



# HISTORIC DISTRICT COMMISSION

## Executive Session

Judge Welsh Hearing Room

October 9, 2012

12:55 p.m.

**Members Present:** Polly Burnell, John Dowd, and David McGlothlin.

**Members Absent:** Marcene Marcoux

**Alternate Present:** Thom Biggert

**Staff:** Russell Braun, David Gardner, and Maxine Notaro.

**Town Counsel:** Ilana Quirk

Ilana Quirk, the Town's Counsel, said that the Commission ruling did not have sufficient findings or facts for why the roof deck was denied. The Historic District Commission (HDC) has the ability to go forward today. They can't file this until the supplemental findings are filed with the Town Clerk's office. The one member absent who originally sat on the case is Marcene Marcoux.

The Town Counsel said that this panel of 3 – needs to look carefully at the supplemental findings.

There was a brief 5 minutes recess which occurred at 12:55 p.m. so that one of the members, David McGlothlin, could notify the school about his unexpected delay in returning to classes.

On October 9, 2009 at a duly noticed and posted public meeting, the Provincetown Historic District Commission met in open session, with Members John Dowd, Polly Burnell, David McGlothlin, and Marcene Marcoux, in attendance, all of whom are regular Commission Members and each of whom attended the original public hearing, and made the following findings, in anticipation of an order of remand to be issued by the Barnstable Superior Court in litigation known as Bernard D. Brahm and Scott A. Shamenek v. Historic District Commission of the Town of Provincetown, Barnstable Superior Court C.A. No. BRCV2009-00411 and Appeals Court 2012-P-0040, in accordance with the Appeals Court's Rule 1:28 decision issued on October 2, 2012.

**The following are October 9, 2012 supplemental findings to support the May 26, 2009 decision for the roof deck (Captain's Walk) at 91 Bradford Street.**

Finding 1. Yes Motion: Polly Burnell Seconded: John Dowd

**The following findings – 2. through 83. were all motioned by Polly Burnell with David McGlothlin seconding them.**

Finding 2. Yes

Finding 3. Yes

Finding 4. Yes

Finding 5. Yes

Finding 6. Yes

Finding 7. Yes

Finding 8. Yes

Finding 9. Yes

Finding 10. Yes

Finding 11. Yes

Finding 12. Yes

Finding 13. Yes

Finding 14. Yes

Finding 15. Yes

Finding 16. Yes

Finding 17. Yes

Finding 18. Amended to read: The deciduous tree located on the abutting parcel of land does not shield the roof from all views.

Finding 19. Yes

Finding 20. Yes

Finding 21. Yes

Finding 22. Yes

Finding 23. Yes

Finding 24. Yes

Finding 25. Yes

Finding 26. Yes

Finding 27. Yes

Finding 28. Amended to read: There is no evidence to indicate that the roof of the cottage at the Property does have an ocean view. Does

Finding 29. Is not

Finding 30. Amended to read: The Commission has no evidence that the roof at the cottage at the Property has a view of the ocean. Yes

Finding 31. Omit in its entirety.

Finding 32. Yes

Finding 33. Yes

Finding 34. Amended to read: The Captain's Walk proposed for the roof at the cottage at the Property would visually dominate the roof. Yes

Finding 35. Yes

Finding 36. Yes  
Finding 37. Yes  
Finding 38. Inappropriate  
Finding 39. Inappropriate  
Finding 40. Would Not  
Finding 41. Violate  
Finding 42. Is  
Finding 43. Is  
Finding 44. Was  
Finding 45. Yes  
Finding 46. Violate  
Finding 47. Would not  
Finding 48. Violate  
Finding 49. Is  
Finding 50. Would not  
Finding 51. Are  
Finding 52. Is not  
Finding 53. Is  
Finding 54. Is  
Finding 55. Is

Finding 56. Would (and another) Would  
Finding 57. Yes  
Finding 58. Yes  
Finding 59. Yes  
Finding 60. Yes  
Finding 61. Yes  
Finding 62. Yes  
Finding 63. Yes  
Finding 64. Yes  
Finding 65. Yes  
Finding 66. Yes  
Finding 67. Yes  
Finding 68. Yes  
Finding 69. Yes  
Finding 70. Yes  
Finding 71. Yes  
Finding 72. Yes  
Finding 73. Yes  
Finding 74. Yes  
Finding 75. Yes

- Finding 76. Yes
- Finding 77. Yes
- Finding 78. Yes
- Finding 79. Yes
- Finding 80. Yes
- Finding 81. Omit in its entirety.
- Finding 82. Yes
- Finding 83. Yes

The Appeals Court came back with a sternly worded order and reversing and ordering that the Superior Court provide why and how the decision came about. The Appeals Court decision can be appealed but our attorney, Ilana Quirk, does not recommend further review.

**Motion: Move to not pursue the October 2<sup>nd</sup> issue.**  
**Motion: Polly Burnell                      Seconded: David McGlothlin                      Vote: 3-0-0**

**Motion: Move to authorize Town Counsel to take the vote and prepare the final decision for the Town Counsel to sign.**  
**Motion: Polly Burnell                      Seconded: John Dowd                      Vote: 3-0-0**

**Motion: Move to direct the Town Counsel to file the final decision with the Town Clerk's office.**

**Motion: John Dowd                      Seconded: David McGlothlin                      Vote: 3-0-0**  
**Motion: Move to come out of Executive Session at 12:50 p.m.**  
**Polly Burnell                      Aye**  
**John Dowd                          Aye**  
**David McGlothlin                Aye**

Respectfully submitted,

*Evelyn Gaudiano*

E. Rogers Gaudiano

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2012.