

VILLAGE OF MIAMI SHORES

LANDMARK FACT SHEET

WORK SHEET

NAME Spears Harris House DATE 1/17/83LOCATION 287 NE 96th StreetCLASSIFICATION structure CATEGORY single-family residentialPERMIT NO. _____ DATE CONSTRUCTED 1925 - CONDITION fairARCHITECT _____ BUILDER finished 1926ORIG. OWNER Ellen Spears Harris PRESENT OWNER & ADDRESS _____Mr. Emory Harris287 NE 96 St.CURRENT ZONING R-18.5 residential

SIGNIFICANCE: A - A physical (architectural or archeological) description of the site. Photograph should accompany this description.

Two-story Mediterranean Revival residence, stucco/masonry construction. Plan is rectangular with slightly projecting left wing and single-story porch. Spanish tile gable roof. Round scuppers. Main entrance has pointed arch door surrounded by semi-circular formed concrete false blocks. Center windows arched. Central second-story has two arched doors opening to wrought-iron balcony; projecting tile shed roof with wood brackets. Left wing has two square doors opening to similar balcony. Single-story loggia extends from right front; arched openings (now screened), flat roof. Windows originally had canvas awnings. Bell cote chimney extends from center section. Most doors and windows are original wood. Servants quarters added 3/22/26. There are several large trees on the property.

SIGNIFICANCE: B - A brief description of the site's relationship to the history, development, architecture, archeology and/or culture of Miami Shores, Dade County, the State of Florida or the nation.

This home was one of the first constructed in the Miami Shores subdivision. The street at that time was called Shoreland Boulevard. It was built for Ellen Spears Harris, previously of Coconut Grove. Mrs. Harris was a Vice-President of the Shoreland Company and cousin of the company's president, Hugh Anderson. The house now is occupied by Miss Pratt Spears, assistant secretary-

HISTORICAL SUMMARY (continued) *treasurer of the Shoreland Co,*
and Mrs. Harris's son, Emory C. Harris.

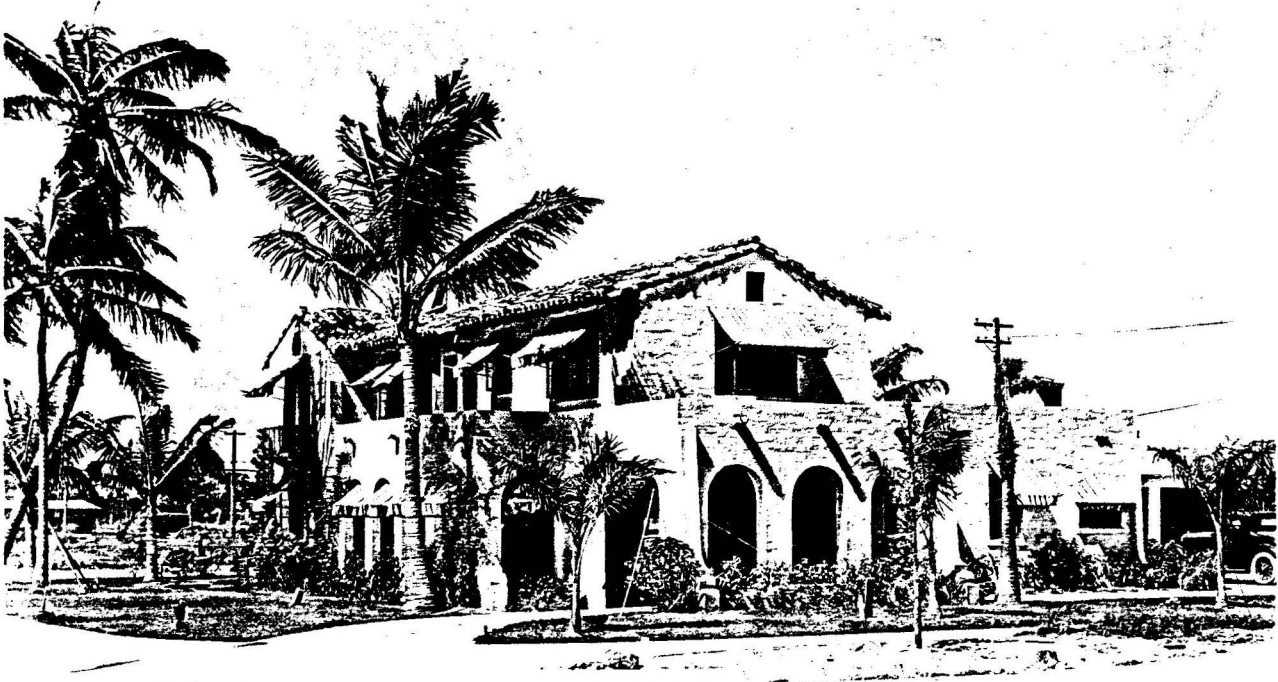
HISTORIC DISTRICT REPORTS WILL CONTAIN THE SAME INFORMATION AS THOSE FOR INDIVIDUAL SITES WITH THE ADDITION OF THE FOLLOWING:

- 1) DATA:
 - A. A map with the location of the district, property lines, buildings, streets and major topographical features.

- 2) SIGNIFICANCE:
 - A. A brief description of the relationship of the sites within the district to each other and the district's relationship to the surrounding area and the Village as a whole.

PREPARED BY: *C. Lawton McCall* DATE: _____
Marilyn Stofek

These rare photographs show the historic Harris-Spears mansion, 287 N. E. 96th Street, as it appeared, newly finished early in 1926, and after the great hurricane of September 18, 1926. This mansion was constructed by Mrs. Ellen S. Harris, (vice president of The Shereland Company, developers of Miami Shores) and by her sister, Miss Pratt Spears (Assistant Secretary of The Shereland Company). This mansion is still occupied by Miss Spears.



Newly completed Harris-Spears mansion - early 1926
287 NE 96th St.



Harris-Spears mansion immediately after the historic hurricane of September 18,
1926



Miami Shores Village

10050 N.E. SECOND AVENUE
MIAMI SHORES, FLORIDA 33138
(305) 758-8000

L. R. FORNEY, JR.
VILLAGE MANAGER

January 4, 1983

Miss Pratt Spears
Mr. Emrys Harris
287 N.E. 96th Street
Miami Shores, FL 33138

Dear Miss Spears and Mr. Harris:

I am pleased to inform you that your house at 287 N.E. 96th Street has been nominated for designation as a historic landmark of Miami Shores Village.

The purpose of the landmark program is to protect those buildings which serve as visible reminders of the history and cultural heritage of the Village.

As one of the first homes built in the Miami Shores development in 1925, your house is a splendid example of the Mediterranean Revival architecture that characterized the Shores' early days, and is essentially unchanged from its original design.

Equally important in the nomination of the property was the role your family played in developing Miami Shores as we know it. As an officer of the original Shoreland Company, Miss Spears, you can appreciate the significance this residence of a member of our "founding family" has in Shores' history.

You are invited to attend the next meeting of the Miami Shores Historic Preservation Board, Monday, January 17, 1983, at 7:30 p.m., at the Village Hall, 10050 N.E. 2nd Avenue, to discuss the nomination. Please feel free to bring any information, supporting data, abstract, records or photographs which you feel would assist the Board. The Board will review all of the information available to determine if your home qualifies for historic landmark designation under the provisions of Ordinance No. 439-82 and the guidelines adopted by the Board.

The recommendation of the Board will be forwarded to the Village Council for final action. The Council will not award the historic landmark designation to your property without your consent.

Miss Pratt Spears
Mr. Emrys Harris

January 4, 1983

A detailed explanation of the effect of this designation is provided in the ordinance which is available at the Village Hall. Briefly, it states that before any changes in the exterior appearance of the property are made, approval of the proposed alterations must be obtained from the Historic Preservation Board. It has no effect on the interior or areas not visible from public access.

One of our Board members will contact you before the meeting to discuss the matter. If you have any questions in the meantime, please call me at 758-1957.

