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

P.O. Box 140, Barnstable, Massachusetts 02630-0140
Tel: 508-744-7586

Peter Hughes and Diane Owen Hughes, Appellants

Vs.

Decision for Appeal No. 2014-1

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

On Tuesday, July 1, 2014 at 1:30 P.M., the Regional Commission held a public hearing at the Yarmouth Town Hall Hearing Room, 1146 Route 28, South Yarmouth, Massachusetts, on Appeal No. 2014-1 filed by Peter Hughes and Diane Owen Hughes seeking reversal of the Yarmouth Historic District Committee's granting of a Certificate of Appropriateness to the Town of Yarmouth, for the installation of new playground equipment, replacing the backboard and hoop, and refurbishing the hardtop for the existing basketball court, all to be located at 460 Route 6A, Yarmouth Port, 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; Bruce P. Gilmore, Yarmouth Town Counsel and Attorney for the Applicant, Patricia Armstrong, Yarmouth Parks & Recreation Director; Joseph DeFour, Representative for the supplier of the proposed equipment, M.E. O'Brien and Sons, Inc.; Peter Hughes and Diane Owen Hughes residents of the Regional Historic District and residing at 455 Route 6A, Yarmouth Port, Massachusetts, Appellants.

Absent was Paul Leach, Orleans.

The Yarmouth Town Committee's decision was filed with the Town Clerk on May 13, 2014. The appeal was entered with the Regional Commission on May 21, 2014, within the 10-day appeal period.

It was announced by Chairman Peter T. Lomenzo, Jr. that prior to the public hearing each of the Members of the Commission had visited the site and were familiar with the location of the proposed project and that copies of the Appeal Petition, Town's Decision, Application, Plans, letters & correspondence submitted to the Yarmouth Town Committee and Minutes from the Yarmouth Town Committee's public hearings of April 28, 2014 and May 12, 2014 had been distributed to the Regional Commissioners for their review.

Applicant's Presentation:

Attorney Bruce P. Gilmore of 99 Willow Street, Yarmouth Port, Massachusetts, addressed the Regional Commission on behalf of the Town of Yarmouth's Application. He stated that the Yarmouth Old King's Highway Regional Historic District Committee initially approved the placement of the existing playground equipment for the site in 1990. He pointed out that equipment was twenty-four years old and appeared to be in a state of disrepair and a deteriorating condition.

He claimed that similar upgrades in playground equipment had been approved for playgrounds that were located within the Old King's Highway Regional Historic District in Barnstable and Dennis. He indicated that the same designs and materials would be incorporated into the approved Yarmouth Port children's playground project.

He stated that the playground project had been in the planning stage and under public review for two years and that neighborhood and public comment had been sought by the Town of Yarmouth throughout the long process.

He denied that there had been any procedural prejudice to the Appellants or their neighbors.

He suggested that the Appellant's claim that a letter of opposition from a neighbor, Chris and Susan Koelsch, dated April 26, 2014 (copies of which had been provided to the Regional Commissioners) had been "suppressed" by the Yarmouth Town Committee was without merit. He stated that the failure of the letter to have been given to the Town Committee members had been the result of an unintentional staff oversight. He asserted that the issues addressed in the letter such as the public safety concern of a potential of increased vehicle traffic and the possible increase use of the property as a playground were zoning and use factors that were beyond the scope of the Yarmouth Historic District Committee's aesthetic review process.

He reported that during the two year planning and review process many of the abutters and neighbors requested restrictions, changes and adjustments had been incorporated into the final playground upgrading project. As an example, he stated that the new equipment would remain within the existing footprint of the present playground area.

He asked Patricia Armstrong, Yarmouth Parks & Recreation Director, to describe the plans, composition of the materials and other related issues of the proposed playground project to the Regional Commissioners.

Director Armstrong reviewed the plans for the upgrading of the Yarmouth Port Common Playground. She stated that the older existing equipment did not meet current safety requirements and that the composite material that would be used was designed to protect the children from the injuries associated with falls and other related risks from playground activities.

