

WILLIAM G. HOWES, III & CYNTHIA HOWES

v.

Decision #98-25

**OLD KING'S HIGHWAY REGIONAL HISTORIC
DISTRICT COMMITTEE FOR THE TOWN OF
BARNSTABLE**

On Tuesday, December 8, 1998, the Commission held a hearing on Appeal #98-25 filed by William G. Howes, III and Cynthia Howes, seeking review of a decision by the Barnstable Historic District Committee denying a Certificate of Appropriateness for a house and garage to be located at 79 Cypress Point, Cummaquid, Massachusetts.

Present were John Milholland, Barnstable; William Quinn, Orleans; Paul SanClemente, Dennis; Roy Robinson, Brewster; Marian Reilly, Sandwich; David Moeller, Yarmouth; Robert G. Brown, Commission Counsel; William G. Howes, III and Cynthia Howes, Appellants; and Jeff Barnaby, Agent for the Appellants.

The Committee's decision was filed with the Town Clerk on November 4, 1998. The appeal was entered with the Commission on November 12, 1998 within the 10 day appeal period.

THE APPELLANT'S PRESENTATION:

William G. Howes, III, Co-Appellant, addressed the Commission in favor of the appeal. He said the plans for the house in question were originally filed in August of 1998. In that changes were planned, the application was withdrawn until this fall. The house is 3000 square feet and is much smaller than other homes in the area which are all over 4000 square feet. The house borders on the Cummaquid Golf Club which he contended was a membership only club and not a public place. In addition, the front portico, which he contended was the principal objection of the Barnstable Committee, would be barely visible from Cypress Point. He said the house is not out of character with others in the area and displayed photographs of others in the area as well as an artistic rendering of the proposed house. Mr. Howes specifically focused on the Barnstable Committee's approval of 51 Dromoland Lane, with its large portico as precedent for approval of his application.

He stated the real reason for the Committee's disapproval was the

memorandum he filed prior to the second hearing on the application wherein he cited telephone messages from committee members and other statements made by committee members which made it appear the matter had been discussed outside of the hearing process.

Mr. Howes played a recording left on his telephone answering machine wherein Patricia Savage of the Barnstable Committee telephone Mr. Howes at his home following a site visit and requested he redesign the front of the house. Mrs. Savage indicated in the message she had discussed this with other member(s) of the Committee who were in agreement that the house should be redesigned. Mr. Howes argued that this conduct was inappropriate and combined with the other statements made outside of the hearing by the Committee members, as well as inaccuracies in the decision itself, the Commission was left with no choice but to reverse the decision of the Barnstable Committee.

THE COMMITTEE'S PRESENTATION:

John Milholland, representing the Barnstable Committee, explained the Barnstable Committee's reasons for denial. He indicated that there had been a good deal of discussion regarding Cummaquid Heights neighborhood. He stated that the Barnstable Committee felt that Cummaquid Heights could be considered to have its own character. In that respect, the Barnstable Committee felt this house would be a sizable step over and above the other houses in the area. He said there were many reasons for denial and the decision of the Barnstable Committee should be upheld.

DISCUSSION:

Patricia Savage of the Barnstable Committee addressed the Commission in opposition to the appeal. She said the portico was a problem for her and that while she originally was in favor of the application, she changed her mind after visiting the site.

Gerald Garnick of Yarmouthport, Massachusetts addressed the Commission in favor of the appeal. The neighbors had no objection to the construction of the house. Cummaquid Heights is not an historic area and whether or not it has its own character is a subjective opinion. The question is whether or not the house can be absorbed by the area and be protected by the Historic District Act. In this instance the house does not derogate from the Act and the Commission should reverse the decision of the Committee.

In discussion among Commission members, there was a general consensus that the actions of the Barnstable Committee were arbitrary and, in some instances, bordered on being unprofessional considering the standard of due process due applicants.

FINDINGS:

The Commission made the following Findings of Fact:

1. That the Barnstable Committee was arbitrary in denying the Certificate of Appropriateness. 4-1-1.
2. That the appeal is allowed and a Superceding Certificate of Appropriateness is issued to the Appellants, subject to plans now on file with the Barnstable Committee. 4-1-1

DETERMINATION:

As to Appeal #98-25, the appeal is allowed, subject to the above conditions.

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 Barnstable Town Clerk.

Marian Reilly
Chair