

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

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Rosemarie Austin, Appellant

Vs.

Decision for Appeal No. 2010-7

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

On Tuesday, September 28, 2010 at 2:00 P.M., the Regional Commission held a hearing at the West Barnstable Fire Station Meeting Room, 2160 Meeting House Way (Route 149), West Barnstable, Massachusetts, on Appeal # 2010-7 filed by Rosemarie Austin seeking reversal of a decision by the Dennis Town Committee granting a Certificate of Appropriateness to Aquacultural Research Corporation for the installation of a 600 kilowatt wind turbine to be located at 99 Chapin Beach Road, Dennis, Massachusetts.

Present were Chairman Peter T. Lomenzo, Jr., Dennis; Patricia McArdle, Sandwich; Richard Gegenwarth, Yarmouth; Lawrence Houghton, Brewster; Patricia Anderson, Barnstable; James R. Wilson, Commission Administrative Counsel; Rosemarie Austin, Appellant; John W. Kenney, Attorney for the Applicant.

The Dennis Town Committee's decision was filed with the Town Clerk on August 27, 2010. The appeal was entered with the Regional Commission on September 2, 2010, within the 10-day appeal period.

Copies of the Appeal Petition, Town's Decision, Plans, Minutes Application and Memorandum, and Photographs from the Dennis Town Committee's hearings were distributed to the Regional Commissioners for review.

Prior to beginning the Applicant's presentation, Chairman Peter Lomenzo stated that because he would be representing the Dennis Town Committee during the hearing that he would ask that the Regional Commissioners to elect another Member to conduct the hearing.

On motion of Patricia Anderson, seconded by Patricia McArdle, Lawrence Houghton of Brewster was elected Acting Chairman to conduct the hearing. (5-0)

The Applicant's Presentation:

Attorney John W. Kenney of Centerville addressed the Regional Commission on behalf of the Applicant's application. He stated that his client, Aquacultural Research Corporation, commonly called "ARC," received a Certificate of Appropriateness from the Dennis Town Committee on August 25, 2010. That approval, allows the Applicant to construct a 600-kilowatt wind turbine on its property located at 99 Chapin Beach Road,

Dennis, Massachusetts. The wind turbine would have a hub height of one hundred sixty-four (164) feet and a blade tip height of two hundred forty-two (242) feet. The wind turbine would be constructed upon a circular slab foundation 50 feet in diameter. The base of the wind turbine's tower would be 10.3 feet in diameter, constructed of tubular steel and painted a non-glossy off white color. The anticipated life of the wind turbine is twenty (20) years.

The Applicant filed its application on July 16, 2010. On August 11, 2010, a public hearing before the Dennis Town Committee took place with four (4) hours of public comment and discussion. The Committee continued the hearing, so that a site visit and tethered balloon test could be conducted. On August 20, 2010 the Town Committee members visited the site and observed the tethered balloon test. On August 25, 2010, the Town Committee reconvened its public hearing and after additional public comment and discussion voted (3-2) to grant the Certificate of Appropriateness.

Atty. Kenney stated that the Applicant is a shellfish cultivator and wholesaler. The company produces clams and oysters from broodstock using state of the art processes including heating, lighting and circulation. As part of the process, the Applicant also grows its own algae to feed the shellfish. The Applicant produces over ninety (90%) percent of the shellfish used in Massachusetts and the majority used in northeastern United States.

He indicated that the Applicant's property contains thirty-nine and seven tenth (39.7) acres of land and has continuously operated at its present site since 1960. The site is an irregular shaped parcel comprised of 17.8 acres of upland, 15.2 acres of marsh, and 6.7 acres of manmade tidal lagoons. The property is located at the westerly end of the paved portion of Chapin Beach Road. It is bounded on the south and west by Chase Garden Creek, on the north by Chapin Memorial Beach, and on the east by marshland owned by the Dennis Conservation Trust. There are three (3) structures on the site with the main building housing the hatchery, a warehouse, and a greenhouse. These structures are all part of the aquaculture operation. There are no buildings, other than those belonging to the Applicant's operation, within approximately 2,600 feet of the proposed wind turbine location.

He stated that the Applicant would be the primary beneficiary of the proposed wind turbine. The projected savings to the company's energy costs resulting from the wind turbine total \$120,000.00 to \$140,000.00 per year. Other beneficiaries of the proposed wind turbine include the many shellfish farmers who depend exclusively on the Applicant as a source of shellfish seed, and the local municipalities who depend on the Applicant to produce shellfish seed for the propagation and remediation efforts.

