

Received 2/2/2024  
Elizabeth Eaton



Harter Secrest & Emery LLP

ATTORNEYS AND COUNSELORS

WWW.HSELAW.COM

February 21, 2024

**VIA HAND DELIVERY**

The City of Niagara Falls City Council  
City Hall  
745 Main Street  
Council Chambers - Room 202  
Niagara Falls, New York 14302

Re: NFR Turtle LLC; SBL No. 158.12-1-20  
Proposed Landmark Designation  
February 21, 2024 City Council Meeting

Dear City Council Members:

We write on behalf of NFR Turtle LLC (“NFR Turtle”) concerning the proposed recommendation by the Niagara Falls Historic Preservation Commission (the “Commission”) to the City Council (the “Council”) to designate NFR Turtle’s property located at 25 Rainbow Boulevard (the “Turtle”) an historical landmark. For the reasons set forth below, we respectfully request that the Council refrain from taking any further action concerning the Commission’s recommendation.

**I. The Turtle’s designation as an historical landmark is premature.**

Any action by the Council concerning the designation of the Turtle as an historical landmark would be significantly premature because the Turtle is less than 50 years old (fewer than 43 years old), and is not exceptionally important.

**A. The Turtle is less than 50 years old.**

According to the New York Parks, Recreation and Historic Preservation Law State Regulations Part 427 “properties that have achieved significance within the past 50 years shall not be considered eligible for the State Register.” § 427.3(b).<sup>1</sup> A property less than 50 years old, even after achieving significance, will only be considered for historical landmark designation if it is of “exceptional importance.” § 427.3(b)(7). The Turtle, completed in 1981, is fewer than 43

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<sup>1</sup> The National Register of Historic Places follows the “50-year rule.” A copy of the NRHP of FAQ’s detailing this requirement from is attached hereto as **Attachment A**.

years old. It is, therefore, ineligible to be designated an historical landmark absent a showing that it is “exceptionally important,” even assuming it has achieved significance. Discussed further below, such a showing has not, and cannot, be made.

Based on our diligent research, the Commission has always followed the “50-year rule.” Of the 37 properties in Niagara Falls listed on the National Register of Historic Places, not a single property is less than 50 years old.<sup>2</sup> Almost all, in fact, are more than 100 years old. Accordingly, the Commission’s proposed designation of the fewer than 43-year-old Turtle constitutes a significant departure from its historic practices.

Any action by the Council concerning the historical landmark designation of the Turtle would be significantly premature.

**B. The Turtle does not meet the exceptionally important exception to the 50-year rule.**

The Commission’s Recommendation Packet to the Council demonstrates the Turtle’s lack of exceptionally important significance, thus failing to satisfy the exception to the “50-year rule.” Rather, the facts bare that the Turtle’s limited operations (1981-1995) as the Native American Center for the Living Arts (“NACLA”) were marred by immediate financial struggles and a lack of visitors, support, and enthusiasm.

By 1986, just five years after its ground breaking ceremony, NACLA was in a desperate financial situation. It struggled to make its payments in lieu of taxes, part of a ten-year agreement with the City, and had difficulty covering basic operational costs. (Recommendation Packet, p. 10.) In 1987, still only six years after NACLA opened the Turtle’s doors, a \$12, 357 tax warrant was filed in the Niagara County Clerk’s office. (*Id.* at pp. 10-11.) At that time, Officials with the State Office of Parks, Recreation and Historic Preservation (“OPRHP”) decided against releasing a \$723,000 appropriation because NACLA failed to provide proof of a financially sound accounting system. (*Id.* at p. 11.) The tax warrant resulted in a four-day lockout of NACLA by the State Department of Taxation and Finance. (*Id.*)

Just seven years after opening, in 1988, the OPRHP cut NACLA’s annual funding. (*Id.*) NACLA, in turn, was forced to make dramatic staff cuts and fell further behind on its payments to the City by 1989. (*Id.*) By 1993, NACLA owed \$102,000 in unpaid electric bills alone. (*Id.*) With the power now cut, NACLA continued to operate for another two years. (*Id.*) Yet, even with admission being a mere \$2.50, NACLA visitors decreased until its doors were permanently shut in 1995. Just 14 years after opening, NACLA’s Executive Director, Duffy Wilson, lamented that “it appears like nobody cares about the Turtle.” (*Id.*) The IRS sold some of NACLA’s