Sincerely,

Marty Stofik
Chairman
Miami Shores Historic
Preservation Board

MS:gm
cc: C. Lawton McCall
Certified - Return Receipt Requested

CERTIFIED MAIL
Return Receipt Requested

287 N. E. 96th Street
Miami Shores, Florida 33138
January 26, 1983

Ms. Marty Stefik, Chairman
Historic Preservation Board
Miami Shores Village
10050 N. E. 2nd Avenue
Miami Shores, Florida 33138

Dear Ms. Stefik:

This is in response to your letter of January 4th, addressed to my aunt, Miss Pratt Spears, and to myself, advising that your board has nominated our properties at 287 N.E.96th Street as a historic landmark of Miami Shores Village.

Please be advised that we do not wish our properties to be so nominated, designated nor certified at this time. We specifically request that the nomination be withdrawn and that the pertinent designation and certification be cancelled.

we are taking this position because we do not wish the annoyance of further public attention to our properties from random strangers roaming the neighborhood nor further intrusions upon our privacy.

Thank you for your prompt attention to this matter.

Very truly yours,



Col. Emrys C. Harris, AUS (Ret)

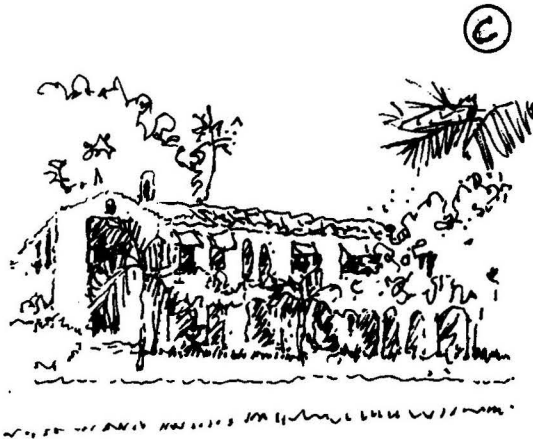
copy to:
Mr. C. Lawton McCall

The Spring Sunday Membership Social and Historic Home Tour
March 12, 1995, from 4:00 to 6:00 p.m.

*at a National Register 1925 Italian Villa home,
287 N.E. 96th Street, Miami Shores,
graciously shared with us by the owner, Mr. Antonio A. Wagner.*

\$10/members and \$15/guests of members

*R.s.v.p. to Dade Heritage Trust (305) 358-9572
190 Southeast 12th Terrace, Miami, Florida 33131
(Please help us by responding before Wednesday, March 8th)*



287 NE 96th Street

Warren Bittner & Juan Ruiz

This 1924 Mediterranean revival home by Arthur Markley is done in the Italian style. Highlights include original furnishings and light fixtures, antique Spanish floor tiles in the loggia, pecky cypress beams with decorative painted designs, turned wood spindles, 1920's cabinetry, original bathrooms with hexagonal tile floors, and two fireplaces.

MIAMI SHORES VILLAGE HISTORIC PRESERVATION BOARD

MC - copy - unanimous
2nd FN

APPLICATION FOR A
CERTIFICATE OF APPROPRIATENESS

please type or print clearly

NAME OF PROPERTY (if applicable): Spears/Harris Residence

ADDRESS OF PROPERTY: 287 NE 96th St.

NAME(S) OF APPLICANT(S): Warren Bittner
(NOTE: IF THE APPLICANT IS A PERSON OTHER THAN THE OWNER(S), EVIDENCE OF THAT PERSON'S AUTHORITY AS AGENT MUST BE ATTACHED TO THE APPLICATION.)

TELEPHONE OF APPLICANT(S): (305) 754-3188 (305) 416-1800

ADDRESS OF APPLICANT(S): same
(if different than address of property)

PRESENT USE OF PROPERTY: residence

CLASSIFICATION OF WORK FOR WHICH CERTIFICATE IS DESIRED:
(circle the letter next to the appropriate classification)

- A.** MAINTENANCE OR REPAIR: The act or process of applying measures to sustain the existing form, integrity and material of a building or structure and the existing form or vegetative cover of a site. It may include initial stabilization work, where necessary, as well as on-going maintenance and repair. Samples of material must be submitted with the Application.
- B.** RESTORATION: The process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work. All applications for restoration shall include site plans (if required by the Building Permit), a statement with bibliography historically justifying the work, and any additional photos or information to support the proposed work.
- C.** REHABILITATION: The process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural and cultural values. All applications for rehabilitation shall include: site plans (if required by Building Permit), and any other supplementary information, such as drawings, that will support the proposed project.
- D.** DEMOLITION: The process of destroying or tearing down a building or structure or a part thereof, or the process of removing or destroying an archeological site or a part thereof. The applicant shall include a report explaining why the proposed action should occur. If this action is to occur for reasons of financial hardship, all pertinent financial data should be included pertaining to the cost of preservation, demolition and new construction. Any other material pertinent to the application is also encouraged as supplementary information.
- E.** NEW CONSTRUCTION: The process of constructing a building or structure that has never existed at that location. Applications shall include: a site plan, elevations, floor plan and/or landscape plan.

unanimous - Master Permit -

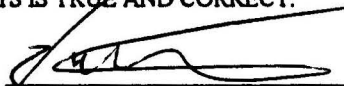
3 photos 3/18/02 - exhibit D
Standards for Rehab - exhibit E
letter, Resonse - Sarafan - exhibit F

DESCRIPTION OF THE PROPOSED PROJECT (Explain what changes will be made and how they will be accomplished - use continuation sheet if necessary - all applications shall be accompanied by at least one 3" x 5" photograph of the property):

pressure clean hand-made clay barrel tile roof to comply with Code Enforcement Citation issued 3/4/02 (attached)

CERTIFICATION

I (WE) CERTIFY TO THE BEST OF MY (OUR) KNOWLEDGE AND BELIEF THAT ALL INFORMATION IN THIS APPLICATION AND ITS ATTACHMENTS IS TRUE AND CORRECT:

SIGNATURE OF APPLICANT(S):  DATE: 3-5-02

DATE: _____

SIGNATURE OF OWNER(S): _____ DATE: _____

FOR BOARD USE ONLY

APPLICATION DATE (date application received by Secretary of the Board): 3/5/02

DECISION OF THE BOARD (circle the appropriate number):

- 1. APPROVED
- 2. APPROVED WITH CONDITIONS (set forth conditions below):

3. DENIED

SIGNATURE OF CHAIRMAN: _____ DATE: _____

Motion - Cost of Application - RD
VIC
Unanimous

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME— FIRST NAME—MIDDLE NAME BITTNER, WARREN R.		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE HISTORIC PRESERVATION BOARD	
MAILING ADDRESS 287 NE 96th STREET		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY	
CITY MIAMI SHORES,	COUNTY MIAMI-DADE	NAME OF POLITICAL SUBDIVISION: MIAMI SHORES VILLAGE	
DATE ON WHICH VOTE OCCURRED		MY POSITION IS: <input type="checkbox"/> ELECTIVE <input checked="" type="checkbox"/> APPOINTIVE	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his special private gain. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained (including the parent organization or subsidiary of a corporate principal by which he is retained); to the special private gain of a relative; or to the special private gain of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, WARREN BITTNER, hereby disclose that on March 20, 2002.

(a) A measure came or will come before my agency which (check one)

- inured to my special private gain;
- inured to the special gain of my business associate, _____;
- inured to the special gain of my relative, _____;
- inured to the special gain of _____, by whom I am retained; or
- inured to the special gain of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

MEASURE: APPLICATION FOR CERTIFICATE OF APPROPRIATENESS **Item #3**

NATURE OF CONFLICTING INTEREST: I AM THE OWNER OF THE PROPERTY FOR WHICH THE CERTIFICATE IS BEING APPLIED FOR.

March 20, 2002
Date Filed

[Signature]
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317 (1991), A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$5,000.

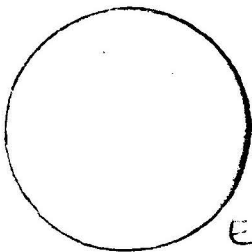


Exhibit B

COURTESY NOTICE

Address: 287 N.E. 96TH ST.



