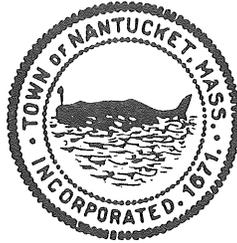


Town and County of Nantucket
Board of Selectmen • County Commissioners

James R. Kelly, Chairman
Rick Atherton
Robert R. DeCosta
Matt Fee
Dawn E. Hill Holdgate



16 Broad Street
Nantucket, Massachusetts 02554

Telephone (508) 228-7255
Facsimile (508) 228-7272
www.nantucket-ma.gov

C. Elizabeth Gibson
Town & County Manager

**AGENDA FOR THE MEETING OF THE
BOARD OF SELECTMEN
SEPTEMBER 7, 2016 - 6:00 PM
PUBLIC SAFETY FACILITY TRAINING ROOM - 2nd FLOOR
4 FAIRGROUNDS ROAD
NANTUCKET, MASSACHUSETTS**

I. CALL TO ORDER

II. BOARD ACCEPTANCE OF AGENDA

III. ANNOUNCEMENTS

1. The Board of Selectmen Meeting is Being Video/Audio Recorded.

IV. PUBLIC COMMENT*

V. NEW BUSINESS*

VI. APPROVAL OF MINUTES, WARRANTS AND PENDING CONTRACTS

None

VII. CONSENT ITEMS

None

VIII. CITIZEN/DEPARTMENTAL REQUESTS

None

IX. PUBLIC HEARINGS

None

X. TOWN MANAGER'S REPORT

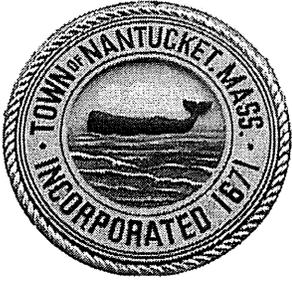
None

XI. SELECTMEN'S REPORTS/COMMENT

1. Discussion Regarding the Historic District Commission's Memo to the Board of Selectmen Dated August 9, 2016 Requesting the Removal of the Historic District Commission from the 2012 Agreement Between the Town of Nantucket and the Nantucket Planning & Economic Development Commission.

XII. ADJOURNMENT

**** Identified on Agenda Protocol Sheet***



HISTORIC DISTRICT COMMISSION

2 Fairgrounds Road
Nantucket, Massachusetts 02554

Telephone: 508.325.7587

Fax: 508.228.7298

COMMISSIONERS

Kristine Glazer
Chairman

Diane Coombs
Vice-Chairman

Ray Pohl

Abigail Camp

John McLaughlin

ASSOCIATE COMMISSIONERS

Matthew Kuhnert

Val Oliver

STAFF

John Hedden
Administrative Specialist
jhedden@nantucket-ma.gov

To: Members of the Board of Selectmen

Date: August 9, 2016

Re: HDC request for removal from the 2012 Agreement between the Town of Nantucket and NP&EDC

The HDC requests that the BOS endorse the re-establishment of a dedicated and independent administrative staff, outside the oversight of PLUS, trained to respond to the needs of the HDC and those who appear before it.

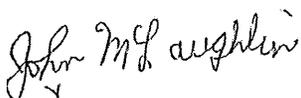
The HDC presently finds itself in the midst of a fourth reorganization in five years. As with all previous reorganizations, the HDC Board has not been consulted prior to the announcement of this reorganization. It is particularly alarmed that the current reorganization proposes to eliminate all professionally trained staff with specialized knowledge pertinent to the HDC. We view an independent, trained staff as essential if we are to improve the process for applicants, reduce the time spent by the commission reviewing applications, and improve compliance with HDC rulings. An administration that has repeatedly proved itself disinterested in hearing the views of the HDC, we believe, is not one able to achieve these goals.

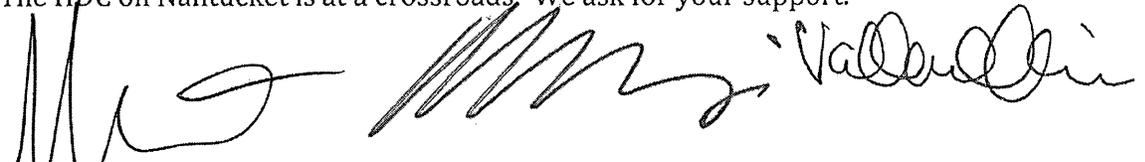
To this end, we suggest that the BOS support the retention of an independent consultant to work with the commission to develop a framework for an independent administrative staff that will better serve the needs of the commission and our community.

