

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

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YARMOUTH  
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**Jessica McConnell & Peter Hughes, Appellant**

**Vs.**

**Decision #2008-2**

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

On Tuesday, April 1, 2008 at 7:45 P.M., the Commission held a hearing at the Fire Station Community Room, 340 Route 6A, Yarmouth Port, Massachusetts, on Appeal #2008-2 filed by Jessica McConnell & Peter Hughes/Diane Owen Hughes, seeking reversal of a decision by the Yarmouth Historic District Committee granting a Certificate of Exemption, Certificate for Demolition or Removal and Certificate of Appropriateness to Claire Gonet for property located at 450 Main Street, Yarmouth Port, Massachusetts.

Present were Patricia McArdle, Sandwich; Peter Lomenzo, Dennis; Deborah Gray, Yarmouth; Roy W. Robinson, Jr., Brewster; Robert Stahley, Barnstable; James R. Wilson, Commission Administrator; Peter Hughes and Jessica McConnell, Appellants Claire Gonet, Applicant; Paul Tardif, Applicant's Attorney and Troy Wall, Applicant's Builder.

Absent was Paul Leach, Orleans.

The Town Committee's decision was filed with the Town Clerk on February 15, 2008. The appeal was entered with the Commission on February 21, 2008, within the 10-day appeal period.

**Applicant's Presentation:**

Paul Tardif addressed the Commission on behalf of the Applicant and described the construction project as consisting of an expansion of the existing kitchen and laundry at the rear of the house. He described the original project as constructing an addition that would connect the two ells at the rear of the house and asserted that the addition would not be subject to public view. He reported that when Troy Wall, Applicant's Builder, got into the construction process, he discovered extensive rot and structural weakness in the western ell. He indicated that the Building Permit issued under the State Building Code, required the contractor to remove the deteriorated material and replace it with suitable structural support for the proposed addition. As a result, Mr. Wall removed the entire 20' X 12' western ell of the building, which he described as having been built in the 1960s and not of the same historical significances or value as the other parts of the National Register (1721) House.

In support of the demolition, he stated that Mr. Wall found 1960 newspapers in the walls of the ell and modern 2" X 4" construction for the roof and walls. He asserted that the door and windows were of a contemporary design, construction and material.

He stated that William Stone, Assistant Building Inspector, visited the site and concurred with the tear down action for safety reasons. He submitted a Memorandum dated January 25, 2008 from the Yarmouth Building Department expressing the opinion that the Builder's actions were "...the proper thing to do and also the safe thing to do."

He acknowledged that the applications for the Certificate for Demolition or Removal and Certificate of Appropriateness were being filed after the fact, but suggested that requirements of the State Building Code and Section 7 - Exclusions could be legal basis for the Builder's actions.

He indicated that design of the replacement ell would be similar to the original ell with only minor modifications to the windows and door. Plans of the replacement ell and addition were shown to the Commissioners.

#### **Appellant's Presentation:**

Peter Hughes stated that Certificate of Exemption that had been issued in December was improperly issued for two reasons. He pointed out that the portion of the building that had been taken down was actually visible from Route 6A and that a Certificate of Exemption does not apply to a demolition. He pointed out the historical significance of the subject property and expressed strong concern that the Building Department and Yarmouth Town Committee appeared to be treating the matter improperly.

He asserted that he complained to the Building Department and Chairman of the Town Committee and that nothing was done to stop the demolition and/or punish his neighbor for the alleged violation of the Act.

Jessica McConnell showed photographs of the site and explained that the portion of the building was clearly visible from Route 6A. She showed pictures of the demolition and the construction of the new addition. She reviewed the changes that had taken place as a result of her neighbor's actions.

Peter Hughes read a letter from the former owner of the property, James C. Chingos, in which he expressed concern for the preservation of the subject building and disputed the owner's claim that the demolished portion of the building was structurally unsound.