He introduced Gail Hart, Vice President of Aquacultural Research Corporation, to provide more information about the company and its operations.

She stated that the company is a shellfish farm. The research part of the name reflects that the Applicant has developed much of its own technology for raising the shellfish. She

described the company as a privately owned for profit business using a vertically integrated shellfish farming system. She explained that the shellfish spawn from the company's parent stock and are raised in closely monitored heated tanks during the winter months. The seed are then planted in protected tidal flats. The shellfish grow in the tidal flats to maturity in about two (2) to three (3) years. The mature shellfish are hand harvested at low tide and sold through a national wholesale distribution system.

She stated that the winter hatchery process is the most energy intensive part of the business. She indicated that the annual growing cycle begins in the heated seawater tanks, where the juvenile seed grow to an adequate size for the outdoor planting. This process of growing the juvenile shellfish requires keeping the saltwater hatchery tank at a constant warm temperature. The microscopic algae that feed the shellfish require warm water temperature, light and circulating water.

She indicated that the Applicant presently obtains its energy from three sources: electricity, a boiler with a large oil tank and three large propane tanks. The proposed wind turbine would replace the oil and propane tanks and the business will convert all of its energy needs to exclusively electricity that will come from the wind turbine and the grid.

She stated that the unique site of the hatchery was ideal for its operations and indicated that the use of seawater and other factors made any effort to relocate the business economically impractical and cost prohibitive.

She reviewed the deterioration of the company's economic business model, which she attributed to rising electric, oil and propane costs. She suggested that the operational savings of the conversion to exclusively electricity with an industrial size wind turbine would restore a viable cash flow for the business and allow improvements and an opportunity for expansion of the company's production.

She described the 600-kilowatt wind turbine as the best size for their company's needs and suggested that the company's property was ideally suited for locating the proposed wind turbine. She compared the turbine with the Massachusetts Maritime Academy 600 kilowatt wind turbine and stated that they were similar in size and height.

She stated that the company's studies show no significant or potential adverse impact to the area from the proposed wind turbine.

Attorney Kenney introduced Richard Kraus, President of Aquacultural Research Corporation, to continue the Applicant's presentation.

He reviewed company's history as the main supplier of shellfish seed in the area. He indicated that their hatchery is the only commercial producer of hard shell clam and oyster seed located in Massachusetts. He asserted that the company is the largest producer and supplier of its seed in the northeast. He estimated the economic impact to the region of their shellfish industry to be around \$42,000,000.00.

He indicated that due to market place constraints and competition; the price of the mature products has remained relatively static over the past ten to twelve years. This has forced the company to become more efficient in its seed production and to produce more quantity of product. He claimed that the proposed conversion to exclusively electric power through the addition of the 600-kilowatt wind turbine would greatly reduce the company's energy production costs and strengthen the company's overall business plan.

He highlighted the historical nature of the shellfish industry on Cape Cod. He pointed out that during the 1800s shellfish seed from Virginia were transported on sailing ships to the area for planting. He claimed that their company had single handedly brought back a dying shellfish industry.

Attorney Kenney asked Tom Michelman of Borel Renewable Energy Development, to describe the proposed Elecon 600 kilowatt wind turbine to the Regional Commission.

Mr. Michelman stated that the wind turbine was comparable to as the one located at the Massachusetts Maritime Academy in Buzzards Bay, Massachusetts, and had the same height and size.

He indicated that the wind turbine would operate when the wind is between 3.5 meters per second (8 MPH) and 25 meters per second (60 MPH). The anticipated average wind speed at the site is 6.76 meters per second (15 MPH), which should enable the wind turbine to meet the energy requirements of the company.

He confirmed that the anticipated life of the wind turbine is twenty (20) years. He stated that the tower for the wind turbine would be erected where the greenhouse is located. The wind turbine will be computer operated with a manual override. It will have three-phase power with breaking in case of icing. He indicated that there should be no sound or flicker effect problem from the wind turbine.

The proposed height of the steel tower is the lowest available for a 600-kilowatt wind turbine. He claimed that any lower or a smaller wind turbine would be less effective and impractical to operate at the site. He expressed the opinion that the proposed wind turbine would meet the projected energy needs of the company and would be better than solar panels, geothermal heat pumps or any other energy source for the site.

