

**OLD KING'S HIGHWAY REGIONAL HISTORIC DISTRICT
COMMISSION**

P.O. Box 140, Barnstable, Massachusetts 02630-0140
Tel: 508-775-1766 FAX 508-775-9248

Dennis Historic Commission, Appellant

V.

Decision #2004-7

**Old King's Highway Regional Historic
District Committee for the Town of Dennis**

On Tuesday, December 7, 2004 at 7:45 P.M., the Commission met to hold a hearing at the Fire Station Community Room, 340 Route 6A, Yarmouth Port, Massachusetts, on Appeal #2004-7 filed by the Dennis Historic Commission seeking reversal of a decision by the Dennis Historic District Committee granting a Certificate of Appropriateness for the construction of a single family dwelling to be located at 49 J.H. Sears Road, East Dennis, Massachusetts.

Present were Roy W. Robinson, Jr., Brewster; Robert DeRoock, Sandwich; Deborah Gray, Yarmouth; Peter Lomenzo, Dennis; James R. Wilson and Leslie Ann Morse Commission Counsel; Nancy Reid Chairman of the Dennis Historic Commission, Appellant; Andrew L. Singer, attorney for the Applicant.

The Committee's decision was filed with the Town Clerk on October 15, 2004. The appeal was entered with the Commission on October 25, 2004, within the 10-day appeal period.

The Applicant's Presentation:

Andrew L. Singer, attorney for the applicant, addressed the Commission on behalf of client's Application and stated that the Appellant had failed to comply with Section 1.04 (e.) 3 of the Commissions Rules & Regulations (972 CMR 1.00 et seq.) that require an appellant to mail or deliver a copy of the appeal petition to the applicant within the ten day appeal period. He submitted written affidavits to support his claim that no notice was sent to his clients.

In addition, he stated that the Dennis Historic Commission is not a required "person aggrieved" and therefore lacked standing to go forward with the appeal.

Roy Robinson, Chairman of the Commission, asked the Appellant if they had sent or delivered the required notice to the Applicant. The appellant acknowledged that they had not sent the notice, but had relied upon a town employee, who had said that she would take care of notifying the applicant.

Mr. Robinson asked the Commission Counsel to provide legal advice on the two issues raised by the Applicant's attorney.

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Dennis Historic Commission
Singer

Commission Counsel's Advice:

The Commission's attorney advised the Commissioners that the two issues raised by the applicant were jurisdictional in nature and properly could be ruled on prior to hearing the appeal on the merits.

He indicated that on the issue of standing, town boards and agencies have been found to be a "person aggrieved" if the subject matter of their jurisdiction related to the appeal. He indicated that since the Dennis Historic Commission is responsible for historical matters, that that a Court would more than likely determine that the appellant has standing to bring the appeal.

He advised that the acknowledged failure to comply with the CMR 972 1.01 et seq. requirements of notice presented a serious legal issue. He indicated that the Courts in zoning cases have dismissed appeals that were defectively filed. He stated that the failure of the appellant to give proper timely notice to the applicant was a valid ground to dismiss the appeal.

Town Committee Comment:

Peter Lomenzo stated that this kind of problem cuts both ways. If the Commission starts making exceptions from its rules, I can think of many situations where excuses will be presented as to why people did not follow the rules. We are criticized for being inconsistent. If you allow defective appeals to go forward, it will open a floodgate for future inconsistency.

Discussion:

Robert DeRoeck stated that if there were a situation where the Rules & Regulation were miss stated to the appellant and/or they were denied a copy of the written Regulations, I might be inclined to allow the appeal to go forward. Mr. DeRoeck asked if copies the Rules & Regulations were available at the Dennis Town office; which was answered in the affirmative.

Roy W. Robinson, Jr., stated that it is the duty of the appellant to follow the rules. That even if the secretary for the town committee volunteered to send the necessary notice to the applicant, it was still the ultimate responsibility of the appellant follow up and make sure that it was accomplished.

Deborah Gray stated that I see this in a black and white manner. I agree with the applicant that the lack of notice is critical and that the appeal should be dismissed. It is unfortunate that the notice was not properly given. The ultimate responsibility rests with the appellant to follow our written rules of procedure. I am sorry that the error was made, but I felt that that the appeal should be dismissed for a failure to comply with notice requirements of the Commission Rules and Regulations.

Findings:

The Commission found as follows:

The Appellant failed to give the proper notice as required under CMR 972 Section 1:04(e.) 3.

Determination:

As to Appeal #2004-7, the decision of the Dennis Committee is affirmed. (3-0-1).

Any person aggrieved by this decision has a right to appeal to the District Court Department, Orleans Division, within 20 days of the filing of this decision with the Dennis Town Clerk.



Roy W. Robinson, Jr.
Chairperson