

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

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TOWN OF SANDWICH

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**Justice Resources Institute, Inc., Applicant/Appellant**

**Vs.**

**Decision for Appeal No 2016-5**

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

On Tuesday, June, 14, 2016 at 1:30 P.M., the Commission held a hearing at the West Barnstable Community Building, 2377 Meetinghouse Way (Route 149), West Barnstable, Massachusetts 02668, on Appeal # 2016-5 filed by Justice Resource Institute, Inc., seeking reversal of the Sandwich Town Committee's decision on Application #16-33 to deny a Certificate of Appropriateness to Justice Resource Institute Inc. for construction of new 2 story plus basement building for schoolhouse with connected 1 story barn. Improve existing curb cut at Route 6A and construct drive way along centerline of existing way. Construct walkways, retaining walls, and parking area at lower elevation on property. Provide landscaping in accordance with landscaping plan to be located at 209 Route 6A, Sandwich, Massachusetts. Said property being shown on Town Map 67 as Parcels 13 & 52.

Present for the Old King's Highway Regional Historic Commission were Chairman Lawrence Houghton of Brewster; Paul G. Richard of Barnstable; William Collins of Sandwich; Phil Catchins of Dennis; Ronald Mgrdichian of Orleans; Richard Gegenwarth of Yarmouth; and James R. Wilson, Commission Administrative Counsel.

Present for the Applicant/Appellant Justice Resource Institute, Inc., a non profit Massachusetts Corporation with a mailing address of 160 Gould Street, Suite #300, Needham Heights, Massachusetts 02494, were Benjamin T. Losordo of 78 Route 6A, Sandwich, Massachusetts 02563, Attorney for the Applicant/Appellant, and Anne M. Michniewicz of 2 Hearthstone Way, Sandwich, Massachusetts 02563, Designer for the Applicant/Appellant.

**Background Information:**

Prior to the commencement of the public hearing, Chairman Lawrence Houghton announced the following:

- 1.) The Sandwich Town Committee's decision was filed with the Sandwich Town Clerk on May 12, 2016 and the Appeal No. 2016-5 filed with the Regional Commission on Monday, May 23, 2016, within the ten (10) day appeal period set forth in *Section 11* of the *Act*.
- 2.) The Regional Commissioners have viewed the Sandwich Community TV video of the May 11, 2016, Sandwich Town Committee meeting; Minutes of the March 23, 2016 meeting; Draft Minutes of the April 27, 2016, and May 11, 2016, meetings; received

copies of the relevant plans and submissions to the Sandwich Town Committee; copies of the Appellant's appeal petition with written submissions; denial by the Sandwich Town Committee; and written submissions by Attorney Brian Wall on behalf of Eugene and Colleen Theroux. The Commissioners are familiar with the site and location of the Appellant/Applicant's proposed school building complex.

**Applicant's Presentation:**

Attorney Benjamin T. Losordo addressed the Commission on behalf of the Applicant, Justice Resource Institute, Inc., and gave an overview of the project and its procedural history. He noted that the Sandwich Zoning By Law specifically permitted school uses throughout the Town. He pointed out that the 7.49 acres of land owned by the Applicant was subject to extensive conservation restrictions that limited the areas where development could take place. He described the effort to locate the proposed school buildings, parking areas, driveways and walkways within the developable land area. He showed the Commissioners the initial site plan and elevations for a larger complex to serve thirty-six (36) students with six (6) connected one story classrooms and its reduction in size to serve twenty-four (24) students with only four (4) classrooms.

He reviewed the many design features of the modified proposal and by using a series of exhibits, plans, photographs and renderings highlighted the changes from the original proposal to a two story with basement colonial style school building with a connected one story barn. He indicated that the new complex would be more setback and better screened from Route 6A. He suggested that the smaller building footprint, location changes for the buildings and the three (3) parking areas with improved lower grading would significantly reduce the complex's visibility and provide better protection for the preservation of the ancient features of Ox Pasture Path.

He asked Anne M. Michniewicz to review the proposed revised school complex and its relationship to other buildings located within the neighborhood.

Ms. Michniewicz stated that she had been designing buildings to be located within the historic district for thirty-two (32) years. She claimed that larger residences had been approved by the Sandwich Town Committee. She presented many examples of large residences that had been approved and constructed along Route 6A. She suggested that the design of the school house with its connected barn was very similar in appearance to the many large residences that exist throughout the historic district. She claimed that school buildings had been common in residential areas such as nearby Spring Hill. She noted that the building would have traditional features such a clapboard and cedar shingles and suggested that it would have a strong textured appearance that would be compatible with the historic neighborhood. She expressed the opinion that the Applicant had made a great effort to meet the historical needs of the Sandwich Town Committee and that the redesigned school complex would have a minimal visual impact as observed from Route 6A and the nearby residential properties.

