OFFICE OF COMMUNITY DEVELOPMENT
TOWN OF BELMONT
19 Moore Street
Homer Municipal Building
Belmont, Massachusetts 02478-0900

Historic District Commission

To: Phyllis Marshall, Interim Town Administrator
From: Lauren Meier and Lisa Harrington, Co-Chairs
Date: January 3, 2018

Subj: Town Counsel Opinion on Legal Challenges to Demolition Delay Bylaw

In response to legal challenges raised against the Demolition Delay Bylaw, Town Counsel provided the following opinion to Staff Planner, Spencer Gober:

- "The Bylaw was adopted by the Town Meeting and approved by the Attorney General, and therefore enjoys 'a strong presumption of validity.' Durand v. IDC Bellingham, LLC, 440 Mass. 45, 51 (2003). It would not be appropriate to decline enforcement based on a property owner questioning its legality;"
- There is "no reason to suspect that the legality of the bylaw is open to serious challenge." An earlier decision by the Attorney General cites "a Superior Court decision (City of Cambridge v. Celucci, No. 87-1522, Middlesex Superior Court March 21, 1988) in which a demolition delay ordinance was upheld," and Belmont's Demolition Delay Bylaw is modeled after the one upheld in Cambridge;
- "The bylaw is an historic preservation bylaw, not a zoning bylaw. It 'discriminates' only in the sense that it only applies to historic buildings, just as a wetland protection bylaw 'discriminates' only against properties with wetlands on them;"
- With regards to "'spot zoning', or zoning provisions that might fail the uniformity requirements of G.L c. 40A, § 4, those provisions are inapplicable;"
- The Bylaw "does not in any way encumber or limit the transferability of title to a property to which it applies. It only delays the issuance of a demolition permit;" and,
- "Such bylaws are valid exercises of towns' powers to protect the health, safety and general welfare of their inhabitants."

In focusing on the claimed arbitrariness of the criteria used to place buildings on the List, the applicants confuse the standards applied to legislative acts with those applicable to adjudicatory proceedings. The List was adopted by Town Meeting through its approval of the Bylaw, and was a legislative act. Such decisions often involve a degree of arbitrariness; there is nothing scientific, for example, about the way that the boundaries between zoning districts were arrived at. This does not make the bylaw of questionable validity. As long as the Bylaw does not discriminate based on some suspect classification (such as race or religion) it need only survive the "rational basis" test: "If a statute or ordinance serves a legitimate purpose, and if the means the State adopted are rationally related to the achievement of that purpose, the legislation will withstand constitutional challenge." *Shell Oil Co. v. Revere*, 383 Mass. 682, 686 (1981).

In this instance, the Town Meeting has provided a remedy for homeowners who think that their houses should not have been included on the List: they can appeal to the Selectmen. But this remedy requires that the property owner demonstrate that the building does not qualify to be on the List. It does not permit them to flip the burden back to the Town based on the claim that the selection process was arbitrary in the first place. Absent such proof from the homeowner, the Board should defer to the judgment of Town Meeting in approving the List in the first place.

If you have any further questions regarding this matter, I would be happy to address them.

Sincerely,

George A. Hall, Jr.

cc: Phyllis Marshall, Assistant Town Administrator (by email)
Spencer K. Gober, Staff Planner (by email)

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January 17, 2018

VIA EMAIL

Patrice Garvin, Town Administrator
Belmont Town Hall, 2nd Floor
455 Concord Avenue
Belmont, MA 02478

Re: Validity of Demolition Delay By-Law

Board of Selectmen:

The owners of 27 Dorset Road (Derek Staples) and 52 Willow Street (Susan E. Gonzalez) have both filed appeals to the Board of Selectmen, pursuant to § 60-320-D.(1) of the Town Code, seeking the removal of their homes from the "List of Belmont's Significant Historic Buildings Subject to [the] Demolition Delay Bylaw" (the "List"). According to that section of the Code, the Board is authorized to remove a building from the List based on "a factual demonstration that the building does not qualify to be a significant building, based on [six] considerations" listed as subsections (a) through (f). Mr. Staples has submitted a memorandum in which he objects to limiting his arguments to that standard, offering the additional arguments that (1) the inclusion of his property on the List was the result of an arbitrary process, and (2) the Bylaw deprives the owners of the listed properties of their property rights in violation of the "takings" clause of the Fifth Amendment to the Constitution. Ms. Gonzalez makes similar arguments in summary form, as it pertains to her appeal. The Office of Community Development has asked me to comment on these legal arguments.

The Board's authority in this appeals is limited to the determination of the factual issue set forth in § 60-320-D.(1) of the Town Code and quoted above. It does not have the authority to determine whether the Bylaw, duly adopted by Town Meeting, is valid. The Board should decline to entertain, or rule on, those claims. In any event, we do not view the arguments raised by the two appellants against the validity of the Bylaw as having merit.

The Board Is Not Empowered to Determine Whether the Bylaw is Invalid

The Demolition Delay Bylaw, § 60-320 of the Town Code, was duly adopted by the Town Meeting, and was then approved by the Attorney General. As such, it enjoys "a strong

presumption of validity." *Durand v. IDC Bellingham, LLC*, 440 Mass. 45, 51 (2003). The Attorney General has approved dozens of similar bylaws around the state, and also has noted that demolition delay by-laws have been upheld by the Massachusetts courts. *See City of Cambridge v. Celucci*, No. 87-1522 (Middlesex Super. Ct. Mar. 21, 1988). In approving a similar by-law in the Town of Winchester this year, the Attorney General stated that "we do not find any facial inconsistency between the proposed by-law and the Constitution and laws of the Commonwealth." *See* Letter from Attorney General re: Case # 8224, March 8, 2017.

Absent a determination by a court that this particular Bylaw, or one substantially identical to it, is unlawful, the Board has a duty to apply it as written. The Board is acting as an administrative agency in this situation, and an administrative agency is "not empowered to decide" the constitutionality of the legislation (or bylaw) under which it operates. *Liability Investigative Fund Effort, Inc. v. Medical Malpractice Joint Underwriting Ass'n of Massachusetts*, 409 Mass. 734, 745 (1991). The property owners are free to reserve their rights to challenge the validity of the Demolition Delay Bylaw, but they would need to bring that challenge to a court of competent jurisdiction, not to the Board.

The Property Owners' Claims Regarding the Invalidity of the Bylaw Are Without Merit

The Demolition Delay Bylaw is neither an unconstitutional taking under the Fifth or Fourteenth Amendment to the U.S. Constitution, nor a violation of due process. The U.S. Supreme Court upheld the constitutionality of local controls for historic preservation in *Penn Central Transportation Company v. City of New York*, 438 U.S. 104 (1978). There, the Court held that the application of New York City's Landmarks Preservation Law to particular property did not constitute a "taking." *Id.* at 138. As the Massachusetts Supreme Judicial Court confirmed in *Gillespie v. Northampton*, 460 Mass. 148 (2011), rational-basis review applies to by-laws challenged under the Takings Clause. Because the Town's demolition delay by-law is reasonably related to historic preservation—which is recognized as a valid state interest by G.L. c. 40, §8D—it is constitutional under *Gillespie* and *Penn Central*. The Bylaw does not effect a physical occupation by the Town of the properties on the List, nor does it deprive the Owners of the use and enjoyment of the properties in the same manner as they have been used since the buildings were constructed. It does not encumber the transfer of the properties, and it ultimately does not prevent the owners from demolishing the buildings and building new homes; it merely subjects such demolition to a delay that is comparable to the time required to obtain many other land use permits required in Massachusetts at the state or local level.

The Demolition Delay Bylaw is not "tantamount to discriminatory zoning." It is an historic preservation bylaw, not a zoning bylaw, and therefore is not subject to the uniformity requirements of G.L. c. 40A, § 4. The fact that a municipal regulation may overlap with what may be the province of a local zoning authority does not convert that regulation into a zoning enactment subject to Chapter 40A. *See Lovequist v. Conservation Comm'n of Dennis*, 379 Mass. 7, 14 (1979).