The HDC reviewed over 2,100 applications last year. It needs a professionally trained staff to accomplish those reviews properly. Applicants before the HDC should expect interaction with a staff that can ease their progress through the system. And similarly, those abutting development should be able to rely on a commission that can protect their property values and the community at large. The HDC looks forward to a day when everyone finds those expectations met.

The HDC on Nantucket is at a crossroads. We ask for your support.


(Raymond Pohl)




Diane Coombs

**AGREEMENT
BY AND BETWEEN**

**Town of Nantucket by and through its Board of Selectmen
and
the Nantucket Planning & Economic Development Commission**
*Professional services for the Nantucket Planning Board, Zoning Board of Appeals, Affordable
Housing Trust, Building Department, Health Department, and Historic District Commission, to be
collectively known as Planning & Land Use Services (PLUS)*

THIS AGREEMENT, effective as of the 22 day of AUGUST, 2012 by and between the Town of Nantucket, Massachusetts (hereinafter referred to as the "Town ") and the Nantucket Planning & Economic Development Commission (hereinafter referred to as the "Commission").

WITNESSETH THAT:

WHEREAS, professional services relating to the administration of certain municipal planning, zoning and land use-related functions of the Town are sought to assist the Town in the coordination of comprehensive land use services; and

WHEREAS, the Commission has been performing planning and zoning services to the Town since its creation pursuant to its creation by Chapter 561 of the Acts of 1973, as amended or as may be amended from time to time and/or for several years without a formalized agreement; and

WHEREAS, in an effort to further a Town Administration goal of consolidating departments with functional similarity for operational and managerial efficiency and economic reasons, we are seeking to combine the operational functions of the departments of Health, HDC, Building, Planning Board, Zoning Board of Appeals, Affordable Housing Trust into one agency collectively known as Planning and Land Use Services (PLUS).

WHEREAS, the Town and the Commission wish to formalize their relationship with mutual recognition of each others' authority and independence, to provide for uninterrupted service to the residents of the Town, County and region of Nantucket and with due regard for efficiency, mutual cooperation and respect;

NOW, THEREFORE, THE PARTIES HERETO DO AGREE TO the mutual covenants and conditions contained herein; including the Scope of Services contained in Exhibit A, which may be adjusted or modified from time to time:

1. The administration of PLUS will be handled by the Director of Planning and the Director of Planning will report to the Town Manager for the administration of PLUS. The Director of Planning will be a member of the Town Administration "Cabinet", an administrative advisory group that meets regularly to discuss a variety of matters, including the achievement of Board of Selectmen and Town Administration Goals, budget development, town meeting, and administrative policy issues. The Director of Planning will administer PLUS in accordance with Town Administration policies and procedures. The departments contained within PLUS will report to the Director of Planning, who may delegate day-to-day operational oversight, under the direction of Town Administration for the overall administration of PLUS.

The infrastructure currently in place in each of the departments to pay bills, purchase supplies and process certain applications will be consolidated into one infrastructure for efficiency purposes (for example one or two individuals vs several will process bills, monitor budget line items and purchase and procure supplies and outside services. All administrative/clerical positions will be

trained to accept a variety of applications. In addition to accepting applications, where applicable, the positions will be trained to issue applications and appropriate related information.

All proposed personnel and budgetary (outside of routine expenditures) actions will require the advance sign-off of Town Administration.

The Director of Planning will also administer the Town's "Yard Sale" program and other real estate programs or processes, such as the "One Big Beach" program, bicycle path or sidewalk easement acquisition, certain types of land-based leases, and will provide information and reports as requested.

A list of deliverables will be developed by the Town Manager and Director of Planning. Progress toward achievement/completion of the deliverables will be reviewed regularly.

The term of the MOU will be such that it continues until the MOU is terminated under the Notice of Termination provision. A complete review of the MOU will be completed after the first year.