Attorney Losordo challenged the Sandwich Town Committee's determination that the building would be "*too massive*" for its historic location by pointing out that larger residential and school buildings had been previously approved by the Committee. He claimed that the Committee had been *arbitrary and capricious* in its determination to deny the application on the basis of *size*. He suggested that Ox Pasture Lane was not a public way and that very few people had rights or an interest in the dirt roadway. He argued that the Committee had been *arbitrary and capricious* in determining that the school/barn complex was *inappropriate* for the immediate surroundings. He claimed that the Committee had been wrong and *erroneous* in its denial of the project and suggested that a proper analysis under *Section 10* of the *Act* would have resulted in the approval of the proposed school building/barn complex.

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

William Collins of the Sandwich Town Committee began his presentation by stating that the Sandwich Town Committee worked long and hard to find a way to be able to approve the proposed school complex and suggested that both the Applicant and the Committee had exhausted their ability to make the complex appropriate for its unique historic setting. He indicated that at the end of the extensive review process, the Sandwich Town Committee found that the modified project would be "*too massive*" and "*inappropriate*" for its immediate surroundings.

Mr. Collins responded to the appeal by addressing *Section 11* of the *Historic District Act* and its criteria for the Commission's consideration in judging the Sandwich Town Committee's action in reaching a final determination to deny a the Certificate of Appropriateness for the requested school complex.

He stated that the Committee followed the law and *did not exceed its authority*. He pointed out that *Section 10* of the *Historic District Act* directs the Committee in passing upon appropriateness to consider the "*setting*" and "*size*" of any proposed building or structure. He indicated that the Committee clearly followed this directive. He noted that the Committee avoided consideration of issues not covered under the *Act*, such as Zoning, traffic and taxation which had been raised during the many public hearings. He indicated that the Committee exercised due care to stay within the authority granted to the Committee under the *Act*.

Mr. Collins denied that that the Sandwich Town Committee had been *arbitrary or capricious*. He indicated that the application in multiple forms had been before the Sandwich Town Committee for more than a year. He suggested that the many site visits, meetings, discussions and the large quantity of information submitted and considered provided an abundance of facts and information upon which the Committee could render its decision. These related to the unique "*historic setting*" of Ox Pasture Lane and the proposed project's substantial changes to the area. The size of the proposed large school building and its supporting facilities were more than adequate to support the Committee's action in making a reasonable determination to deny the requested school/barn complex, as presented.

He denied that the Sandwich Town Committee *exercised poor judgment*. He claimed that the Committee carefully reviewed all the submitted information and the plans for the proposed school complex. He reported that the Committee examined the relationship of the proposed buildings to other buildings and structures in the neighborhood. He disputed the Applicant's claim that the example of large buildings being located within the regional historic district were significantly relevant to the setting of the *Ox Pasture Lane* area.

Mr. Collins denied that the Sandwich Town Committee had acted *erroneously*. He pointed out that each piece of land is unique and suggested that what may work in one place may not work in another. He stated that the Committee rejected the building as being *too massive* for the *setting* and suggested that the large complex with the extensive parking areas, walkways and roadways would overwhelm and permanently destroy the ancient character of the historic setting. He suggested that a large colonial home properly setback and facing an existing major paved roadway such as Route 6A is very different in visual impact than the proposed large school/barn building that is to be the only large building fronting on the narrow ancient *Ox Pasture Lane*. He emphasized the importance of visiting the site and observing the stakes indicating the proposed location of the building and the stakes close proximately to the ancient dirt roadway. He suggested that it is not an error to preserve important historic settings within the regional historic district. He asked the Commissioners to deny the appeal and affirm the Sandwich Town Committee's decision.

**Public Comment:**

Chairman Houghton asked for public comment on the appeal.

Attorney Brian J. Wall of 90 Route 6A, Sandwich, Massachusetts, addressed the Commission on behalf of Eugene and Colleen Theroux, direct abutters owning a residence at 207 Route 6A, Sandwich, who support the decision of the Sandwich Town Committee and oppose the appeal by Justice Resource Institute, Inc.. He began his presentation by asking Michael J. Borselli, P. E. of Falmouth Engineering, Inc. to describe their analysis of the volume of the buildings located at 201, 202, 205, 211, 212, 214 and 215 Route 6A in terms of foot print and volume to the proposed School facility. The result of the analysis was to indicate the proposed school facility would far exceed the volume of the nearby buildings.

Attorney Wall highlighted the massive aspects of the proposed school/barn building and its major landscape improvements with three paved parking areas, walkways, roadways and a large entrance and exit on to Route 6A. He pointed out the institutional appearance of the facility. He contrast this appearance with the existing size and features of the property and the rural residential modestly-sized homes of the immediately surrounding area.