Miami Shores Village

10050 N.E. SECOND AVE.
MIAMI SHORES, FLORIDA 33138-2382
Telephone: (305) 795-2207
Fax: (305) 756-8972

Dear Property Owner:

While making inspections in the area, I noticed the following items needing your attention:

- Property is in need of mowing / cleaning
- Trash on site
- Exterior of structure requires maintenance U.F.
- Trees/bushes/hedges need trimming
- Commercial vehicle in residential zone
- Inoperable vehicle on property
- Vehicle parked in landscaped area
- Vehicle parking areas must be paved
- Vessel / boat not properly stored
- Interior / exterior work requires permits
- Prohibited signs on property
- Non-domestic animals on property
- Other: "UNSATISFACTORY... HOUSE EXTERIOR"
I.E. - DIRTY ROOF

Corrective action needed by: 04/03/02 :
PLEASE PRESSURE-CLEAN ROOF
(NO PERMIT REQUIRED)

Failure to correct the violation by the above date may result in a Notice of Violation to appear before the Code Enforcement Board which may impose fines up to \$500 per day. The Village residents have always taken great pride in the community and we know that you share in this effort to keep the "Village Beautiful". Your cooperation is appreciated.

KUSH OMAR LYON 03/04/02
Code Enforcement Officer Date

MIAMI SHORES VILLAGE HISTORIC PRESERVATION BOARD

APPLICATION FOR A
CERTIFICATE OF APPROPRIATENESS

please type or print clearly

NAME OF PROPERTY (if applicable): SPEARS/HARRIS RESIDENCE

ADDRESS OF PROPERTY: 287 NE 96th St.

NAME(S) OF APPLICANT(S): Warren Bittner
(NOTE: IF THE APPLICANT IS A PERSON OTHER THAN THE OWNER(S), EVIDENCE OF THAT PERSON'S AUTHORITY AS AGENT MUST BE ATTACHED TO THE APPLICATION.)

TELEPHONE OF APPLICANT(S): (305) 754-3188; (305) 416-1800

ADDRESS OF APPLICANT(S): same
(if different than address of property)

PRESENT USE OF PROPERTY: residence

CLASSIFICATION OF WORK FOR WHICH CERTIFICATE IS DESIRED:
(circle the letter next to the appropriate classification)

- A.** MAINTENANCE OR REPAIR: The act or process of applying measures to sustain the existing form, integrity and material of a building or structure and the existing form or vegetative cover of a site. It may include initial stabilization work, where necessary, as well as on-going maintenance and repair. Samples of material must be submitted with the Application.
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- D.** DEMOLITION: The process of destroying or tearing down a building or structure or a part thereof, or the process of removing or destroying an archeological site or a part thereof. The applicant shall include a report explaining why the proposed action should occur. If this action is to occur for reasons of financial hardship, all pertinent financial data should be included pertaining to the cost of preservation, demolition and new construction. Any other material pertinent to the application is also encouraged as supplementary information.
- E.** NEW CONSTRUCTION: The process of constructing a building or structure that has never existed at that location. Applications shall include: a site plan, elevations, floor plan and/or landscape plan.

DESCRIPTION OF THE PROPOSED PROJECT (Explain what changes will be made and how they will be accomplished - use continuation sheet if necessary - all applications shall be accompanied by at least one 3" x 5" photograph of the property):

Repaint exterior same colors as existing
to comply with Code Enforcement Citation
issued 3/4/02 (attached)

Medieval Brown - Beige

CERTIFICATION

I (WE) CERTIFY TO THE BEST OF MY (OUR) KNOWLEDGE AND BELIEF THAT ALL INFORMATION IN THIS APPLICATION AND ITS ATTACHMENTS IS TRUE AND CORRECT:

SIGNATURE OF APPLICANT(S): [Signature] DATE: 3-5-02

DATE: _____

SIGNATURE OF OWNER(S): _____ DATE: _____

FOR BOARD USE ONLY

APPLICATION DATE (date application received by Secretary of the Board): 3/5/02

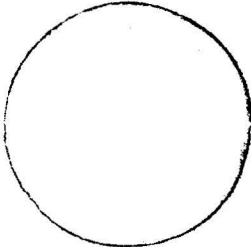
DECISION OF THE BOARD (circle the appropriate number):

1. APPROVED

2. APPROVED WITH CONDITIONS (set forth conditions below):

3. DENIED

SIGNATURE OF CHAIRMAN: _____ DATE: _____



COURTESY NOTICE

Address: 281 N.E. 96th St.



Miami Shores Village

10050 N.E. SECOND AVE.
MIAMI SHORES, FLORIDA 33138-2382
Telephone: (305) 795-2207
Fax: (305) 756-8972

Dear Property Owner:

While making inspections in the area, I noticed the following items needing your attention:

- Property is in need of mowing / cleaning
- Trash on site
- Exterior of structure requires maintenance *U.F.*
- Trees/bushes/hedges need trimming
- Commercial vehicle in residential zone
- Inoperable vehicle on property
- Vehicle parked in landscaped area
- Vehicle parking areas must be paved
- Vessel / boat not properly stored
- Interior / exterior work requires permits
- Prohibited signs on property
- Non-domestic animals on property
- Other: "UNSATISFACTORY... HOUSE EXTERIOR"

Motion - Fred Newman
2nd - Martha Collins
UNANIMOUS

NOTE: FADED PAINT & STAINED WALLS (EXT.)

Corrective action needed by: 04/03/02

PLEASE OBTAIN PERMIT & COLOR APPROVAL
THEN PAINT HOUSE EXTERIOR

Failure to correct the violation by the above date may result in a Notice of Violation to appear before the Code Enforcement Board which may impose fines up to \$500 per day. The Village residents have always taken great pride in the community and we know that you share in this effort to keep the "Village Beautiful". Your cooperation is appreciated.

KARA OMARA LYON
Code Enforcement Officer

03/04/02
Date

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME— FIRST NAME—MIDDLE NAME BITTNER, WARREN R.	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE HISTORIC PRESERVATION BOARD
MAILING ADDRESS 287 NE 96th STREET	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: XX <input type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY MIAMI SHORES,	COUNTY MIAMI-DADE
DATE ON WHICH VOTE OCCURRED	NAME OF POLITICAL SUBDIVISION: MIAMI SHORES VILLAGE
	MY POSITION IS: <input type="checkbox"/> ELECTIVE <input checked="" type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

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For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

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IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

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IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

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DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, WARREN BITTNER, hereby disclose that on March 20, 2002, 1902:

(a) A measure came or will come before my agency which (check one)

- inured to my special private gain;
- inured to the special gain of my business associate, _____;
- inured to the special gain of my relative, _____;
- inured to the special gain of _____, by whom I am retained; or
- inured to the special gain of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

MEASURE: APPLICATION FOR CERTIFICATE OF APPROPRIATENESS **Item # 2**

NATURE OF CONFLICTING INTEREST: I AM THE OWNER OF THE PROPERTY FOR WHICH THE CERTIFICATE IS BEING APPLIED FOR.

March 20, 2002
Date Filed

[Signature]
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317 (1991), A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$5,000.



Miami Shores Village

RICHARD SARAFAN
VILLAGE ATTORNEY

825 BRICKELL BAY DRIVE
TOWER III - 17TH FLOOR
THE FOUR AMBASSADORS
MIAMI, FLORIDA 33131
(305) 374-6688 - 374-0384 (FAX)

March 7, 2002

Mr. Warren Bittner, Chairman
Miami Shores Village Historic
Preservation Board
287 N.E. 96th Street
Miami Shores, Florida 33138

Dear Mr. Bittner:

I have been advised through several sources that the Miami Shores Village Historic Preservation Board has determined that the pressure cleaning of clay roof tiles will result in physical damage to historic materials and that therefore all pressure cleaning of clay roof tiles with regard to historic designated properties is being prohibited. This issue has arisen at a recent Code Enforcement Board hearing and, in fact, an owner of a property which is not even historically designated has testified that you instructed her not to pressure clean her roof in response to a Code Enforcement Notice of Violation. As you might imagine, I am somewhat concerned about the potential that an applicant for a certificate of appropriateness might perceive that the Historic Preservation Board has already made its mind up about the appropriateness of any type of pressure cleaning with regard to every clay tile roof on every historic property, in advance of the hearing on that individual's application. Even more importantly, I need to know that, in the event of a later challenge, the Village will be in a position to demonstrate that any such determinations by the Historic Preservation Board were based upon substantial competent evidence.