She indicated that, in response to the expressed request of the abutters and neighbors, the location and square footage of the existing playground would not be changed and the existing open space area of the park would remain open for ball playing, Frisbee and other similar activities. She stated, that while the initial upgrade proposal would have increased the basketball court to a full size with two hoops, the plan was reduced to only replacing the existing single hoop to accommodate the wishes of the neighbors. She indicated that, as existing trees fall and funds became available, hardwood shade trees and small benches would be added to the park in a manner that would not encroach upon the park's open space.

She described the playground equipment as being made of a composite material (High-density polyethylene) that is designed to look like wood. Samples of the material were shown to the Regional Commissioners. She indicated that while the equipment can be obtained in many bright colors, the proposal approved by the Yarmouth Town Committee would be in soft tan, brown and green colors.

She described the ground cover under the playground equipment as being made of Fibar, which is a safety engineered shredded wood fiber designed to absorb the impact of a child's fall from the equipment.

She stated that the playground would have two sizes of equipment that would service two age groups with a section for very young children and another to accommodate older children.

She expressed the opinion that the proposed upgrade would be an improvement for the neighborhood and provide a much safer environment for the children residing on the north-side of Yarmouth.

Commissioner Collins asked for a clarification of the number public meetings and the amount of neighborhood input that had taken place.

Director Armstrong reported that during the two year lead up to the filing with the Old King's Highway Regional Historic District Committee, four general informal public meetings had taken place at the Yarmouth Port Congregational Church. She reported that the Yarmouth Town Meeting had approved the use of CPA Funds for the project and that public informal meetings had taken place with the Old King's Highway Regional Historic District Committee prior to the formal filing of the Application in which notice was sent to all abutters and parties in interest. She indicated that notices were twice placed in newspapers.

Chairman Lomenzo asked for clarification of the location of the new playground equipment and confirmation that the area would not increase the current foot print of the playground.

Director Armstrong pointed out the area on the Applicant's submitted plot plan and stated that during an earlier informal public meeting, a much larger proposal had been considered but abandoned because of neighborhood opposition.

Chairman Lomenzo asked if the appearance, type of material and its color had been discussed with the neighbors and the Yarmouth Old King's Highway Regional Historic District Committee.

Director Armstrong indicated that sample materials and colors had been shown to the neighbors and the Yarmouth Town Committee. She reported that an earlier sketch had shown the equipment with bright red and yellow colors which were changed to more acceptable colors of tan, brown and green.

She indicated that the issue of additional landscaping plans was raised during the review process. She stated that such an additional submission had been rejected, because additional landscaping improvements had not been funded and therefore she felt could not be promised. The project was limited to the plans and specifications as submitted and approved by the Yarmouth Town Committee.

Appellants' Presentation:

As abutters and residents of the regional historic district, Peter Hughes and Diane Owen Hughes of 455 Route 6A, Yarmouth Port, addressed the Regional Commission in support of their appeal.

Mr. Hughes stated that their family had lived across the street from the site of the proposed playground construction for thirty-three years.

He claimed that the Yarmouth Town Committee acted without regard for due process and without acting with due diligence in making its determination to approve the application. He specifically assigned as grounds for the appeal a claim that the Yarmouth Town Committee failed to follow Section A, Clause 8, of the Commission's Guidelines, which reads as follows:

"Committee members shall familiarize themselves with each application and site prior to any determination."

In support of this claim, he charged that the recent twenty-two year history of the playground site had been ignored by the majority of the Town Committee. He suggested that the application was both incomplete and misleading. He argued that replacing the previously existing children's equipment with substantially the same equipment at the identical location would be inappropriate and only result in a repeat of the same problems that the prior equipment had caused for the neighborhood.

He challenged the importance of aesthetics in the approval process and suggested that historical appropriateness in setting would be a more objective basis for a determination

of appropriateness. He asserted that the long and significant history of the Yarmouth Town Common usage had been ignored by a majority of the Town Committee in making the decision to approve the application for refurbishing the playground equipment.

