

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

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

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DENNIS TOWN CLERK

**Robert Oldham, Applicant/Appellant**

**Vs.**

**Decision for Appeal No. 2016-9**

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

On Tuesday, October 4, 2016 at 1:30 P.M., the Regional Commission held a hearing at the West Barnstable Fire Station Meeting Room, 2160 Meetinghouse Way (Route 149), West Barnstable, Massachusetts, on Appeal # 2016-9 filed by Robert Oldham seeking reversal of the Dennis Town Committee's denial of a Certificate of Appropriateness for a 2 story dwelling to be located at 14 Pleasant Street, East Dennis, Massachusetts. Said property being shown on Tax Map 413 as Lot 31.

Present were Chairman Lawrence Houghton, Brewster; William Bohlin, Dennis; Terry Blake, Sandwich; Paul Richard, Barnstable; Richard Gegenwarth, Yarmouth; James R. Wilson, Regional Commission Administrative Counsel; Steven J. Pizzuti and Anthony J. Mazzeo, Attorneys for the Applicant/Appellant; Jacque Lapointe, Designer and Richard Pozzo, Builder for the Applicant/Appellant. Absent was Commissioner Ronald Mgrdichian of Orleans.

The Dennis Town Committee's decision was filed with the Dennis Town Clerk on August 25, 2016. The appeal was entered with the Regional Commission on September 6, 2016, within the 10-day appeal period of Section 11 of the Act and 972 CMR Section 1:03 Clause 3(e.). Prior to the opening of public hearing, Dr. Gegenwarth reviewed with the Applicant's agents omissions and inaccurate representations shown on the August 24, 2016 submitted final plans. At the Beginning of the public hearing, Chairman Houghton announced that the Commissioners had reviewed the Dennis Town Committee Minutes and the videos of the July 27, 2016, August 10, 2016, and August 24, 2016, public hearings on the application; reviewed copies of the August 16, 2016 revised elevations, the August 18, 2016 revised Plot Plan; the application with specification sheet; copies of the Appellant's appeal petition with attached Memorandum and Exhibits 1- 9; the Dennis Tax Map #413 and the Board of Assessors Map showing List of owners of property within 75 feet of Applicant's property. He indicated that the Commissioners had visited the neighborhood and were familiar with the site of the proposed 2 story dwelling to be located at 14 Pleasant Street, East Dennis, Massachusetts. He indicated that the Commissioners had also observed the dwellings located at 5 Crosby Lane, Brewster and 71 Wamponoag Street, Dennis, Massachusetts.

**Applicant/Appellant's Presentation:**

Attorney Steven J. Pizzuti of 336 South Street, Hyannis, Massachusetts, addressed the Regional Commission on behalf of the Applicant/Appellant's appeal. He suggested that



the appeal presented two parts for consideration. He claimed that due to bias by the Town Committee, his client did not receive a fair and impartial hearing and suggested that had the review been conducted properly, the proposed building would have been found to be appropriate.

In support of the claim of a flawed review process, he pointed out the role of a committee member (Mr. Catchings) who, while not being "a direct abutter," was "an abutter to an abutter" and lived within seventy-five (75) feet of the applicant's property. He stated that the committee member participated in the initial two informal reviews on July 27, 2016 and August 10, 2016 and expressed strong opposition to the style and design features of the original proposed building.

Attorney Puzzuti expressed the opinion that the initial participation by this committee member was unethical and in violation of the conflict of interest law (MGL Chapter 268A Section 19). He alleged that this action tainted the review process and asserted that these adverse comments caused other committee members to vote against the project on August 24, 2016 when the committee member "recused" himself from the hearing room and new revised plans dated August 16, 2016 and August 18, 2016 were submitted for review and a final vote by the remaining four (4) members of the Dennis Town Committee.

He also claimed that the written reason given for the disapproval was vague and insufficient when the revised building plans were denied (3-1) for "not being appropriate for the area."

He asked his law partner Attorney Anthony J. Mazzeo to address the appropriateness of the design features of the proposed building.

Attorney Mazzeo showed photographs of two homes located within the regional historic district at 5 Crosby Lane in Brewster and 71 Wamponoag Street in Dennis. He stated that they had been built by the Applicant's builder and suggested that they were similar in appearance with the proposed building that had been rejected by the Dennis Town Committee. He expressed the opinion that these two houses were located in similar neighborhoods to the Quivet Neck site in East Dennis.

He showed photographs of selected building features from the Quivet Neck area and claimed that the proposed building would be compatible with these features. He suggested that appropriateness should be based on compatibility and should not be based upon the preservation of an area's particular historic appearance or period.

He noted many of the Town Committee's suggested changes that had been incorporated into the revised plans and the Applicant's effort to modify the proposed building's appearance, so that it would better fit and be more compatible with its immediate surroundings.

**Dennis Town Committee's Presentation:**

William Bohlin addressed the Commission in support of the Dennis Town Committee's decision. He denied that Mr. Catchings had a financial interest in the design features of the proposed building.