As such, could you please provide me with additional information with regard to this determination by the Board, including the date of the meeting at which this was approved and a brief description of the evidence presented to the Board on the question of whether or not it is possible to pressure clean a clay tile roof on a historic building without causing damage to historic materials.

Thank you for your assistance in this matter.

Very truly yours,

RICHARD SARAFAN
RS/vp

DIVISIONS OF FLORIDA DEPARTMENT OF STATE
 Office of the Secretary
 Office of International Relations
 Division of Elections
 Division of Corporations
 Division of Cultural Affairs
 Division of Historical Resources
 Division of Library and Information Services
 Division of Licensing
 Division of Administrative Services



FLORIDA DEPARTMENT OF STATE
 Katherine Harris
 Secretary of State
 DIVISION OF HISTORICAL RESOURCES

MEMBER OF THE FLORIDA CABINET
 State Board of Education
 Trustees of the Internal Improvement Trust Fund
 Administration Commission
 Florida Land and Water Adjudicatory Commission
 Siting Board
 Division of Bond Finance
 Department of Revenue
 Department of Law Enforcement
 Department of Highway Safety and Motor Vehicles
 Department of Veterans' Affairs

March 20, 2002

Mr. Warren Bittner, Esq.
 287 NE 96th Street
 Miami Shores, Florida 33138

Re: Clay Tile Roofing: Cleaning

Dear

I am writing in aid of the discussion regarding the need for cleaning of clay tile roofs. According to best preservation practices, no material should be cleaned unless it is necessary to prevent deterioration of that material. We often see buildings or their parts cleaned when cleaning is not needed with a result of damage to the material.

That The Secretary of the Interior's Standards for Rehabilitation specifically deal with this cleaning is not accidental. Standard 7 refers to cleaning thus, "Chemical or physical treatments ... that cause damage to historic materials shall not be used. The surface cleaning of structures, *if appropriate*, shall be undertaken using the gentlest means possible". Note that the phrase "if appropriate" is added to this Standard.

Clay tile is a fragile material which, in the course of setting up a system for any type of cleaning, or in the cleaning itself, might well be damaged. Inasmuch as the discoloration of clay tile is caused by materials that do not deteriorate the tile, such cleaning is neither necessary of desirable. Furthermore, pressure cleaning of any surface which is not monolithic, such as tile or slate or wood shingles, is not recommended as water can easily penetrate these materials to the substrate below and actually initiate damage. Finally, in the Guidelines for Rehabilitating Historic Buildings, there is a specific admonition against "Applying high pressure water cleaning methods that will damage historic masonry ..."

Very truly yours,

Walter S. Marder, AIA
 Preservation Architect

500 S. Bronough Street • Tallahassee, FL 32399-0250 • <http://www.flheritage.com>

Director's Office
 (850) 245-6300 • FAX: 245-6435

Archaeological Research
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Historic Preservation
 (850) 245-6333 • FAX: 245-6437

Historical Museums
 (850) 245-6400 • FAX: 245-6433

Palm Beach Regional Office
 (561) 279-1475 • FAX: 279-1476

St. Augustine Regional Office
 (904) 825-5045 • FAX: 825-5044

Tampa Regional Office
 (813) 272-3843 • FAX: 272-2340

WARREN BITTNER
287 SHORELAND BOULEVARD
(N.E. 96TH ST.)
MIAMI SHORES, FL 33138
(305) 754-3188 - TELEPHONE

March 15, 2002

Richard Sarafan
Village Attorney
825 Brickell Bay Drive
Tower III – 17th Floor
The Four Ambassadors
Miami, FL 33131

**Re: Pressure Cleaning of
Hand-made Clay Roof Tiles
On Historic Architecture**

Richard

Dear Mr. ~~Sarafan~~:

I am responding to your letter of March 7, 2002, which I am enclosing for the benefit of those copied herein. I am responding issue by issue.

ISSUE NO. 1: “I have been advised through several sources that the Miami Shores Village Historic Preservation Board has determined that the pressure cleaning of clay roof tiles will result in physical damage to historic materials and that therefore all pressure cleaning of clay roof tiles with regard to historic designated properties is being prohibited.”

RESPONSE NO. 1: On February 4, 2002, the Historic Preservation Board ruled on an Application for Certificate of Appropriateness filed by **Mr. & Mrs. Nobili**, the owners of the historically designated property located at 352 NE 98th Street, requesting permission (after having received a Code Enforcement Courtesy Notice), to pressure clean the hand-made clay barrel tile roof installed on that property. **The owners were opposed to the Application.** After considering all of the evidence presented, the Board granted the relief requested by the owners and denied the Application concluding that the pressure cleaning of the clay roof tiles installed on the roof of that property would be inconsistent with the Secretary of Interior’s Standards for Rehabilitation, in particular Standard No. 7, since that process, among other things, would likely cause physical damage to historic materials, and, furthermore, is not necessary and is not appropriate.

The Board rules on Applications for Certificates of Appropriateness on a case-by-case basis. It is my understanding that the rulings of the Board are applicable only to the

property under consideration, not to all historic properties in the Village. Although certainly the decision in this case may have some precedential value in future cases, no one can predict with absolute certainty how the Board will rule in a subsequent case – each property and each circumstance is unique and individual.

ISSUE NO. 2: “This issue has arisen at a recent Code Enforcement Board hearing and, in fact, an owner of a property which is not even historically designated has testified that you instructed her not to pressure clean her roof in response to a Code Enforcement Notice of Violation.”

RESPONSE NO. 2: I believe the property owner, who’s name you fail to mention in your letter, is one **Elsie Baioff**, of 336 N.E. 96th Street. I do not believe there is anyone in the Village Administration who is not aware of Ms. Baioff’s unique issues, which need not be addressed here.

My name and work telephone number were given to Ms. Baioff by someone in Village Hall after she received a Code Enforcement Courtesy Notice to Pressure Clean her roof. As luck would have it, her property, built in **1927** by the **Shoreland Company**, is covered by one of the few remaining examples of Historic Cuban Tile in Miami Shores. Indeed, hers is an original installation – I am not aware of another original installation in Miami Shores. Although her property is not officially designated, it indisputably so qualifies. However, it is her roof which brings her under the jurisdiction of the Board for limited purposes pursuant to Section 104.11 of the South Florida Building Code, **of which I am the author**. Because of its unique history and importance, Historic Cuban Tile is the only building material given special protection under the South Florida Building Code, and clearly, the Historic Preservation Board of each jurisdiction is charged with the responsibility of protecting it.

Accordingly, the advice I gave Ms. Baioff was the following: I reminded her that she had declined repeated invitations to designate her property and that her property did not fall under the jurisdiction of the Board on this particular matter. Furthermore, I told her that it was my personal opinion that pressure cleaning her Historic Cuban Tile roof was inappropriate from an historic preservation perspective, and could very well damage it. I further advised her that, because her property was not designated, she should either comply with the Courtesy Notice by pressure cleaning her roof, or contest the action utilizing the procedures available, including appearing before the Code Enforcement Board and pleading her case before that Board. Any suggestion that I told her to disregard the Courtesy Notice or refuse to comply with an order of the Code Enforcement Board, is untrue.

Indeed, it is my understanding that this elderly woman was so intimidated by the Code Enforcement Officers, and in addition, with the prospect of appearing before the Code

Enforcement Board, that she had her roof pressured cleaned before she appeared before the Code Enforcement Board on Thursday, February 7, 2002. Although her roof is now clean and free of any trace of mold or moss, it now looks like it was installed yesterday (instead of 75 years ago) - which is exactly what the Secretary of Interior's Standards try to avoid. As will be explained below, the action which Ms. Baioff took, under duress, was antithetical to the goals of historic preservation and was inappropriate under every applicable standard. What Ms. Baioff did was the equivalent of stripping an antique piece of furniture.

ISSUES NO. 3: "As you might imagine, I am somewhat concerned about the potential that an applicant for a certificate of appropriateness might perceive that the Historic Preservation Board has already made its mind up about the appropriateness of any type of pressure cleaning with regard to every clay tile roof on every historic property, in advance of the hearing on that individual's application."