He asked his wife, Diane Owen Hughes to present a history of the Yarmouth Town Common.

She described the usage of the area from the beginning of the Town's settlement through to today's park and playground activity. She stated that the original Town Common was much larger, extending all along Center Street to Bass Hole, and had served as the ancient center of activity for the Town. She claimed that the Town's militia had trained on the Common and the Declaration of Independence had been approved by the Town at the site in June of 1776.

She pointed out and highlighted with an 1880 Map and pictures, the Town Common's reduction in size and changes to the area which included the relocation of the Congregational Church from the site. She noted with old photographs a 250th Celebration of the site that took place in 1889. She described with other photographs many of the historic houses that border the park and children's playground.

She reported that when the Congregational Church relocated to the west on Route 6A, the Town Common site was acquired by the Thatcher family and the former church building was used as a post office, social club and general store until it was destroyed by fire in 1902. In 1924, Louis Thatcher returned the ownership of the property to the Town "...to be used as a common and playground." She indicated that in 1929 the site was named the *Old Church Green*.

She reported that in the 1950s, playground equipment and the basketball court were added to the site. In 1990, the playground equipment was replaced with large plastic and wooden structures which she characterized as dividing the site and bringing destruction to the historic appearance of the area.

She stated that prior to the addition of the playground equipment in 1990, the area had been used as an adult gathering place for fairs and other community events. She claimed that the addition of the children's playground equipment had limited these activities and had caused an increased intensity of public usage that threatened the neighborhood with unpleasant activities such as children urinating in the bushes and cars running onto people's lawns.

She stated that the neighbors had joined together to fence the property and limit the alleged harm being caused by the increased intensity of usage. She claimed that with pressure from the neighbors, former Town officials had removed some of the larger children's playground equipment and agreed to allow the remaining equipment to deteriorate and not be replaced.

She concluded by referring to the preservation purposes of the Old King's Highway Regional Historic District Act and arguing that replacing the children's playground equipment would be a step back from the intent of the Act, which she inferred to be restoring the open field appearance of a large public park.

Mr. Hughes claimed that the size of the site was too small for the proposed children's playground and that it would create a traffic safety problem by attracting too many visitors to the area.

He argued that the Town Committee had not familiarized itself with the site and that the application was substantially incomplete because it failed to include a traffic survey, an archeological survey, soil study, and a detailed landscape plan.

He claimed that the Town Committee had acted in an arbitrary and unfair manner by allowing the use of plastic, while requiring other applicants that appeared before the Committee to use wood on their houses and other structures.

He asserted that the Yarmouth Town Committee unfairly suppressed a letter of opposition from Chris and Susan Koelsch, an abutter owning property at 8 Old Church Street, Yarmouth Port, Massachusetts that had set forth the same points that had presented to the Town Committee.

Commissioner Collins of Sandwich asked Mr. Hughes for a clarification of the charge that the Town Committee did not familiarize itself with the site.

Mr. Hughes responded by stating that the Town Committee did not make a formal site visit, which had been proposed by one of its members at the April 28th Meeting.

Commissioner Collins asked for clarification of the charge of the incompleteness of the application.

Mr. Hughes responded by stating that it was the failure to provide a proper full landscaping plan, dimensional plans and surveys.

Commissioner Collins asked if the charge of applying lower standards referred to the approval of artificial materials instead of wood and Mr. Hughes answered in the affirmative.

Commissioner Collins asked for a clarification of the charge that the abutter letter of opposition had been suppressed by the Town Committee.

Mr. Hughes stated that it had been submitted two days before the April 28th Meeting by email and that it was mentioned in his presentation to the Town Committee and as being in the packets for the Members, but by omission was not actually provided to or read by each of the Town Committee Members until after they had acted on the application.

Chairman Lomenzo asked Mrs. Hughes if she had presented her presentation to the Town Committee at the April 28th or May 12th public hearings.