Attorney Kenney presented his legal argument in support of sustaining the Dennis Town Committee's granting of the Certificate of Appropriateness for the 600-kilowatt wind turbine. He read from Sections 1, 3, 6, 10 and 11 of the Historic District Act and Section 5 of the Commission Guidelines. He presented the argument that was previously presented to the Dennis Town Committee in support of granting the Certificate of Appropriateness. The argument had been submitted in a written Memorandum dated August 11, 2010. (A copy of the Memorandum had been provided to the Commissioners as a part of the Town Committee record prior to the hearing.)

He disputed the claims made by the Appellant in the Appeal and concluded by asserting that the Dennis Town Committee correctly granted the approval of the Applicant's application and requesting that the decision be affirmed.

The Appellant's Presentation:

Rosemarie Austin of Dennis, addressed the Regional Commission on behalf of her appeal. She indicated that residents from Dennis, Yarmouth and other neighborhoods, who shared her opposition to the Dennis Town Committee's decision, would join her in the presentation.

She claimed that the Dennis Town Committee "exercised poor judgment" in acting on the application. In support of her claim, she charged that the Dennis Town Committee did not exercise due diligence and did not adequately review the information that was available about the proposed project before rendering its decision.

She suggested that the Dennis Town Committee did not adequately address the ownership and/or the "industrial and commercial" nature of the large wind turbine.

She pointed out that the proposed project is to be located in a part of the town that is only zoned for residential use. She stated that the maximum permitted height for a wind turbine in a Dennis Residential Zoning District is only forty-five (45) feet and not the two hundred forty-two (242) feet of the Applicant's proposed 600-kilowatt wind turbine.

She showed the Commissioners a copy of the Town of Dennis Zoning Map, which highlighted the five (5) areas where the Town of Dennis had specifically authorized the placement of small, medium and large wind turbines. None of the areas are located within the Old King's Highway Regional Historic District.

She expressed concern about the fourteen (14) feet height of the ground water table in the area where the proposed thirty (30) feet deep concrete foundation base for the steel tower is to be located.

She asserted that the Dennis Town Committee failed to properly consider the degree of adverse impact that the large wind turbine would have on an environmentally sensitive residential part of the Regional Historic District.

Anne Ierardi of Route 6A, Yarmouth Port, criticized the action of the Dennis Town Committee for its failure to give adequate notice to the Yarmouth residents or to give due consideration to the adverse impact of the proposed structure on the nearby Bass Hole area with its popular board walk and public bathing beach. She suggested that the Dennis Town Committee acted on the application from a narrow Town of Dennis only prospective and ignored the regional impact of the proposed project or to adequately seek alternative solutions to the Applicant's needs.

Richard Watts of 15 Whig Street, Dennis, suggested that the Dennis Town Committee acted erroneously in not properly analyzing the financial and electrical energy assumptions set forth in the November 2008 Feasibility Study. He stated that the Applicant represented that the 600 Kilowatt industrial size wind turbine was needed to bring down the electricity costs of their facility. He expressed the opinion that high cost of construction (est. \$2.2 mil. less \$.9 mil. in grants) plus the annual operating cost of \$24,036.00 would result in an overall higher energy cost to the Applicant.

He claimed that, as referenced in the study, the available tax advantages would bring in a third party investor.

He stated that the study included an assumption of significant expansion and increased production to meet projected electrical usage and raised the possibility that the Applicant might not be the primary user, but would be selling more than fifty (50%) per cent of its electricity to other parties.

He claimed that the project would destroy many important view sheds from the Towns of Dennis and Yarmouth. He expressed the opinion that, while it might be appropriate to locate a large commercial industrial wind turbine in an industrial zone, it was inappropriate for the proposed residential coastal setting.

Ann Porotti of 22 Dr. Bottero Road, Dennis, stated that the Dennis Town Committee failed to properly address the issue of public safety. She cited a series of wind turbine incidents where blades broke or towers collapsed. She suggested that the Dennis Town Committee acted in an arbitrary and capricious manner by not investigating these incidents or properly addressing the issue in its decision.