Date: 11/26/17

TO: Board of Selectmen ,

CC: Office of Community Development

From: Derek Staples, 27 Dorset Rd.

RE: APPLICATION TO APPEAL TO REMOVE A BUILDING FROM THE LIST OF BELMONT'S SIGNIFICANT HISTORIC BUILDINGS SUBJECT TO DEMOLITION DELAY BYLAW

Our property at 27 Dorset Rd. was included on the list of significant historic buildings. We did not agree to the town's including our property on this list, which will subject us to regulations to which approximately 99% of the other properties in town (and 100% of those on our street) will not be subject. We do not live in a "historic district". We wish to challenge the town's decision to regulate our property in such an arbitrary way.

The town provided no specific written justification for placing our home on the list. In a recent meeting with a representative of the Historic District Commission we were told (verbally) that the decision was based on criteria "c" and "f". We reserve all rights to challenge the notion that we need to base our appeal and challenge this regulation on the basis of any of the six criteria outlined (let alone criteria "c" and "f"). We see no legal basis for the town to arbitrarily place our property on this list without just compensation, nor do we see any legal basis for the town to narrowly define our property rights in a way that forces us to challenge the decision based on these criteria. Furthermore, we would point out that the process itself is intimidating in that it causes potential appellants to consider the downside associated with creating a public record that describes their property in a negative light (i.e. by explaining why they do not think it is distinct and beautiful—for the record, we believe our property is beautiful, unique and highly valuable). However, I will note that neither the Commission nor the consultant it hired to compile the list of "significant historic properties" has any objective way of determining that our property meets criteria "c" and "f". This was a completely subjective and arbitrary process.

Our property was designed by Royal Barry Wills. We think his work is beautiful. We obviously believe our home is beautiful. This is the reason we bought it in 2014 and have invested money in the property to maintain it. But there is no objective basis for the decision to include our home on this list based on a determination that it is "the work of a master" (see criterion "c"). Even if Wills is a "master" (a completely subjective term), it seems clearly arbitrary that our home was included on this list to be regulated when several of the other homes in town also designed by Wills were not. Similarly, the town's apparent determination that (per criterion "f") the integrity of our property is sufficiently intact is subjective. It has provided no written, objective argument that the changes made to our property over the past 79 years did not affect the integrity of the property compared to what has taken place at other properties in town that were designed by the same architect.

We worry that an arbitrary regulation of our property—particularly as a single isolated unit and not part of a district—will negatively impact its value. We requested documentation of any economic analyses performed by the town to this effect, and are led to believe that none was done (an analysis of "historic districts" does not count, because our home is not part of a "historic district", but the only regulated home on its street). We would like to remind the town that according to Amendment V of the Bill of Rights, "no person shall be...deprived of...property, without due process of law; nor shall private property be taken for public use, without just compensation". This feels to us like an arbitrary and capricious regulatory taking without just compensation. We don't think the town should be making such aggressive, controversial moves to deprive residents (particularly a young family like ours for whom such a regulation could have such a meaningful negative impact) of their property rights.

Kind regards,

Derek Staples

Date: 1/9/18

TO: Board of Selectmen

CC: Office of Community Development

From: Derek Staples, 27 Dorset Rd.

RE: REPLY TO HDC RESPONSE TO DEMOLITION DELAY APPEAL #17-02: 27 DORSET RD, AND COMMENTS FROM THE APPEAL HEARING THAT TOOK PLACE ON 12/18/17

1. The HDC claims that "the process was not arbitrary and subjective", but provides no arguments that back the claim.

The HDC's Response claims that the process that led to our property's being regulated by a Demolition Delay Bylaw was not arbitrary and subjective because (i) it relied on recommendations from a "historic preservation consultant in conjunction with the HDC", (ii) it narrowed a large number of properties down to a small number of properties, and (iii) it claims to have relied on standards adopted by the National Parks Service (i.e. those used to include properties on the National Register) and standards set forth by the Massachusetts Historical Commission (MHC), chaired by the Secretary of the Commonwealth.

In general the HDC's approach to my argument that this was a clearly arbitrary and subjective process is to cite the presence of experts and various national and state standards that it claims to have followed (making sure to mention who chairs the various commissions in question, or what federal department a specific bureau falls under). It also uses some high-level numbers to give one the impression that since some numbers were involved we should trust that this was a systematic process. However, in this presentation we actually learn nothing about how my property was *specifically* and *objectively* chosen for regulation while other very similar properties were excluded.

The Response explains that the Historic Resources Survey narrowed a list of 600 properties down to a list of 182. It further explains that there are four (although I am told there are more) properties in town designed by Royal Barry Wills (RBW), but that only two ended up being regulated via inclusion on the List of Significant Buildings (the List). This point does not support the HDC's argument in any way. If anything it supports my argument. Why were the several other RBW properties not chosen? We are not given specifics. Instead, we are only told that two of the four (again, I am told there are more than four) were selected.

The use of a consultant isn't particularly important. If the town has hired a consultant, it does not necessarily follow that such consultant's recommendations must be considered purely objective and non-arbitrary. The HDC would like us to believe that the process is objective and non-arbitrary simply because experts with credentials were involved. But the presence of experts with credentials is not conclusive evidence of such. We need to know whether and specifically how our property was chosen and other similar properties were not.

It may be the case that the National Parks Service standards for determining properties for the National Register is the "professional standard" throughout the country. It may be that the town sought to rely on these standards for this effort. Let's assume for a moment that the HDC is right about this. Even so, the standards themselves can be applied subjectively and arbitrarily[1]. One could choose any property in town and include it on the list. Based on the HDC's logic, so long as the HDC "relied" on these standards, no decision could ever be considered arbitrary, even if the decision were based on random, unsystematic recommendations. That doesn't seem like sound logic.

[1] Reading through them, I believe any reasonable person would admit that in practice it would be very difficult to actually apply the standards (particularly the relevant NPS Criterion C) in an objective way.

Nowhere in the HDC's response, nor in the documentation provided to us as owners of the property in question, can we find an objective analysis that explains why our property should be regulated while other properties designed by the same architect should be excluded from the list. As such, I found it interesting that the HDC referred to the use of the MHC Inventory Form as evidence of an objective and non-arbitrary process. The Inventory Form provided to us explains very little. It does not even specify which criteria the HDC thought our property met. It is a great example of the HDC's general approach. Seemingly in the mind of the HDC so long as an Inventory Form is used, it matters not what content is included on the form, whether that content provides any *specific* details as to why our property is being regulated, and why other similar properties are free from such regulation. So why does the HDC reference the Inventory Form as proof of due process? It appears to me that it does so simply because it believes the Inventory Form is proof of something *in and of itself*, simply because it comes from the Massachusetts Historical Commission, "which is chaired by the Secretary of the Commonwealth". It is an appeal to authority, but one lacking what we really need here—proof of an objective, non-arbitrary decision process concluding that our property should be regulated and other very similar properties should not be.

Only in our meeting with Lisa Harrington did we discover (from her verbal explanation) that the property was included based on criteria C and F. The HDC's Response confirms this (for this first time) to us; however, it is silent on why our property is chosen for the regulation while other RBW properties are free from it.

When it comes to Criterion F ("integrity of the property"), the HDC's Response hides very vaguely behind the National Register standards (i.e. "seven qualities", including "location, design, setting, materials, workmanship, feeling, and association"), but one is left to simply trust that these standards were faithfully and objectively followed when determining that our property should be regulated. Where is that analysis? Why was it not provided to us? How many of those seven qualities did our property meet, compared to other RBW properties in town? We would like for the HDC to *objectively* demonstrate that the "integrity" of our property is so distinct in, for example, its "feeling" or "setting" that it should be regulated and other RBW properties not. The HDC has not objectively proven any such standards were met. It only references the standards and claims that it abided by them. It is one thing to *claim* that standards have been followed. The question of whether these standards were followed in an *objective, non-arbitrary* fashion requires that the HDC give specifics. It has given none.