He described the 350 year old history of *Ox Pasture* and *Ox Pasture Lane* and its relationship to the harvesting of salt hay by the earliest settlers. He noted the relatively

unchanged character of the nearby area and its importance as a significant historical setting and place for the Town of Sandwich.

He claimed that the Sandwich Town Committee properly applied the criteria of *Section 10 of the Act* in its determination that (1) the buildings were *too massive* for the historic location, (2) is adjacent to Ox Pasture Lane; and (3) is inappropriate for its immediate surroundings.

He asserted that the Sandwich Town Committee did not exceed its authority, exercise poor judgment, was not arbitrary, capricious or erroneous in its action of denying the requested Certificate of Appropriateness. He requested that the Commissioners affirm the denial by the Sandwich Town Committee.

Stephen Jones of 212 Route 6A, Sandwich, Massachusetts, stated that his family had been living across the street from the site of the proposed school facility for seventy-six (76) years and that he and his wife strongly opposed the paving and radical changes to *Ox Pasture Lane* and the massive building and facility that would be cramped into too small a space at 209 Route 6A. He expressed the opinion that that the project was incompatible with the historic farmland character of the neighborhood and that the Sandwich Town Committee had been correct in denying the project.

Kandi Zrebs of 201 Route 6A, Sandwich, Massachusetts, indicated that she supported the Sandwich Town Committee's denial of the project.

Judith A. Stainbrook of 2 Faunce Mountain Road, Sandwich, Massachusetts, stated that for eighteen years, she has enjoyed the many lovely historic neighborhoods of Sandwich and supported the preservation and protection these areas. She indicated that walking the *Ox Pasture Lane* area was an important part of appreciating the value of the area. She urged the Commission to sustain the Sandwich Town Committee's decision to deny the project.

Amanda Sawyer of 24 Crowell Road, Sandwich, Massachusetts pointed out the incompatible 1920s small bungalow style of the existing building with the massive colonial style of the school/barn and suggested that the project was too large for the left over developable space. She contrasted the many supporting elements shown on the landscape site plan with the needs of a simple residence and inferred that the Sandwich Town Committee had been correct in its decision to deny the project.

#### **Applicant's Rebuttal & Conclusion:**

Attorney Benjamin T. Lorsordo pointed out that the Sandwich Town Committee had already approved a number of buildings larger than the one under consideration in the appeal. He suggested that the property would be developed and that the lots have already been approved for two (2) or three (3) additional residential buildings. He indicated that the Applicant has gone to great length to preserve the character and condition of the

ancient *Ox Pasture Lane* and that the amount of paving and improvements to the roadway and parking areas have been minimized and well screened by the Applicant.

He claimed that the important view of the project should be from *Route 6A* and not from *Ox Pasture Lane*. He stated that the proposed school building had been setback a significant distance from *Route 6A*. He suggested that the proposed school was very small and would have a minimal visual impact on the area.

Anne M. Michniewicz stated that the proposed design was appropriate for the setting and claimed that it was no larger than other large residential buildings that had been approved by the Sandwich Town Committee.

#### **Sandwich Town Committee Rebuttal & Conclusion:**

William Collins stated that the Sandwich Town Committee appreciated the many changes put forth by the Applicant in an effort to find an acceptable school facility for the site. However he indicated that it became clear to the Applicant and the Committee that despite their best efforts, it was not possible to find an appropriate design for the location.

Chairman Houghton closed the public hearing and announced that the Commissioners would attempt to make a decision on the appeal. He announced that the public could remain to observe the deliberations.

#### **Commission Discussion:**

Chairman Houghton commenced the discussion by acknowledging the difficult challenge of considering such an historic *setting*. He asked the Commissioners for their thoughts about the appeal.

Commissioner Gegenwarth suggested that modifications might still be possible to make the project more acceptable. He expressed disappointment that the Applicant had exhausted its effort to find an acceptable solution to the proposed school facility needs. He indicated that he could not fault the Sandwich Town Committee for their final denial of the project, as presented.

Commissioner Mgrdichian indicated that after visiting the site, reviewing all the submitted material and hearing the oral presentations that he was satisfied that the Sandwich Town Committee had properly considered the *setting* and the relationship of the proposed school facility to its immediate surroundings. He indicated that he found the determination of appropriateness fell within the authority of the Sandwich Town Committee and that he could not fault their determination.

Commissioner Richard expressed concern about the legal status of *Ox Pasture Lane* and asked Mr. Wilson as the Commission's legal counsel to clarify its status and relevance as an ancient way. Attorney Wilson indicated that its relevance was that of being an important historic feature of the *setting*.

