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

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Jessica McConnell, Appellant

V.

Decision #2005-2

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

On Tuesday, April 5, 2005 at 7:30 P.M., the Commission held a hearing at the Fire Station Community Room, 340 Route 6A, Yarmouth Port, Massachusetts, on Appeal #2005-2 filed by Jessica McConnell seeking reversal of a decision by the Yarmouth Historic District Committee granting to M. Victoria Schuh a Certificate of Demolition and Removal and a Certificate of Appropriateness for a 26' x 26' barn on property located at 438 Route 6A, Yarmouth Port, Massachusetts.

Present were Robert DeRoeck, Sandwich; Deborah Gray, Yarmouth; Roy Robinson, Brewster; Peter Lomenzo, Dennis; Paul Leech, Orleans; Patricia Anderson, Barnstable; James R. Wilson, Commission Counsel; M Victoria Schuh, Applicant; Paul Tardiff, Attorney for the Applicant; and Jessica McConnell, Appellant and her agent Diane Hughes.

The Committee's decision was filed with the Town Clerk on March 3, 2005. The appeal was entered with the Commission on March 9, 2005, within the 10-day appeal period.

Standing:

Prior to beginning the review of Yarmouth Town Committee's granting of the Certificates to the Applicant, the Commission considered the issue of the Appellant's right to challenge the action of the Committee as "a party aggrieved." A plan of the Appellant and Applicant's properties showed that a "pan-handled lot" owned by Edmund R. Tuttle separated the two properties making the Appellant not an abutter. The distance of separation was shown to be approximately twenty feet. Notwithstanding this condition, the location of the barn was determined to be so close and visible from the Appellant's property that it was determined that the granting of the Certificates could have a direct impact on the value of the Appellant's property. The Commission found that the Appellant was "a party aggrieved."

The Applicant's Presentation:

Paul Tardiff addressed the Commission on behalf of the applicant's applications. He requested that the determinations of the Town Committee be affirmed. He stated that the Yarmouth Committee conducted a public site visit at which the barn was examined and

its poor structural condition viewed by the members of the local town committee. He indicated that the foundation needed replacement and that the floors were in an unsafe condition. He described the leaking roof, bulging sides, large hole in the building and its decaying condition as rendering the wooden barn as being beyond any reasonable physical restoration effort.

He indicated that the barn was not shown on the 1880 County Map and stated that it had been built after the main house that was shown on the map.

He stated that the barn lacked any historic or architectural significance to the public interests set forth in the Historic District Act.

He presented plans of the proposed replacement building, which had been designed to reflect the architectural features of the existing barn. He indicated that the intent of the applicant had been to preserve the visual appearance of the existing barn structure.

He claimed that the Committee had acted properly in allowing the barn's demolition and its proposed replacement with a similar appearing building.

The Appellant's Presentation:

Jessica McConnell and Diane Hughes addressed the Commission on behalf of the Appellant, stating that the historic character of the neighborhood would be damaged by the demolition of the existing barn. They asserted that the local Committee did not properly carry out its mandate to preserve and protect historic buildings. They indicated that they felt that the Committee was biased toward the applicant and that the neighbors did not receive a full and fair opportunity to present evidence that would support their claim that the barn should not be taken down.

In support of the Appellant's claims, it was suggested that the Committee ought to have required that a structural engineer be hired to examine the barn. While the Appellant acknowledged that the owner did not have to give the neighbors access to the property for such an expert, they felt that the Committee ought to have provided support for such an examination.

In addition, it was stated that the Committee minutes did not record a statement of opposition from a neighbor and that a committee member may have blocked his ears during a portion of the public hearing.

The Committee was criticized for not focusing on the applicant's proposed change of use. The Appellant asserted that a barn's use as a barn would be far less structurally demanding than the applicant's proposed new use.

It was claimed that the destruction of barns is significant problem for the District and that the Town Committee failed to properly value the barn's contribution to District.

The Town Committee's Presentation:

Deborah Gray addressed the Commission on behalf of the Yarmouth Town Committee. She stated that her Committee held three (3) public meetings on the applications. She stated that a public viewing was conducted at the site. She indicated that all of the members of her Committee, interested neighbors and the Appellant were allowed to attend.

She reported that the Committee observed the wooden barn to be in a very poor structural condition. She reported that the barn was occupied by raccoons and had a damp and moldy smell to it. The single brick foundation had failed and the floorboards were resting in the dirt. The windows and clapboard were described as having cracked and failed. The building was described as being of balloon construction with vertical boards decaying at their base. The roof had failed and a large hole existed at the rear of the building. Pictures of the barn were shown to the Commissioner's.

She distributed to the Commissioners a copy of a licensed Home Inspector's Report on the condition of the barn. She indicated that the Committee's architect had examined the building and concurred with the Committee's decision to approve the demolition.

She stated that her Committee did not consider the proposed change in use for the barn, as that was the responsibility of the Board of Appeals.

She described the proposed replacement building as being a visually identical replica of the existing barn with only the rear windows being altered.

She stated that the Yarmouth Committee was acting properly when it approved the applications.

Discussion:

The members of the Commission reviewed the plans, minutes, photographs and items submitted during the hearing.

Roy Robinson stated that he felt that the Committee was correct in approving the demolition of the Barn. He indicated that he could not fault the Committee for its procedures in hearing the applications.

Peter Lomenzo stated that he could not find sufficient evidence to support the appellant's claim that the town committee had been arbitrary and/or capricious or erroneous in reviewing the application. He indicated that he wished that the Certificate of Demolition could be linked to the Certificate of Appropriateness.

Paul Leech indicated that he shared Mr. Lomenzo's opinion that the Committee did not make an error in its determination.

Patricia Anderson expressed a wish that the law allowed the Committees to better address the issue of Demolition by neglect but indicated that she felt that the Yarmouth Committee acted properly in granting Certificates to the applicant.

Robert DeRoeck stated that he felt that the act is flawed in its failure to link Certificates of Demolition with a Certificate of Appropriateness and that he would vote to remand the matter back to the Yarmouth Committee.

The Commission findings:

The Commission found as follows:

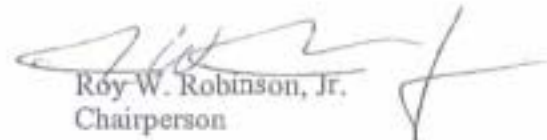
That the Committee was not arbitrary, capricious or erroneous in its action of approving the Certificate of Demolition and Removal and Certificate of Appropriateness.

That the Committee did not exceed its authority in approving a Certificate of Demolition and Removal for the existing barn.

Determination:

As to Appeal #2005-2, the appeal is denied and decision of the Yarmouth Committee is affirmed (4-1-1) in accordance with the findings set forth above.

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


Roy W. Robinson, Jr.
Chairperson