Similarly, on the question of whether RBW is a "master" the HDC relies on a *recent* effort by Historic New England to catalog and digitize RBW properties, presumably so the public knows where to find them. However, as the HDC's Response admits, the decision by Historic New England to digitize RBW properties was made on 10/3/17—*after* the decision was made to regulate our property on the basis of RBW's being a "master". It is remarkable that the HDC's single specific argument that it relied on objective proof that RBW is a "master" points to a decision made by a third party *AFTER* the evaluation process was completed. If RBW is a "master", and other architects who designed properties in town are not, and this is an objective truth, then how did the town determine this? Can it point to a systematic process (e.g. in meeting minutes or other documents) it followed to single out RBW? The HDC's shocking example in its Response is evidence to me that there was no such systematic process.

Finally, on the point of whether RBW is a "master", I would like to address a point made by Adam Dash during the hearing on December 18. His comment was as follows: "I don't know how one can say how Royal Barry Wills is not a master architect. If you look through the real estate ads, when his houses come up they tout it very highly that he designed it, in the ad. It's a very big selling point. And it's a good example of his work." I would like to know if this was a criterion for the HDC, because it would be very misguided *in our particular case*. Our *specific* property has consistently taken longer to sell than other properties in the neighborhood. According to Zillow, in 2014 it took 7 months to sell until we finally stepped in and bought it ~14% below the initial listing price. From 2010 to 2012 it sat on the market for a total of 18 months before selling for ~18% below the initial listing price. Zillow currently estimates (without knowledge of the many expensive improvements we've made to the property since our purchase in 2014) that our property is worth 21% less than any other property on our street. I suspect that Mr. Dash was unaware of any of this history, and I hope that he will reconsider his line of thinking here.

2. Neither the HDC nor the Board of Selectmen have considered whether the List infringes on our property rights, and have subsequently acknowledged that the aim was to "disadvantage" (or at least do something that would be "perceived to disadvantage") "one resident" to "serve the common good".

First, I want to clarify that on the legal points I have made in this debate I am not so much focused on challenging the Demolition Delay Bylaw *itself*, but am instead focused on how the regulation was applied to our *specific* property in an arbitrary and subjective way.

During the hearing on 12/18/17 the following notable comments were made:

- Chair Jim Williams: "When we become Selectmen we don't represent our base necessarily anymore, we have to represent the 24,000 people in town. So sometimes there are things that disadvantage, or are perceived to disadvantage one resident, but it serves the common good, and that's really what we're governed by".
- HDC Co-Chair Lauren Meier: "I will say that we did not consult with Town Counsel on this regard. We felt that we had a bylaw in 2013. There are 148 Demolition Delay bylaws in Massachusetts...It was approved at Town Meeting. It has been reviewed and approved by the Attorney General, and so we did not feel the need to consult with Town Counsel on the question of taking."
- Selectman Adam Dash: "I can't allow an appeal, I guess, based on the challenge to the authority of the Demolition Delay Bylaw itself. I think it's clearly legal. It's clearly constitutional. It is not a taking. It's been through the Attorney General. Numerous towns have these. It's not a rare thing or unusual at all."
- Chair Jim Williams: "I bought my house in 2012. It's in a historic district, but it's not historic. And my house has appreciated 45% since 2012...The point is that Belmont housing has increased dramatically since 2012. So we all have benefitted from that standpoint."

Let's review some basic facts. Our house is on the edge of town. People who drive on our street do so primarily because they live on our street. It is not a historic district. We do not get much traffic. Unlike other areas in town, it is highly unlikely that any material number of Belmont's 24,000 residents come to visit our property. Our property is one of several RBW properties in town, but one of only two that is being regulated. The HDC has provided zero specific and objective evidence that our property should be selected for regulation while the other RBW properties should not be regulated. Historically owners of our property have had difficulty selling it. It is possible, even likely, that we will be further "disadvantaged" (to use Chair Williams's term) by our inclusion on this list. Chair Williams appears to agree that we would be disadvantaged. There is no practical, compelling reason to include our property on the List. I would be shocked if any meaningful number of Belmont's 24,000 residents are focused on this. Nevertheless, the HDC (and seemingly the Board of Selectmen) seem to believe that the time has come for the town to "disadvantage" us as property owners at 27 Dorset because doing so "serves the common good", and takes the position—without having checked with Town Counsel, or seemingly thought through whether it is sensible and good to do this to one of its residents—that it may do so without providing any compensation to us as owners.

With respect to 27 Dorset, as the owners of the property, we have rights that the other 24,000 residents in town simply do not have. We ask the town to consider and be sensitive to our rights when determining whether our specific property should be regulated against our wishes.

The Constitution of the United States is the "supreme Law of the Land", and public-sector executive officers of all varieties—not just Supreme Court Justices—have a duty to study, interpret and uphold its text (see Article VI). As I explained in my initial appeal, Amendment V of the Bill of Rights says that "no person shall be...deprived of...property, without due process of law; nor shall private property be taken for public use, without just compensation". There are two clauses in there. One of them has to do with due process, and the other has to do with the taking of property (either via a physical taking *or* a regulatory taking). When adopting policies affecting the rights of *specific* property owners for the benefit of the "common good", the town should naturally wonder

whether they are doing so in a way that respects the "supreme Law of the Land". Note that the question is not what other towns in the state are doing, or what the Attorney General, National Park Service, Massachusetts Historical Commission or other officials think. The question is what the text of the Constitution says. I was saddened that the town admitted to not having even thought about it prior to creating and adopting the List and subjecting property owners to the Demolition Delay bylaw simply because everyone else is doing similar things.

The HDC's response retroactively considers the question of a taking, and cites (via a secondary source it looked up) *Penn Central Transportation Co. v. City of New York (1978)* as the landmark precedent for historical district takings cases. As the HDC's Response highlights, there is a three-factored test for these cases. Although a takings case would not be heard by the Board of Selectmen, I would point out that (i) the regulation being imposed on our property was passed after we purchased the property, (ii) according to Zillow, our property's estimated value currently suggests that we might have not made any meaningful (or potentially even a positive) return on our 2014 home purchase and subsequent capital investments (especially when factoring in a sale commission), and one would suspect that the "disadvantage" that this regulation places on it would make matters worse, and (iii) as we have stated, there is no practical, compelling reason to place our home—which is situated on the very edge of town where there is very little traffic—on this list. It is not up to the Board of Selectman to hear a takings case. However, I think that if the Board of Selectmen wants to consider the *Penn Central* three-part test weighing (i) whether it really has a legitimate and compelling public interest to regulate our specific, individual property, and (ii) whether pursuing such public interest would materially interfere with the property owner's investment-backed expectations, it would be wise to reconsider regulating our property. *Penn Central* does not hold that towns like Belmont may pass whatever type of historic property regulations they want, nor (importantly) does it hold that such towns may apply them to an individual property (like ours) any way they want.

Finally, it is important to note that my appeal references both the due process *and* takings clauses of Amendment V of the Bill of Rights. As the Supreme Court unanimously held in *Lingle v. Chevron U.S.A. Inc. (2005)*, "if a government action is found to be impermissible—for instance, because it fails to meet the 'public use' requirement or is so arbitrary as to violate due process—that is the end of the inquiry. No amount of compensation can authorize such action." Justice Kennedy's concurrence also noted that "a regulation might be so arbitrary or irrational as to violate due process", and that "the failure of a regulation to accomplish a stated or obvious objective would be relevant to that inquiry". In other words, one must consider whether an action was made arbitrarily, and part of that inquiry is the question of whether a specific regulatory decision (like the one to regulate 27 Dorset) even accomplishes its stated objective. And to that I obviously seriously question—for the reasons stated—how regulating our *specific* property achieves the stated objective of the town's policy here.