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<sup>2</sup> [https://en.wikipedia.org/wiki/National\\_Register\\_of\\_Historic\\_Places\\_listings\\_in\\_Niagara\\_Falls,\\_New\\_York](https://en.wikipedia.org/wiki/National_Register_of_Historic_Places_listings_in_Niagara_Falls,_New_York).

artifacts and furnishings to settle tax liens, while a proposal by the University at Buffalo to take over the building for operation as an Indigenous Cultural Center was rejected by the City. (*Id.*)

The City foreclosed on the now vacant Turtle in 1996. A year later, NFR Turtle purchased the Turtle for \$1 Million: \$100,000 per year for ten years. The Turtle was, as it remains today, back on the City tax rolls. This means, in addition to the \$1 Million purchase price, NFR Turtle has made approximately \$1.3 Million in tax payments to the City, County, and School District.

To further bely any argument that the Turtle is “exceptionally important,” The City permitted NFR Turtle to remove structural elements from the Turtle in July 2000 at a “groundbreaking” event attended by then Mayor Irene Elia and other City officials.



Equally damaging to any attempt to establish exceptionally important circumstances today is the fact that the Turtle could have and should have been so designated prior to the City selling it to NFR Turtle more than two decades ago.

Finally, on February 7, 2024, Roger Trevino, Executive Vice President of Niagara Falls Redevelopment, LLC, outlined NFR Turtle's failed efforts to develop the Turtle into a museum/cultural center:<sup>3</sup>

NFR has made numerous efforts over the years to develop the site. Indeed, NFR spent considerable expense and several years attempting to establish a Smithsonian-affiliated Museum at the site. These efforts included hiring a museum consultant and other professionals and touring the site with representatives of the US Department of the Interior. In the end, NFR couldn't find any financially viable Native American group with an interest in moving this project forward. Other efforts included outreach to indigenous communities as far away as Mongolia.

More recently, NFR attempted to attract a hotel development to the site, but since the property had been downzoned in the years since NFR took over the building, the City wouldn't grant a variance back to the original height limit in order to get the project done.

Never in any of these discussions was the issue of historic significance of the Turtle structure raised.

We have always been open to working with the indigenous community in Niagara Falls on cultural preservation efforts and remain so. Yet no financially viable group has ever stepped forward with a serious proposal for the successful operation of the Turtle facility in any way. Moreover, we note that museums across the country are moving away from the display of native artifacts and returning these artifacts to the tribal lands in response to new federal regulations. Most recently, in fact the American Museum of Natural History in New York closed its Native American exhibits for this reason

The history of the Turtle, including its brief run as a financially disastrous Native American Cultural Center for the Living Arts, and subsequent disinterest from any financially viable Native American group to redevelop the site, demonstrates its lack of exceptionally important status. The Turtle, therefore, does not meet the exception to the 50-year rule for historical landmark designation.

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<sup>3</sup> [https://www.niagara-gazette.com/opinion/guest-view-historic-status-doesn-t-solve-turtle-s-problems/article\\_5297d3e6-c5dc-11ee-9055-af5d62799619.html](https://www.niagara-gazette.com/opinion/guest-view-historic-status-doesn-t-solve-turtle-s-problems/article_5297d3e6-c5dc-11ee-9055-af5d62799619.html).

**II. The various City Departments do not support the Turtle's historical landmark designation.**

Historic Preservation Regulation § 1335.05-2(B) requires that “[i]f the proposed action is on [the Commission’s] own initiative, the [Commission] shall prepare a notice of proposed designation.” The application or notice must contain (1) the name and address of the property owner; (2) the parcel number; (3) any available surveys, sketches, photographs or drawings of the property; (4) a legal description of the property; (5) the zoning of the property; (6) a general statement of the current condition of the property; (7) the Commission’s proposed action; and (8) any additional information as the Commission shall deem necessary. *See id.* The notice or application must then be sent to the following City departments for comments on the proposed designation, which shall be made part of the record:

- Engineering Department
- Community Development Department
- Assessors Department
- Planning Board; and
- Law Department

*See* HPR §1335.05-2(C).