She reported that Vestas, a leading producer of wind turbines, recommends a 1300 feet safety zone around its industrial wind turbines. She stated that the frequent public recreational use of Chapin Beach, Gray's Beach and Chase Garden Creek would bring people within the 1300 feet safety zone. She urged the Regional Commission to overturn the Dennis Town Committee's and deny the application.

Judy Recknagel of 408 Route 6A, Yarmouth Port, stated that the Old King's Highway with its many historic places is listed in the AAA Magazine as one of the top ten (10) scenic places in the America. She suggested that this was in large part the result of the Regional Historic District Act and the preservation efforts of those who administer it.

She voiced concern that Yarmouth residents did not get notice of the hearings. She claimed that none of her neighbors were aware of the proposed wind turbine project and that Yarmouth interests appear to have been ignored by the Dennis Town Committee.

She claimed that, while the Town of Dennis has many public bathing beaches on the Bay side, Yarmouth has only one and it abuts the area where the proposed wind turbine is to be located. She described the Gray's Beach as a jewel with its bathing beach for swimming, shaded picnic tables, cooking grills and a long boardwalk across the marsh.

She stated that the area is enjoyed by hundreds of Cape Codders and tourist who visit the site. She suggested that the large wind turbine belonged in a less sensitive industrial or commercial area.

She charged that the Dennis Town Committee showed poor judgment and acted capriciously in allowing the proposed industrial wind turbine to be placed where it would have a maximum visual impact for Yarmouth residents and visitors. She claimed that the large industrial wind turbine would significantly detract from the historic, natural and aesthetic quality of an important part of the Regional Historic District.

She requested that the Regional Commission annul the decision and deny the Certificate of Appropriateness and preserve the historic, natural and aesthetic character of Gray's and Chapin Beach.

Mario Gonzalez of Yarmouth Port, expressed the opinion that the Dennis Town Committee based their decision on poor judgment. He referenced the Old King's Highway Regional Historic District Commission Guideline requirements under Section 5, which states that a solar or wind generator should have "a minimum visual impact on the surrounding neighborhood" and "...be designed and constructed in such manner as to blend with existing features in the immediate area." He characterized the judgment to approve the proposed wind turbine as a failure to follow the Guidelines and apply them to the application.

He claimed that the beauty of the natural landscape of the area would be decimated by the installation of the proposed industrial wind turbine.

He dismissed the economic claim of the Applicant that it might fail if it did not obtain the wind turbine. He stated that there is nothing in the Regional Historic District Act that says that it is the responsibility of the Dennis Town Committee to save a financially faltering private business.

Ronald Perera of 114 Wharf Lane, Yarmouth Port, stated that the proposed wind turbine would be visible from his home, along the shore to the end of Yarmouth village, the Yarmouth town wharf, the Yarmouth boardwalk at Gray's Beach and along the edge of Chase Garden Creek as far as to the Dennis town line. He expressed the opinion that the exterior architectural features of such a large industrial wind turbine are out of scale with the residential character of the surrounding neighborhood.

He suggested that the impact of the Applicant's application for the large industrial wind turbine should not be treated as a local Town of Dennis matter only, but should be addressed as a regional issue.

He requested that the Regional Commission refer the matter to the Cape Cod Planning Commission for review and in the absence of doing so, reverse the action of the Dennis Town Committee to protect and preserve the natural beauty and historic shorelines of Yarmouth and Barnstable.

Josie Dornback of 42 Rodoalph Way, Dennis, expressed concern about the area wetlands, migratory birds and endangered species. She indicated that the construction of the wind turbine would have a destructive impact on these aspects of the salt marsh and creek area.

She suggested that allowing the project to go forward would have an adverse impact on the public interests identified in Article 97 of the Massachusetts Constitution.

The Town Committee's Presentation:

Peter Lomenzo addressed the Regional Commission on behalf of the Dennis Town Committee.

He stated that because of prior admonishment for not fully exploring the economic advantages of any proposed solar or wind device, the Dennis Town Committee agreed at the outset to receive and review all the available information on the issue.

The Dennis Town Committee agreed with the Applicant to defer any presentation or determination on the hardship issue until such time as the Town Committee issued a complete denial of the application.

He indicated that he felt that the Dennis Town Committee did not exceed its authority because the proposed project was geographically located within the Regional Historic District and the Applicant's proposed activity was under the jurisdiction of the Act.

He indicated that he felt that the Dennis Town Committee did not make an error. He stated that the Dennis Town Committee followed its regular procedures and held six (6) hours of hearing time on the application and a site visit with a tethered balloon test.

