

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

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

**Peters Family Trust, Appellant**

**Vs.**

**Decision for Appeal No. 2012-2**

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

On Tuesday, June 5, 2012 at 1:30 P.M., the Commission held a hearing at the West Barnstable Fire Station Meeting Room, 2160 Meeting House Way (Route 149), West Barnstable, Massachusetts, on Appeal # 2012-2 filed by the Peters Family Trust seeking reversal of the Dennis Historic District Committee's granting of a Certificate of Appropriateness to Michael Joyce, Trustee of the 30 Highland Road Nominee Trust for proposed additions and alterations to a dwelling located at 30 Highland Road, East Dennis, Massachusetts.

Present were Chairman Peter T. Lomenzo, Jr., Dennis; Lawrence Houghton, Brewster; William Collins, Sandwich; Carrie Bearse, Barnstable; Richard Gegenwarth, Yarmouth; James R. Wilson, Commission Administrative Counsel; David S. Reid, Attorney for the Appellant; Heather and Todd Peters, Trustees for the Peters Family Trust, Appellant; Michael D. Ford, Attorney for the Applicant; and Michael Joyce, Trustee of the 30 Highland Road Nominee Trust, Applicant.

Absent was Paul Leach, Orleans.

The Dennis Town Committee's decision was filed with the Town Clerk on April 26, 2012. The appeal was entered with the Commission on May 1, 2012, within the 10-day appeal period.

Copies of the Appeal Petition with attachments, Town's Decision, Application, Plans and Minutes from the Dennis Town Committee's hearings were distributed to the Commissioners for review prior to the hearing.

Prior to initiating the public hearing, Chairman Lomenzo announced that he would be presenting the report of the Dennis Town Committee and requested that another member of the Commission be elected to act a temporary chairman to conduct the public hearing.

On motion of Carrie Bearse, seconded by William Collins; Lawrence Houghton of Brewster was unanimously elected to conduct the public hearing on Appeal 2012-2.  
(Vote 5-0)

### **Applicant's Presentation:**

Michael D. Ford of Harwich, addressed the Commission on behalf of the Applicant's application. He identified the application as being for a Certificate of Appropriateness to expand an existing deck on a single-family dwelling located within historic district at 30 Highland Road, East Dennis near Sesuit Harbor. He stated that the existing dwelling had been constructed in 1995 and that the expansion included a larger deck with a fireplace, chimney, windbreak and a handicap ramp for the Applicant's daughter.

He reviewed the prior history of the project by stating that that in February the Applicant had requested and received a Certificate of Exemption for the project. He indicated that construction proceeded under the Certificate of Exemption. He reported that in March, the Applicant requested a modification in the location of the fireplace and a squaring off of the deck. He indicated that at about the same time, the Appellants sent a letter to the Dennis Historic District Town Committee protesting the exemption status of the project and submitted photographs showing the deck as being visible from various public locations. He reported that as a result, the Dennis Town Committee denied the request for modification and the Applicant was advised that an application for a Certificate of Appropriateness would be required. As requested, the Applicant filed an application for a Certificate of Appropriateness and after two public hearings in April, (4/11/12 & 4/25/12), over the protest of the Appellant; the Dennis Town Committee approved the Certificate of Appropriateness that is the subject of this appeal (Appeal No. 2012-2) to the Regional Commission.

Mr. Ford stated that at the Dennis Town Committee required the Applicant to submit a landscape package that would provide additional evergreen screening for the project. He showed the Commissioners the landscape plan and a series of photographs that indicated the relative visual obscurity of the deck as seen from the road and other various public vantage points. He claimed that the Certificate of Exemption had been properly issued in February and had never been withdrawn or appealed. He stated that the only matter for review was the appropriateness of the modifications requested in March and approved after a full and proper public hearing review in April. He described the requested modifications to the deck and fireplace location.

