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Final Regulation Agency Background Document

Agency name	Department of Historic Resources
Virginia Administrative Code (VAC) citation(s)	17 VAC5-30
Regulation title(s)	Evaluation Criteria for Procedures and Designations by the Board of Historic Resources
Action title	Amend the Owner Objection Process
Date this document prepared	June 20, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The amendments to the existing regulations add clarifying language that written notification of the nomination and written notification of the public hearing will be sent to property owners listed in official land recordation records or tax records within 90 days of notification. In addition, property owners who wish to object to a designation must submit their formal objection 7 business days prior to the board meeting. The amendments also add that in addition to the letter being notarized, it must also be attested and reference the property by address and/or parcel number. Also, in order to be counted by the director as a property owner, if the objecting party was not listed on the official land recordation records or tax records within 90 days of notification, then a copy of the recorded deed evidencing transfer of ownership must be submitted along with the written, attested and notarized statement. Lastly, formal designations may be reconsidered at a subsequent board meeting if the director receives, at least 30 days prior to the next scheduled board meeting, written, attested and notarized statements stating that there is no longer an objection.

In current regulations, it is unclear as to what “current real estate tax assessment books” really meant so amending it to specifically state the official land recordation records or tax records makes certain what records are to be consulted to determine property ownership within nominated district boundaries. Also, currently, there is no time restriction/deadline on the director receiving formal letters of objection to a property being considered for designation on the VLR. Also, property owners are not required to state the subject property address or parcel number in a formal objection letter nor is it required that the letter be attested. Current regulations do not require that a copy of the recorded deed evidencing ownership transferred to the objecting party be submitted along with the objection letter. Lastly, in current regulations, there is no time restriction/deadline for the director to receive letters for reconsideration.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

DHR: Department of Historic Resources
VLR: Virginia Landmarks Register

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On June 16, 2016, the Board of Historic Resources approved promulgation of 17VAC 5-30, Evaluation Criteria for Procedures and Designations by the Board of Historic Resources.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

The Department of Historic Resources (DHR) has specific statutory authority under Va. Code 58.1-339.2 to promulgate regulations necessary to implement the program. The regulation is mandated in whole by the state statute. The statute provides that the Director of DHR shall establish by regulation the requirements needed for the program, including the process and procedures by which properties are nominated to the VLR by the Board of Historic Resources.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The subject matter addressed is the owner objection process to properties nominated for historic district designation by the Board of Historic Resources for inclusion in the VLR. The intent of the planned regulatory action is to clarify and detail the process and requirements necessary for formal objection. Amendment and clarification of the existing procedures are necessary to more clearly set out the objection letter requirements for both property owners and DHR staff and what is required in order for an owner objection to be considered formal and valid. By clarifying and detailing existing language, these amendments will make the objection process and requirements therein easier to understand for property owners and staff. Making specific the records to be consulted and the time frame in which they should be consulted in addition to creating specific deadlines and attestation requirements as well as requiring proof of ownership on the part of objecting owners are intended to prevent any confusions or assumptions about the formal objection process and will benefit both property owners and DHR staff.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

The amendments to the existing regulations add clarifying language that written notification of the nomination and written notification of the public hearing will be sent to property owners listed in official land recordation records or tax records within 90 days of notification. In addition, property owners who wish to object to a designation must submit their formal objection 7 business days prior to the board meeting. The amendments also add that in addition to the letter being notarized, it must also be attested and reference the property by address and/or parcel number. Also, in order to be counted by the director as a property owner, if the objecting party was not listed on the official land recordation records or tax records within 90 days of notification, then a copy of the recorded deed evidencing transfer of ownership must be submitted along with the written, attested and notarized statement. Lastly, formal designations may be reconsidered at a subsequent board meeting if the director receives, at least 30 days prior to the next scheduled board meeting, written, attested and notarized statements stating that there is no longer an objection.