2. RESPONSIBILITY OF THE TOWN: The Town shall assume responsibility for assisting the Commission insofar as possible for the purposes of efficiency and furnishing the Commission with information needed to satisfactorily complete the services.
3. REPORTING: The Director of Planning will submit regular reports to the Town Manager on the status of the professional services to be performed in a format to be agreed upon by the Town Manager and Director of Planning.
4. TERM: The professional services to be provided shall commence on or about August 20, 2012 and will continue until termination by the Town of Nantucket.
5. GENERAL PROVISIONS:
 - 5.1 RETENTION OF RECORDS: The Commission shall retain all records, and other documents, including but not limited to payroll records, accounting records, and purchase orders, that are sufficient to document that activities carried out are in accordance with this Agreement. The Commission shall maintain such records in accordance with directions from the Town and applicable State and Federal laws.
 - 5.2 ACCESS TO RECORDS: All accounts, records, reports, files, and other documents, things or properties that relate to activities under this Agreement will be available at all times for inspection, review and audit by the Town, and its authorized representatives.
 - 5.3 TERMINATION OF AGREEMENT: The Town/NP & EDC may mutually terminate this Agreement upon at least 90 days notice which may be waived upon agreement of both parties.
 - 5.4 AMENDMENTS: This Agreement may be amended provided such amendment is mutually agreeable and committed to writing by the signatories hereto.
 - 5.5 PERSONNEL: All personnel except the Director of Planning are included in respective bargaining units with Town of Nantucket employees; or, are covered under the Personnel Policies of the Town if not by a bargaining unit; or, are covered under an employment contract if neither of the two aforesaid applies. The Director of Planning is subject to a written Employment Agreement executed by the Commission and the Town pursuant to 7.0 Administration of the Bylaws of the Commission. All are subject to policies, rules and

regulations, responsibilities and benefits of the Town/County except where specifically otherwise stated.

6. SEVERABILITY OF PROVISIONS: If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby, and all other parts of this Agreement shall remain in force and effect.

IN WITNESS THEREOF, the TOWN and the COMMISSION have executed this AGREEMENT as of the date above so noted.

The Town of Nantucket

**Nantucket Planning and Economic
Development Commission**

By: *Pat Foxe*
Chairman, Board of Selectmen

By: *William E. Howell*
Chairman, NP & EDC

Date: 22 August 2012

Date: 8/14/2012

Attest: *Wrika D. Mooney*
(Signature)

Attest: *[Signature]*
(Signature)

*Andrew V. Venes, Director
of Planning*

ATTACHMENT A

Scope of Services

The following outlines a Scope of Services which the Director of Planning for the Nantucket Planning & Economic Development Commission (the "Commission") will perform for the Town of Nantucket (the "Town"):

1. Planning, administration, implementation, community education, professional training, and service coordination for the activities and responsibilities of the Planning Board, Zoning Board of Appeals, Affordable Housing Trust, Building Department, Health Department, Historic District Commission (collectively known as Planning & Land Use Services "PLUS")) and planning related duties of the Town/County including but not limited to real estate, infrastructure, transportation, capital planning duties and the preparation and formulation of Town Meeting warrant articles for submission to Town Administration/Board of Selectmen.

The Director of Planning will be responsible for the Town's compliance with all applicable State and Federal regulations pertaining to the implementation of the duties contained herein.

2. Oversee and administer public meetings of PLUS departments as necessary. The Commission will provide staff and other resources to assist with the conduct of statutory duties. Tasks include but are not limited to: preparation of packets of information for meetings, notice and posting of hearings, including on-line, transcribing minutes, timely maintenance of website materials and information, handling public inquiries, coordinating with relevant Town departments and community agencies or groups, developing and preparing reports and proposed annual budgets and any and all other duties normally, routinely and reasonably provided by staff of similar municipal boards.

3. Project Management. Certain land use projects may be assigned for which staff from PLUS is required. Resources for such projects will be provided.

4. Monitoring and Reporting Activities. The Commission, through its Director, shall be responsive to the Town/County, through its Town/County Manager on all issues related to this Agreement. The Director shall:

- Attend all department head meetings called by the Town Manager, included Cabinet meetings.
- Attend meetings of staff, the Board of Selectmen, the County Commissioners or any other forum requested by the Town Manager as reasonable and practicable;
- Provide memorandum, reports, and other written material requested by the Town Manager;
- Direct, conduct reviews of, discipline, hire, remove staff so assigned by the Town Manager in compliance with applicable policies, rules and protocol of the Town/County, including collective bargaining agreements.. All such actions shall be made in consultation with Town Administration and shall not occur without the concurrence of Town Administration.

