff to designate the building.

Kasdin said e-mails between Novick and Kaufman suggested, "bring the old report from 2010... it should be an interesting hearing." Kasdin wondered if Novick knew a petition was coming, did he have *ex parte* communications with someone who informed him (Board sits as quasi-judicial body, prohibiting *ex parte* communications).

Kasdin said the County Attorney sitting as the Board's attorney eventually stopped the HPB from acting at that February 17, 2015 meeting. The Board instructed staff to bring the matter back for the March meeting to approve.

Wernick said that Kathleen Kauffman and her staff worked with Teri D'Amico and other advocates to ask that the National Historic Trust identify the East Island as a most endangered place – all without communicating with the Town. Once the designation was won, they worked to put out a press release. He said after the hearings got underway, the staff tried to take a more objective stance in public.

The attorneys said there was bias and prejudice in the designation process. They accused Novick of conducting the HPB hearings inappropriately, possibly in violation of Citizens' Bill of Rights. They said Novick cut off some speakers, not others.

Robert Yaffe, Bay Harbor Islands Town Councilmember, August 24, 2015.

Yaffe said that in summer of 2014, town officials began hearing that the HPB had undertaken some sort of survey of the town. The town had done its own historic review in 2006 or 2007, and wanted to find out what was going on and if the town's earlier survey would be relevant. Then, Yaffe said, Town officials discovered that the National Registry of Historic Places endangered list for 2014 including the Town's East Island, to their surprise. [Yaffe appears to be misidentifying the National Trust for Historic Preservation's 2014 endangered places listed.]

Yaffe said they asked for a meeting with the County. He believes the date was Aug. 7, 2014. Kathleen Kauffman and Sarah Cody and another gentleman from the county [presumably Deputy Mayor Osterholt] attended, as did Yaffe, Ron Wasson and Town planner Michael Miller.

Yaffe said, "They told us it was just coincidence [that the survey and the National Trust listing happened almost simultaneously]. They said they had nothing to do with the National Registry. They're not involved in getting properties listed. They thought it was a good idea, but had nothing to do with it."

Yaffe said that attorneys involved in the case then obtained e-mails from the county staff showing they were, in fact, involved with the Trust listing effort, and also with getting Miami Herald reporter Andres Viglucci help with a feature article on threatened MiMo architecture on East Island.

"Clearly what they stated to us was not accurate," Yaffe said. He said the county staff had signed the National Register application.

A follow-up meeting was held with Osterholt, Kauffman, Cody and another gentleman, Yaffe said. "They were somewhat defensive. I remember the vice mayor being somewhat hostile, [as if they were saying.] 'We didn't do anything wrong.'" Bay Harbor Islands representatives said the County representatives said they had nothing to do with the application, or with engaging Viglucci into the effort. "I felt that the initial conversation was misleading," Yaffe said. He said the county officials initially sounded as if their interest was in being open and transparent about the process. But after the e-mails surfaced, "I felt they were talking out of both sides of their mouths." Yaffe said he had left the first meeting with a positive feeling, until he found

out later that the county staff's involvement had been misrepresented. He understands the staff's advocacy responsibility but "They're not supposed to be secretive."

Yaffe said he feels it goes without saying that local officials should be involved when the HPB undertakes something like the designation of buildings in that town. "Why wouldn't they feel obligated to give us a call or a head's-up?" Yaffe said that the rap that the town officials are against historic designation is unfair. But, he said, "We think the property owners should be involved."

Yaffe said he was left with the impression that Novick was biased based on his handling of meetings. Yaffe cited Novick's comment about making his living restoring historic buildings, though Yaffe specifically said he had no suspicion that Novick was involved with any of the buildings then under review.

The HPB "just seemed more open to hearing comments from people who were in favor of historic preservation and cut other people off. Mitch wasn't receptive to slowing down and doing more public outreach."

Kathleen Kauffman, Executive Director of the Miami-Dade County Historic Preservation Board, Sept. 3, 2015.

Asked about the history of the Continental, Kauffman began with February 2015, when three unit owners at the Continental brought a petition to the Historic Preservation Board. Kauffman stated that under the code, staff can bring proposals to the board for consideration, calling that "a function of our office." She said "Our preservation office allows a property to be recommended for designation a couple of different ways: by the owner, by the staff or by the Board."

