

CANAL MARINE, INC.

v.

Decision #99-6

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

On Tuesday, December 5, 2000 the Commission held a hearing on Appeal #99-6 filed by Canal Marine, Inc., seeking review of a decision by the Barnstable Historic District Committee denying a Certificate of Demolition for a building located at 153 Freezer Road, Barnstable, Massachusetts.

Present were Dorothy Stahley, Barnstable; Jonathan Shaw, Sandwich; Elizabeth Wilcox, Dennis; Deborah Gray, Yarmouth; Roy Robinson, Brewster; Robert G. Brown, Commission Counsel; Stuart Bornstein, President of Canal Marine, Inc.; Edward Taiple, Attorney for Canal Marine, Inc.; and many interested members of the public.

The Committee's decision was filed with the Town Clerk on April 29, 1999. The appeal was entered with the Commission on May 10, 1999 within the 10 day appeal period.

Prior to the start of the hearing, Robert G. Brown, Counsel for the Commission advised that this matter was before the Commission by way of a remand in Joseph Dugas v. Old King's Highway Regional Historic District Commission, Barnstable District Court Docket No. 9925CV0645, combined with Stuborn Limited Partnership v. Old King's Highway Regional Historic District, Barnstable District Court Docket #9925CV0885. Any prior hearings of the Commission have been nullified by the Court.

THE APPELLANT'S PRESENTATION:

Edward Taiple, Attorney for Canal Marine, Inc., Appellant, addressed the Commission in favor of the appeal. He introduced Stuart Bornstein and said that, while the original application was submitted in the name of Canal Marine, Inc., the property owner of record is now Stuborn

Limited Partnership. He distributed a memorandum in favor of the appeal and described the procedural history of the project. He said the condition of the building has not improved since the last hearing before the Commission. The building is constructed with a pre-1950 pole and plug design, using inexpensive materials. He distributed photographs of the building and said that the building had no historic or architectural significance. He said that preservation should be based solely on architectural and historic merit and, as this building had neither, a Certificate of Demolition should issue. The property is not evocative of the early days of Cape Cod and demolition of this structure would not be an endorsement of any future construction.

THE COMMITTEE'S PRESENTATION:

Dorothy Stahley, representing the Barnstable Committee, explained the Barnstable Committee's reasons for denial. She also recounted the procedural history of the application. She read from the April 28, 1999 decision of the Barnstable Committee which stated that the building in question was a visible reminder of an established fishing industry which dates back to the 1600's and that the approval of the requested Certificate of Demolition would not be a proper solution to maintaining this legacy. She pointed out that the Appellant, in its original application to the Barnstable Committee, linked the proposed demolition to proposed construction.

DISCUSSION:

In general discussion, almost all of the members of the public in attendance were in opposition to the appeal, claiming the building was historic and should be preserved.

In discussion among Commission members, Roy Robinson expressed the opinion that no one can prevent demolition by neglect and that most of the concern expressed at the meeting was not about the building itself but what might be built in its place. The condition of the building is a legitimate issue as no one is now allowed to occupy the building. However, there was a consensus among the other members of the Commission that, while they may have voted differently, the decision of the Barnstable Committee should be upheld as they did not act in an arbitrary or capricious manner.

FINDINGS:

The Commission voted as follows:

1. That the Barnstable Committee did not act in an arbitrary or capricious manner in denying the Certificate of Demolition. 3-0-2.

2. That the appeal be denied. 3-0-2.

DETERMINATION:

As to Appeal #99-6, the appeal is denied.

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.

Roy Robinson
Chair