He noted two procedural issues that occurred during the processing of the application. The first was a failure by the Applicant to file for a Certificate for Demolition for the Quonset hut buildings that were to be removed to make room for the proposed tower base. The second was the submission of more detailed specification about the proposed wind turbine. He reported that the Dennis Town Committee and the Applicant resolved both issues.

He indicated that he felt that the Dennis Town Committee was not arbitrary or capricious in acting on the application. He described the review process as being lengthy and complete. He reported that all determinations were based on a full discussion and thorough review of the issues.

He acknowledge that the judgment to approve the application was a three (3) to two (2) split vote. He stated that three (3) members felt that the proposed wind turbine was appropriate for the site and two (2) members felt that it was too big and too high for the site.

He stated that after the first hearing it appeared that a majority of the Committee was going to approve the application. He indicated that the focus of the Dennis Town Committee shifted to establishing the conditions that would best protect the Dennis community interests. As a result the Certificate of Appropriateness was finally issued with the following seven (7) conditions:

- 1.) A Certificate for Demolition shall be obtained by September 20, 2010 or Certificate of Appropriateness shall expire.
- 2.) The wind turbine shall be maintained in proper working order.
- 3.) A Bond shall be in place to remove the wind turbine.
- 4.) A Specification Sheet for all items in feet and inches shall be submitted.
- 5.) Clarification of FAA light on hub.
- 6.) The Applicant shall consider a less intrusive turbine design if it becomes available.
- 7.) Color to be 9001.

He stated that he believed that the Town Committee did its job. He indicated that he felt that the only issue that remained for the Regional Commission was whether or not the Dennis Town Committee exercised poor judgment in approving the large size of the proposed wind turbine at its proposed location.

Public Comment:

Richard Elrick, the Barnstable and Bourne Energy Coordinator, stated that there is a strong public commitment to the use of wind and solar energy. He urged the Regional Commission to vote in favor of the proposed wind turbine as being in the public interest. He indicated that if wind turbines are appropriate in Europe and the old-world, they ought to be appropriate on Cape Cod.

James Liedell of 148 Kates Path, Yarmouth Port, stated that, as an engineer, he has examined the proposed wind turbine and its location. He supports its approval because of its isolated location from residences and a belief that it will have a minimal impact on the Regional Historic District.

Gerry Palano, of the Massachusetts Department of Agricultural Resources, expressed support for the Applicant and its effort to obtain approval of the wind turbine. He indicated that the Department supports the use of clean energy resources and the importance of local shellfish industry.

Stephen Wright, President of the Massachusetts Aquacultural Association, stated that the shellfish industry has benefited from the seed production of the Aquacultural Research Corporation. He expressed support for the proposed wind turbine project because he felt that it would assist the members of his organization in continuing the growing and harvesting of shellfish.

Carl Freeman of Orleans expressed support for the use of wind power. He claimed that the use of wind power is much safer and better than using fossil fuels.

Gary Sherman, President of the Massachusetts Shellfish Officers Association, expressed support for the Aquacultural Research Corporation. He reported that many local communities have shellfish propagation programs and that the Applicant's business plays an important support role for these programs.

Richard York of Falmouth stated that as a marine biologist, he supports the application for the wind turbine. He expressed the opinion that the company provided a public benefit to the shellfish industry and to the community. He described the company as the sole provider of clam and oyster seed in the area. He urged the Regional Commission to support the application because the company needs the financial help.

Janet Polito of 20 Loch Rannoch Way, Yarmouth Port, expressed her opposition to the wind turbine and requested that the Dennis Town Committee be reversed.

Thomas Kelley of Yarmouth expressed his support for the proposed wind turbine and characterized Gray's Beach and the Bass Hole in Yarmouth as a "mud hole."

Frank Ciambriello of Dennis and a member of the Dennis Town Committee, who voted against the application, asked to speak as a resident of Dennis.

Atty. Kenney objected to his being allowed to address the Regional Commission because the Chairman was the designated speaker for the Town Committee.

The Regional Commission noted the objection but allowed him to speak as a resident of Dennis.

Mr. Ciambriello objected to the focus on the Applicant's economic needs as opposed to the appropriateness of the industrial wind turbine in its proposed location.