Kind regards,

Derek Staples

Haskell, Matthew

From: Elizabeth Harmer Dionne <eharmerdionne@comcast.net>
Sent: Tuesday, January 09, 2018 8:21 PM
To: Selectmens Mailbox
Cc: Derek Staples
Subject: 27 Dorset Road
Attachments: DStaples Reply - 1.9.18.pdf

Gentlemen:

I write in support of Derek and Mary Staples' motion to have their home removed from the list of significant historic buildings. At the time Town Meeting adopted the significant buildings bylaw, I spoke against it for the reasons Derek outlines: Placement of homes on the list seems arbitrary (I remain unimpressed by vague references to "experts"), and placement of a home on the list imposes an undue regulatory and financial burden on current homeowners. Derek has done extensive research and fleshes out these concerns in a far more specific and articulate manner than I did at the time of Town Meeting.

The bylaw itself may be legal, but I am quite confident that any homeowner who goes to the trouble of challenging placement of his/her specific home on the list will prevail in court, again for the reasons Derek has so cogently outlined for you. I doubt most homeowners will go to that trouble and expense, but that doesn't justify sloppiness in decision-making or in the imposition of unnecessary regulatory burdens by the Town. It is entirely feasible that a public interest law-firm (such as the Institute for Justice or the legal arm of the Pioneer Institute) would take a case like this as a test case for a general defense of private property rights in Massachusetts. In fact, a public interest firm might represent all affected property owners as a class against the Town.

I live close to Dorset Road and have been through the Staples home both of the last two times it was on the market. I considered it as an investment property but declined to make an offer both times for the same reasons. First, it is in a very challenging location (frontage road off route 2, with a driveway that exits directly onto the frontage road). Second, the home has an awkward lay-out, low ceilings, and very small windows. (The house is definitely NOT one of RBW's better designs. Again, I was shocked to see it included on the list.) Third, like much of Belmont's housing stock, the house will ultimately require gut renovation, at which point a home-owner might prefer simply to start fresh.

The Staples are wonderful friends and neighbors. I am personally thrilled that they purchased the home, but I am very sorry that they are facing this regulatory headache. I strongly urge you to consider their request to de-list their property.

Yours truly,

Elizabeth Harmer Dionne

55 Wellesley Road, Belmont

Town Meeting, Precinct 2

---------- Original Message ----------
From: Derek Staples <derekostaples@gmail.com>
To: Elizabeth Harmer Dionne <eharmerdionne@comcast.net>
Date: January 9, 2018 at 11:32 AM
Subject: Latest reply to Board of Selectman re: 27 Dorset

Hi Elizabeth,

In case you're interested, attached is our latest reply to the town on the "significant building list" issue. Our third hearing on this will be in a couple weeks.

Derek

OFFICE OF COMMUNITY DEVELOPMENT
TOWN OF BELMONT
19 Moore Street
Homer Municipal Building
Belmont, Massachusetts 02478-0900

Historic District Commission

To: Phyllis Marshall, Interim Town Administrator
From: Lauren Meier and Lisa Harrington, Co-Chairs
Date: December 8, 2017

Subj: HDC Response to Demolition Delay Appeal #17-02: 27 Dorset Road

HDC Response

The Historic District Commission (HDC) reviewed the property owner's application to appeal to remove his property at 27 Dorset Road from the List of Significant Buildings (the List). The HDC understands that his rationale for appeal is based on these three points: 1) the process was arbitrary and subjective; 2) that the HDC considers the architect (Royal Barry Wills) to be a "master" under Criterion C is questionable, as is the HDC's opinion that the integrity of the property is sufficiently intact; and, 3) the Demolition Delay Bylaw (the Bylaw) results in a taking of his property and will have a negative economic impact on its value.

Provided below are the HDC's responses to the property owner's points:

1) The process was not arbitrary and subjective

The List was developed utilizing data from the Historic Resources Survey, which was conducted by a historic preservation consultant in conjunction with the HDC. The Survey began with over 600 properties, 205 of which were inventoried, and ultimately 182 were identified by the HDC as being highly historically significant. In fact, there are four Royal Barry Wills designed homes in Belmont, but the HDC only included two of those homes on the List. Furthermore, the List was developed utilizing standards adopted by the U.S. Department of the Interior, National Parks Service[1], and are considered to be the professional standard throughout the country. Inventory Forms prepared by the survey consultant follow standards set forth by the Massachusetts Historical Commission (MHC), which is chaired by the Secretary of the Commonwealth.

2) Royal Barry Wills is a master and the property maintains its historic integrity

As previously stated, the criteria used by the HDC in generating the List were developed and promoted by the U.S. Department of the Interior, National Park Service following the United States' 1966 National Historic Preservation Act, to be used when evaluating a building's qualification for listing in the National Register of Historic Places. These criteria are accepted as national standards for evaluating historic properties, and are used for historic preservation efforts throughout the country and by our peer communities. More specifically:

a) Criterion C – Design/Work of a Master: Royal Barry Wills is considered to be a master. In fact, on October 3, 2017, Historic New England (the oldest and largest regional heritage organization in

[1] https://www.nps.gov/nr/publications/bulletins/nrb15/nrb15_2.htm

the nation) released an article[2] discussing their efforts to catalog and digitize "the archive of iconic architect Royal Barry Wills." The end goal of their effort is to publish the archive on their website in order to make "the works of this influential architectural firm available to the public." Therefore, Wills is considered to be a master.

b) Criterion F – Integrity of the property: Most historic buildings in Belmont have been altered to some degree on the interior or exterior. The HDC considers integrity in determining whether a historic building is a candidate for inclusion on the List. Historical integrity is the visible presence of physical features that characterize the reason for a property's historic significance. The National Register considers seven qualities (location, design, setting, materials, workmanship, feeling, and association) in determining integrity. For the purposes of the List, interior renovation has no bearing on integrity and exterior changes must be considered in the context of the building's historic development. In the case of 27 Dorset Road, the Survey Consultant, Lisa Mausolf, consulted the archives of Royal Barry Wills at Historic New England, the Town building files, and did a visual reconnaissance of the property to make the determination that the building retained sufficient integrity to make it eligible for consideration on the List.

3) The U.S. Supreme Court does not consider historic preservation regulations to be a taking

In general, courts (including the Supreme Court) have ruled that preserving historic structures through restrictions on those properties is reasonable and permissible. According to the National Trust for Historic Preservation[3], "Judicial review of regulatory takings claims is based upon a three-factored inquiry: i) the character of the government action; ii) the economic impact of that action on the property; and, iii) the claimant's distinct investment-backed expectations."

i. Character of the government action: "In *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), the U.S. Supreme Court recognized that preserving historic structures is 'an entirely permissible goal' and the imposition of restrictions on historic property through historic preservation ordinances is an 'appropriate means of securing' that purpose."
ii. Economic Impact: "Takings claims involving the denial of permission to alter or demolish historic structures are also routinely dismissed. Both federal and state courts have ruled that governmental actions under historic preservation laws that prevent landowners from realizing the highest and best use of their property are not unconstitutional. A taking will not result when the owner can realize a reasonable rate of return on his or her investment or can continue to use the property in its current condition or upon rehabilitation."
iii. Investment-backed expectations: "The argument raised by property owners, that the application of preservation laws unconstitutionally interferes with their investment-backed expectations in situations where the property in question has been designated after the property was purchased, has also been rejected. Courts have found that an owner's expectation to be free from regulation is not reasonable."

With regards to prior research into the economic impact of the Demolition Delay Bylaw, the HDC consulted with real estate agents, assessors and planning staff in numerous peer communities; and with the Director of Local Government Programs with MHC. No evidence was found to suggest that similar

[2] https://www.historicnewengland.org/royal-barry-wills-associates-archives-marketer/
[3] http://forum.savingplaces.org/learn/fundamentals/preservation-law/constitutional-issues/takings

bylaws negatively impacted property values, and MHC indicated that no formal research exists to support this claim. Furthermore, the Bylaw has been in existence in Belmont since 2013, and experience with the Bylaw does not suggest that it negatively impacts property values.

Lastly, national trends have shown that property values have increased because of historic designation programs – the reasons for that effect are difficult to isolate. For residential areas, buyers have appreciated the unique and special character of the properties and have perceived the protective measures afforded by local historic designation as a means to ensure the stability of the community.