Kauffman said, "We probably started getting contacted about Bay Harbor Islands buildings in 08-09," people concerned about demolitions. Around that time, a man named Carlos Dunn (now deceased) did an initial survey of the island.

Kauffman said the board staff did a designation report on the Continental (and Bay Harbor Club, the so-called "Dexter" building, next door) in 2010, and the building was recommended for designation. She said the Board didn't go forward because of "a lot of turmoil in the city. They [Board members] thought it was better to continue doing outreach and maybe revisit it later. It never got to that point [of being designated or rejected for designation]."

Kauffman said there was subsequent talk about people wanting to get the East Island on the National Register of Historic Places. She described this as a federal listing with no real regulatory teeth, more of an "honorary" listing. She contrasted this with the National Historic Preservation Trust, a private non-profit organization engaging in preservation advocacy.

Kauffman returned on a number of occasions to the question of the federal National Register even though the investigator did not ask about that. She said that the preservationists met with her and her staff to get that recognition. "We did not have the capacity to undertake that

[campaign]. Kauffman said. She said "We were willing help them if they wanted to [make] the historic registry, but we can't [lead the effort]." The reason was not legal, but rather the limited staff availability, Kauffman suggested.

Regarding the Continental, Kauffman noted that the original closing date for the sale was in September 2014, and stated that "We thought the sale had already gone through and we thought the building was already a lost cause." The time period she referred to was before the designation application in February 2015.

Regarding the meeting with Bay Harbor Islands officials and with Jack Osterholt, Kauffman said "I didn't think we had anything to do with that [the allegation that the staff had been advocating without informing the city]." She acknowledged offering to help send in a nomination to the Dade Heritage Trust, and said she would work with the DHT on that. Kauffman said "Osterholt 'would have signed off' on a nomination to be considered for the National Trust for Historic Preservation's 11 most endangered list. 'At that meeting, maybe at that meeting he didn't remember,'" Kauffman said. She added, "What would be the point of lying about it? We get requests all the time."

Kauffman said that there is an obligation for the staff to notify property owners "If the Board has formally started the designation process." What the staff engages in prior to that point she considers "raising awareness."

Kauffman mentioned that Commissioner Sally Heyman presented a resolution that the Board must notify the district Commissioner and local officials if any designation efforts were underway.

Jack Osterholt, Deputy County Mayor, October 27, 2015

The investigator gave Osterholt a brief summary of the case leading up to the August meeting, as gleaned from the complaint and my investigation to date, thus: The Town officials say they requested a meeting with HPB officials after learning that the Town's East Island had been listed by the National Trust for Historic Preservation on its annual list of the 11 Most Endangered Places for 2014. This in turn led to a large takeout article in the Miami Herald describing the MiMo architectural style found on the East Island. The town officials ask, "Were you [the county HPB staff] behind this?"/ Osterholt and Kauffman reportedly said, "No." Then shortly afterward, the town officials become aware of e-mail conversations between Kauffman and Teri D'Amico and other preservation activists indicating the county played a direct role in trying to obtain the NTHP recognition. The Village officials call the County officials back and claim that they lied. In response, the county reps say, "we never said what you say we said."

Osterholt accepted the narrative without objection or edit. He said that he believed it was a request by the HPB to look at several sites for potential restoration. Osterholt, referring to efforts by the HPB in 2010 to do a historical survey of the town, said the county backed off when the Town objected. "The city said 'Stop,' and we stopped," Osterholt said, ending the 2010 "inventory" of the town. Osterholt said, however, that "that process brought a lot of

attention to the island.”

Asked about the question of having lied to town officials, Osterholt said, “The Mayor [of Bay Harbor Islands, Robert Yaffe] was incorrect if he said they [the County staff] were trying to get national attention.”

Osterholt described the then-Town Mayor as a “flamboyant guy,” and claimed Yaffe was “making accusations he could not substantiate.” Osterholt said he said promised Town representatives that the county would “do better with communication.”

Osterholt said that from that point on, “our efforts slowed down,” but “they [Town officials] kept coming to us and accusing the staff of causing problems.” Osterholt believes the county pulled back, but that the Town kept complaining. The Mayor kept insisting, Osterholt said, that “the county was still trying to rile up people.”

Osterholt said he believed the Mayor was encouraging property owners to file demolition permits.