Commissioner Catchins indicated that he studied the ten (10) basic reasons set forth in the appeal and did not see a sufficient factual basis to reverse the Sandwich Town Committee. He indicated that he believed that the Committee had followed the proper procedure and had been thorough in their review of the setting and the application. He expressed the opinion that the Committee had not been arbitrary, capricious, or erroneous and had rendered a reasonable determination within its authority under the *Act*. He pointed out that each application is unique and must be judged on its own merits under the *Act*. He suggested that simply because a large building is approved in one location does not mean that large buildings need to be approved in all other situations.

Chairman Houghton indicated that he agreed with his fellow Commissioners that the Sandwich Town Committee had done a good job of trying to stay within the parameters of the *Act*. He suggested that the Committee did not appear to exceed its authority or exercise poor judgment. He found the action of the Committee to have been reasonable and not arbitrary, capricious or erroneous in its denial of the application as presented. Chairman Houghton noted the apparent consensus among the Commissioners and asked the Attorney Wilson to distribute a draft set of possible findings for consideration by the Commissioners.

The Commissioners reviewed the possible findings. Chairman Houghton asked if there were any additions, deletions or changes to the prepared draft findings. There being none offered, he asked for a motion to adopt the draft findings.

Mr. Gegenwarth seconded by Mr. Mgrdichian moved that the following findings be adopted and incorporated into the Commission's decision. The motion was adopted by a vote of 5-0-1. (Houghton, Richard, Gegenwarth, Catchins, & Mgrdichian in favor; None, opposed; and Collins, abstaining)

#### **The Commission findings:**

1. The denied project consists of a request to construct a new 2 story plus basement building for schoolhouse with connected 1 story barn. Improve existing curb cut at *Route 6A* and construct drive way along centerline of existing way. Construct walkways, retaining walls, and parking area at lower elevation on property. Provide landscaping in accordance with landscaping plan to be located at 209 *Route 6A*, Sandwich, Massachusetts.
2. The location of the project is in a rural residential area on the North side of *Route 6A* bisected by an ancient cart path way known as "*Ox Pasture Lane*."
3. The property is bordered on its north by "*Ox Pasture*" a 75 acre parcel of undeveloped upland and marshland that has remained nearly unchanged and in a relatively pristine condition for over 350 years.
4. The historical value and significance of this area and *Ox Pasture Lane* relate to the importance of salt hay and its harvesting with teams of oxen during the earliest days of settlement of the Town of Sandwich.
5. The surrounding area is generally characterized by modestly sized single family dwellings.

6. The large size of the proposed schoolhouse/barn building will be "too massive" for the location adjacent to ancient *Ox Pasture Lane* and the surrounding area.
7. The extensive expansion of asphalt parking areas, driveways, walkways and other supporting features for the large building will accentuate the building's massive appearance.
8. The proposed large schoolhouse/barn facility will be incongruous and inappropriate for its immediate surroundings.
9. The project is located within the Regional Historic District and the Sandwich Town Committee had jurisdiction and the authority under the *Act* to deny a Certificate of Appropriateness for the proposed building.
10. The relative size and incongruity of the proposed building with the features of other modest buildings and structures in the immediate surroundings indicate that the Sandwich Town Committee did not exercise poor judgment.
11. The site visits, large quantity of information submitted, the many written and oral opinions offered during the review process, provide an abundance of information about the facts and features that were more than adequate to support and render a reasonable final determination of denial by the Sandwich Town Committee.
12. The Sandwich Town Committee had a reasonable factual basis for its denial of the proposal and did not act in an arbitrary manner.
13. The Sandwich Town Committee's consistent effort to stay within the boundaries set forth in *Section 10* of the *Regional Historic District Act* was not being capricious.
14. The Sandwich Town Committee was not erroneous in denying the application.
15. The Sandwich Town Committee did correctly consider the purposes of the *Regional Historic District Act* in determining that the proposed schoolhouse/barn was "too massive" for the location adjacent to ancient *Ox Pasture Lane* and inappropriate for its immediate surroundings.

Mr. Gegenwarth moved, seconded by Mr. Mgrdichian, that the Commission vote to uphold the decision to deny the Certificate of Appropriateness to Justice Resource Institute, Inc. for the application as presented. The motion carried by a vote of 5-0-1 (Houghton, Richard, Catchins, Gegenwarth & Mgrdichian in favor; none opposed; and Collins abstaining)

**Commission's Determination:**

As to Appeal No. 2016-5, the appeal is denied and the decision of the Sandwich Town Committee to deny a Certificate of Appropriateness to Justice Resource Institute, Inc. in Application No. 16-33 for is affirmed. (5-0-1)

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 Sandwich Town Clerk.

Dated: June 27, 2016



Lawrence Houghton, Chairperson