Mrs. Hughes responded that she did not attend the hearings, but that her husband had attended and presented all of the historical information about the Town Common and playground to the Yarmouth Town Committee.

Chairman Lomenzo asked Mr. Hughes if he had seen the specification sheets that had been included in the Town Committee file.

Mr. Hughes responded by asserting that specifications kept changing and being modified during the process.

The Town Committee's Presentation:

Richard Gegenwarth addressed the Commission in support of the Yarmouth Town Committee decision to approve the proposed new Playground Equipment. He reported that the Town Committee had held four (4) public meetings - August 26, 2013, March 24, 2014, April 28, 2014 and May 12, 2014. He reported that the August 26, 2013 and March 24, 2014 public meeting were prior to the submission of an application. As is the general practice of the Town Committees, he indicated that the informal public meetings were to give general feedback from the Town Committee to a potential applicant, before going to the expense of submitting detailed plans and specifications. He reported that the informal public meetings were part of the regular scheduled public meetings and covered features such as size, design, placement, material and color of the proposed refurbishing of the children's playground equipment.

He indicated that there had been much discussion about the liability risk of personal injury law suits and the reasons for the design and types of synthetic material that were available and needed for a modern children's public playground.

He pointed out that wood often causes injury from splinters and that pressure treated wood causes chemical risks to the people touching it and the soil and ground water under it. He acknowledged that the Town Committee does generally require applicants to use natural wood instead of synthetic materials, but, he expressed the opinion that in the 21st Century, a public children's playground needed to be designed to be safe. He claimed that the design and material approved by the Town Committee had been tested, certified, and used for public playgrounds all across Massachusetts and the country.

He described the material to be placed under the children's playground equipment as being a foot deep and designed so that a child falling from a height of six feet would not be injured.

He reported that a few members of the Town Committee initially wanted sand to be used as a ground cover, but that after examining and learning more about the proposed ground

cover material and its safety features, the artificial wood chip based material had been found to be acceptable.

He confirmed that the Town Committee had been provided samples of the proposed synthetic wood material during the approval process. Samples of the product were shown to the Regional Commissioners to assist in the examination of the action of the Town Committee in approving the use of the product for the children's playground equipment.

He confirmed that at the public hearing on April 28th 2014, Mr. Hughes had presented his concerns and opposition to the proposed upgrade of the children's playground equipment and the history and background information about the Town Common.

He indicated that at the conclusion of the April 28th 2014 public hearing, he requested that the matter be continued so that accurate final elevation and a more detailed landscape plan could be presented before voting on the final application. He reported that satisfactory plans and details were submitted and the application was approved at the May 12, 2014 public hearing by a 3-2 vote.

He reported that the two (2) Town Committee Members that voted against the approval of the project indicated that they were not against upgrading the children's playground equipment, but favored the use of wood instead of the synthetic material.

Chairman asked the Commissioners for questions for the Town Committee.

Commissioner Bearse of Barnstable asked Mr. Gegenwarth that in view of the Appellants' charge "incompleteness" in the application process, could he confirm that at the time of the final vote, the Town Committee had sufficient plans and details to make its final determination.

Mr. Gegenwarth expressed the opinion that the application process was complete and that the Town Committee had been provided sufficient modified specifications and plans to consider and vote on the submitted application.

Mrs. Bearse asked if the color and other modifications to the project had been a part of the review process.

Mr. Gegenwarth confirmed that it had been a part of the process and that the colors were selected and approved by the Yarmouth Town Committee at the final meeting on May 12, 2014.

Mrs. Bearse asked if the accidentally omitted abutters' letter of opposition, a copy of which had been provided to each of the Regional Commissioners for their review, would have been read into the record of the public hearing.

Mr. Gegenwarth indicated that written correspondence was distributed by the staff to each of the Town Committee members as a part of their packet and would not be formerly read into the record at the public hearing.

Commissioner Houghton of Brewster asked if all of the Town Committee members had visited the property and were familiar with the site.

Mr. Gegenwarth indicated that all members had visited the site and were familiar with it.

