

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

P.O. Box 140, Barnstable, Massachusetts 02630-0140

YARMOUTH TOWN CLERK

Donna Legere, Applicant/Appellants

Vs.

Decision for Appeal No. 2016-6

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

On Tuesday, August 2, 2016 at 1:30 P.M., the Commission held a hearing at the West Barnstable Fire Station Meeting Room, 2160 Meetinghouse Way (Route 149), West Barnstable, Massachusetts, on Appeal # 2016-6 filed by Donna Legere seeking reversal of the Yarmouth Town Committee's denial of a Certificate of Appropriateness for solar panels to be located at 34 Railroad Avenue, Yarmouth Port, Massachusetts.

Present were Chairman Lawrence Houghton, Brewster; William Bohlin, Dennis; William Collins, Sandwich; Carrie Bearse, Barnstable; Richard Gegenwarth, Yarmouth; Ronald Mgrdichian, Orleans; James R. Wilson, Commission Administrative Counsel; Donna Legere, Applicant/Appellant and Jay Schildge, agent for Solar City.

The Yarmouth Town Committee's decision was filed with the Yarmouth Town Clerk on June 28, 2016. The appeal was entered with the Regional Commission on July 8, 2016, within the 10-day appeal period of Section 11 of the Act.

The Commissioners have reviewed copies of the application with relevant plans and submissions presented to the Yarmouth Town Committee; the draft Minutes of the June 27, 2016, Yarmouth Town Committee public meeting; the denial of the application by the Yarmouth Town Committee; and copies of the Applicant/Appellant's appeal petition.

The Commissioners have visited the site and are familiar with the location of the Applicant/Appellant's proposed solar panels at 34 Railroad Avenue, Yarmouth Port, Massachusetts.

Applicant/Appellant's Presentation:

Donna Legere, Applicant/Appellant addressed the Commission on behalf of her appeal. She stated that Railroad Avenue was a short cut from Willow Street to Route 6A and that the proposed roof mounted solar panels would not be visible from Route 6A. She indicated that she had owned her home at 34 Railroad Avenue for twenty (20) years and that she was seeking to conserve energy and save money on her electric bill. She submitted four (4) letters from her neighbors indicating that they did not object to the proposed solar panels.

She showed a video of a commercial building with roof mounted solar panels located within the historic district at 203 Willow Street and inferred that if they were approved for that building, the Yarmouth Town Committee ought to have approved her application. She showed another video of her house and Railroad Avenue. She claimed that the solar panels would not be too visible from the road and would be appropriate for her roof.

She submitted a list of the many solar panel projects that had been approved by the Yarmouth Town Committee and suggested that the public's view from the heavily traveled "cut through" (Railroad Avenue) was less important than a view from nearby Route 6A or other more significant and sensitive areas located within the regional historic district. She argued that the road was simply a side road short cut for many people that did not live in the neighborhood.

She asserted that it was unfair that she should be denied the financial benefits of being able to place the proposed solar panels on her roof and expressed the opinion that the Regional Historic District Commission ought to be more supportive of permitting a broader use of solar panels through out the regional historic district.

Yarmouth Town Committee's Presentation:

Dr. Gegenwarth addressed the Commission to describe the Yarmouth Town Committee's actions in denying the request for the roof mounted solar panels. He indicated that the Yarmouth Town Committee was very familiar with the different kinds of solar energy projects. He stated that the Committee was familiar with the setting and building that was being proposed by the Applicant. He indicated the Applicant's house was built in 1925 and reflected the simple cottage design features of the 1920s Era. He pointed out its close proximity to Route 6A, the historic flavor of the neighborhood and the many older homes located in the immediate surroundings.

He acknowledge that many approvals had been granted by the Yarmouth Town Committee, but indicated that each application is carefully reviewed on a case by case basis.

He agreed with the Applicant's characterization of Railroad Avenue as being an heavily traveled "cut through" to Route 6A, but disagreed with the opinion that very few people would notice or observe the solar panels. He noted that the solar panels would be very close to the road, unscreened and appear very prominent to the many people driving passed the Applicant's house. He pointed out that the house was only one-story high and that the sight line would be much lower and more observable to the passing motorist and the general public.

