

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

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Kent M. Sargent, Applicant/Appellant

Vs.

Decision for Appeal No. 2016-10

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

On Tuesday, October 18, 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 # 2016-10 filed by Kent M. Sargent seeking reversal of the Dennis Town Committee's denial of a Certificate of Appropriateness for painting shutters, front door, side door, and fence post located at 400 Old Chatham Road, South Dennis, Massachusetts. Said property being shown on Tax Map 191 as Lot 5. Present were Chairman Lawrence Houghton, Brewster; William Bohlin, Dennis; Terry Blake, Sandwich; Carrie Bearse, Barnstable; Richard Gegenwarth, Yarmouth; Ronald Mgrdichian, Orleans; James R. Wilson, Regional Commission Administrative Counsel; and Kent M. Sargent Applicant/Appellant.

The Dennis Town Committee's decision was filed with the Dennis Town Clerk on September 14, 2016. The appeal was entered with the Regional Commission on September 22, 2016, within the 10-day appeal period of Section 11 of the Act.

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 September 13, 2016, public hearing on the application; reviewed the application with specification sheet and the appeal petition. He indicated that the Commissioners had visited the neighborhood and were familiar with the site of the proposed change of color to be located at 400 Old Chatham Road, South Dennis, Massachusetts.

Applicant/Appellant's Presentation:

Kent M. Sargent addressed the Regional Commission on behalf of the appeal. He stated that he had lived in his home for thirty (30) years and had repainted the shutters five (5) times without an awareness that he needed the approval of the Dennis Old King's Highway Regional Historic District Committee. He indicated that he had painted the shutters in August and claimed that he was unaware that he needed approval from the Dennis Town Committee. He claimed that the *Cottage Rose* color was an historic color and was being used in Nantucket and in other parts of Dennis. He claimed that he had visited the website for the Dennis Historic Committee and had seen a color very similar to the one that he had used.

Commissioner Bearse asked if the approved color was for the Old King's Highway Regional Historic District Committee.

Mr. Sargent indicated that there were two (2) color charts and that it was confusing. He claimed that the color that was similar to *Cottage Rose* was called *Coral*. He inferred that there should be no difference between the two historic districts. He showed the Commissioners a photograph of a house in the South Dennis Historic District (Chapter 40C District) with a front door painted a similar color to his requested color.

He claimed that his house was heavily screened by vegetation and that the color change would have a minimal visibility from the street.

He indicated that his property was surrounded by a recreational trailer park, condominium complex, and a sandpit.

Dennis Town Committee's Presentation:

William Bohlin addressed the Commission in support of the Dennis Town Committee's decision. He stated that the biggest part of the problem was the fact that the Applicant painted the shutters without getting the prior approval of the Dennis Town Committee.

He reported that after receiving the violation notice, the applicant applied for a Certificate of Appropriateness for the wrongfully applied color.

He indicated that all of the Dennis Town Committee members had visited the site and felt that the color was inappropriate.

Carrie Bearse inquired as to the criteria that was being applied by the Dennis Town Committee in its determination that the color was inappropriate.

Mr. Bohlin expressed the opinion that the *cottage rose* color was inappropriate for its setting in the historic district. He claimed that during his ten (10) years of serving on the Dennis Town Committee, he had never seen an application for the proposed color.

He suggested that the prior darker *cranberry* color was appropriate, but that the brighter *salmon* type color was not appropriate for the historic district.

Public Comment:

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

Applicant/Appellant Rebuttal & Conclusion:

Mr. Sargent suggested that he had nothing more to add to his presentation.

Dennis Town Committee Rebuttal & Conclusion:

Mr. Bohlin acknowledged that the setting was not a particularly sensitive part of the historic district.

He repeated that the two (2) major concerns of the Dennis Town Committee were (1.) that the Applicant just went ahead without permission from the Dennis Town Committee and (2.) the thought by the Dennis Town Committee that the color was not appropriate for the historic district.

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 expressed concern that judgment on the application for a Certificate of Appropriateness may have been improperly influenced by the failure of the Applicant to have obtained prior permission. He pointed out that when a subsequent (after violation) application is submitted to a Town Committee, it is improper to consider the initial conduct of the Applicant in not obtaining permission in determining the appropriateness.

Chairman Houghton suggested that he agreed with Dr. Gegenwarth's concern, but felt that the Dennis Town Committee did properly determine that the proposed color change was inappropriate.

Commissioner Mgrdichian stated that he felt that the Dennis Town Committee had the discretion under the Act to determine the appropriateness of the proposed color.

Commissioner Bearse stated that she was concerned that the denial not be a punishment for the Applicant's conduct. She indicated that while she respects the discretion of local town Committee to determine appropriateness for their Town, she expressed concern that the area was not a sensitive area and the color change would probably have been allowed in the proposed setting by her Town Committee.

Commissioner Blake pointed out that the purpose of the Act is directed to the whole Regional District and not to just one Town Committee's opinion of appropriateness. She expressed the opinion that the determination of color appropriateness was being viewed too narrowly by the Dennis Town Committee and that the Committee needed to give greater consideration to the location and setting for the proposed color change. She suggested that the Dennis Town Committee needed to more carefully examine the features of the trailer park and the neighborhood. She indicated she found the area to have a whimsical character that supported the proposed color. She expressed the opinion that the proposed color did not appear to be incongruous to the setting and suggested that the Dennis Town Committee did not properly consider the setting.

Dr. Gegenwarth asked if the process was flawed?

Commissioner Blake suggested that the Dennis Committee exercised poor judgment in its consideration of the proposed location.

Chairman Houghton stated that he agreed that a more detailed examination of the setting might result in the color being found to be appropriate.

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. Mgrdichian, seconded by Mrs. Bearse 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 proposed change of color to "*Cottage Rose*" may be compatible with the colors of the dwelling and will not contrast with the dwelling's other features.
2. The proposed new color may be congruent with the colors and features in the immediate surroundings.
3. The Dennis Town Committee exercised poor judgment in not considering the features of the setting for the proposed change in paint color.
4. The Dennis Town Committee's determination should be annulled and the application remanded to the Committee for further review in accordance with these findings.

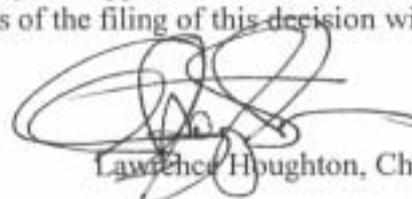
The motion carried by a vote of 5-0-1. (Houghton, Mgrdichian, Bearse, Blake & Gegenwarth in favor; none opposed; and Bohlin abstaining)

The Commission's Determination:

As to Appeal 2016-10, the Dennis Town Committee's determination is annulled and the case remanded to the Dennis Town Committee for further review in accordance with the above findings.

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 26, 2016



Lawrence Houghton, Chairperson