



Old King's Highway Regional Historic District Commission
P.O. Box 2187, Hyannis, Mass. 02601 Telephone 508-775-5793

STEPHEN C. PINNEY, et al.

v.

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

TOWN
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K & T RECORDS
Decision #93-1
EIV

On Tuesday, January 5, 1993 the Commission held a hearing on Appeal #93-1 filed by Stephen C. Pinney and others, seeking review of a decision by the Yarmouth Historic District Committee which had approved a Certificate of Exemption to the Town of Yarmouth for the relocation of a fence located at Route 6A and Playground Lane, Yarmouthport, Massachusetts.

Present were Pat Rothermel, Dennis; Peter Freeman, Barnstable; David Moeller, Yarmouth; Christopher Miner, Orleans; Robert G. Brown, Commission Counsel; Stephen C. Pinney, Appellant, and many interested members of the public.

The Committee's decision had been filed with the Town Clerk on January 8, 1993, and the appeal entered with the Commission on January 15, 1993, within the 10 day appeal period.

THE APPELLANT'S PRESENTATION:

Stephen C. Pinney, Appellant, addressed the Commission in favor of the appeal. He stated that the Yarmouth Committee's grant of a Certificate of Exemption constituted poor judgment and exceeded the authority of the Yarmouth Committee. He presented copies of a letter signed by the Town of Yarmouth Department of Public Works in August of 1990 with regard to placement of the fence and stated that for the Town of Yarmouth to file for a Certificate of Exemption is an end run. He also stated that the Certificate of Exemption only applies to residential use and this is not a residential use.

Chip Mulford, Attorney for several residents of the area, addressed the Commission in favor of the appeal. He said that he did not intend to imply that there was any ill will on the part of the Appellants or the Yarmouth Committee but it is clear that an error was made. He stated that the original Certificate of Appropriateness made reference to the fence and the letter from the Town of Yarmouth Department of Public Works specifically stated that they would not move the fence. He stated that the fence was unique and that a full hearing should be held to determine if the original Certificate of Appropriateness should be modified.

THE COMMITTEE'S PRESENTATION:

David Moeller, representing the Yarmouth Committee, addressed the Commission to explain the Yarmouth Committee's reasons for approval. He stated that the Yarmouth Committee made its decision solely on the basis of the criteria in the Bulletin of the Regional Commission, specifically the criteria found on pages 12 and 17 of the Bulletin. He did state that the Committee had not considered the issue of residential versus non-residential use of the fence.

DISCUSSION:

In discussion among the members of the Commission, various Commission members felt that the issue of use was important and that Certificate of Appropriateness, rather than a Certificate of Exemption, was more proper.

FINDINGS:

The Commission made the following Findings of Fact:

1. That the Yarmouth Committee exceeded its authority in approving the Certificate of Exemption to the Town of Yarmouth as the Certificate of Exemption is allowed only for residential use and this is not a residential use. #3-0-1.

DETERMINATION:

Based on the above findings the appeal is allowed, 3-0-1.
The Certificate of Exemption issued to the Town of Yarmouth
is declared null and void.

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.



Christopher Miner
Chairman

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TOWN CLERK & TREASURER