Osterholt described the two meetings he cited with the Town officials as “far from friendly meetings.” Osterholt said his intent was to assure that no one from the county was continuing to push for the designation after that first meeting. Osterholt pointed out that eventually, it was individual residents of the Bay Harbor Continental that had requested HPB historic designation for their building.

Osterholt said he believed the Mayor was “exaggerating the facts.” He said that in the early stages, the BHI Mayor might have had legitimate concerns early in the process, but “toward the end seemed more accusatory.”

Asked where the proper limit of Kauffman’s HPB work is, Osterholt gave the example of the Environmental Quality Control Board, whose job it is to identify threats to the environment, likening it to an advocacy role by the HPB. Osterholt said the HPB job is to impartially evaluate data and testimony and render an impartial judgment regarding a potential designation. The investigator agreed, but then pointed out that e-mails exist showing that Kauffman not only took the side of the preservation activists (as might be expected), but actually advocated on that side’s behalf (by helping to apply for and win the designation by the National Trust.). I said my question remained whether playing such a role in such a manner was going beyond the mandate of the staff.

Osterholt said that if events were as I described them (that is, that the email record indicated County staff cooperation in the NTHP application), then it was likely that Kauffman may have, in fact, taken her mission beyond appropriate limits. Osterholt added, however, that the County Commission, driven primarily by Commissioner Sally Heyman, was already in the process of revamping the county’s Historic Preservation code, and that this would address, and hopefully solve, situations like this in the future.

Document/Audio/Video Review:

Appeal to the Miami-Dade Board of County Commissioners of HPB Resolution 2015-06, May 5, 2015, Neisen Kasdin.

Although complainant Leonard was not a party to the appeal nor a client of Kasdin, the essence of Leonard's complaint is encompassed by Kasdin's appeal memorandum.

Kasdin represents Bay Harbor Continental Inc., owner of the Bay Harbor Continental Co-op. Kasdin filed an appeal on May 5, 2015, of the HPB's designation of the Continental at its meeting on April 15, 2015. Though the appeal lists numerous bases in its argument for the BCC to overturn the HPB's decision, most deal with the issues involved in the case and carry no implication of an ethics violation.

However, Point Two of Kasdin's five-point basis for appeal suggests inappropriate actions on the part of the HPB and its staff, and deserves note here. Point Two alleges in relevant part that the HPB's decision was "...predicated on a flawed process, including (a) an invalid petition for historic designation that does not meet the County's own criteria for initiation of historic designation, lack of notice and meaningful opportunity [for opponents of the designation] to be heard, (c) lack of a fair and impartial hearing caused by the HPB Chair's clear predetermination to designate the building..."

Briefly, Kasdin argues that: (a) At the HPB's Feb. 17, 2015, meeting, Chair Novick closed the public hearing portion of the agenda, and then announced that a petition for designation had been filed with the HPB by three residents of the Continental. It should be noted that there was no item on this meeting's agenda regarding designation of the Continental. Kasdin states that Novick refused to hear public testimony on the petition, and "immediately made his thoughts [in favor of designation] known loud and clear." Novick goes on to say that he believed that a moratorium on changes to the property could begin immediately. The HPB's representative county attorney corrected Novick, stating that the Board first had to direct the staff to draft a designation report. Novick reluctantly agreed to follow the attorney's advice.

Kasdin argues in (b) that "[t]he Owner and residents did not have a meaningful opportunity to be heard since they were not given any notice that their Building would be considered at the February 17th meeting, nor that the petition had been filed." Kasdin further alleges that Novick "repeatedly cut off anyone who spoke out against preservation" at the February, March and April HPB meetings.

Kasdin argues in (c) that "[i]n the spring and summer months of 2014, Ms. Kauffman and one

or more preservation advocates interested in buildings on the East Island quietly prepared and submitted an application to the National Trust for Historic Preservation ('National Trust'), without the consent or knowledge of the Town of Bay Harbor Islands officials or the Owner, in which they encouraged the National Trust to market the East Island as a place in danger. ... When they were informed that the application was being accepted, the Office of Historic Preservation arranged for the County to issue a press release to spread the news...."

Kasdin's further argument is the foundation for complainant Leonard's allegation of *ex parte* communications on the part of Novick. Kasdin writes that, "On February 17, 2015, Novick sent an e-mail to Kathleen Kauffman, asking that she bring the old designation reports for Bay Harbor islands to the meeting, commenting that he was 'looking forward to an exciting meeting.' ... Based on Novick's e-mail from February 17th and his actions at each of the HPB meetings, it is clear that his intentions were purposeful and calculated to designate this building without any concern for the opinions of the Owner of its residents, Town official, or any consideration of the County's Ordinance or fundamental issues of due process..." Kasdin alleges.

