

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

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Tel: 508-775-1766

YARMOUTH TOWN CLERK  
'13FEB14M8:25 REC

**Kevin Johnson and Tia Decoito, Appellants**

**Vs.**

**Decision for Appeal No. 2012-8**

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

On Tuesday, January 29, 2013 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 # 2012-8 filed by Kevin Johnson and Tia Decoito seeking reversal of the Yarmouth Historic District Committee's denial of a Certificate of Appropriateness for an Appropriateness for an Black vinyl coated fence located at 12 Musket Lane, Yarmouth Port, Massachusetts.

Present were Lawrence Houghton, Brewster; William Collins, Sandwich; Carrie Bearse, Barnstable; Richard Gegenwarth, Yarmouth; James R. Wilson, Commission Administrative Counsel; and Kevin Johnston, Appellant/Applicant.

Absent were Paul Leach, Orleans and Peter Lomenzo, Dennis.

The Yarmouth Town Committee's decision was filed with the Town Clerk on November 29, 2012. The appeal was entered with the Commission on December 6, 2012, within the 10-day appeal period.

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

Chairman Peter Lomenzo being absent, Lawrence Houghton of Brewster was duly elected (4-0) as Chairman pro temp to conduct the public hearing.

A letter from Karen Fenton of 21 Musket Lane was distributed to the Commissioners.

**The Appellant/Applicant's Presentation:**

Kevin Johnston addressed the Commission on behalf of the Applicant's appeal. He stated that Pro Fence of Upper County Road, Dennis for the restraint and protection of their dog, had installed the fence. He indicated that they had relied on the installer to obtain proper approval from the Town of Yarmouth and claimed that the installer had stated that no permit would be required. He indicated that the chain link was chosen to provide an

unobstructed view with security and protection of the property. He presented a petition of support from his neighbors and showed pictures of other chain link fences that had been erected at other locations within the historic district. He claimed that the fence was appropriate for the site.

Robert Guarino supported the Applicant by suggesting that it appeared to have been an innocent mistake by the Mr. Johnston and that the family had recently sustained a tragic loss of two grandchildren.

Mr. Collins of Sandwich asked about the large RV that appeared to be in violation of a town by-law.

Mr. Johnston indicated that the RV had triggered the problem of enforcement by the building department and had revealed the improper erection of the chain link fence by Pro Fence a year earlier. He stated that the RV was going to be removed from the property and parked at an off premises and more suitable location.

Mr. Johnston suggested that a screening of the fence with suitable vegetation would perhaps solve the problem for all interested parties and might permit the fence to remain in place.

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

Richard Gegenwarth asked Leslie Peat, a member of the Yarmouth Town Committee, to present the Yarmouth Town Committee reasons for denying the application.

He stated that the matter of the erection of the fence with out a Certificate of Appropriateness had been brought to the Town Committee's attention by a neighbor and that the Town committee had along standing policy of discouraging and not approving chain link fences.

He pointed out that the fence was located on both sides of the house and were very visible.

Ms. Bearse asked for a clarification of the Town Committee's action on the application. She pointed out that the Minutes appeared to indicate that the matter was "tabled" until the January 28th meeting and the copy of the Application & Determination indicated that it had been "denied."

Mr. Peat reported that the Applicant had returned to the meeting and indicated that he did not wish to have the matter postponed. He indicated that then the Town Committee voted and signed the denial of the Application.

Ms. Bearse suggested that the vote to deny ought to have been entered into the Minutes and that perhaps a remand would give the Applicant an opportunity to present a modification that would be acceptable to the Yarmouth Town Committee.

Mr. Collins agreed and suggested that a remand would give the Yarmouth Town Committee a chance to correct the Minutes and the Applicant a chance to discuss the matter with Pro Fence to try and come up with a better solution.

**The Appellant's Rebuttal:**

Mr. Johnston again stated that he felt that the fence with suitable screening would be appropriate and that he did not wish to remove it. He claimed that the neighborhood was not opposed to the fence and that other people had been allowed to have chain link fences for their homes. He suggested that it would be a hardship to remove and replace the fence.

**The Town Committee Rebuttal:**

Mr. Peat questioned the location of other chain link fences within the district and suggested that the photographs were from Dennis and Brewster and not Yarmouth.

He indicated that the Town Committee never discussed a screening option. He expressed the opinion that a remand may not be successful because of the general policy against chain link fences and the prominent location of the fence.

**The Commission Discussion:**

Ms. Bearse began the discussion by stating that she felt that annulling and remanding was a proper decision by the Commission. She indicated that the error in the Minutes gave the Commission jurisdiction of the matter and that an opportunity to have the Applicant review the problem with Pro Fence might yield an acceptable solution.

William Collins of Sandwich stated that he agreed with the suggestion and expressed hope that the matter could be resolved.

Mr. Houghton suggested that he felt that it was a proper procedure for the appeal and that he could not fault the Town Committee's action, he felt that the error in the Minutes might provide an opportunity to work out a compromise.

He called for a motion to vote on the appeal.

Ms. Bearse moved, seconded by Mr. Collins, to annul the determination by the Yarmouth Town Committee and remand the Application to the Town Committee for further review and consideration.

The motion carried by a vote of 3-0-1. (Bearse, Collins, & Houghton in favor and Gegenwarth abstaining)

**The Commission Findings:**

The Commission found as follows:

The Yarmouth Town Committee did not properly record its action in denying the application in its Minutes.

The Yarmouth Town Committee decision to deny a Certificate of Appropriateness to the Applicant should be annulled.

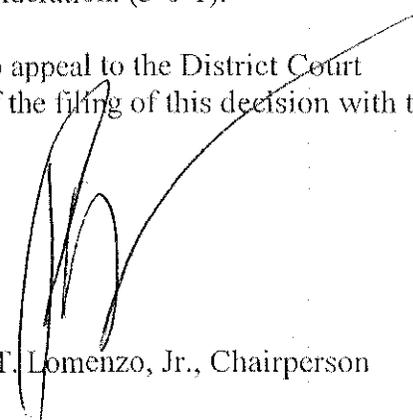
The Application should be remanded to the Yarmouth Town Committee for further review and consideration.

**Commission's Determination:**

As to Appeal #2012-8, the Decision of the Yarmouth Town Committee in denying a Certificate of Appropriateness for a chain link fence is annulled and the matter remanded to the Town Committee for further review and consideration. (3-0-1).

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.

Dated: February 1, 2013



Peter T. Lomenzo, Jr., Chairperson