The HDC's opinion regarding Demolition Delay Appeal #17-02: 27 Dorset Road

The HDC developed the List utilizing nationally recognized historic preservation standards, it represents the most historically significant buildings in Belmont, and the U.S. Supreme Court has ruled that historic designation regulations do not constitute a taking.

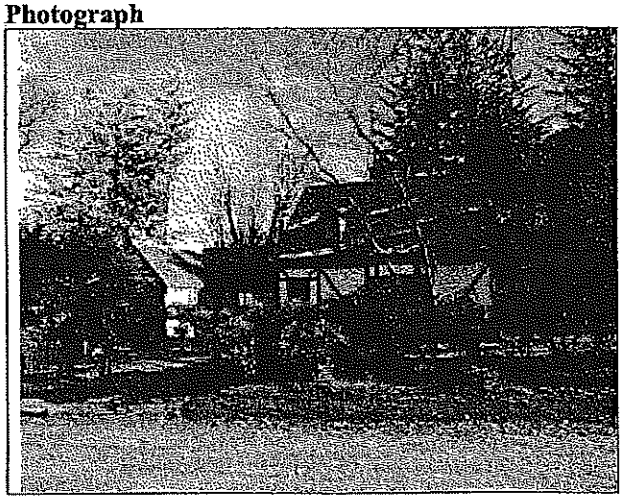
Therefore, the property owner's case is not factually sufficient to warrant removal of 27 Dorset Road from the List.

FORM B – BUILDING

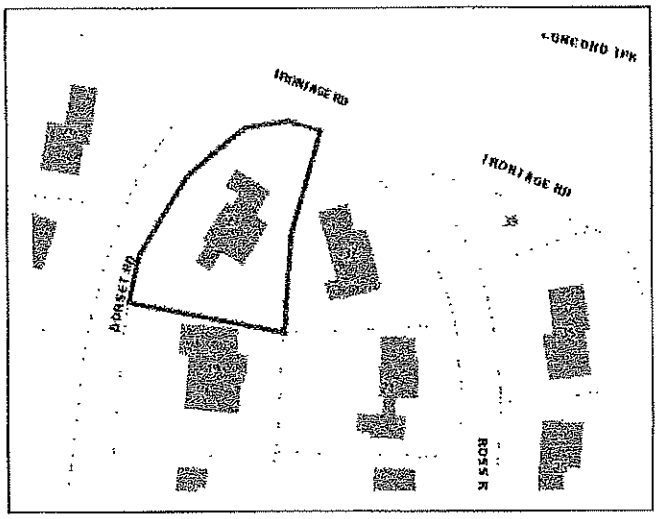
MASSACHUSETTS HISTORICAL COMMISSION
MASSACHUSETTS ARCHIVES BUILDING
220 MORRISSEY BOULEVARD
BOSTON, MASSACHUSETTS 02125

Assessor's Number	USGS Quad	Area(s)	Form Number
53-85-F	Boston North	BC	BLM.764

Photograph



Locus Map (north at top)



Recorded by: Lisa Mausolf
Organization: Belmont Historic District Commission
Date (*month / year*): November 2014

Town/City: Belmont

Place: *(neighborhood or village)*:
Belmont Hill Village

Address: 27 Dorset Road

Historic Name: Prentice & Cynthia Downes House

Uses: Present: single family dwelling

Original: single family dwelling

Date of Construction: 1938

Source: building permit

Style/Form: English Revival

Architect/Builder: Royal Barry Wills, architect

Exterior Material:
Foundation: concrete

Wall/Trim: stucco/wood

Roof: wood shingles

Outbuildings/Secondary Structures:
none

Major Alterations *(with dates):*
1986 – attached garage addition

Condition: good

Moved: no ☒ yes ☐ **Date:**

Acreage: 13,337 SF

Setting: neighborhood of similar early 20th century dwellings on small, landscaped lots near Concord Turnpike

INVENTORY FORM B CONTINUATION SHEET

BELMONT | 27 DORSET ROAD

MASSACHUSETTS HISTORICAL COMMISSION
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) | Form No.
BC | BLM.764

☐ Recommended for listing in the National Register of Historic Places.
If checked, you must attach a completed National Register Criteria Statement form.

ARCHITECTURAL DESCRIPTION:

Describe architectural features. Evaluate the characteristics of this building in terms of other buildings within the community.

Located at the north end of Dorset Road and the corner of Frontage Road, 27 Dorset Road is a modest English Revival-style dwelling constructed in 1938 and designed by well-known Boston architect, Royal Barry Wills. The rambling dwelling has a 1 ½-story, side-gabled core with half-timbered façade with a sunporch attached to the south end and a lower wood shingled section with L-shaped plan extending to the north. The cottage-inspired fenestration includes small-paned double-hung windows and casements with diamond panes or small squares of glass. As built in 1938 the house included a single car garage underneath the house. A 1986 addition attached another two-car garage to the north side of the house. It is clad in live edge wood siding.

The informally landscaped lot includes wooded buffers to the north and south of the house. A flagstone walk leads to the front door and a low stone wall frames a patio area in front of the entrance.

HISTORICAL NARRATIVE

Discuss the history of the building. Explain its associations with local (or state) history. Include uses of the building, and the role(s) the owners/occupants played within the community.

This house is located within the "Belmont Hill Village" subdivision which consisted of thirty-six residences all built between 1935 and 1939 under the supervision of August Johnson Associates. Belmont Hill Village was the fourth of nine areas in Belmont developed by the Belmont Hill Company. It was developed after the Concord Turnpike was built in 1934.

All of the lots in the Belmont Hill Village subdivision were about ¼ acre – smaller than the earlier developed areas. Deed restrictions controlled the type of development which could occur. Construction was limited to single-family dwelling houses with a garage permitted accommodating not more than two cars. The houses were to be setback from the road at least twenty-five feet and the designs had to be approved by the Belmont Hill Village Trust. Lastly, the houses had to cost at least $7,000 to construct. The Village Hill Trust received a building permit for this lot (Lot 34) in 1938. The architect of the house was Royal Barry Wills and the builder was Carl Swanson of Natick. Wills designed several other houses in the subdivision including 25 & 35 Ross Road and 43 Village Hill Road.

The house was sold by August Johnson Associates to Cynthia Sargent Downes, wife of Prentice Downes, in 1941 (Book 6505, Page 456). L. Kenneth and Aza Blunt purchased it in 1945 (Book 6835, Page 516). Kenneth Blunt died in 1950 and Mrs. Blunt later remarried Daniel Rogers. She continued to own the house until 1972. The house was owned by Matthew and Ardemis Matteosian from 1984 to 2013.

The house was designed for Johnson and Trenholm by Royal Barry Wills (1895-1962). Royal Barry Wills grew up in Melrose and graduated from MIT in 1918. After working as a design engineer with the Turner Construction Company from 1919 to 1925, Wills opened an architectural office in Boston in 1925 which he maintained until his death in 1962. His office specialized in small house design including traditional two-story, central hall houses and two-story, garrison houses but became especially well known for their Cape Cod cottages. As seen here, Wills also designed a lesser number of Tudor Revival/English Revival homes. Of the 130+ properties currently listed in the Massachusetts Historical Commission MACRIS database, about a dozen appear to be variations on the English Revival. These include 55 Blake Road in Brookline (1930), the Fitzpatrick Estate at 159 Saddle Hill in Hopkinton (1922); and a number of homes in Newton: 60 Beacon Street (1930); 199 Dorset Road (1929); 33 Gate House Road (1927); 11 Sagamore Road (1929); 24 Sagamore Road (1928); and 62 Sheffield Road (1931) and 197 South Street in Reading (1931) (Mausolf 2009). In Belmont other English Revival designs by Wills include 35 Ross Road (1938). He also designed Cape Cod houses such as 24 and 25 Ross Road (also in the Belmont Hill Village subdivision).