In current regulations, it is unclear as to what “current real estate tax assessment books” really meant so amending it to specifically state the official land recordation records or tax records makes certain what records are to be consulted to determine property ownership within nominated district boundaries. Also, currently, there is no time restriction/deadline on the director receiving formal letters of objection to a property being considered for designation on the VLR. Also, property owners are not required to state the subject property address or parcel number in a formal objection letter nor is it required that the letter be attested. Current regulations do not require that a copy of the recorded deed evidencing ownership transferred to the objecting party be submitted along with the objection letter. Lastly, in current regulations, there is no time restriction/deadline for the director to receive letters for reconsideration.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage to the public that is offered by the changed regulation is a clear time frame within which private property owners may participate in the VLR nomination process and to submit comments or objections to the proposed listing, and the changed regulation clearly defines what local government records will be used and when for the purpose of identifying property owners within a nominated historic boundary.

The primary disadvantage to the public is that the changed regulation introduces a new requirement to provide a copy of a recorded deed showing evidence of a transfer of property if the transfer occurred after the date that then-current local government records were used to gather property owner information. Under the current regulation, such a situation does not require a property owner to provide a copy of a recorded deed with their written objection. Under the changed regulation, to object to VLR listing, a property owner must provide written notice no less than 7 business days prior to a meeting of the Board of Historic Resources, but the property owner will retain a minimum of 30 days from notice of a proposed nomination to the deadline to object.

The primary advantage to DHR and the Commonwealth is that DHR staff will have a clear definition of the local government records to be consulted for a proposed nomination, the time frame within which they may be consulted, the time frame within which property owner objections to VLR listings will be received prior to a joint Board meeting, and a minimum of 7 business days within which to process and verify the property owner’s objection. Under the current regulation, property owner objections to a VLR listing may be received up to the day of a joint Board meeting, leaving no opportunity for DHR staff to process the objection and keep Board of Historic Resources members informed of property owner objections. The changed regulation offers no disadvantage to DHR or the Commonwealth.

The changed regulation offers advantages to local governments and to nomination authors by clearly explaining the types of local government records that will be consulted to identify property owners within a nominated historic boundary, the time frame within which the records are to be consulted, and a deadline of at least 7 business days prior to a joint Board meeting for DHR staff to notify them of any property owner objections. The changed regulation offers no disadvantage to local governments or to nomination authors.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The VLR is not subject to Federal regulation and therefore the regulation change cannot be more restrictive than any applicable Federal regulatory requirement.

The proposed regulation creates a clear schedule according to which private property owners may object to a proposed VLR listing prior to a meeting of the Board of Historic Resources and provides private property owners with a set time frame within which to submit property owner objections prior to the joint Board meeting and provides DHR staff a set time frame within which to process property owner objections prior to the joint Board meeting.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality is particularly affected by the proposed regulation.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These amendments will have no impact on the family.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change

No changes were made since the Proposed Stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

Commenter	Comment	Agency response

No public comment was received in the Proposed Stage.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, and likely impact of proposed requirements
17VAC5-30-100		The department shall give written notice to affected property owners of a proposal to designate.	The proposed change adds clarifying language that official land recordation records or tax records must be used in determining ownership within 90 days of notification.
17VAC5-30-110		Prior to historic district nomination, the department shall hold a public hearing and give written notice of said hearing to all property owners.	The proposed change adds, by reference, clarifying language that official land recordation records or tax records must be used in determining ownership within 90 days of notification.
17VAC5-30-120		The department shall send notice to property owners as shown on current real estate tax assessment books.	The proposed change adds, by reference, clarifying language that official land recordation records or tax records must be used in determining ownership within 90 days of notification.
17VAC5-30-160		<p>i. Property owners objecting to a designation shall submit a notarized statement certifying the objection</p> <p>ii. In order to be counted, property owners not listed on current real estate tax assessment lists shall certify in a written and notarized statement their objection.</p> <p>iii. Objections must be received prior to the board meeting at which the property is being considered for designation.</p> <p>iv. The board may reconsider the designation when a notarized statement has been received stating that the owner no longer objects to the designation.</p>	<p>i. Property owners objecting to a designation shall submit within 7 business days prior to the board meeting at which the property is being considered for nomination a written, attested and notarized letter that references the subject property by address and/or parcel number.</p> <p>ii. In order to be counted, property owners not listed on official land recordation records or tax records within 90 days of notification shall submit a written, attested and notarized statement along with a copy of the recorded deed evidencing the transfer of ownership to the objecting party.</p> <p>iii. For properties to be reconsidered by the board, written, attested and notarized statements indicating that the owner no longer objects must be received at least 30 days prior to the next scheduled board meeting.</p>