RESPONSE NO. 3: Your concern has already been addressed above. Once again, all applications are considered on a case-by-case basis. Each property and each circumstance is unique and individual. I cannot tell you however, that, if presented with identical circumstances, the Board would not rule the same way.

ISSUE NO. 4: "Even more importantly, I need to know that, in the event of a later challenge, the Village will be in a position to demonstrate that any such determinations by the Historic Preservation Board were based upon substantial competent evidence. As such, could you please provide me with additional information with regard to this determination by the Board, including the date of the meeting at which this was approved (sic) and a brief description of the evidence presented to the Board on the question of whether or not it is possible to pressure clean a clay tile roof on a historic building without causing damage to historic materials."

RESPONSE NO. 4: Thank you for the invitation and the platform to persuade. To begin, under the Miami Shores Village Code, in considering Applications for Certificates of Appropriateness, the Historic Preservation Board is required to apply the Secretary of Interior's Standards for Rehabilitation. Standard No. 7 is applicable. It provides:

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

Indisputably, pressure cleaning is a physical treatment. A sample of the hand-made clay tile installed on the Nobili roof was shown to and handled by the Board. A hand-made clay tiles does not have the durability or strength of a cement tile. The material, by its nature is delicate, and easily broken. In addition, the composition of a hand-made clay tile can be easily gouged, unlike a cement tile. Furthermore, it is well-known that a pressure cleaner is capable of even gouging cement. It was clear to the Board that this material should not be subjected to the unnecessarily harsh wear and tear, and possible degradation, that would occur if it were pressure cleaned. Upon referral from Mr. Walter Marder of the Florida Department of State, Historic Preservation Division, I have confirmed this by consulting a local expert in the field of antique and hand-made clay tile, Mr. Daniel Arguelles, of Architecture Roofing Technologies, the roofing contractor responsible for the recent Historic Cuban Tile restorations of the Coral Gables City Hall, the Coral Gables Venetian Pool, and many of the historic Shoreland Company homes in Miami Shores, including 262 NE 96th Street [Perry Alexander], 145 NE 95th Street [Steve & Linda Johnson], 107 NE 96th Street [Max Sturman], 10108 NE 1st Avenue [formerly Warren Bittner], etc., etc. Mr. Arguelles specifically warned against pressure cleaning a hand-made tile roof installation for reasons including, unnecessary breakage caused by stepping on the tiles, undue wear and tear, a tendency to push water into the roofing membrane, and the real possibility of voiding any warranty on the roof.

At the same time, the Board also had to consider whether the surface cleaning of the Nobili roof, for the sole purpose of removing mold and mosses, was “**appropriate**” in the first instance. It was the Board’s position that it was **not** appropriate. The Board’s rationale was the following. Historically, prior to the invention of pressure cleaners in the 1960s or 1970s, roofs in general were never subjected to pressure cleaning. Indeed, the older Historic Cuban Tiles are barrel tiles actually manufactured 400 to 1,000 years ago in the Mediterranean countries such as Spain, Italy and Portugal. These tiles have been used again, and again, and again, without ever having been pressure cleaned. Indeed, Mr. Nobili himself testified that when he was a young man living in Italy, he was employed in the roofing industry, and actually has extensive experience in salvaging and reapplying ancient barrel tile. He testified that in Italy he had never heard of anyone attempting to pressure cleaning a barrel tile roof installation – it was not done. The argument follows that, just because someone invented the “pressure cleaner”, doesn’t mean we have to use it on everything.

Next, it is a well-known historic fact that during the 1920’s the architects and builders of the Mediterranean homes that grace Coral Gables, Miami Beach, and even Miami Shores, used specific building materials and building methods with the intention of making their “new” buildings look “old”. Of course, the prime example is the use of Historic Cuban Tile. Another example, which is becoming more and more popular today, especially in Coral Gables, is the use of Lime Based Paint, because of the streaking weathered looking

effect it obtains when it gets wet (See the Coral Gables Water Tower; see also 107 NE 96th Street [Max Sturman]). There are many, many other examples.

On this subject, I have consulted with the State of Florida, Department of State, Division of Historic Preservation, the Curator of Vizcaya, the Historic Preservation Office of Coral Gables, and the Miami-Dade County Office of Historic Preservation. As stated by Walter Marder of the State of Florida, Division of Historic Preservation, "pressure cleaning hand-made clay tile is not recommended," and, indeed, is "dangerous", because "it tends to push water into the roofing membrane." Furthermore, because of the porous nature of the tile, "in a year's time, it will be molding again." "The tile is supposed to age."

According to Historic Preservation Specialist, Simon Chin, of the City of Coral Gables, the issue of roof cleaning has not come up in over 3 years. When it does, however, it is the rare "**extreme**" case, i.e., a situation when "**no red shows on the roof**". In that rare "**extreme**" case, Code Enforcement coordinates with the Historic Preservation Office, who determines if cleaning is appropriate, and then works hand-in-hand with the homeowner to determine the method, if any, for cleaning. Indeed, in the words of this Historic Preservation Specialist, "in Coral Gables we have moldy roofs and are proud of it." Mold and mosses add character and the weathered look of age – always the goal of historic preservation.

Further, I have had contact with Michelle McDonald, Curator of Vizcaya, the world-famous architectural masterpiece which was instrumental in the Mediterranean Revival Architectural Movement in South Florida during the 1910's and 1920's. According to Ms. McDonald, as far as she is aware, the roof tiles of Vizcaya have never been cleaned. According to her, pressure cleaning will damage the roof, and she would not recommend it.

In summary, and in specific response to your issue, you need not worry about whether the decision of the Historic Preservation Board in this case could withstand a challenge – there is an avalanche of substantial competent evidence to support the decision. Indeed, there would have been no substantial competent evidence to approve the application and allow the pressure cleaning. As a seasoned municipal attorney specializing in litigation, there is no doubt in my mind that the decision of the Board would be affirmed at the Circuit Court Appellate Division level.

CONCLUSION:

The advice given by experts in the historic preservation field is compelling. The evidence is clear and indisputable - pressure cleaning for the purpose of removing mold and mosses will damage historic materials and is furthermore inappropriate. For an example of how beautiful mold and mosses complement an Historic Cuban Tile Roof installation,

Richard Sarafan
Village Attorney
March 15, 2002
Page 6

which almost everyone in the Village passes on the way to work every day, is 145 NE 95th Street [Steve and Linda Johnson]. I encourage every reader to take a close look at it.

Instead of being concerned about the action taken by the Historic Preservation Board, perhaps you should be concerned with the actions taken by the Code Enforcement Section, who are subjecting the hand-made clay tile roofs of our historic homes to this unnecessarily harsh ware and tear. The question is really not whether there is enough evidence to support the decision of the Historic Preservation Board, but rather whether Code Enforcement has done sufficient research to justify subjecting the delicate roofs of our historic homes to unnecessary pressure cleaning, and are willing to accept responsibility for the potential damage it could cause.

It is worth remembering that it is the Village's historic architecture that has been primarily responsible for catapulting property values in this Village during the past several years. For example, see "Soaring prices on Miami's upper north side shock homebuyers", *Miami Today* (3/14/02)(attached). Whether the issue of today is replacing original wood casement windows (577 NE 96th Street), or pressure cleaning the mold and mosses off of hand-made clay tile roofs, if the Village wishes the trend of rising property values to continue, the Village must seriously begin to preserve and **appreciate** its historic architecture.

Clearly, the Code Enforcement frenzy that we are currently experiencing in Miami Shores has begun stepping over the line. That line was drawn, and appropriately so, by the Historic Preservation Board in this case.

The Historic Preservation Board should not be at loggerheads with the Village Administration on this issue – instead we should be receiving their support. If this beautiful Village is to be favorably compared to the City of Coral Gables, the Village Administration must start developing a true appreciation for historic preservation and get beyond the spic and span, bright and shiny plastic mindset – - the Burger King model does not apply to our historic architecture.

If any reader has any questions, please do not hesitate to contact me. Thank you.