He claimed that the Dennis Town Committee properly determined that the features of the proposed deck as modified during construction are appropriate under the Historic District Act for the 1995 residential dwelling. He stated that many houses in the neighborhood have similar large decks. He suggested that the Dennis Town Committee acted with in its authority and did not exercise poor judgment or act in an arbitrary, capricious, or erroneous manner in approving the application, but acted with an abundance of procedural thoroughness and careful examination of the application. He requested that the Commission uphold the Dennis Town Committee's granting of the Certificate of Appropriateness.

Commissioner Geganwarth stated that he had visited the site and asked for a clarification of the property lot lines and the location of the abutter's lot line. Mr. Ford showed the

Commissioners a portion of the Town of Dennis Assessor's Map and pointed out the different property locations.

**The Appellant's Presentation:**

Attorney David S. Reid of South Yarmouth addressed the Commission on behalf of the Appellant. He began his presentation by showing the Commissioners a Google earth aerial photograph of the site that was taken in March during the construction of the deck. He pointed out the location of his client's residence on the southerly sideline of the Applicant's property. He showed additional photographs that supported his client's claim that the deck had been visible from the street and other public locations.

He showed the March 20, 2012 letter from the Chairman of the Dennis Town Committee to his client, Heather Peters, in which reference to 972 CMR Section 3.04 was made for the issuance of the Certificate of Exemption. He criticized the letter for appearing to reference a special deck exemption feature, which he pointed out, does not exist. He reported that the Certificate of Exemption was issued by the Chairman and claimed that the Dennis Town Committee, at the April 11, 2012 public hearing, was surprised and voiced opposition to the Chairman's action in granting the Certificate of Exemption for a project that in his client's photographs appeared to be so large and very visible.

He reviewed the dimensions of the deck and the increase of the proposed eight-foot addition to the south toward his client's property. He highlighted the twenty-five foot height above the street elevation and the seventeen-foot height of the proposed fireplace and chimney above the existing grade. He pointed out the stainless steel cable railing and suggested that the proposed structure was too large and inappropriate for the area.

He used photographs of other decks that existed in the neighborhood to suggest that the proposed project was inappropriate for the area. He claimed that none of the other decks had the fireplace, chimney or windscreen architectural features. He indicated that only one of the existing neighborhood decks had a stainless steel cable railing.

Mr. Reid stated that the Dennis Town Committee demonstrated arbitrary, capricious and erroneous conduct in acting on the application. He suggested that the committee member statements made at the April 11, 2012 public hearing were inconsistent with the unanimous vote to approve the project that was taken on April 25, 2012.

He again highlighted the architectural features of the proposed deck, fireplace, chimney and wind screen wall and claimed that they were not compatible with the exterior architectural features of the house or the historic district.

He requested that the determination of the Dennis Town Committee be reversed and the application be disapproved.

### **The Town Committee's Presentation:**

Peter Lomenzo, as Chairman of the Dennis Town Committee, addressed the Commission to provide the basis of the Dennis Town Committee's decision to approve the requested Certificate of Appropriateness for the modifications to the deck located at 30 Highland Road, East Dennis.

He reported that the Dennis Town Committee received a request for a Certificate of Exemption for the project in early February. He reported that as the Town Committee's designee, he reviewed the application and determined that the proposed project would not be visible from the road or a public place. As was the common practice and procedure, he issued the Certificate of Exemption for the proposed additions to the deck.

In March, after a substantial portion of the project had been completed, the Appellants complained that the project had become very visible and requested that something be done. Mr. Lomenzo indicated that an investigation showed that much of the screening vegetation had been removed during the construction work and that the project had become subject to public view.

Mr. Lomenzo reported that while the investigation was taking place, the Applicant had submitted an amendment request for modifications to the project. He indicated that based on the changes to the projects visibility, the request for the approval of the amendment was rejected and the Applicant was advised that Certificate of Appropriateness with a full public hearing and proper notice to abutters would be required.

On April 11, 2012, the first public hearing took place at which the members of the Dennis Town Committee expressed concern for the visibility issue raised by the Appellants and the matter was continued so that an on site viewing of the project could take place.