Susan Arayas of Dennis expressed opposition to the approval of the proposed wind turbine and expressed the opinion that there were too many unanswered questions about the project.

Applicant's Rebuttal:

Attorney John Kenney showed the Regional Commissioners letters of support from the Dennis Board of selectmen and Massachusetts Representative, Cleon H. Turner, encouraging the Regional Commission to sustain the Dennis Town Committee's decision to approve the proposed wind turbine.

He asked Gail Hart to clarify the ownership issue. She assured the Regional Commission that only Gail Hart, Richard Kraus and Susan Machie owned Aquacultural Research Corporation and that there was no plan to bring in any third party owners.

She reviewed the financing plan for the project and indicated that they expected to obtain two government grants for \$400,000.00 (State) and \$500,000.00 (Federal) for a total of \$900,000.00 in grant money. She indicated that the owners would borrow \$1,200,000.00 as the balance of the estimated construction costs. She asserted that there was no plan to lease any part of the property or business.

Attorney Kenney assured the Regional Commissioners that the wind turbine would be accessory to their shellfish business and that more than fifty (50%) per cent of the electricity would be used by Aquacultural Research Corporation.

He stated that they could not relocate the business or the wind turbine to one of the five permitted Dennis zoning districts because they did not own any land in the designated areas. He again pointed out the need of the hatchery to be located in its current location near the shore.

He asked Richard Kraus to address the risk to the aquifer by the project.

Mr. Kraus assured the Commissioners that there would be no risk of harm to the ground water. He indicated that the water under the proposed wind turbine was salt water and not fresh water.

Attorney Kenney asked Tom Michelman to address the safety issues.

Mr. Michelman stated that the wind turbine, tower and base would have to meet the standards in the state Building Code and other safety regulatory standards. He assured the Commissioners that the geology of the site was suitable for the device.

He stated that the V 90 Vestas Wind Turbine was about twice as large as the proposed 600 Kilowatt wind turbine. He expressed the opinion that the 1,300 feet safety zone was not being followed.

Atty. Kenney stated that location was picked to assure that if it collapsed it would fall on the applicant's property. He claimed that there are many wind turbines safely functioning in the world and to his knowledge no one has been injured by a collapse or structural failure.

He stated that there might be confusion about the numbers in the November 2008 Feasibility Study, which he indicated, is only based on the conversion of the existing electrical usage and omits the fuel oil and propane conversion factor. The calculation changes significantly when the overall projected energy costs are brought into play.

He asked Tom Michelman to clarify this issue.

Mr. Michelman stated that when you convert from fuel oil and propane there would be a much higher electrical usage. The proposal that is being presented is based on a total conversion to electricity resulting in a substantial increase in electrical usage at the site.

Atty. Kenney asked Gail Hart to address the claim that notice and publicity about the proposed project had not been adequately given.

Gail Hart stated that for two (2) to three (3) years they have been inviting public comment to obtain permission for the proposed wind turbine. She indicated that there have been many articles in the newspapers on the subject.

Atty. Kenney requested that the Dennis Town Committee's decision be affirmed.

Appellant's Rebuttal:

Roseanne Austin stated that the opposition is directed to the placement of the large wind turbine in its proposed location. She stated that it is too large for the site.

She again stated that the Town of Dennis on January 10, 2010, voted to create five (5) places that were suitable for wind turbines. She suggested that if this residential site were approved, there would be wind turbines being constructed all over Town.

She raised a question about the future use and ownership of the wind turbine. She asked, if the people sell the property, does the wind turbine go with the new owner?

She requested that the Regional Commission reverse the Dennis Town Committee and deny the application.

Town Committee's Rebuttal:

Mr. Lomenzo stated that the first time that they encountered an application that was as large and difficult as this one, it involved the placement of cellular antennas for telephone communication. With the help of technology, they were able to work through the issue to a solution in which the antennas are now buried inside church steeples, attics and on top of water tanks. It would appear that we have not reached that point with this technology. He suggested that the addition of the seven (7) conditions was an effort to move toward that solution.

He suggested that, as indicated in the proceedings, the core factors of size and setting remain to be considered. He stated that the Dennis Town Committee now defers to the Regional Commission to determine whether or not its action was an "exercise of poor judgment."

He indicated that a remand would not be of benefit. He noted that the presentations by the Applicant have shown that the proposed tower and wind turbine cannot be lowered or reduced in size and that other changes would not be practical.