Here, while it is unclear whether the Commission followed this Notice requirement, the Assessors Department, Engineering Department, Community Development Department, Planning Board, and Law Department submitted comments that were made part of the Recommendation Packet, which demonstrate an overwhelming lack of support for the proposed historical landmark designation:

- The Assessors Department, Engineering Department, and Community Development Department did not take a supporting position on the Turtle historical landmark designation -- or any position at all.<sup>4</sup>
- Seven of the nine<sup>5</sup> Planning Board members either had “no comment,” or spoke against the historical landmark designation of the Turtle.<sup>6</sup>
  - Planning Board member John Spanbauer stated “The Turtle was a great building and could be utilized for a lot of things, but would rather not

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<sup>4</sup> Comments from the Assessors Department, Engineering Department, and Community Development Department are collectively attached as **Exhibit B**.

<sup>5</sup> The two Planning Board Members who supported the Turtle’s historical landmark designation did so with the “explicit understanding that the owners would do something with the property to add to Niagara Falls tourism.”

<sup>6</sup> Comments from the Planning Board are attached hereto as **Exhibit C**.

declare it a Historical Landmark if it meant it would prevent some kind of development.”

- Planning Board member Tim Polka stated “the Turtle should be torn down. [There is] no value in any historical preservation with that structure and that the site location would be ideal for a new project.”
- The City’s then Corporation Counsel, Christopher Mazur, Esq., submitted his comments on behalf of the Law Department.<sup>7</sup>
  - He stated “[t]he major historical impact of the Turtle building is that it is emblematic of the short sighted and underfunded development projects from the urban renewal era that contributed to the systematic decline of the City in the second half of the 20th century. A building that has been vacant for twice as many years as it was open, the Turtle has no more significant historical significance than the buildings that were torn down to make way for its construction. Given its prime location, I would hope in that property will entice a significant development project in the coming years. Historic Designation would only complicate that process.”

Accordingly, action from this Council in favor of designating the Turtle an historical landmark would be out of step with the City’s Departments that were asked to comment.

### **III. Questions about concerning the composition of the Commission.**

In accordance with Sections §§ 1335.04(B) and (D) of the Historic Preservation Regulations, the Commission must consist of seven City residents who, if practicable, have the following occupations:

- At least one architect;
- At least one historian;
- At least one licensed real estate professional; and
- At least one licensed professional engineer.

The Commission has not established that it has seven members, whether all of those members are City residents, and whether any of its members are architects, historians, licensed real estate professionals, or licensed professional engineers, as required by law.

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<sup>7</sup> Comments from the Law Department are attached hereto as **Exhibit D**.

Until this information is disclosed to the Council so it can effectively consider and comment upon the proposed historical landmark designation, the Council should decline to take action on the Commission's recommendation.

Please feel free to contact us if you have any questions about the contents of this submission. Thank you for your prompt and thoughtful attention to this matter.

Very truly yours,

Harter Secrest & Emery LLP

*/s/Ryan C. Altieri*

Ryan C. Altieri

Associate

DIRECT DIAL: 716.844.3726  
EMAIL: R.ALTIERI@HSELAW.COM

RCA:rca  
Attachments







# National Register of Historic Places

## FAQs

The National Register of Historic Places is the official list of the Nation's historic places worthy of preservation. Authorized by the National Historic Preservation Act of 1966, the National Park Service's National Register of Historic Places is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources.

**What is the National Register of Historic Places?**

**How is a property listed in the National Register of Historic Places?**

**What are the restrictions, rules, regulations for historic property owners?**

**Can I modify, remodel, or renovate, my historic house?**

**How do I apply for grant money or tax credits?**

**Are there insurance regulation implications of a house being listed in the National Register?**

**How do I get a plaque?**

**How do I get a copy of the file you have on a property?**

**How can I update information for a property that is already listed?**

**I am pretty sure that a property is listed, but I cannot find it in your database, why is that?**

**How old does a property have to be to qualify for listing?**

Generally, properties eligible for listing in the National Register are at least 50 years old. Properties less than 50 years of age must be exceptionally important to be considered eligible for listing.

