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SOLAR PANELS/SYSTEMS IN HISTORIC DISTRICTS

TO: City of Eustis Historic Preservation Board (hereinafter “the Board”)

FROM: Cheyenne D. Dunn, Esq.

DATE: March 7, 2023

In recent years the desire of historic home property owners to install solar panels has become a subject of consideration for historic preservation boards. This memorandum is intended to provide guidance for the Board as to whether it should consider these requests, what factors to consider, as well as a discussion regarding the ability to amend the city code or historic guidelines to address the installation of solar panels in the historic district or on historic properties, should the Board deem this necessary.

Florida Statute §163.04

Florida Statute §163.04 provides that “a property owner may not be denied permission to install solar collectors or other energy devices by any entity granted the power or right in any deed, restriction, covenant, declaration, or similar binding agreement to approve, forbid, control, or direct alternation of property with respect to residential dwellings...”. Additionally, the statute prohibits the “adoption of an ordinance by a governing body...which prohibits or has the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources...”

In sum, the statute prohibits the Board from preventing a property owner from installing solar panels or other energy devices on their property nor can any ordinance prohibit installation. The statute does provide that the Board may “determine the specific location where solar collectors may be installed on the roof with an orientation to the south or within 45 degrees east or west of due south” but only if the effectiveness of the solar panels will not be impaired.

Secretary of the Interior Standards for Rehabilitation

The Secretary of the Interior has Standards for Rehabilitation (hereafter “Interior Standards”), that have been adopted by multiple state National Historic Preservation Boards. The additional guidelines this Board considers when evaluating certificates of appropriateness are based on these standards (see Eustis Code of Ordinances Section 46-227(m)). Standard 2 and Standard 9 appear to be controlling when it comes to evaluating the placement of solar energy collectors on historic district properties.

- Standard 2: The historic character of the property shall be retained and preserved. The removal of historic materials or alternation of features and spaces that characterize a property shall be avoided.
- Standard 9: New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

Adaptations by Other Historic Preservation Boards

Key West: The City of Key West includes a section on solar collectors in their Historic Architectural Guidelines which encourages citizens to exhaust all other means of reducing a “carbon footprint” before seeking to install solar devices. It goes on to state any proposals regarding the installation of solar energy collectors “shall be based on a hierarchy of preferred locations starting with roofing not visible from public streets, then locations within rear gardens or on pergolas, and only if none of those are viable because of orientation or overshadowing” then the board will consider proposals that involve collectors “on roofing areas or other locations visible from public streets.” If a citizen wants to install the solar devices and the related equipment in a location that will be visible from public streets then they must show, “by way of calculation of energy outputs” that similar performance cannot be achieved in a location away from public view. They prohibit “character defining features” of the buildings from being damaged or obscured when new energy collecting devices are introduced.

Gainesville: The City of Gainesville addresses rooftop solar photovoltaic system, a/k/a solar panels, in their Land Development Code. They provide if installation of such system as defined by their Code will not be seen from any street frontage, will meet the City’s Historic Preservation Rehabilitation and Design Guideline, and will meet an additional design criteria, then the City Manager or designee “may issue a certificate of appropriateness” of the system. Otherwise, the approval of the Historic Preservation Board is needed. A copy of the relevant section of the code is included for review by the Board and the portion regarding the additional design criteria is highlighted. In one Historic Preservation Board Report, approval of a COA was granted for the installation of solar panels after determining the plan complied with the Interior Standards 2 and 9. The solar panels were visible from the right-of-way on the primary roof façade elevation but the installation would not result in permanent loss of significant character-defining features of a historic resource, installation was reversible and the panels could be removed without

permanent alteration of the historic fabric of the house as the panels were low mount and the system's conduit would run through the attic as much as possible to avoid the conduit being visible on the roof.

Lakeland: The City of Lakeland includes in their Design Guidelines for Historic Properties that “solar panel installations should not become prominent new elements that detract from the character-defining features of a building or landscape.”

There are common themes in how other boards have addressed this issue. First, regardless of the suggestions, proposals, guidance, or requirements of the boards, all further the idea of the Interior Standards 2 and 9.¹ All seem to take a stance of exhausting all efforts/attempts to preserve the historic nature of the property without the outright prohibition to the property owner from installing the systems. Additionally, each board encourages property owners to make all possible attempts to preserve the historic nature/character and provide notice of what attempts need to be made and what corroborating information of the attempts is needed before approval of solar panels visible from a right-of-way will be approved.

City of Eustis Historic Preservation Board

The City Code does not include any provisions regarding the installation of solar panels on properties located within historic districts or with a historic designation. One question to consider is whether COAs for solar panels on properties located within historic districts or with a historic designation need to be considered by the Board? The answer appears to be yes. As discussed above other historic preservation boards in the state consider COAs regarding solar panel installation in historic districts and on historic properties.

This Board's consideration of solar panel installation for historic homes through COAs falls in line with the City's historic preservation policy and purpose. Section 46-2 (a) of the City's Code states it is a “matter of public policy that the preservation, protection, enhancement, perpetuation and use of landmarks, landmark sites, and historic districts is a public necessity.” In addition, Florida Statute §163.04 provides some ability for the Board to designate the placement of the solar panels. By having the COAs presented to the Board, review of the plans can be done to ensure the historic nature of the building is preserved as much as possible and if the solar panels must be placed in view of a right-of-way, it will be because it has been proven that the effectiveness of the system will be otherwise impaired.

Should the Board find it necessary to revise the City Code or historic guidelines to include review of solar panel installation in the historic district, the Code provides the Board the ability to make such a recommendation to the City Commission. Section 46-60(6) of the Code grants the Board the power “to develop specific guidelines for the alteration, construction, relocation or

¹ For example, the City of Key West's prohibition of “character defining features” being damaged or obscured reflect Standard 2 (“historic character of the property shall be retained and preserved) and Standard 9 (“New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property.”) The City of Gainesville's approving solar panels partly because they can be removed without permanent alteration of the historic fabric of the house reflects Standard 9 (“The new work shall... protect the historic integrity of the property and its environment.”).

removal of designated property.” Section 46-60(7) grants the Board the power to “promulgate standards for architectural review which are consistent with standards for rehabilitation which have been or may be established by the United States Secretary of the Interior.” Finally, Section 46-60(18) grants the Board the power to make such rules and regulations as it deems necessary for the administration of ordinances for which it is responsible.” As a practical matter, it may be wise for the Board to make recommendations to add provisions regarding the ideal placement of solar panels and preferred look and design of the same so that citizens are more knowledgeable regarding what should be provided when submitting their COA.