Very Truly Yours,



Warren Bittner

enclosures (2)

Richard Sarafan
Village Attorney
March 15, 2002
Page 7

cc: Members, Historic Preservation Board (w/encls.)
Mr. & Mrs. Nobili (w/encls.)
Steve Loffredo, Esq. (w/encls.)
Al Davis, Mayor (w/encls.)
Mark Ulmer, Councilman (w/encls.)
Greg Ulman, Councilman (w/encls.)
Prospero Herrera, Councilman (w/encls.)
Bob Blum, Councilman (w/encls.)
Tom Benton, Village Manager (w/encls.)
Membership, Historic Homeowners Assoc. (w/encls.)
Rick Ferrer, Miami-Dade County, Office of Hist. Pres. (w/encls.)



287 N.E. 96 St.

WARREN BITTNER
287 SHORELAND BOULEVARD
(N.E. 96TH ST.)
MIAMI SHORES, FL 33138
(305) 754-3188 - TELEPHONE

April 13, 2002

Mayor & Members of the Village Council
Miami Shores Village
10050 NE 2nd Avenue.
Miami Shores, FL 33138

**Re: Appeal of Decision of Historic Preservation Board
Denying Application for Certificate of Appropriateness
Concerning Pressure Cleaning of Hand-made Clay Roof Tiles
For the National Register Property at 287 NE 96th Street**

Dear Mr. Mayor & Members of the Village Council:

This is in response to Richard Sarafan's Memorandum to you dated March 27, 2002, urging a reversal of the decision of the Historic Preservation Board rendered March 20, 2002, concerning my home.

BACKGROUND

Although Mr. Sarafan's arguments are easily rebutted, it is important that you first understand what it is that this case is all about.

Attached hereto as Composite Exhibit 1 are three 8"x10" color laser prints of my home taken on March 18, 2002, two days prior to the hearing before the Historic Preservation Board. These were presented to the Board and are in the appellate record. I do not think there is any doubt in anyone's mind that this is one of the most striking, prominent, and architecturally significant homes in Miami Shores Village. The issue in this case, however, is whether the small amount of mold and mosses that have accumulated on the roof should be removed. The Historic Preservation Board, following the guidelines set forth in the Village Code, applied the Secretary of Interior's Standards for Rehabilitation [Exhibit 2], and determined that such action would be inappropriate, and that the method required by the Code Enforcement Officer, i.e., pressure cleaning,

could damage the hand-made clay roof tiles. The Board's decision is attached as Exhibit 3].¹

ISSUE NO. 1: Under the Village Code, is a Certificate of Appropriateness required when the maintenance of an exterior element of a building does not require a building permit?

Your Village Attorney, Richard Sarafan, has misrepresented the Village Code to you on this issue. The pertinent Code sections are Section 11-6 and Section 11-9, which we will now review together.

First, Section 11-6 of the Village Code provides:

Sec. 11-6. Effect of historic landmark designation.

No structure or site that is designated by the village council as a historic landmark or building within a designated historic district may be demolished, moved or **changed in the exterior appearance by** addition, reconstruction, alteration or **maintenance**, or removal of or destruction of trees located on the site until an application for a certificate of appropriateness has been submitted to the historic preservation board and has been approved by that board, or the village council on appeal.

This section makes no reference to a building permit. The key words in this section are: "**changed in the exterior appearance.**" If there is such a "change in the exterior appearance" by any means, including by "maintenance" or otherwise, a certificate of appropriateness is required.

Next, Section 11-9 of the Village Code provides:

¹ On a purely historical note of interest, attached is a color laser print enlargement of an old historic Postcard depicting "Pueblo Feliz, Miami Shores, FL," which can be dated to 1925-26 [Exhibit 4]. It can be so dated because Pueblo Feliz, a Shoreland Company project, was built in 1925 and was destroyed in the Hurricane of September 1926. See excerpt, Thelma Peters, *Biscayne County, 1870-1926* (1st Ed. 1981)(Exhibit 5)(also in the record). The architectural style of my home, built in 1924-25, by the same development company, is the same. Note how the mold on the tile roof of the structures in the historic Postcard compliments the Mediterranean architecture, just as it compliments the Mediterranean architecture on my home. The structures in the historic Postcard were approximately one year old when the Postcard was produced.

Sec. 11-9. Maintenance of designated properties.

Nothing in this chapter shall be construed to prevent the **ordinary maintenance** or repair of any exterior elements of any building or structure which does not involve a **change of design, appearance** or material, **and** which does not require a building permit.

This section describes the circumstances under which “**ordinary maintenance**” would not require a certificate of appropriateness.

The first key word in this section is “**ordinary**”. The un rebutted expert testimony presented at the hearing before the Historic Preservation Board, which Mr. Sarafan does not dispute, was that pressure cleaning of hand-made clay tile is destructive. Pressure cleaning therefore cannot be characterized as “**ordinary maintenance**”.

The second set of key words in Section 11-9 are “**change of appearance**”. Mr. Sarafan does not dispute, and the un rebutted testimony presented at the hearing before the Board was, that pressure cleaning mold and mosses off a hand-made clay tile roof will involve an inappropriate **change in appearance**.

Finally, the reference to a **building permit** in Section 11-9, is added to further narrow and restrict the circumstances under which “**ordinary maintenance**” will not require a certificate of appropriateness.

Thus, contrary to the suggestion of the Village Attorney, based upon the only two applicable and governing Code sections, it is of no moment that pressure cleaning a roof does not require a building permit – a Certificate of Appropriateness is still required.

ISSUE NO. 2: Should a property owner ignore a Courtesy Notice of Violation issued by a Code Enforcement Officer?

This homeowner had received a Courtesy Notice of violation issued by a Code Enforcement Officer, threatened with being taken before the Code Enforcement Board, and fined up to \$500 per day, if he did not “pressure-clean” his “**dirty roof**” by a date certain, i.e., April 3, 2002. The exact words of the “Courtesy Notice” [Exhibit 6] are the following:

Dear Property Owner:

While making inspections in the area, I noticed the following items needing your attention: Exterior of structure requires maintenance; Other: “UNSIGHTLY ...

HOUSE EXTERIOR” I.E., DIRTY ROOF. Corrective action needed by: 04/03/02: PLEASE PRESSURE-CLEAN ROOF (NO PERMIT REQUIRED). Failure to correct the violation by the above date may result in a Notice of Violation to appear before the Code Enforcement Board which may impose fines up to \$500 per day.

To suggest, as Mr. Sarafan has, that the receipt of this notice was not an “official Code Enforcement citation” and that it placed the homeowner in no “**immediate** jeopardy of any Code Enforcement penalties” simply begs the question. Should the homeowner have sat back, ignored the notice and waited to be brought before the Code Enforcement Board, and likely fined, before taking some action? Should the homeowner have attempted to try to reason with the Code Enforcement Officer?² Better yet, should the homeowner have spoken directly to the Manager and tried to convince him that cleaning the roof was not a good idea?³ And, what if the homeowner was not successful in his pleas to the Code Enforcement Officer or to the Manager – when, if ever, under Mr. Sarafan’s theory could the homeowner seek the advice of the Historic Preservation Board as to what was the appropriate course of action to take with respect to this historic property?

Faced with the proverbial Sword of Damocles hanging over his head, and knowing beforehand that what was being demanded by the Code Enforcement Officer was both inappropriate and unreasonable, this homeowner naturally sought the opinion of the Historic Preservation Board, who’s duty, as mandated by the Village Code, is to

² As is reflected in the record, this indeed happened. As I explained in my “lengthy letter” of March 15, 2002, again responding to Mr. Sarafan’s inquiries on this subject, I had the occasion to speak with the Code Enforcement Department concerning Elsie Baioff’s roof. I was rudely told that pressure cleaning did not require a permit and to essentially mind my own business. After that negative experience, I concluded that further conversation with that Department, with respect to this issue, would be fruitless.