Commissioner Collins of Sandwich asked if all four of the Town Committee Meetings had been properly advertised and posted as required by law.

Mr. Gegenwarth indicated that they had been properly advertised and publically posted as required by law.

Mr. Collins asked if proper notice had been sent to the abutters for the April 28th, 2014 public hearing as required under the Act.

Mr. Gegenwarth indicated that the notice had been sent to abutters, but indicated that he could not speak to the other meetings that were held by the Parks & Recreation Department or other town boards and agencies.

Mr. Collins asked if the Appellants had been given the opportunity to present all of their historical information to the Yarmouth Town Committee at the April 28, 2014 Public Hearing.

Mr. Gegenwarth confirmed that Mr. Hughes had thoroughly presented all of the information to the Yarmouth Town Committee for their consideration during the review process.

Commissioner Lomenzo asked Mr. Gegenwarth to confirm the maximum height of the playground equipment.

Mr. Gegenwarth stated that it would be fourteen feet eight inches tall.

Mr. Lomenzo asked for a clarification of the number of letters that were accidentally omitted by staff from the Town Committee member packets.

Mr. Gegenwarth indicated three (3).

Mr. Lomenzo asked if the people that had submitted the letters had attended either the April 28th 2014 or the May 12th 2014 Meeting.

Mr. Gegenwarth indicated that he did not know.

Public Comments:

Chairman Lomenzo asked for public comments on the appeal.

Jessica M. McConnell of 191 Route 6A, Yarmouth Port, Massachusetts stated that she was concerned about possible arsenic in the soil from the prior wooden playground equipment. She suggested that the Town Committee should require that a health and environmental study be done on the property.

Suzanne Courcier of 57 Wharf Lane, Yarmouth Port, Massachusetts stated that she was the Vice Chairman of the Yarmouth Town Committee and she wanted to emphasize for the record that the vote to approve the final application was a split vote. She acknowledged that the Town Committee's staff was shorthanded and suggested that a public reading of all letters, emails and other communications ought to be adopted as a future procedure for the Yarmouth Town Committee.

John Stuart of 182 Route 6A, Yarmouth Port, Massachusetts stated that he was an alternate member of the Yarmouth Town Committee and that he had attended all of the meetings. He indicated that it had been difficult to obtain accurate plans and specifications during the review process. He indicated that he felt that the final landscape plan ought to have provided more information about the proposed tree and other plantings for the site.

Patricia Sherman of 21 Minnetuxet Way, Yarmouth Port, Massachusetts, stated that she was a very active member in the community who over the years had supported the playground use at the site. She stated that Appellants and the neighbors had supported the children's playground for many years and disputed the Appellants' claim that the neighborhood had previously wanted the children's playground reduced or abandoned by the Town of Yarmouth.

Chris Koelsch owner of 8 Old Church Street, Yarmouth Port, Massachusetts stated that it was his April 26, 2014, email against the new playground equipment that had been omitted from the Yarmouth Town Committee packets. He stated that he and his wife had owned their property for five years and that they had been restoring it to its original grandeur. He wrote in the April 26, 2014 email that "We have been following the process, as much as possible, and have studied the project application form and were very much against the proposed plans for the following reasons..." He stated a concern for the risk to the public caused by an increased usage without sufficient parking, restroom facilities or an adequate impact study. He expressed support for a return to a former use of the site as a simple village common instead of being the site for a modern public children's playground. He repeated the Appellants' claim that the new equipment could create an increased intensity of use resulting in overuse and a loud and disruptive atmosphere for the neighborhood. He claimed that he had never been notified of the public meetings or asked for his opinion or thoughts about the project.

Scott Meyers of 43 Winter Street, Yarmouth Port, Massachusetts expressed support for refurbishing the equipment for the playground and stated that he and his family looked forward to spending time at the improved playground site.