Wills's simple designs met with considerable success. Between 1935 and 1942 he won awards in more than two dozen design competitions including those sponsored by *Pencil Points*, *House Beautiful*, *Better Homes and Gardens* and *Ladies' Home Journal*. In 1938 *Life* magazine selected him as one of eight architects (four modern and four traditional) to prepare home designs for families in four income categories. In the category for families with $5,000 to $6,000 income, Wills's traditional design competed against a modern design by Frank Lloyd Wright. The selected family in the article chose the Wills house over the Wright design and subsequently the home was built in Edina, Minnesota. In the 1940s Royal Barry Wills wrote three books on architecture that were widely read and publicized in both the popular and professional architectural press. By 1946 over a half million copies of his books had been sold and *Life* Magazine declared him the nation's most popular architectural author. Royal Barry Wills went on to win a number of national contests and was also featured in the *Saturday Evening Post*. He received a Certificate of Honor from the Massachusetts State Association of Architects in 1949 and a fellowship in the American Institute of Architects in 1954 (ibid).

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Royal Barry Wills archive shows architect's mastery of marketing

Oct 3, 2017

Historic New England is cataloguing and digitizing the archive of iconic architect **Royal Barry Wills** and his namesake firm. Wills is best known for popularizing and constructing Cape Cod-style homes throughout the mid-twentieth century. Since beginning the project (https://www.historicnewengland.org/rediscovering-architect-royal-barry-wills/), which is supported by the Institute of Museum and Library Services (IMLS), in April 2017, our Library and Archives (https://www.historicnewengland.org/explore/library-archives/) staff have catalogued and digitized twelve scrapbooks dating from the 1920s through 1972.

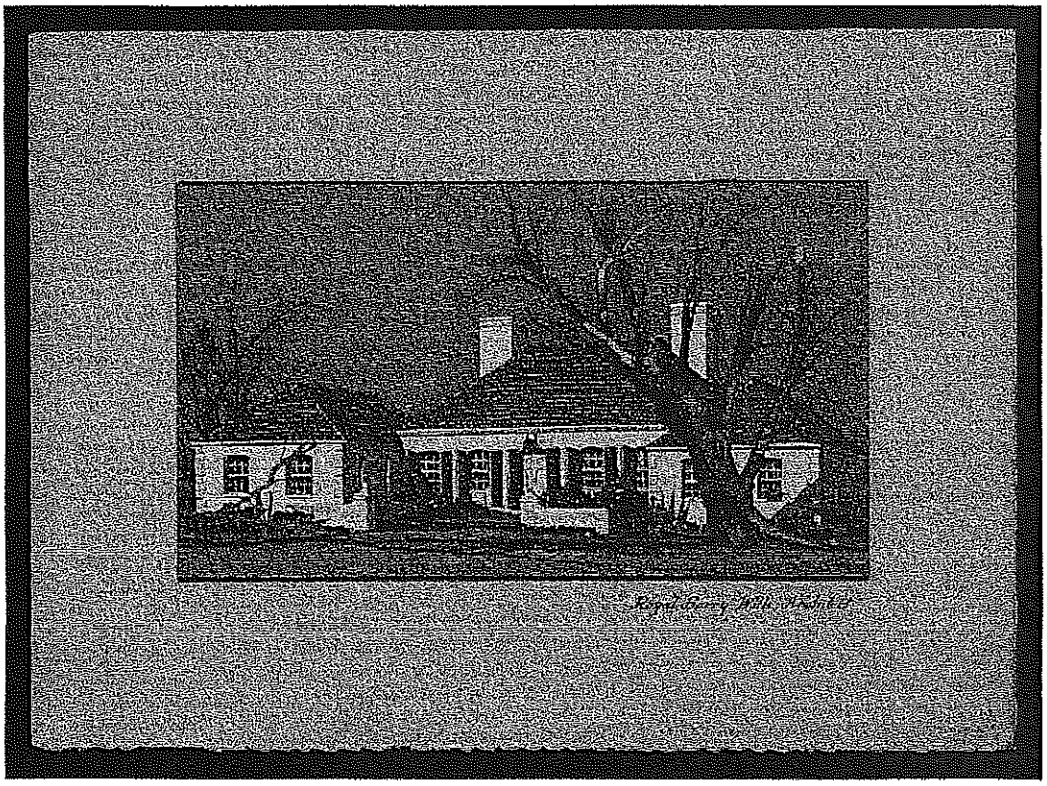
The scrapbooks provide an excellent overview of the work created by Wills and his firm. They contain more than 1,200 pages of press clippings, including magazine articles written by and about Wills and house designs published in national newspapers. The books reveal that Wills, a consummate marketer, did not shy away from using new technologies to expound his preference for traditional house design.

Here is an advertisement for a Cape Cod house by Wills, one of ten designs commissioned from him by the largest manufacturer of prefabricated homes in the U.S.

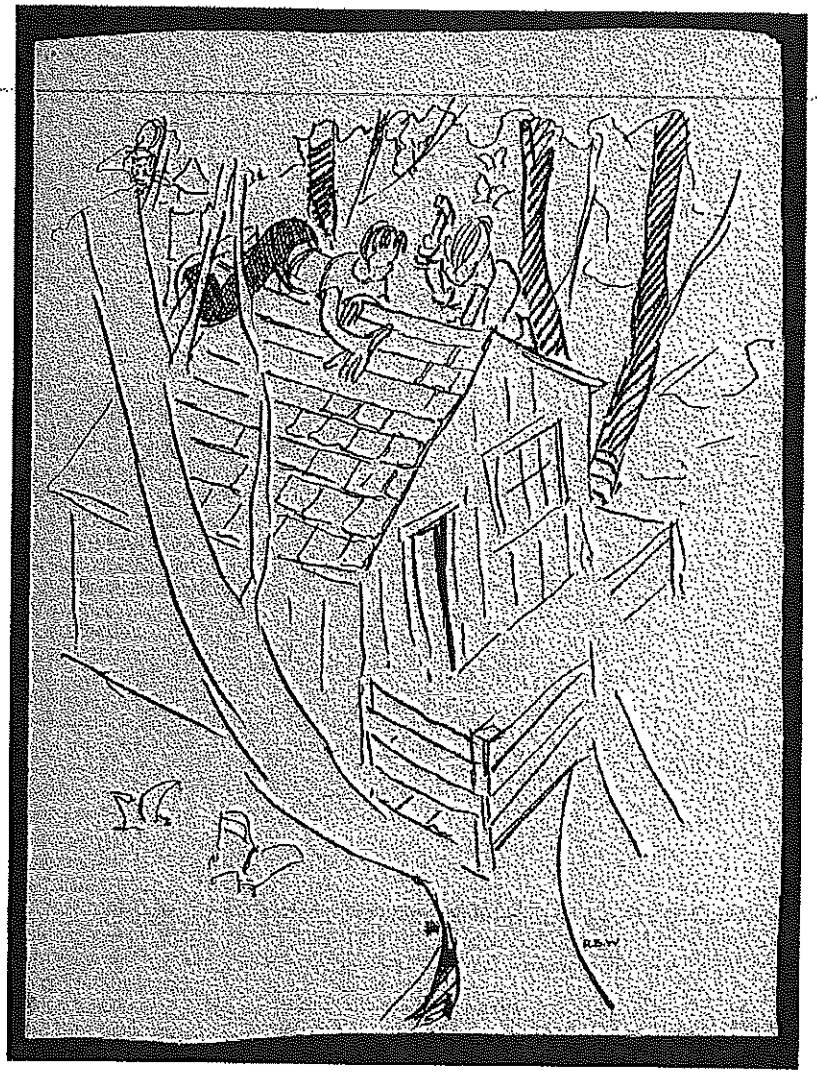
Royal Barry Wills Associates scrapbook, 1957-1962 – Page 7

Royal Barry Wills demonstrated his ability for self-promotion by authoring eight successful books relating to architecture. One book discusses how to establish a successful architecture practice; another comprises Wills' often witty essays on the clients and workers he encountered in his career. Other books focus on house designs by Wills and his firm and offer guidance to prospective homeowners on which houses would best suit their needs and budgets. Wills also penned a guide for constructing every future architect's favorite structures – tree houses! Revealing both his playful sense of humor and technical expertise, Wills weaves a story of two boys who built and expanded a tree house over several years with detailed instructions on how readers can build treehouses themselves.