³ Indeed, this conversation between myself and Mr. Benton took place on March 5, 2002, the very day that the Application for Certificate of Appropriateness [Exhibit 3] was filed with the Secretary of the Building & Zoning Department. I called to speak with Mr. Benton concerning the erection of further Shoreland Blvd. Co-designation signs along 96th Street utilizing funds raised from the annual historic home tours. Mr. Benton raised the issue with me, and we both discussed our respective positions. We agreed to disagree, and both to do further research on the issue – mine to inquire how Coral Gables dealt with the issue. [All of this is contained in the transcript from the hearing below].

protect historic properties⁴ and interpret and apply the Secretary of Interior's Standards for Rehabilitation. See Section 11-4(g), which provides:

(g) Guide used in planning and deliberations. In all its planning and deliberations, the historic preservation board shall use "The Secretary of Interior's Standards for Rehabilitation and guidelines for Rehabilitating Historic Buildings" (as revised) as a basis for its guidelines for preservation.

In this instance, Standard No. 7 directly applies. It provides:

7. Chemical or **physical treatments**, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, **if appropriate**, shall be undertaken using the gentlest means possible.

The uncontradicted evidence presented at the hearing before the Board, which the Village Attorney concedes has merit, was that pressure cleaning of hand-made clay tile for the purpose of removing mold and mosses was both **inappropriate** and would **cause damage** to the hand-made clay tile at issue. For example, see letter dated March 20, 2002, from Walter S. Marder, AIA, Preservation Architect, from the Florida Department of State, Division of Historical Resources, whose office is responsible for the Village's National Register Nominations (including this property), and which was introduced into evidence before the Board [Exhibit 7]. There could be no clearer substantial competent evidence in support of the Board's decision.

ISSUE NO. 3: Should the Owner of a historic property seek a Hardship Variance from the Planning Board, instead of seeking a Certificate of Appropriateness from the Historic Preservation Board, on the issue of pressure cleaning hand-made clay roof tiles on historic properties?

Next, Mr. Sarafan argues that since a homeowner seeking relief from Code Enforcement action, such as that at issue in this case, would be required to oppose his Application for a Certificate of Appropriateness, that would "result in a sham hearing", "undermine the authority of the Village's Boards", "waste time", "become an improper one-sided hearing", and "skew the result." Mr. Sarafan's solution is to require the homeowner to seek a hardship variance, under Zoning Appendix s. 702, from the

⁴ See Section 11-1 of the Village Code, "The purpose of this chapter [establishing the Historic Preservation Board] is to promote ... the general welfare of the public through the preservation and **protection** of the historic or architecturally worthy buildings...."

requirements of Section 12-133 of the Village Code, which he says, "requires all homes in Miami Shores to keep their roofs free of excessive mildew and the like." I will show you that the sections cited by Mr. Sarafan do not apply.

First, lets examine Section 12-133 of the Village Code and see what it says:

Section 12-133. Depreciation of surrounding property.

The exterior of every structure shall be so maintained with reasonable attractiveness so as not, in the case of excessive scaling of paint or excessive mildew, to cause a substantial depreciation in property values in the immediate neighborhood. The exterior surfaces shall be kept free from materials, objects and conditions which will have an adverse effect on adjacent premises.

This section does not exactly say what Mr. Sarafan told you it said. Under this section, a mildew condition would have to be so bad that it causes "a substantial depreciation in property values in the immediate neighborhood." Is Mr. Sarafan suggesting that, based on the photographs in evidence before you, the condition of the roof of this home is such that it is causing a depreciation in property values in the immediate neighborhood, such that a variance from Section 12-133 is required in this case? No reasonable person would come to that conclusion. Clearly then, Section 12-133, cited to you by your attorney, has no application to this case.

Let us also look at Zoning Appendix s. 702, which your attorney says should be used by this homeowner to obtain a hardship variance from section 12-133. It provides in pertinent part as follows:

Sec. 702. Hardship variances.

If the building inspector denies an application for building permit or a certificate of occupancy for any building or use that would be in violation of any of the provision of this ordinance, and if the applicant is of the opinion that it is impossible to apply strictly such provisions to his property because of the existence of peculiar and unusual physical conditions affecting such property, other than conditions relating to the financial circumstances of the applicant, but including the fact that same has been designated as a historic landmark by the Miami Shores Village Council, he may appeal to the planning board, fully setting forth:

This Section has no application to this case either. The homeowner has not been denied an application for building permit or a certificate of occupancy.

So therefore, under Mr. Sarafan's hypothesis, if a homeowner should be precluded from seeking advice from the Historic Preservation Board in response to Code Enforcement action with which he disagrees, and the provisions regulating hardship variances are not available to the homeowner because they are inapplicable, what is the homeowner to do? Submit himself to the mercy of the Code Enforcement Board? In this Village, the Code Enforcement Board is not charged with the duty of protecting historic buildings or in interpreting the Secretary of Interior's Standards – only the Historic Preservation Board is.

ISSUE NO. 4: Was the hearing before the Board a sham, improper one-sided proceeding as alleged by Richard Sarafan?

At the hearing before the Historic Preservation Board on the homeowner's Application, of which the Village Administration had fifteen days prior notice,⁵ Mr. Sarafan had every opportunity beforehand to consult with experts in the field. He also had ample time to prepare for the hearing any opposition he might have had to what he already knew from the Chairman's response to his letter on the Nobili Application would be the position of the homeowner. Indeed, Mr. Sarafan was prepared enough to bring a Court Reporter, and he had the benefit of my "lengthy letter", as he put it. Thus, that this homeowner would oppose pressure-cleaning of the hand-made clay tile on his roof was a surprise to no one. Instead of presenting opposing evidence, Mr. Sarafan chose to rely only upon the arguments advanced here, which were correctly rejected by the Board.

Under the Code Sections we have reviewed, if a change in appearance would result from the proposed action, such as pressure cleaning the roof, a Certificate of Appropriateness is required. There is no exemption anywhere in the Village Code from this requirement when a homeowner opposes proposed maintenance required by a Code Enforcement Officer, which would effect such a "change in appearance". The Code Enforcement Officer could have appeared at the hearing before the Board and advocated the maintenance requested, but he did not. Indeed, in this case an extra copy of the Application for Certificate of Appropriateness was specifically made at my request for the Code Enforcement Officer and delivered to him by the Secretary for Building & Zoning, so he would have notice. That is how Tom Benton learned of the Application and why he was anxious to speak with me on the issue later that day. Although the Code

⁵ The date of the Application is the date it is received by the Secretary of the Building & Zoning Department, who filed in the date March 5, 2002 [Exhibit 3]. The date of the hearing was March 20, 2002, fifteen days later.

Enforcement Officer was given notice of the Application, he chose not to appear before the Board to advocate the proposed maintenance at issue, which was certainly a course of action available to him. Indeed, if aggrieved by the decision of the Board, the Code Enforcement Officer could have appealed an adverse decision on the merits to this Village Council.

I propose that this would have been the most appropriate way of handling this situation. My suggestion satisfies every one of Mr. Sarafan's objections, there is nothing revolutionary to it, and it comports with all existing provisions of the Village Code, requiring no amendments. You would have to substantially overhaul the Village Code, especially the sections Mr. Sarafan cited to you, to implement Mr. Sarafan's suggestion.

ISSUE NO. 5: "Has the Historic Preservation Board already made its mind up about the appropriateness of any type of pressure cleaning with regard to every clay tile roof on every historic property, in advance of the hearing on that individual's application."

Mr. Sarafan seems to be preoccupied and obsessed by this issue, which is apparently his excuse for taking up this appeal. If you recall, he already asked this of me in his letter of March 7, 2002, to which I have thoroughly and thoughtfully responded in my letter, dated March 15, 2002 (copies of which you were previously provided and which is also included in the appellate record).

For the record, I will repeat again what I have written before. The Historic Preservation Board rules on Applications for Certificates of Appropriateness on a case-by-case basis. The decisions are *quasi-judicial*, not *legislative*, in nature. The rulings of the Board are applicable only to the property under consideration, not to all historic properties in the Village. Although a decision in a case may have some precedential value in a future case, the decision in any case must be based upon the substantial competent evidence presented to Board in that case. Each circumstance is unique and individual. Not every clay tile on every historic property is hand-made. The Board has not yet had the occasion to consider whether, for example, pressure cleaning of a vitrified tile roof or a glazed tile roof, would be consistent with the Secretary of Interior's Standards. Those decisions await another day.