Nomination form drafted and submitted by HPB Historic Preservation Planner Sarah Cody asking the National Trust for Historic Preservation to consider listing East Bay Harbor Island on its 11 Most Endangered Historic Places listing for 2014. The nomination form was confirmed received by the NTHP on March 3, 2014. Of note: In Part II of the nomination form, the applicant stated: "Though the local historic preservation office attempted to designate several individual buildings, this effort was met with great resistance and has since stalled. Inclusion on the National Trust's 11 Most Endangered List would help tremendously in educating the Town on the significance and value of their unique collection of historic MiMo buildings."

Selected E-mails (by public records request)

- December 5, 2013: Bay Harbor Islands-based preservationist Teri D'Amico writes to ask for Kauffman's help in preserving MiMo architecture. "... [T]his is your thing. I can't do anything about designation. I am trying to stop these huge building [sic] and overdevelopment because of the greed and TDR money...."
- January 7, 2014: Kauffman writes to Sarah Cody: "Please take a look at this [application information from the National Trust for Historic Preservation] and see how involved it is. If it's not too much, I want us to go ahead and nominate Bay Harbor Islands. If it seems like a lot of work, we will ask Dade Heritage Trust to do it."
- January 22, 2014: Kathleen Kauffman writes to D'Amico and "other friends of Mid-century architecture" that "we are in concurrence that the time has come. There needs to be a serious game plan, beyond just randomly talking about mid-century residences in symposiums or organizing field trips for school children ... Our office is planning to submit Bay Harbor Islands (the east islands) to the national Trust's 11 Most Endangered [listing]... Also, we agree to help come up with the game plan, but we cannot execute the game plan on our own...." Kauffman then lists community groups and advocates she believes will help in the campaign.
- February 26, 2014: Last of an e-mail exchange between Cody and Kauffman on

strategy for getting East Bay Harbor Island listed on the NTHP endangered-sites listing for 2014.

- March 4, 2014: Cody informs Kauffman that the National Trust for Historic Preservation has confirmed receipt of the nomination for inclusion on the 11 Most Endangered listing.
- April 24, 2014: Daniel Ciraldo informs Kauffman that “a significant MiMo building in Bay Harbor Islands designed by the noted Architect Charles McKirahan in 1958 has recently been sold and appears to be up for demolition.” He inquires as to whether “something can be done at the County level (HP etc.) to discuss the plight of buildings in Bay Harbor Islands.”
- May 12, 2014: Jessica Pumphrey, associate manager for public affairs for the NTHP, informs Cody that her organization has accepted the nomination of East Bay Harbor Island as an endangered historic site for 2014.
- June 24, 2014: After receiving word that the National Trust included East Bay Harbor Island on its 2014 Endangered Historical Sites list, D’Amico sends an e-mail to Kathleen Kennedy and Frances Neuhut acknowledging Kauffman’s role in the effort. “I will be working with Kathleen to get some press from this,” D’Amico writes. Later in the day, Kauffman asks Michael Hernandez in County Mayor Carlos Gimenez’s office and others to help produce a press release.

Selected News Articles

- Board designates Bay Harbor Islands building as historic – Miami Herald, April 15, 2015.
- Demolition permit denied for Bay Harbor Continental. – The Real Deal website, May 20, 2015.
- Bay Harbor Islands preservation battle heats up – The Real Deal website, June 9, 2015
- What’s next now that County Commissioners junk historic designation in Bay Harbor Islands? – Daily Business Review, July 1, 2015.

Copy of Memorandum to Mary Cagle, Miami-Dade Inspector General, from Felix Jimenez dated August 24, 2015. The memo presents the results of a Preliminary Inquiry in OIGCR 1265-1415-H.

Analysis

Much of the issue of the historic designation of the Bay Harbor Continental lies beyond the scope of the jurisdiction of the Commission on Ethics. Nonetheless, it is helpful to briefly recount the issue to provide context to this analysis.