On April 25, 2012, the Dennis Town Committee, with all members present, held a publicly scheduled on site visit at which the Applicant, Appellants, and other interested neighbors were in attendance. He reported that the visit included going on the deck and examining its visibility from the public vantage points of Harbor Road and the East Dennis Yacht Club parking lot.

Later that evening, at its regularly scheduled public meeting, the Dennis Town Committee continued the process of reviewing of the application. The Applicant submitted a revised landscape plan that included adding four (4) Japanese Black Pines to screen the deck and reduce its visibility. After examining the proposed landscape plan, the Dennis Town Committee, as a condition of its approval required the Applicant to use 6-8 foot Leland Cypress and increase to eight (8) the number of tree plantings with two placed on the southerly side toward the Appellant's property.

Mr. Lomenzo concluded his report by expressing the opinion that the Dennis Town Committee did not exceed its authority in granting the Certificate of Appropriateness. He stated that the review was thorough with careful and methodical steps, which included a

view of the site and the deck. He stated that the Dennis Town Committee had a clear picture of the decks size, appearance and visibility and voted unanimously to issue the Certificate of Appropriateness.

Commissioner Collins asked if the Dennis Town Committee considered the whole deck in its granting of the Certificate of Appropriateness.

Mr. Lomenzo stated that the application was for the whole deck and while much of the focus was on the issue of visibility, the whole deck was found to be similar to other decks in the area and not incompatible.

Commissioner Houghton asked if the deck had been completed at the time of the Dennis Town Committee's site visit.

Mr. Lomenzo indicated that while the site looked like a construction zone, the project was nearly complete.

**Public Comment:**

Acting Chairman Houghton asked for public comment on the appeal.

Heather Peters, Appellant, asked to address the Commission.

Acting Chairman allowed her to address the Commission.

Ms. Peters stated that she had asked questions about the permits for the gas installation and other construction issues that were not answered at the Dennis Town Committee hearing. She reported on statements made by the members of the Dennis Town Committee at the April 11, 2012 hearing in which they voiced opposition to the issuance of the Certificate of Exemption and suggested that the deck, with its extra features, did not appear to be appropriate for the district.

Margot E. Peters, wife of Appellant Todd Peters, stated that the deck had become so visible that the house was being commonly referred to as the "deck house."

Todd Peters, Appellant, stated that he felt that the Chairman of the Dennis Town Committee should not have issued a permit for the project.

**Applicant's Rebuttal:**

Attorney Ford stated that the main issue in this matter is the public's view of the deck and its features and not the Appellant's private view. He claimed that record shows that the Dennis Town Committee's made a reasonable effort to properly address the Appellant's concerns by holding two public hearings and a site visit that resulted in changes that included a substantial landscape screening plan.

He stated that the standard for determining appropriateness is set forth in Section 10 of the Act, which he cited as listing the "historical value and significance" of the building, which in this case he said there was none. He went on to say that the next factor was "the general design, arrangement, texture, material and color of the features and the relationship of such factors to similar factors of buildings and structures in the immediate surroundings," which he suggested did not apply because the vegetated screening prevented the public's view of the project's exterior architectural features.

He requested that the Dennis Town Committee's determination be affirmed.

**Appellant's Rebuttal:**

Attorney Reid stated that the issue is not visibility from a way or public place, but whether or not, the proposed deck with its fireplace, chimney and windscreen is appropriate for its location. The test under Section 10 of the Act requires an examination of the structural features and determination of their compatibility with the goals and purposes of the Historic District Act. He suggested that visibility was an issue for the Certificate of Exemption and not the proper consideration for the issuance of a Certificate of Appropriateness.

He requested that the decision of the Dennis Town Committee be reversed and the application be denied.

**Town Committee Rebuttal:**

Mr. Lomenzo stated that "public visibility" is an important issue in determining appropriateness under the Historic District Act.