**I want to know if a property is listed, how can I do that?**

**I am a member of the National Trust for Historic Preservation, what can you do for me?**

**I want to use the photographs in your files, are they copyrighted?**

**What are the definitions of some of the terms and acronyms you use?**

**What is the preferred method of citation for a National Register of Historic Places nomination file?**

**What is the difference between a National Park, a National Monument, a National Memorial, a National Historical Park, etc?**

Last updated: May 19, 2023

Was this page helpful?

Yes

No

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(<https://touchpoints.app.cloud.gov>)

# EXHIBIT B

Re: 25 Rainbow Boulevard request for comments

James Bird <james.bird@niagarafallsny.gov>

Wed 7/5/2023 8:23 AM

To: Michael Pesarchick <michael.pesarchick@niagarafallsny.gov>

Hello,

The Assessor's office has no issues with the above request.

James R. Bird  
City Assessor  
City Hall  
745 Main Street  
Niagara Falls, NY 14302  
716.286.4380

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**From:** Michael Pesarchick <michael.pesarchick@niagarafallsny.gov>

**Sent:** Monday, July 3, 2023 10:27 AM

**To:** James Bird <james.bird@niagarafallsny.gov>; Robert Buzzelli <robert.buzzelli@niagarafallsny.gov>; Thomas Tedesco <thomas.tedesco@niagarafallsny.gov>; Chris Mazur <christopher.mazur@niagarafallsny.gov>

**Cc:** Kevin Forma <kevin.forma@niagarafallsny.gov>

**Subject:** Re: 25 Rainbow Boulevard request for comments

Good morning all,

A gentle reminder that the HPC is still soliciting comments on "The Turtle," 25 Rainbow Boulevard, which is being considered for Historic Landmark status, pursuant to Section 1335.05-2(C) of the City of Niagara Falls Codified Ordinances.

Comments were originally solicited on June 8, so we ask that comments be sent in by the end of this week. Comments may be sent to me.

Thank you all, and Happy Fourth.

Best,

**Mike Pesarchick, MUP**

*Planner II & Historic Preservation Specialist*

*City of Niagara Falls, N.Y.*

*mpesarchick@niagarafallsny.gov*

*(716) 286-4467*

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**From:** Michael Pesarchick <michael.pesarchick@niagarafallsny.gov>

**Sent:** Monday, June 26, 2023 11:01 AM

**To:** James Bird <james.bird@niagarafallsny.gov>; Robert Buzzelli <robert.buzzelli@niagarafallsny.gov>; Thomas Tedesco <thomas.tedesco@niagarafallsny.gov>; Chris Mazur <christopher.mazur@niagarafallsny.gov>

**Cc:** Kevin Forma <kevin.forma@niagarafallsny.gov>

**Subject:** Re: 25 Rainbow Boulevard request for comments

**CITY OF NIAGARA FALLS  
NEW YORK**

July 28, 2023

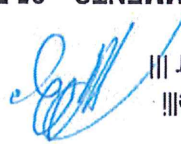
**TO:**

Mike Pesarchick  
Planner II & Historic Preservation Specialist

**FROM:**

Kevin Forma  
City Planner

Robert Buzzeil  
Civil Engineer III



**RE:**

REVIEW COMMENTS - 25 RAINBOW BOULEVARD  
HISTORIC LANDMARK PRESERVATION STATUS

Please note that due to the ill-fated structure's location outside of the municipal right-of-way, the Engineering Department has no official comments to offer at this time.

I trust this will satisfy your initial inquiry and I apologize for any delay in responding.

cc: file



## The Turtle - Comments

Thomas Tedesco <thomas.tedesco@niagarafallsny.gov>

Tue 7/18/2023 4:24 PM

To: Michael Pesarchick <michael.pesarchick@niagarafallsny.gov>

Hi Mike,

Other than having that parcel redeveloped sooner than later, I have no comments regarding "The Turtle" located at 25 Rainbow Boulevard.

If you have any questions, please let me know.

Thank you.