He identified Quivet Neck as the most historically sensitive area in Dennis. He stated that the Applicant's attorney described the proposed building as being "a modern version" of what had been previously located at the site.

He indicated that the proposed dwelling's modern features did not fit with in the historic setting. He stated that the Dennis Town Committee suggested numerous changes to the original submitted plans in an effort to find a way to make it work.

He confirmed that the members of the committee analyzed the submitted plans and considered many variations to its modern design and style, but ultimately determined that the revised plans were inappropriate for the area.

**Public Comment:**

Chairman Houghton asked for public comment on the appeal.

Debbie Klein, abutter and owner of 10 Pleasant Street, indicated that she was present to see the revised plans for the proposed dwelling, but did not wish to offer an opinion on the application.

**Applicant/Appellant Rebuttal & Conclusion:**

Attorney Puzzuti criticized the Dennis Town Committee for their process of suggesting significant changes and then after being accepted by his Client, the application was ultimately turned down by the Committee. He suggested that it was unfair to lead an applicant on in this manner.

He criticized the Dennis Town Committee for not giving a more detailed explanation of the reasons for the ultimate determination of denial.

Attorney Mazzeo restated his opinion that Mr. Catchins had a financial interest in the application, that he was the reason for the Dennis Town Committee's denial of the application and that Mr. Catchins departure from the hearing room was not an effective "recusal" from the review process.

**Dennis Town Committee Rebuttal & Conclusion:**

Mr. Bohlin claimed that during the review process, the modern style and features of the proposed building were identified as not being appropriate for the location and that major design modifications would be required to give it a more historic appearance.



He pointed out that the Applicant's builder had constructed a much more traditional colonial style dwelling in the South Dennis Historic District which reflected a more appropriate design and style for the Quivet Neck area.

#### **Commission Discussion:**

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

Dr. Gegenwarth indicated that, as an architect, he would design the building very differently for the site. He indicated that he would follow the traditional practice of facing solar South to take advantage of the energy benefits of such an orientation. He indicated that he had a lot of problems with the proposed design and the submitted revised plans for the site.

Terry Blake stated that she believed that the procedural process of review had been flawed by both sides, but that she had a problem with Section 11 of the Act. She stated that she felt that because of the wording of the legislation, the Commission had no authority to grant any relief to the Applicant/Appellant when a Town Committee had denied an application. (**NOTE:** A check of the *Legislation & Bulletin* indicates a transcribing typographical error in the *Bulletin* at Page 11, Section 11 of the Act, line 10 last word "of" should be "or".)

Attorney Wilson assured the Commissioners that the Courts had interpreted the Act to have granted the Commissioners the authority to reverse a Town Committee's denial of a Certificate of Appropriateness after finding that an error had been made by a Town Committee.

Commissioner Blake pointed out that problem of the inaccuracy of the submitted plans and expressed concern for the public's right to see accurate plans and know that the Town Committee is being careful to have sufficient time to fully examine the submissions before voting.

Chairman Houghton stated that he had watched the videos, examined the plans and was still not sure as to what was being acted upon. He indicated that enough errors had been revealed to send the application back for a new review with corrected plans and proper public notice.

Paul Richard agreed and suggested that the application should be returned to the Dennis Town Committee for a new public hearing with proper advance public notice and completely new plans.

Chairman Houghton suggested that there appeared to be a consensus among the Commissioners and asked the Administrative Counsel to distribute a draft of possible findings that would reflect the opinions expressed by the Commissioners.

The draft findings were distributed and reviewed by the Commissioners

Chairman Houghton called for a motion to vote on the draft findings.

Mr. Richard, seconded by Dr. Gegenwarth moved that the following findings be adopted and incorporated into the Regional Commission's decision.

**The Commission findings:**

The Commission found as follows:

1. Mr. Catchings property is not contiguous with the Applicant's property and therefore, he is not an "abutter" under the Old King's Highway Regional Historic District Act.
2. The Dennis Town Committee exercised poor judgment in performing informal reviews of the project after the application was filed.
3. The Dennis Town Committee exercised poor judgment in accepting inaccurate plans for the proposed building.
4. The Dennis Town Committee acted erroneously in not providing more specific written details for its denial of the application.
5. The Dennis Town Committee's determination should be annulled and the case remanded to the Committee for a new public hearing with new revised plans and proper notice.

The motion carried by a vote of 3-1-1. (Houghton, Richard & Gegenwarth in favor; Blake opposed; and Bohlin abstaining)

**The Commission's Determination:**

Mr. Richard moved, seconded by Dr. Gegenwarth, that the Dennis Town Committee's determination be annulled and the case remanded to the Dennis Town Committee for a new public hearing with notice and that new revised plans and specifications be submitted not less than ten (10) days prior to said public hearing.

The motion carried by a vote of 3-1-1 (Houghton, Richard & Gegenwarth in favor; Blake opposed; and Bohlin abstaining)

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: October 17, 2016

  
Lawrence Houghton, Chairperson



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