5. Other Activities. Perform such other relevant work tasks and activities as may be authorized by the Town Manager which are mutually agreeable to both and necessary for the meeting of the objectives of the Town/County, and which related to the items contained in this Agreement.

AN ACT ESTABLISHING AN HISTORIC DISTRICT COMMISSION FOR THE TOWN OF NANTUCKET AND ESTABLISHING NANTUCKET ISLAND AS THE HISTORIC DISTRICT

CHAP. 314; 1998, CHAP. 193; 2000, CHAP. 57; 2002, CHAP. 90; 2010, CHAP. 8; 2014, CHAP. 338

Be it enacted, etc., as follows:

SECTION 1. Chapter 601 of the Acts of 1955 is hereby repealed and the Historic Districts Commission is hereby abolished.

SECTION 2. The purpose of this Act is to promote the general welfare of the inhabitants of the Town of Nantucket through the preservation and protection of historic buildings, places and districts of historic interest through the development of an appropriate setting for these buildings, places and districts and through the benefits resulting to the economy of Nantucket in developing and maintaining its vacation-travel industry through the promotion of these historic associations.

SECTION 2A. For purposes of this Act, the following words shall have the following meanings: "Altered" shall include the words rebuilt, reconstructed, rehabilitated, remodeled, renovated and restored.

"Building," a combination of materials forming a shelter for persons, animals or property.

"Commission," the Nantucket Historic District Commission, acting as the Historic District Commission.

"Constructed" shall include the words built, erected, installed, enlarged, and moved.

"Exterior architectural features," such portions of the exterior of a building or structure, including the size and shape of proposed buildings and structures described in subsection (b) of section 9, as are open to view from a beach, a public way, a traveled way, a street or way shown on a land court plan or shown on a plan recorded in the Registry of Deeds, a proprietor's road, a street or way shown on a plan approved and endorsed in accordance with the Subdivision Control Law, a public park or a public body of water, and shall include but not be limited to, the architectural style and general arrangement and setting thereof; the kind, color and texture of exterior building materials; the color of paint or other materials applied to windows, doors, lights, signs, trim, gutters, leaders, louvers, vents, exterior surfaces and type and style of roofs, porches, decks, staircases, steps, balconies, roof walks and other appurtenant exterior fixtures. **[Amended by St. 2000, Ch. 57]**

"Razed," includes the words destroyed, demolished and removed.

"Structure," a combination of materials other than a building, including, but not limited to a vending machine, sign, fence, wall, terrace, walk or driveway. **[Amended by St. 1998, Ch. 193]**

SECTION 3. There is hereby established in the Town of Nantucket an Historic District Commission consisting of five (5) unpaid members who shall be resident taxpayers of the Town of Nantucket, to be appointed by the Selectmen. The Historic District Commission shall have the powers and authority and perform all the duties as hereinafter enumerated and provided. All 5 members shall be elected for rotating 3-year terms at the annual town election each year. Vacancies occurring in the Commission, other than by expiration of term of office, shall be filled

by appointment by the Selectmen, but such appointment shall be only for the unexpired portion of the term of the member replaced. **[Amended by St. 2014, Ch. 338; St. 2016, Ch. 2[1]]**

The Chairman of the Historic District Commission may designate an associate member to sit on the Commission in case of absence, inability to act or conflict of interest on the part of any member thereof or in the event of a vacancy on the Commission until said vacancy is filled in the manner provided herein. Three such associate members shall be appointed by the board of selectmen in accordance with section 3.4(a)(3) of the charter of the town of Nantucket for rotating 3-year terms. Vacancies in said office shall be filled by the board of selectmen for the remainder of the unexpired term. **[Amended by St. 2014, Ch. 338]**

The members of the commission shall be exempt from subsections (a) and (c) of section 17 of chapter 268A of the General Laws. **[Amended by St. 1998, Ch. 193; St. 2002, Ch. 90]**

SECTION 4. There is hereby established in the Town of Nantucket an Historic Nantucket District, which shall include the land and waters comprising the Town of Nantucket.