I must note at this juncture that Mr. Sarafan went out of his way in his Memorandum to you, to repeatedly insist that "it was [Mr. Bittner's] desire and intention **to establish a precedent** against the granting of [applications to clean roofs]", and further, that, "the Board voted to reject Mr. Bittner's application **in order to 'send a strong message' and create a precedent against the granting of permission to clean historically designated roofs.**" Nothing of the kind was ever said to that effect - the transcript of the hearing, which has been ordered and will be available for your review

prior to Tuesday, April 16, 2002, will bear that out – Mr. Sarafan has not been fully candid with you in this regard.⁶

ISSUE NO. 6: Is the Code Enforcement action against the Chairman of the Historic Preservation Board on this issue, just a coincidence?

Richard Sarafan first learned of the Nobili decision at a Code Enforcement Board meeting of February 7, 2002, which he attended as the Village Attorney, when Mr. Nobili appeared before that Board with the Historic Preservation Board's decision on his home in hand. The Code Enforcement Courtesy Notice at issue in the instant case is dated March 4th [Exhibit 6]. My conversation with the Manager took place on March 5th, within hours following my submission of an Application for Certificate of Appropriateness to the Building and Zoning Secretary, with a copy to the Code Enforcement Officer [Exhibit 3]. Richard Sarafan's letter to the Chairman of the Historic Preservation Board, inquiring about the Nobili decision, is dated March 7th [Exhibit 10].

Richard Sarafan insisted at the hearing below that the Chairman's receipt of two Code Enforcement Citations coming on the heels of the Nobili decision of the Historic Preservation Board was just a coincidence. Considering the tone and tenor of Richard Sarafan's writings on this issue, the timing of the events which have transpired, and his conduct during the proceeding below as reflected in the transcript, I believe you could draw a reasonable inference to the contrary.

This may indeed have been a well-orchestrated scheme by the Village Attorney to get this issue before you and to attempt to embarrass the Chairman of the Historic Preservation Board. I submit that the Administration used poor judgment in selecting my home to make an example out of.

⁶ You should know the reason why the transcript of the hearing below is not ready at this time. Although Richard Sarafan's Memorandum to you was faxed to the Village Clerk on March 27, 2002 [see Fax cover sheet attached as Exhibit 8], the Clerk did not mail a copy to me (the Appellee – an important party to the appeal) until April 8, 2002, almost two weeks later [The envelope showing the postmark is attached as Exhibit 9]. Having only received the Notice of Appeal upon returning home from work on Tuesday, April 9th, the transcript could not be ordered from the Court Reporter until Wednesday, April 10th. The Village Clerk also did not advise the Appellee in that mailing, or in any other way, of the date this appeal would be heard by the Council. I had to call the Village Clerk myself on Wednesday, April 10th to myself inquire and learn that the appeal would be heard the following Tuesday, April 16th. The transcript will be ready on Monday, April 15th, and will be distributed to you that evening.

ISSUE NO. 7: Does this appeal involve the merits of the Application for Certificate of Appropriateness considered below as to whether pressure cleaning mildew and mosses off of the hand-made clay roof tiles installed on this property is appropriate or could damage the tile?

Mr. Sarafan states on page 3, **“I take no position whatsoever on the merits of the underlying issue** as to whether or not the roofs on historically designated structures should be cleaned.” Clearly then, that answer is “no”. However, later, on page 4, Mr. Sarafan states, **“... the concerns of the Historic Preservation Board regarding the cleaning of roofs of historically designated structures may, indeed, have merit...”** Based upon this unequivocal statement, and the lack of any argument to the contrary in the Village Attorney’s Memorandum, the merits of the issue before you have been conceded, and properly so, by the Village Administration.

I ask you then, if the Historic Preservation Board has reached a correct conclusion, which it obviously has in this case, why is the Village Administration insisting that we go through this proceeding? I would hope that this is more than just an “intellectual” exercise.

CONCLUSION

Richard Sarafan’s recommendation that a homeowner aggrieved by a Code Enforcement Citation must seek a hardship variance from the Planning Board, rather than a Certificate of Appropriateness from the Historic Preservation Board, doesn’t comport with the existing provisions of the Village Code. Clearly, no maintenance, which would change the exterior appearance of a historically designated structure may be undertaken without a Certificate of Appropriateness. Only the Historic Preservation Board is charged with interpreting and applying the Secretary of Interior Standards for Rehabilitation – no other Board has that ability; and only the Historic Preservation Board can grant or deny a Certificate of Appropriateness.


So what is the proper course of action in this case? The Code Enforcement Department has mandated action which would change the appearance of the historic property, and it, to date, has not been withdrawn.⁷ It was up to the Code Enforcement Officer to appear before the Board to advocate the action he was requesting, and his failure to do so amounts to a waiver of that position.

⁷ All of these proceedings could have been stopped in their tracks if the Code Enforcement Officer or the Manager had written a letter to Mr. Bittner, or stated on the record below, that the Courtesy Notice was withdrawn. Mr. Benton, who was present below, declined repeated invitations during the hearing below to do so. [See transcript]. I suggest that he declined those invitations specifically because he wanted this appeal to come to you.

The appeal of the Village Attorney on behalf of the Village Administration is without foundation, and is without any support in the Village Code. You are therefore urged to **deny this appeal** and to **affirm the decision of the Historic Preservation Board** in this case.

If any member of the Council has any questions, I would be delighted to address them with you. Thank you for your consideration of these important issues relating to historic preservation in this Village.

Very Truly Yours,



Warren Bittner

exhibits (10)

cc: Barbara Fugazzi, Village Clerk (w/exhibits)

Members, Historic Preservation Board (w/exhibits)

MIAMI SHORES VILLAGE

APPLICATION FOR CERTIFICATE OF APPROPRIATENESS

NAME OF PROPERTY (If applicable): Spears/Harris Residence

ADDRESS OF PROPERTY: 287 NE 96th St.

NAME(S) OF APPLICANT(S): Warren Bittner / Barbara Bittner
(Note: If the applicant is a person other than the owner(s), evidence of that person's authority as agent other than the owner(s), evidence of that person's authority as agent must be attached to the application.)

CONTACT TELEPHONE NUMBERS: 305 416-1800 /

APPLICANT ADDRESS: 287 NE 96th St.
(If different than property address)

PRESENT USE OF PROPERTY: Residence

INDICATE CLASSIFICATION OF PROPOSED WORK:

- MAINTENANCE OR REPAIRS
- RESTORATION
- REHABILITATION
- DEMOLITION
- NEW CONSTRUCTION
- OTHER (PLEASE EXPLAIN) _____

DESCRIPTION OF THE PROPOSED PROJECT: repaint as follows: Behr Echo Trail - masonry walls; Behr Chaps - sills + shadows; Behr Medival Brown - windows + wood trim

PLEASE PROVIDE THE FOLLOWING SUPPLEMENTARY INFORMATION:

- SITE PLAN (W/ DIMENSIONS)
- FLOOR PLANS (W/ DIMENSIONS)
- ELEVATION (W/DIMENSIONS)
- LABELED PHOTOS
- SURVEY (WITHIN 5 YEARS)
- COLOR SAMPLE
- MATERIAL SAMPLE
- OTHER _____

CERTIFICATION

UNDER PENALTY OF PERJURY, I (WE) CERTIFY THAT ALL INFORMATION IN THIS APPLICATION AND THE ATTACHMENTS HERETO IS TRUE AND CORRECT TO THE BEST OF MY (OUR) KNOWLEDGE AND BELIEF, THAT THE WORK FOR WHICH APPROVAL IS SOUGHT HEREIN IS BEING PROPOSED IN GOOD FAITH AND WILL BE PROMPTLY PERFORMED IN THE EVENT OF THE APPROVAL OF THIS APPLICATION AND THE GRANTING OF A BUILDING PERMIT, AND THAT I (WE) DESIRE THAT THIS APPLICATION BE GRANTED AND SUPPORT THE GRANTING OF THIS APPLICATION.

SIGNATURE OF APPLICANT(S): [Signature] DATE: 5-31-02

[Signature] as attorney for Barbara Bittner DATE: 5-31-02

SIGNATURE OF OWNER(S): _____ DATE: _____

_____ DATE: _____