Historic preservation activists have long valued the Bay Harbor Continental as a prime example of MiMo, architecture, among a number of buildings on the town's East Island from the same period. Preservationists attempted to have the HPB designate the Continental as historic in 2010, but strong resistance from the town and certain community members compelled the Board to withdraw its bid. The Continental was scheduled to be sold in September 2014 to a developer intending to raze the building and construct an entirely new one, although the sale was postponed several times. In the meantime, a new effort to designate the Continental was approved by the Board in April 2015, but the ruling was appealed to the Board of County Commissioners, which overturned the designation.

The record shows that preservation activist Teri D'Amico solicited Kauffman's assistance in protecting certain buildings on the East Island as early as December 2013, and that in the following months Kauffman was an enthusiastic participant in the campaign. The record indicates that Kauffman and her staff's efforts included submitting a nomination form to include the East Island on the 2014 "11 Most Endangered Places" listing compiled by the National Trust for Historic Preservation. The staff-written application itself states the belief that a listing would help "educate[e] the Town on the significance and value of their unique collection of historic MiMo buildings." Kauffman's staff also appeared to assist efforts to encourage the Miami Herald to do a feature on MiMo architecture on the East Island. While it would be normal for the HPB staff to facilitate news media requests for information, it is not clear the job duties for the staff specifically include seeking out media exposure.

The record also shows no effort by Kauffman or her staff to inform Bay Harbor Islands Town officials or the property owner of the Continental about the HPB staff's efforts between December 2013 and August 2014. It should be noted, however, that the staff's efforts were not aimed at saving the Continental specifically, but rather to pursue a strategy to protect East Island buildings as a collective or district.

Testimony reveals that neither Bay Harbor Islands Town officials nor the owner of the Bay Harbor Continental were aware of these County efforts until the Herald article ran.

The record indicates that Daniel Ciraldo informed Kauffman about closing of a sale of a building designed by Charles McKirahan and built in 1958. Though the Continental is not named, the building fits the given description. Ciraldo is a preservation activist who advocates against demolition of historic buildings, and has worked in conjunction with the Miami Design Preservation League.

County Code (Ordinance 81-13 Chapter 16A (IV) gives the power to initiate designation proceedings to either (pp. a) the owner of the property or (pp. b) the Historic Preservation Board by directive. When proceedings have been initiated, the code states that "the Board is *encouraged* to obtain the permission of the property owner(s) within the designated area, and is *responsible* for mailing a copy of the designation report to the owner(s) At least 15 days prior to a public hearing held pursuant to this section." [italics added.]

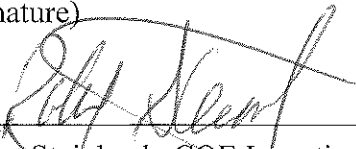
The Code, however, is silent on whether the staff may initiate and actively pursue strategies to strengthen the case for designation of particular properties in the absence of a directive from the Board. It is also silent on whether and when staff's activities intended to strengthen the

case for designation should be revealed to either property owners or Town official. The HPB in particular presents a unique situation, since the Board, by Code, does have the power to pursue historic designation without the consent of the owner. But since the Board typically convenes as a quasi-judicial panel, the appropriateness of the staff actively working on behalf of one of the parties appearing before it should be considered.

Deputy Mayor Osterholt acknowledged that such a situation may represent staff exceeding its authority, but pointed out that the Board of County Commissioners is conducting a review of the Historic Preservation code which may clarify standards for this situation.

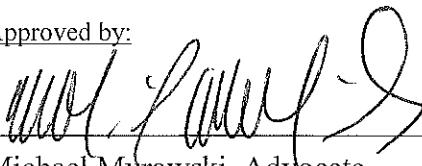
The investigator did not pursue investigation of the alleged Novick conflict of interest, as this allegation appears to have been fully investigated and resolved by the Miami-Dade Office of the Inspector General, which closed the case with no further action taken. After review and consultation with the Ethics Commission Advocate, it was determined that there is no evidence to support the filing of an ethics complaint in this matter.

(Signature)

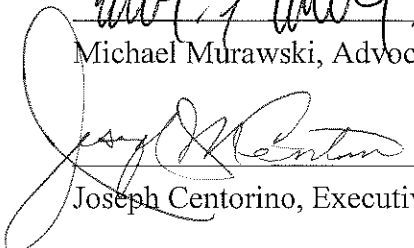


Robert Steinback, COE Investigator

Approved by:

 11/19/15

Michael Murawski, Advocate

 11/6/15

Joseph Centorino, Executive Director