The archive contains manuscript drafts and illustrations (some not included in the published volumes) for many of the books. These materials have been catalogued and more than 350 of the illustrations have been digitized.



"Better Houses for Budgeteers" original drawing, page 69



"Tree Houses" original sketch

Having completed the scrapbook and manuscript cataloguing, we are now processing the architectural drawings for more than 2,500 projects that span more than seventy-five years. We have already found many gems among the drawings, including sketches for somewhat unusual projects, such as a Tudor Revival children's playhouse, a Cape Cod ice cream stand, and a Modernist dentist office. We will share glimpses of the drawings in future blog posts, so check back frequently.

When the project is complete in early 2019, a finding aid to the collection and more than 11,000 digitized images will be available for exploration on our website, thus making the works of this influential architectural firm available to the public.

You can support the preservation of this and other Historic New England collections by making a gift to the Collections and Conservation Fund (http://shop.historicnewengland.org/DONATION-COLLECTIONS-9657/).

Takings Clause

Although largely unsuccessful, property owners challenging historic preservation laws sometimes argue that such laws, either generally or in their application in a specific case, amount to a taking of private property without just compensation. The term "taking" comes from the Fifth Amendment to the U.S. Constitution, which states, "... nor shall private property be taken for public use without just compensation." Under the Supreme Court's interpretation, the takings clause extends to governmental regulations as well as physical takings of property.

Regulatory Takings

Takings cases fall into one of three categories – physical occupations, exactions or conditions on development, and permit denials. The level of judicial scrutiny varies among each of these categories depending upon the level of intrusiveness on the part of the government. In general, the more closely the government action resembles "confiscation" rather than simply a restriction on use, the closer the court will look at the governmental purpose behind the alleged taking and its corresponding impact on the property.

Physical Occupations

This first category of takings claims involves situations where the government invades or occupies private property. The occupation may be "in fact," such as the required installation of wires or cable boxes on an apartment building, or "constructive," such as the frequent flying of airplanes over private property. Because of the close link between physical occupations and actual expropriations through eminent domain, the Supreme Court has established a "per se" rule, requiring just compensation in all physical occupation cases.

Exactions & Conditions on Development

This category of takings involves challenges to conditions imposed by government in exchange for the issuance of a development permit. For example, a local government may condition the issuance of a building permit for a new residential subdivision on the construction of roads servicing that subdivision. In such cases, the Supreme Court has said that there must be an "essential nexus between the burdens placed on the property owners and a legitimate state interest affected by the proposed development." In other words, there should be a reasonable correlation between the conditions placed on the property owner and the public interest being served. A nexus, perhaps, might not be found if a preservation commission required historic property owners to build a sidewalk in front of their house as a condition to the issuance of a certificate of appropriateness to build an addition on the back of their home. See *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), where a nexus between a lateral beach access condition and the Coastal Commission's stated goals was ruled insufficient.

In addition, the Supreme Court has ruled that a governmentally-imposed dedication of land for public use must be "roughly proportional" to the impacts on the community that will result from the proposed development. This rule precludes the placement of onerous requirements on property owners seeking governmental approval. In Dolan v. City of Tigard, 512 U.S. 687 (1994), for example, the Supreme Court found a taking since Tigard had failed to establish that the development exaction of a greenway and bicycle path would mitigate the flooding and traffic impacts caused by a proposed store expansion in a roughly proportionate manner.

Permit Denials

The vast majority of preservation takings cases fall within this category. Under this scenario, a property owner argues that a taking has occurred as a result of the denial of an application concerning the use of his or her property. In determining whether a taking has occurred, it is important to identify the "relevant parcel." The Supreme Court has said that reviewing courts must look at the "parcel as a whole" rather than the land directly affected by the regulatory action. Thus, for example, in analyzing a takings claim, courts should look at the entire historic estate rather than the segment of the estate on which a historic preservation commission has ruled that development may not occur.

The "parcel as a whole" analysis is especially significant in view of *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), which established the rule that a "total deprivation of beneficial use" is a per se or categorical taking. In other words, if a regulation renders property completely valueless (i.e. a "total wipeout"), then a taking requiring "just compensation" results. Without the "parcel as a whole" rule, property owners could claim that a categorical taking has resulted with respect to the portion of property directly affected by the challenged regulatory action. See *District Intown Properties Ltd. Partnership v.*

District of Columbia, 198 F.3d 874 (D.C. Cir. 1999), cert. denied, 531 U.S. 812 (2000), in which the owner argued, unsuccessfully, that the denial of permission to develop the lawn of a historic apartment building amounted to a categorical taking under Lucas.

Although decided over 30 years ago, *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), is the leading case governing the constitutionality of permit denials under the takings clauses of the federal and state constitutions. As Supreme Court Justice Sandra Day O'Connor wrote in her concurring opinion to *Palazzolo v. Rhode Island*, 533 U.S. 606, 633 (2001), "our polestar...remains the principles set forth in Penn Central itself and our other cases that govern partial regulatory takings." Her views were echoed by the majority in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002), which held that outside the exceptional "wipe out" situation found in Lucas, takings claims must be analyzed under Penn Central's ad hoc, multi-factored framework, and again, in *Lingle v. Chevron, U.S.A., Inc.*, 544 U.S. 528 (2005).

The Penn Central Test

Judicial review of regulatory takings claims is based upon a three-factored inquiry: the character of the government action; the economic impact of that action on the property; and the claimant's distinct investment-backed expectations.

Character of Governmental Action

This prong focuses on the nature of the action in dispute. As noted above, permanent occupations are treated as per se takings and governmental actions involving exactions or conditioned approval are generally subject to a higher level of scrutiny. Historic preservation regulations are rarely challenged on this issue. Indeed, in *Penn Central*, the U.S. Supreme Court recognized that preserving historic structures is "an entirely permissible goal" and the imposition of restrictions on historic property through historic preservation ordinances is an "appropriate means of securing" that purpose.

Economic Impact

The vast majority of preservation cases involving takings claims focus on the question of economic impact. To succeed under this factor, the property owner must demonstrate that the challenged regulation will result in the denial of the economically viable use of his or her property. This inquiry focuses on the impact of the regulation on the property and not the property owner.

Takings claims involving the mere designation of properties as historic resources pursuant to historic preservation ordinances under both federal and state constitutions have uniformly been rejected. As the Pennsylvania Supreme Court observed in *United Artists' Theater Circuit, Inc. v. City of Philadelphia*, 635

A.2d 612, 619 (Pa. 1993), "in fifteen years since *Penn Central*," no state has ruled that a "taking occurs when a state designates a building as historic."

Takings claims involving the denial of permission to alter or demolish historic structures are also routinely dismissed. Both federal and state courts have ruled that governmental actions under historic preservation laws that prevent landowners from realizing the highest and best use of their property are not unconstitutional. A taking will not result when the owner can realize a reasonable rate of return on his or her investment or can continue to use the property in its current condition or upon rehabilitation. Several courts have also ruled that a property owner must establish that he or she cannot recoup his or her investment in the historic property through sale of the property "as is" or upon rehabilitation.

Investment-Backed Expectations

Under the final Penn Central factor, the property owner must show that the challenged regulatory action interferes with his or her "distinct investment-backed expectations." This factor looks at the circumstances surrounding the property in question, such as the owner's investment motives or his or her primary expectation concerning the use of the property are relevant considerations. To prevail, the expectation must be objectively reasonable rather than a "mere unilateral expectation."

In *Palazzolo v. Rhode Island*, the Supreme Court ruled that the acquisition of property subsequent to the adoption of a law, such as a historic preservation ordinance, does not bar a takings claim. This does not mean, however, that the existence of a preservation law or designation of a property as historic prior to acquiring title is not a relevant factor.

Conversely, the argument raised by property owners, that the application of preservation laws unconstitutionally interferes with their investment-backed expectations in situations where the property in question has been designated after the property was purchased, has also been rejected. Courts have found that an owner's expectation to be free from regulation is not reasonable.