Commission Discussion:

The members of the Regional Commission reviewed the pictures, plans, photographs and other items submitted for review during the public hearing.

Patricia Anderson began the discussion by expressing concern for the large number of historic buildings, places and sites in the area that could be affected by the appearance of the large wind turbine.

Richard Gegenwarth of Yarmouth identified himself as a physicist and retired engineer. He stated that electricity is not the best way to heat water. He pointed out that the existing use of oil and gas was far more efficient than a switch to electricity. He reviewed the projected numbers and stated that the comparable 600 Kilowatt wind turbine at the Massachusetts Maritime Academy generated about one-third less energy than the applicant's projections for the proposed 600 kilowatt wind turbine. He suggested that from an engineering point of view, the proposed wind turbine appeared to be the wrong size for the intended job.

He challenged the energy advantage of an all-electric conversion and suggested that mixed alternative solutions to be considered. He expressed the opinion that heat pumps and other energy devices might work better and would be more appropriate for the project. He recommended that more study and engineering work was needed before a project of the proposed magnitude went forward.

He voiced strong concern about the visual impact of the large size of wind turbine on the surrounding area. He described the Gray's Beach area as having the character of a miniature National Seashore Park. He described the site as being visited by many people who came to enjoy its natural scenic seashore beauty. He suggested that its natural beauty would be lost by the construction of the proposed wind turbine. He therefore concluded that the proposed location of the two hundred and forty-two feet (242) wind turbine would be inappropriate under the Act.

Patricia McArdle expressed concern about the many issues raised by the hearing and indicated that based on the presented information, she was not able to support the Dennis Town Committee's judgment to approve the project.

Acting Chairman Houghton stated that he believed that the Dennis Town Committee did not exceed its authority, was not arbitrary, erroneous or capricious. He indicated that he felt that the use of wind energy is very important and that the Regional Historic District should encourage its use. He expressed the opinion that the public needs to get used to seeing wind turbines and that he supported the proposed site for the large wind turbine.

He stated that he could not comment on the energy advantage issues raised by his fellow commissioner, but that he felt that the project should be approved and that the Dennis

Town Committee did not exercise poor judgment in issuing the Certificate of Appropriateness.

Patricia Anderson stated that she agreed that Dennis Town Committee was not arbitrary and capricious. She expressed the view that everybody was given a fair opportunity to have spoken and be heard. However, she found that the Dennis Town Committee exercised poor judgment in granting permission to construct the industrial size wind turbine abutting the scenic public creek, marshland and Cape Cod Bay.

She expressed the opinion that the Dennis Town Committee failed to properly consider the visual abutters many concerns. She found that the proposed wind turbine would have a significant detrimental affect on the many historic and aesthetic assets of the Regional Historic District located in Dennis, Yarmouth and Barnstable.

Richard Gegenwarth of Yarmouth stated that he agreed that the Dennis Town Committee made a poor judgment in granting the Certificate of Appropriateness.

Chairman Houghton asked for a motion.

On Motion by Richard Gegenwarth, seconded by Patricia Anderson, the Commission voted to annul the Dennis Town Committee's grant of a Certificate of Appropriateness and to deny the application. (Anderson, Gegenwarth and McArdle voting in favor; Houghton voting against; and Lomenzo abstaining) (3-1-1)

The Commission findings:

The Commission found as follows:

The Dennis Town Committee exercised poor judgment in approving the 600-kilowatt wind turbine at the proposed location.

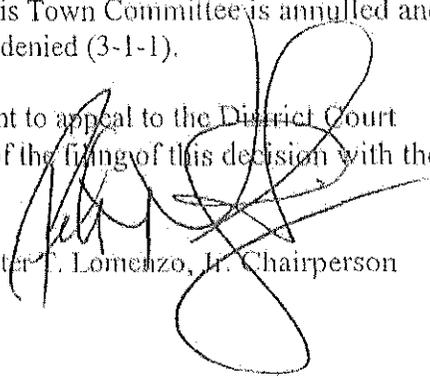
The Dennis Town Committee grant of a Certificate of Appropriateness should be annulled and the application denied.

Determination:

As to Appeal #2010-7, the decision of the Dennis Town Committee is annulled and the application for a Certificate of Appropriateness denied (3-1-1).

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.

Dated October 25, 2010


Peter F. Lomenzo, Jr. Chairperson