Tom

Thomas Tedesco  
City of Niagara Falls, NY  
Director of Business Development  
Department of Economic Development  
NFC Development Corporation  
Executive Director  
City Hall - 745 Main St.  
Niagara Falls, NY 14301  
Phone: (716) 286-4482  
Fax: (716) 286-4484  
Room #300A

# EXHIBIT C



## Planning Board Comments for HPC Submission

**Tony Palmer**

No comments.

**John Spanbauer**

Mr. Spanbauer stated at the September 13, 2023, Planning Board meeting that he would not support the building designated as a Historic Landmark unless there were specific determinations of what The Turtle would be used for. He stated that The Turtle was a great building and could be utilized for a lot of things, but would rather not declare it a Historic Landmark if it meant it would prevent some kind of development. Mr. Spanbauer reiterated these comments at the September 27, 2023, Planning Board meeting.

**Tim Polka**

Mr. Polka submitted comments by email. He stated that his personal opinion is that The Turtle should be torn down. He stated he saw no value in any historic preservation with that structure and that the site location would be ideal for a new project.

**Ken Nossavage**

No Comments.

**Shurron Cowart**

No Comments.

**Beverly Callen**

Ms. Callen submitted comments by email. She stated she would support Historic Landmark status for The Turtle with the explicit understanding that the owners would do something with the property to add to Niagara Falls tourism. She stated that the building sitting empty was a waste of prime space. Ms. Callen stated that, if it was granted landmark status, and the owners provided the necessary renovations and created a tourist program, it would be beneficial all the way around.

**Ryan Dallavia**

Mr. Dallavia concurred with Mr. Spanbauer's comments at the September 13, 2023, Planning Board meeting.

**Charles MacDougall**

No Comments.

**Joyce Williams**

Ms. Williams concurred with Ms. Callen at the September 27, 2023, Planning Board meeting.

# EXHIBIT D

**RE: 25 Rainbow Boulevard request for comments**

**Chris Mazur** <christopher.mazur@niagarafallsny.gov>

Wed 8/23/2023 2:06 PM

To: Michael Pesarchick <michael.pesarchick@niagarafallsny.gov>

Cc: Kevin Forma <kevin.forma@niagarafallsny.gov>; Susan Knotts <susan.knotts@niagarafallsny.gov>

Mike:

In response to your request for comments regarding the application for landmark status for 25 Rainbow Boulevard, or "The Turtle," please find the following.

There are no significant legal issues regarding the City of Niagara Falls in relation to the property, as the City sold it to NFR in 1996. The City had to foreclose on the property as the operator of the building, the Native American Center for the Living Arts, was in financial trouble right from the opening of the building in 1981 and was significantly delinquent on its property taxes (as well as other federal taxes and business loans).

Based on my review of the information on the City website and my knowledge of both City government and the general history of the City, I cannot recommend the designation of any type of historic or landmark status for the property at 25 Rainbow Boulevard. The Turtle opened in 1981 and ceased operations in 1995. While the intended purpose for the building was sincere and its design (which reflected the significance of Native American culture and history in our area) and construction were certainly unique, it was ultimately a failure. It did not attract enough patronage or generate a level of activity or participation to sustain itself (ironically, the major benefactor of the Turtle, the NYS Office of Parks, Recreation and Historic Preservation, continually cut funding to levels that proved unsustainable for its continued operation). The major historical impact of the Turtle building is that it is emblematic of the short sighted and underfunded development projects from the urban renewal era that contributed to the systematic decline of the City in the second half of the 20th century. A building that has been vacant for twice as many years as it was open, the Turtle has no more significant historical significance than the buildings that were torn down to make way for its construction. Given its prime location, I would hope in that property will entice a significant development project in the coming years. Historic designation would only complicate that process.

Those are my thoughts, which are not necessarily those of the Administration, the Law Department or the City of Niagara Falls. If you need anything else, let me know.

Thanks,

Chris

Christopher M. Mazur, Esq.  
Corporation Counsel and City Prosecutor  
Department of Law, City of Niagara Falls, NY  
745 Main Street, P.O. Box 69  
Niagara Falls, NY 14302-0069  
Tel: (716) 286-4423  
Fax: (716) 286-4424

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