Statutory Responses

In some situations, statutory provisions may protect individuals from potential regulatory takings. Many jurisdictions, for example, include provisions in their preservation ordinances that establish a separate administrative process for considering cases of undue hardship that may lead to potential takings claims. Commonly referred to as economic hardship provisions, they enable local governments to address hardship claims in individual cases and help prevent invalidation of commission decisions on constitutional grounds. Economic hardship provisions are typically invoked once an owner has been denied permission to demolish or substantially alter his or her property. An applicant may be required to submit detailed information to show that retention or sale of the property is economically infeasible.

The standard for measuring economic hardship may vary from one jurisdiction to the next. Most jurisdictions, however, use the same standard as that for a regulatory taking, finding economic hardship when an owner has been denied all economically viable use of his or her property.
A number of states have enacted so-called "takings" laws mandating a governmental assessment of the impact of a proposed action on individual property owners to avoid situations that may ultimately result in a compensable taking. A proposed regulation or governmental action may fail to be enacted based upon its projected impact on constitutionally-protected property rights. In a very limited number of states, compensation may be required upon a showing by a private owner that the value of his or her property (and, in some cases, a portion of that property) has been diminished by a certain percentage (sometimes as low as 10 percent.)

While highly controversial, the impact of takings laws on historic preservation has not been documented. Nonetheless, because historic preservation laws may affect private property, these laws are likely to have some impact on efforts to regulate historic property and should be consulted where applicable.

Eminent Domain

Under the Fifth Amendment, a federal, state, or local government may confiscate privately-owned properties for public use, provided that "just compensation" is paid. This authority has been both helpful and harmful to historic properties. On the one hand, scores of historic buildings have been demolished through the application of eminent domain proceedings under urban renewal, transportation and other public works programs. On the other hand, dilapidated historic resources have been protected from total ruin by government seizure and subsequent transfer to preservation organizations committed to rehabilitating the structures.

The use of eminent domain or condemnation authority has become an issue of increased importance since the U.S. Supreme Court handed down its controversial decision in Kelo v. City of New London, 545 U.S. 469 (2005). In Kelo, the Court ruled that the seizure of houses for use in a major, private development project that would bring jobs and tax revenues to an economically-distressed area satisfied the Fifth Amendment's "public use" requirement.

In response to the public outcry against the decision, a number of states have amended their state constitutions and eminent domain laws. These amendments restrict seizures of privately-owned property for economic development if the property is to be transferred to another private entity. Many of these laws narrow the definition of "public use" and tighten existing laws relating to the identification of blighted areas. Some also strengthen procedures relating to the condemnation process.

Although many of these laws may help limit the use of eminent domain authority to redevelop areas with historic buildings, local governments – even under the most restrictive statutes – still enjoy considerable authority.

Additional Resources

THE PENN CENTRAL DECISION

KELO COMMENTARY FOR MEMBERS OF THE HISTORIC PRESERVATION COMMUNITY

SUPREME COURT TAKINGS CASES

National Trust for Historic Preservation®

2600 Virginia Avenue NW,
Suite 1100
Washington, DC 20037
forumonline@savingplaces.org
Phone: 202-588-6000
Toll-Free: 800-944-6847
Fax: 202-588-6038
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The Preservation Leadership Forum of the National Trust for Historic Preservation is a network of preservation leaders — professionals, students, volunteers, activists, experts — who share the latest ideas, information, and advice, and have access to in-depth preservation resources and training.

COLLABORATING PARTNERS
National Trust Insurance Services
National Trust Community Investment

Zoning Facts | 27 Dorset Road

12.11.2017

Zoning District: Single Residence A (SR-A)

USES	SINGLE FAMILY	TWO FAMILY	APARTMENT	COMMERCIAL
BY RIGHT	Y	N	N	N
SPECIAL PERMIT	N	N	N	N (except wireless telecommunications)

DIMENSIONAL REGULATIONS	REQUIRED/ALLOWED SR-A	27 DORSET ROAD EXISTING
LOT AREA	25,000 square feet (sf)	13,337 sf
LOT FRONTAGE	125 ft.	122.08 ft.
FRONT SETBACK	30 ft.	23.77 ft.
SIDE SETBACKS	15 ft.	21.29 ft.
REAR SETBACK	40 ft.	28.59 ft.
MAXIMUM LOT COVERAGE	20% (2,667 sf)	12.3% (1,641 sf)
MAXIMUM STORIES	2.5 stories	1.5 stories

Conclusion:

1. Lot Area and Frontage:
   In the SR-A District, the lot area and frontage requirements only apply to newly created lots, not to existing lots. Therefore, at 13,337 sf with 122.08 feet of frontage, the lot is not large enough to subdivide and create two new lots.

   However, a new home could be built by-right on the existing lot even though the area and frontage are less than is required.

2. Lot Setbacks and Coverage:
   In this district, a new structure must comply with all setback and lot coverage requirements.

3. Development Options:
   The existing structure at 27 Dorset Road could be enlarged to 2.5 stories from its current 1.5 stories, and the building footprint could be increased by approximately 1,026 sf (2,667 sf allowed and 1,641 sf existing) as long as the addition stays within the setback requirements.

   Please note that since 27 Dorset Road is a corner lot, the Zoning By-Law allows some flexibility in the application of what is considered a side or rear setback. With this flexibility, it is possible to site a new building footprint of 2,667 sf within the required setbacks (see attached schematic).

Case # DDA-17-02

NOTICE OF PUBLIC HEARING BY THE BOARD OF SELECTMEN

APPLICATION TO APPEAL TO REMOVE A BUILDING FROM THE LIST OF SIGNIFICANT BUILDINGS

Notice is hereby given that the Belmont Board of Selectmen will hold a public hearing on **TUESDAY, December 18, 2017, at 8:00 PM** in the Town Hall, Board of Selectmen's Meeting Room, 455 Concord Avenue, to consider the application of **Derek Staples** to **APPEAL TO REMOVE 27 DORSET ROAD** from the **List of Significant Buildings,** which is subject to regulation by the Demolition Delay Bylaw.

Additional information on the List of Significant Buildings and the Demolition Delay Bylaw can be found:

www.belmont-ma.gov/historic-district-commission/pages/6b-demolition-delay-bylaw-2017-amendments

Belmont Board of Selectmen

TOWN OF BELMONT
BOARD OF SELECTMEN
Town Hall
455 Concord Avenue
Belmont, MA 02478

Telephone: (617) 993-2610 FAX: (617) 993-2611

APPLICATION TO APPEAL TO REMOVE A BUILDING FROM THE LIST OF *BELMONT'S SIGNIFICANT HISTORIC BUILDINGS SUBJECT TO DEMOLITION DELAY BYLAW*

Date: _____

BOARD OF SELECTMEN
Town Hall
455 Concord Avenue
Belmont, MA 02478

To Whom It May Concern:

Pursuant to the Town of Belmont General Bylaws, Section 60-320, the Demolition Delay Bylaw, I/we, the undersigned, being the owner(s) of a building located at 27 DORSET RD., appeal to your Board to remove said Building from the List of Belmont's Significant Historic Buildings Subject to Demolition Delay Bylaw.

WE RESERVE ALL RIGHTS TO CHALLENGE SUCH A LIMITATION.

I/we understand that the basis of this appeal shall be limited to a factual demonstration that the Building does not qualify to be a Significant Building, based upon the following considerations:

a. Whether the Building is associated with events that have made a significant contribution to our history;
b. Whether the Building is associated with the lives of persons historically significant in our past;
c. Whether the Building embodies distinctive characteristics of a type, period, or method of construction; represents the work of a master; possesses high artistic value; or represents a significant and distinguishable entity whose components may lack individual distinction;
d. Building has recognized national, state, or local level historical significance;
e. The historic context of the Building; and,
f. The integrity of the historic Building.

Signature of Building Owner _____

Print Name DEREK STAPLES

Address 27 DORSET RD
BELMONT, MA 02478

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