SECTION 5. (a) No building or structure shall be constructed or altered within the Nantucket Historic District in any way that affects its exterior architectural features unless and until either:

(1) An application for a building permit shall first have been approved as to exterior architectural features, which approval shall be evidenced by a certificate of appropriateness issued by the Commission; or

(2) The Commission first issues a certificate of nonapplicability with respect to such alteration or construction,

(b) No building permit for construction or alteration of a building or structure within the Historic Nantucket District shall be issued by the Building Inspector until and unless the applicant has first obtained the applicable certificate from the Commission. No occupancy permit shall be issued by the Building Inspector with respect to any building or structure in the Nantucket Historic District unless and until the Building Inspector receives a written certification from the Historic District Commission that:

(1) The building or structure has been constructed or altered in compliance with the terms of the certificate of appropriateness issued therefor; or

(2) A certificate of nonapplicability has been issued for the construction or alteration.

(c) Nothing in this Act shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior architectural feature within the Nantucket Historic District which does not involve a change in design, material, color or the outward appearance thereof; nor to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, nor to prevent landscaping with plants, trees and shrubs.

SECTION 6. No building or structure within the Historic Nantucket District shall be razed without first obtaining a permit approved by the Historic District Commission, and said Commission shall be empowered to refuse such a permit for any building or structure of such architectural or historic interest, the removal of which in the opinion of said Commission would be detrimental to the public interest of the Town of Nantucket or the Village of Siasconset.

SECTION 7. The erection or display of an occupational or other sign exceeding two (2) feet in length and six (6) inches in width or the erection or display of more than one (1) such sign, irrespective of size, on any lot, building or structure located within the Historic Nantucket District must be approved in advance by the Historic District Commission. Evidence of such approval shall be a certificate of appropriateness issued by said Commission.

SECTION 8. The Historic District Commission shall elect its Chairman and Vice Chairman. The Commission shall meet within ten (10) days of the receipt of an application for a certificate of appropriateness or permit for removal and at such other times as the Commission may determine or upon call of the Chairman or of any two (2) members. It shall keep a permanent record of its resolutions, transactions and determinations and may make such rules and regulations consistent with this Act as may appear desirable and necessary. It may hold public or private hearings as it may deem advisable. It may incur expenses necessary to the carrying on of its work within the amount of its annual appropriation. The Commission shall make and publish rules and regulations adopting or establishing guidelines for exterior architectural features and establishing procedures for the processing of applications and conduct of hearings. The Commission may establish such fees with respect to applications and hearings as it deems necessary and appropriate to defray its expenses. **[Amended by St. 2010, Ch. 8]**

SECTION 9. (a) It shall be the function and the duty of the Historic District Commission to pass upon the appropriateness of exterior architectural features of buildings and structures hereafter to be erected, reconstructed, altered or restored within the Historic Nantucket District wherever such exterior features are subject to view from a beach, public way, public park, public body of water, traveled way, a street or way shown on a land court plan, or shown on a plan recorded in the registry of deeds, a proprietors road or a street or way shown on a plan approved and endorsed in accordance with the Subdivision Control Law. All plans, elevations and other information deemed necessary by the Commission to determine the appropriateness of the exterior features to be passed upon shall be made available to the Commission by the applicant. It shall also be the duty of the Commission to pass the removal of any building within said districts as set forth in Section 6 and the erection or display of occupational or other signs as set forth under Section 7.

(b) The Historic District Commission, in passing upon appropriateness of exterior architectural features in any case, shall keep in mind the purposes set forth in Section 2 and shall consider, among other things, the general design, arrangement, texture, material and color of the building or structure in question, the location on the lot and the relation of such factors to similar features of buildings and structures in the immediate surroundings and the position of such building or structure in relation to the street or public way and to other buildings and structures. In the case of new construction or additions to existing buildings or structures, the Historic District Commission shall consider the appropriateness of the size and shape of the building or structures both in relation to the land area upon which the building or structure is situated and buildings and structures in the vicinity, and the commission may in appropriate cases impose dimensional and setback requirements in addition to those required by applicable by-law. **[Amended by St. 2000, Ch. 57]**

- (c) The Historic District Commission shall not consider interior arrangement or building features not subject to public view. The commission shall not make any recommendations or requirements except for the purpose of preventing developments incongruous to the historic aspects of the surroundings and the Historic Nantucket District. **[Amended by St. 2000, Ch. 57]**
- (d) In case of disapproval, the Commission shall state its reasons therefor in writing, and it may make recommendations to the applicant with respect to appropriateness of design, arrangement, texture, material, color and the like of the building or structure involved.
- (e) Upon approval of the plans, the Commission shall cause a certificate of appropriateness, dated and signed by the Chairman, to be issued to the applicant or affixed to the plans.
- (f) If the Commission shall fail to take final action in any case within sixty (60) days after receipt of any application for a certificate of appropriateness or a permit for removal, the case shall be deemed to be approved except where mutual agreement has been reached for an extension of the time limits.
- (g) The Commission shall have, in addition to the powers, authority and duties granted it by this Act, such other ancillary, enforcement or investigative powers, authority and duties as may be delegated or assigned to it from time to time by vote of an Annual or Special Town Meeting of the Town of Nantucket.