Applicant's Rebuttal:

Attorney Gilmore began by addressing the claim by Chris and Susan Koelsch that they did not receive notice of any of the public meetings or hearings. He presented to the Commissioners a copy of the Town Committee's certified most recent tax list of abutters and a copy of mailing labels for the April 28th 2014 Public Hearing showing a label that was sent to: Koelsch, Susan Ann & Koelsch, Donald Christian, 8 Mill Race Road, Wilmington, DE 19810-2917. He indicated that similar mailing labels were used by the Park & Recreation Commission for their informal public meetings.

He presented samples of the ropes and synthetic materials that were to be used in the new playground equipment to the Commissioners.

He noted that the abutting way has been called Playground Lane, which he suggested could not be an historic misnomer.

He highlighted the public playground usage during the 20th and 21st Century, but concluded his remarks by narrowing the focus of the review by claiming that it is not about use, soil studies, engineering studies, or about traffic studies. He declared that it is about the appearance of the proposed improvements and their conformity to the requirements of the Old King's Highway Regional Historic District Guidelines. He requested that the Regional Commission sustain the decision of the Yarmouth Town Committee.

Appellant's Rebuttal:

Mr. Hughes renewed his criticism of the procedures of the Yarmouth Town Committee in reviewing and acting on the application. He referred to the dissenting minority comments of Suzanne Courcier and John Stuart as support for his claim that due process had been violated in the review process has been flawed by a lack of proper procedure in obtaining sufficient information to properly act on the application and that the two informal informational meetings violated due process by denying the public sufficient notice or sufficient opportunity to engage in the review process.

He suggested that the process of review was defective because of the going around to many other meetings with Town Boards, Committees and Town Meeting prior to the formal hearings on April 28th 2014 and May12, 2014.

He asserted that the soil study, engineering study and a traffic study were all significant informational gathering procedures that ought to have been included by the Town Committee in the review process.

He criticized the Town Committee for acting on the application when it was alleged that the Town of Yarmouth was in violation of the Historic District Act by erecting, without a Certificate of Appropriateness, similar structures at the Bass Hole playground. He claimed that the Town Committee exercised poor judgment in not acting on the alleged violation before taking final action on the pending application.

He criticized the Town Committee for its staffing delays in providing information and the records of its proceedings.

Town Committee Rebuttal:

Mr. Gegenwarth stated that he passed on making further comments.

Commission Discussion:

Chairman Lomenzo announced that the purpose of the deliberation is to determine if the Yarmouth Town Committee had (1.) exceeded its authority, (2.) exercised poor judgment, (3.) was arbitrary, (4.) was capricious, or (5.) was erroneous in its action.

He asked the Commissioners for their comments.

Lawrence Houghton of Brewster observed that many of the concerns presented and brought forward in the appeal are outside the purview of the Yarmouth Town Committee. The traffic problem is not part of the Historic District Act's regulative authority. The arsenic issue, while being a significant area for public concern, is outside the jurisdiction of the Historic District Act. The regulation of aesthetics and the appearance of buildings and structures in the setting in which it is going to be placed should be the main focus for a Town Committee's review of an application

However, he expressed concern for some of the Town Committee's procedural problems, such as the omitted letters, which he felt could have been avoided had they been read into the record. He stated that he believed that things could have been handled better.

William Collins of Sandwich stated that the role of the Regional Commission is not to second guess the action of the Town Committee and re-decide the issue that in this application is very complex. The Regional Commission is required to look at the action of the Town Committee and determine if it acted properly and fairly.

He stated that the appeal requests the Regional Commission to look at three specific things in the Town Committee's review process.

The first is the idea that the application was incomplete. He indicated, that after examining all of the materials submitted and listening to the testimony, he did not find the idea of "incompleteness" was proven or supported.

The second idea raised by the appeal is the theory that the Town Committee acted in an “arbitrary manner” by applying a lower standard to the application in its determination to approve the use of a synthetic material instead of wood for the children’s playground equipment. He expressed the opinion that each application must be judged on its own merits and requiring the use of wood on a shed or building is different from allowing the use of synthetic materials for a modern children’s playground.