Public Comment:

Chairman Houghton asked for public comment on the appeal and there was none.

Commission Discussion:

Chairman Houghton closed the public hearing and asked the Commissioners to consider whether or not the Yarmouth Town Committee exceeded its authority or exercised poor judgment, was arbitrary, capricious, or erroneous in its action.

Mr. Collins stated that his home in Sandwich is not suitable for solar panels and suggested that each situation needs to be determined according to the location and factors presented. He observed that it is not the role of the Regional Commission to substitute its judgment of *appropriateness* for that of the local Town Committee, but rather to determine if the Yarmouth Town Committee had exceeded its authority or exercised poor judgment. He suggested that in this appeal that he believed that it was a judgment call to be made by the Yarmouth Town Committee and that after seeing the site, he could not find an error in the determination to deny the Certificate of Appropriateness.

Mr. Mgrdichian asked if there had been a pattern of improper denial in the many decisions on solar panel reviewed by the Yarmouth Town Committee. He asked Dr. Gegenwarth to explain the reasons for granting some approvals while denying others.

Dr. Gegenwarth indicated that each determination was unique and that even the composition of membership of the local committee will change from time to time. He indicated that simply because a solar panel project in one location may be found to be appropriate does not mean that a similar project in a different location should be approved.

Chairman Houghton confirmed that many variations of decisions on solar panels were being made within the regional district. He pointed out that the Act does not base determinations on precedence. He suggested that the Act required judgments of appropriateness to be made on the different factors and variables of each application.

Ms. Bearse suggested that there should be some consistency in the pattern of approval or denial, but indicated that Dr. Gegenwarth appeared to have presented a reasonable process of review by the Yarmouth Town Committee.

Mr. Bohlin stated that Dennis has approved a lot of solar panel applications, but depending upon the location and visibility of the project some projects are not approved. He indicated that the Applicant's project would probably not be approved by his Committee in Dennis.

Chairman Houghton agreed with his fellow Commissioners and stated that because his home's southern exposure would be highly visible to the general public, he would not have solar panels placed on his roof. He indicated that each situation is different and

some houses have screening and different heights or roof slopes that will impact the public's visibility of the proposed solar panels.

He suggested that there appeared to be a consensus among the Commissioners and asked the Administrative Counsel distribute a draft of proposed findings that might reflect the opinions expressed by the Commissioners.

He called for a motion to vote on the appeal.

Ms. Bearse, seconded by Mr Bohlin moved that the following findings be adopted and incorporated into the Regional Commission's decision.

The Commission findings:

The Commission found as follows:

1. The property is located with in the Regional Historic District on a very heavily traveled way.
2. The proposed roof location of the solar panels will be close to the road and very visible to the general public.
3. The proposed solar panels would be incompatible and incongruous with the features of the other houses located in the immediate surroundings.
4. The Commission finds that the Yarmouth Town Committee did not exceed its authority or exercise poor judgment,
5. The Commission finds that the Yarmouth Town Committee was not arbitrary, capricious, or erroneous in its action.
6. The Yarmouth Town Committee decision should be affirmed.

The motion carried by a vote of 5-0-1. (Houghton, Collins, Mgrdichian, Bohlin & Bearse in favor; none opposed; and Gegenwarth abstaining)

The Commission's Determination:

Mr. Bearse moved, seconded by Mr. Bohlin, that the Commission vote to uphold the decision to deny the Certificate of Appropriateness to Donna Legere for solar panels on the roof of a dwelling located at 34 Railroad Avenue, Yarmouth Port, Massachusetts and hereby notes that it determines that the Yarmouth Town Committee did not exceed its authority or exercise poor judgment and was not arbitrary, capricious or erroneous in its action and that the decision was within the guidelines of the Act and was specific to the setting under consideration.

The motion carried by a vote of 5-0-1 (Houghton, Collins, Mgrdichian, Bohlin & Bearse in favor; none opposed; and Gegenwarth abstaining)

As to Appeal #2016-6, the Decision by the Yarmouth Town Committee in denying a Certificate of Appropriateness to Donna Legere for roof mounted solar panels 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 Yarmouth Town Clerk.

Dated: August 12, 2016



Lawrence Houghton, Chairperson