He reported that the hearing before the Yarmouth Town Committee had been conducted in a very restricted manner. He stated that the Chairman had not allowed people to express their opinions about the Certificate of Exemption process nor allow comments to be made about the letter of withdrawal of the Certificate of Exemption.

He suggested that it was improper for the Chairman to restrict the public comments to the factors of Section 10 of the Act. In addition, he expressed the opinion that the Chairman had discouraged comments about prior hearings and the granting and/or denying of Certificates for other projects within the District.

Ms. McConnell expressed the opinion this matter represented a loss of a vital historic village asset and criticized the Town Committee for not better protecting the village from her neighbor's wrongful actions in this matter.

#### **Town Committee:**

Deborah Gray presented copies from the Town Committee's file of the applications, site plan, elevations, photographs, Minutes and related correspondence to the Commissioners. She explained that in December she received an application for a Certificate of Exemption for an addition to the rear of the house that was to fill in the area between the two ells and was not visible from a public way. She approved the Certificate of Exemption.

Approximately two and half weeks later, the building department notified her that a portion of westerly ell had been demolished. She went to site and observed that the report was correct. She was advised that the building had rot and had been in an unsafe condition.

She reported that she met with the building department and it was determined that the owner would need to apply for a Certificate for Demolition and a Certificate of Appropriateness for the project.

The Applicant agreed to not rely upon the Certificate of Exemption for the project and filed applications for the proper Certificates.

A public hearing was held before the Town Committee on February 13, 2008 on the application for a Certificate for Demolition and the "historical significance" and "public interest" were noted and considered. The application was approved by a 4-0-0 vote.

A public hearing was next held on the application for a Certificate of Appropriateness and the factors of Section 10 of the Act noted and considered. The application was approved by a 4-0-0 vote.

She confirmed that at the public hearing the Appellants and other people wanted to talk about the granting of the Certificate of Exemption procedure and other demolition projects, which she ruled as out of order.

She reported that her Committee was very familiar with the history and age of the Inn. She acknowledged that she came in after the portion of the building had been demolished but pointed out that the building department had confirmed the "rot and the unsafe condition" of the structure.

**Public Comment:**

Robert Wilkins expressed concern for the protection of the historic buildings that exist with in the District and noted that in his opinion a building with age and history of the subject property deserves more respect and better preservation.

Joel Chaison stated that he was concerned about the procedure and suggested that steps needed to be taken to prevent similar future demolitions from taking place.

**Discussion:**

Peter Lomenzo began the discussion by saying that after listing to all the testimony, viewing the property, examining the material presented he did not see that the Yarmouth Town committee had made an error in granting the two certificates. He indicated that it did not appear that the hearing on February 13<sup>th</sup> was handled in an arbitrary and/or capricious manner, but was conducted in accordance the procedural rules for such hearings.

He indicated that he felt that the facts of what happened appear to be reasonably clear and while unfortunate, there did not appear to be any significant flaws in the replication of the demolished portion of the western ell as built.

For these reasons he expressed the opinion that the Committee's decision should be upheld.

Robert Stahley stated that he would agree. He indicated that based on what he had heard and seen that there is not sufficient evidence to support a conclusion that the Town Committee made an error or acted in an arbitrary or capricious way in granting the two Certificates.

Patricia McArdle stated that she agreed that the Town Committee did not make an error in approving the two applications.

Roy Robinson indicated that he also agreed with upholding the Town Committee's determination.

**The Commission findings:**

The Commission found as follows:

That the Town Committee did not make an error in issuing the two Certificates.

That the Town Committee was not arbitrary and/or capricious in making its decisions.

That the Town Committee did not exceed its authority in granting the two Certificates.

That the determination by the Town Committee should be upheld.

**Determination:**

As to **Appeal #2008 - 2**, the decision of the Yarmouth Town Committee granting a Certificate for Demolition and a Certificate of Appropriateness is affirmed (4-0-1)

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.

April 24, 2008

  
Roy W. Robinson, Jr., Chairperson