He characterized the work of the Dennis Town Committee as being thorough. He suggested that time was taken to investigate the issues raised by the Appellants. He stated that the members of the Dennis Town Committee were familiar with the site of the proposed deck and had reviewed similar decks that had been approved in the neighborhood. He pointed out that each member had visited the site, observed the neighborhood and the nearly completed deck before voting unanimously to issue the Certificate of Appropriateness.

**Commission Discussion:**

Mr. Gegenwarth of Yarmouth began the discussion by stating that decks with walls are a common feature for privacy. He observed that the seventeen - foot height of the fireplace chimney is largely made up of foundation to support the stone fireplace. He added that there were building codes that regulated the height of chimneys for safety reasons. He indicated that the choice of stainless steel wire for the railing was a better choice than wood, because it caused the deck to be far less visible.

He stated that construction projects do require a significant removal of trees and other vegetation in order to properly build a foundation and erect the new structure. He indicated that the substantial vegetation plan is both reasonable and appropriate for the project. He confirmed that he had visited the site, walked on the deck, observed the nearly completed work. He concluded by stating that he did not see where the Dennis Town Committee made an error in granting the Certificate of Appropriateness.

Carrie Bearse of Barnstable stated that she felt that the Dennis Town Committee did properly handle the review of the project. She stated that the Dennis Town Committee invited the neighbors to participate in both the public hearings and the site visit. She expressed the opinion that the procedure appeared to have been correct and the decision a proper determination under the Act.

Mr. Collins indicated that he had visited the site and had difficulty seeing the deck behind the existing vegetation. He stated that the obscurity of the project was an important factor in the consideration of the projects appropriateness. He concurred with Mr. Gegenwarth and Ms. Bearse's opinion that the Dennis Town Committee did not act in an arbitrary, capricious or erroneous manner in granting the Certificate of Appropriateness.

He stated that the Chairman's granting of the Certificate of Exemption was the same procedure that is followed in Sandwich. The Chairman is authorized by the Town Committee to act as "the designee." (See CMR Sec 3:01) It appears that once the area was cleared of vegetation, the Dennis Town Committee acted properly in refusing the amendment and requiring the public hearings and a Certificate of Appropriateness.

Mr. Houghton stated that he concurred with his fellow Commissioners. He expressed the opinion that it was unfortunate that the project began with a Certificate of Exemption, but the Dennis Town Committee appeared to have properly recovered, when the visibility became apparent. He acknowledged that he had visited the site and believed that the Dennis Town Committee acted properly and within its authority in approving the application for a Certificate of Appropriateness.

He called for a motion to vote on the appeal.

Mr. Collins moved, seconded by Mr Gegenwarth to affirm the decision of the Dennis Town Committee in their determination to issue a Certificate of Appropriateness for the proposed deck expansion project located at 30 Highland Road, East Dennis, Massachusetts.

The motion carried by a vote of 4-0-1. (Collins, Bearse, Houghton & Gegenwarth in favor and Lomenzo abstaining)

**The Commission findings:**

The Commission found as follows:

The Dennis Town Committee did not act in an arbitrary, capricious or erroneous manner in granting a Certificate of Appropriateness for the proposed deck expansion to be located at 30 Highland Road, East Dennis, Massachusetts.

The Dennis Town Committee did not exceed its authority in granting a Certificate of Appropriateness for the proposed deck expansion project to be located at 30 Highland Road, East Dennis, Massachusetts.

The Dennis Town Committee did not exercise poor judgment in granting a Certificate of Appropriateness for the proposed deck expansion project to be located at 30 Highland Road, East Dennis, Massachusetts.

The Dennis Town Committee decision of April 25, 2012, to issue a Certificate of Appropriateness to the Applicant should be affirmed.

**Commission's Determination:**

As to Appeal #2012-2, the Decision of the Dennis Town Committee in granting a Certificate of Appropriateness for a deck expansion with fireplace and chimney, windscreen and ramp located at 30 Highland Road, East Dennis, Massachusetts is affirmed. (4-0-1).

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.

Dated: June 22, 2012

Lawrence Houghton., Acting Chairperson