SECTION 10. Any person who violates any of the provisions of this Act shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$10 nor more than \$500, which shall be forfeited to the use of the town. Each day that a violation continues to exist shall constitute a separate offense.

(a) It shall be a violation of this Act for any person to construct or alter a building or structure without having first obtained from the Commission a certificate of applicability or a certificate of nonapplicability; for any person to raze any building or structure without having first obtained from the Commission a permit for such razing; for any person to construct or alter a building or structure in any way which is inconsistent with or contrary to the terms of the certificate of approval issued for such building or structure; or for any person to knowingly submit false, fraudulent or misleading information to the Commission in connection with any application.

SECTION 10A. It shall be a violation of this Act for any person to construct or alter a building or structure without having first obtained from the Commission a certificate of applicability or a certificate of nonapplicability; for any person to raze any building or structure without having first obtained from the Commission a permit for such razing; for any person to construct or alter a building or structure in any way which is inconsistent with or contrary to the terms of the certificate of approval issued for such building or structure; or for any person to knowingly submit false, fraudulent or misleading information to the Commission in connection with any application.

SECTION 11. Appeals may be taken to the Board of Selectmen by any person aggrieved by the ruling of the Historic District Commission. The Board of Selectmen shall hear and act upon such appeals promptly, and the decision of the Board shall be as determined by a majority vote of the members of the Board. Such appeals shall be taken within ten (10) days of the filing by the Commission of its certificate of determination with the Clerk of the Town of Nantucket, and

written notice of such appeal shall be given by the appealing party to the Commission at the time such appeal is taken.

SECTION 12. Any person or the Historic District Commission, aggrieved by a decision of the Board of Selectmen, may appeal to the Superior Court sitting in equity for the County of Nantucket, provided that such appeal is filed in said Court within 15 days after such decision is recorded. The appealing party or parties shall, at the time of filing such appeal, give notice thereof to all persons who were parties to the appeal to the Board of Selectmen, by causing to be delivered to such parties a copy of the complaint and written notice of the filing thereof. The Court shall hear all pertinent evidence and determine the facts and, upon the facts so determined, annul such decision if found to exceed the authority of such Board, or may remand the case for further action by the Commission or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive, but the parties shall have all rights of appeal and exception as in other equity cases.

Costs shall not be allowed against the Historic District Commission or the Board of Selectmen unless it shall appear to the Court that the Commission or the Board, in making the decision appealed from, acted with gross negligence, in bad faith or with malice.

Costs shall not be allowed against the party appealing from the decision of the Historic District Commission or the Board of Selectmen unless it shall appear to the Court that said appellant or appellants acted in bad faith or with malice in making the appeal to the Court.

SECTION 13. The Superior Court, sitting in equity for Nantucket County, shall have jurisdiction to enforce the provisions of this Act and the certificates, permits, determinations, rulings and regulations issued pursuant thereto and may, upon petition of the Commission, restrain by injunction violations thereof; and, without limitation, such court may order the removal of any building, structure or exterior architectural feature constructed in violation of this Act or the substantial restoration of any building, structure or exterior architectural feature altered or razed in violation of this Act and may issue such other orders for relief as may be equitable.

SECTION 14. In case any section, paragraph or part of this Act be for any reason declared invalid or held unconstitutional by any court of last resort, every other section, paragraph or part shall continue in full force and effect.

SECTION 15. This Act shall take effect upon its acceptance by the voters of the Town of Nantucket at an Annual Town Meeting or any meeting duly called for the purpose.

February 27, 1990

[1]

Editor's Note: Section 2 of this enactment provided that "an incumbent member of the Historic District Commission appointed or elected pursuant to section 3 of chapter 395 of the acts of 1970, as amended, shall continue to serve in that capacity until the expiration of the incumbent's term or until the incumbent sooner vacates the office, after which the election of members shall proceed in accordance with section 1."