The third item deals with the handling of the letter from Mr. Koelsch, which is characterized in the written appeal as “a suppressing” of a communication by the Town Committee. This choice of the word “suppressing” appears to infer a deliberate attempt to prevent a particular point of view from being heard. All of the facts that have been presented are to the contrary of this having happened. Unfortunately, this kind of a clerical mistake or accident does happen in processing applications.

An examination of the letter indicates that it would not have made a difference. The three issues raised in the letter were traffic safety which is not within the purview of the Act; a due process violation, which lacked substantiating support; and an historic preservation item, which was fully presented by the Appellants for consideration by the Yarmouth Town Committee.

He indicated that he felt that the Town Committee did not exceed its authority, but made an effort to stay within the purview its authority under the Act. He suggested that he did not see the action of the Town Committee as an exercise of poor judgment, but that a recommendation for better procedures for handling letters might be in order. He observed that he felt that effort was made to hear all views and the split decision does not mean that a poor judgment was made by the majority. He found that the Town Committee was not arbitrary, capricious or erroneous, but appeared to have worked hard with the community and the abutters to deal with the issues that were within their purview and before them.

Carrie Bears of Barnstable stated that she agreed with remarks of Mr. Collins and Mr. Houghton. She recommended that the Yarmouth Town Committee ought to change its procedures to have all letters and communications read in to the record at the public hearing.

Chairman Lomenzo of Dennis expressed concern for the apparent gaps in the procedures of the Yarmouth town Committee in handling the application. He suggested that the claim of an incomplete application was significant. He acknowledged that extensive efforts were made by the Town Committee to hear all parties and yet noted that the focus did not appear to be on the playground equipment itself. He indicated that he was not sure that he could find an error or mistake by the Town Committee.

He called for a motion to vote on the appeal.

Mr. Collins moved, seconded by Ms. Bearse, to affirm the decision of the Yarmouth Town Committee in their determination to issue a Certificate of Appropriateness for the installation of new playground equipment, replacing the backboard and hoop, and refurbishing the hardtop for the existing basketball court, all to be located at 460 Route 6A, Yarmouth Port, Massachusetts.

The motion carried by a vote of 3-0-2. (Collins, Bearse, & Lomenzo in favor and Houghton & Gegenwarth abstaining)

The Commission findings:

The Commission found as follows:

The Yarmouth Town Committee did not exceed its authority in granting a Certificate of Appropriateness for the installation of new playground equipment, replacing the backboard and hoop, and refurbishing the hardtop for the existing basketball court, all to be located at 460 Route 6A, Yarmouth Port, Massachusetts

The Yarmouth Town Committee did not exercise poor judgment in granting a Certificate of Appropriateness for the installation of new playground equipment, replacing the backboard and hoop, and refurbishing the hardtop for the existing basketball court, all to be located at 460 Route 6A, Yarmouth Port, Massachusetts.

The Yarmouth Town Committee did not act in an arbitrary, capricious or erroneous manner in granting a Certificate of Appropriateness for the installation of new playground equipment, replacing the backboard and hoop, and refurbishing the hardtop for the existing basketball court, all to be located at 460 Route 6A, Yarmouth Port, Massachusetts.

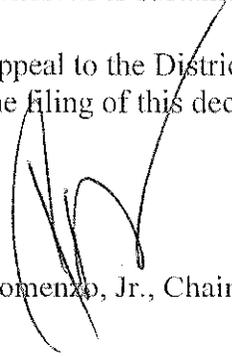
The Yarmouth Town Committee decision of May 12, 2014, to issue a Certificate of Appropriateness to the Applicant should be sustained.

Commission's Determination:

As to Appeal #2014-1, the Decision of the Yarmouth Town Committee in granting a Certificate of Appropriateness for installation of new playground equipment, replacing the backboard and hoop, and refurbishing the hardtop for the existing basketball court, all to be located at 460 Route 6A, Yarmouth Port, Massachusetts is sustained. (3-0-2).

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: July 22, 2014


Peter T. Lomenzo, Jr., Chairperson