

TOWN OF BREWSTER SCHOOL BUILDING COMMITTEE

v.

Decision #95-4

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

On Tuesday, April 25, 1995 the Commission held a hearing on Appeal #95-4 filed by the Town of Brewster School Building Committee, seeking review of a decision by the Brewster Historic District Committee which had denied a Certificate of Appropriateness for the construction of a structure to be located at Route 6A, Brewster, Massachusetts.

Present were Chick Craig, Dennis; Roy Robinson, Brewster; Christopher Miner, Orleans; Robert Terrill, Sandwich; Robert G. Brown, Commission Counsel; E. James Veara, Counsel for the Appellant; and several interested members of the public.

The Committee's decision had been filed with the Town Clerk on March 28, 1995, and the appeal entered with the Commission on March 30, 1995, within the 10 day appeal period.

THE APPELLANTS' PRESENTATION:

E. James Veara, Counsel for the Appellant addressed the Commission in favor of the appeal. He stated that the Brewster Committee had committed an error of procedure and had violated the Brewster School Building Committee's rights to due process by predetermining the application. He said that as a result, the Brewster School Building Committee did not get a fair hearing before the Brewster Committee. He distributed a package of materials to the Commission and particularly cited a September 8, 1994 letter from Janet Francis, Chairman of the Brewster Committee, to Mrs. McGeoch, Chairman of the Brewster School Building Committee where it was stated that the Brewster Committee was unanimous in its opinion that access from Route 6A to the proposed school would be denied.

This letter was dated prior to the filing of a formal application with the Brewster Committee and any hearing on the application. Attorney Veara also stated that the Brewster Committee considered

matters, such as traffic volume and safety, which were outside the scope of the Committee's jurisdiction. Attorney Veara specifically asked that the decision of the Brewster Committee be annulled and the Regional Commission issue a Superceding Certificate of Appropriateness rather than remanding the decision to the Brewster Committee, citing the Brewster Committee's initial predetermination of the application as well as a June 1, 1995 deadline for the Brewster School Building Committee to submit their application to the State.

THE COMMITTEE'S PRESENTATION:

Roy Robinson, representing the Brewster Committee, addressed the Commission to explain the Brewster Committee's reasons for denial. He stated that on April 14, 1995 he had made a written request to the Brewster Board of Selectmen for legal assistance before the Regional Commission and had had no reply. He displayed a map of the historic district in Brewster (both active and exempt areas) and discussed the history of the school building project with respect to the access issue. He stated that the access had originally been off of Underpass Road. Then, another access off Route 137 was investigated and then another access off of Underpass Road was considered. He said that the Route 6A access was not considered until last September. He said that additional RFP's (Requests for Proposals) were advertised last fall but on December 10, 1994 the Selectmen decided to stick with the present plan. He said the Brewster Committee met informally with the Brewster School Building Committee in October and met again with them on November 12, 1994 to discuss referring the matter to the Cape Cod Commission for an Environmental Impact Review (EIR). He said that the Brewster Committee voted unanimously not to refer the project to the Cape Cod Commission as the EIR process would take a year and the School Building Committee was under a June 1, 1995 deadline. He said the Committees met again on February 6, 1995 and this was followed by a site review on March 3, 1995 and another meeting on March 20. Addressing the bridge portion of the project, he stated that the bridge was to be constructed of poured concrete with aluminium railings and would be set back 50-60 feet from a 120 foot curb cut on Route 6A. He said the massive impact of the bridge was a problem. In closing he asked that the Commission uphold the decision of the Brewster Committee or, in the alternative, remand the matter to the Brewster Committee with specific instructions on how to proceed.

DISCUSSION:

In general discussion from members of the public there was prevailing sentiment that the access should be allowed off Route 6A as it is the Main Street of Brewster and, until 20 years ago, there had always been a school off Route 6A in Brewster. Other members of the public questioned the Committee's determination

with regard to traffic volume and safety and also questioned the Committee's determination with regard to the impact of the curb cut and the impact of the bridge.

In discussion among Commission members, a majority of the members of the Commission felt that the existence of the letter of September of 1994, signed by the former Chairman, was compelling evidence that a predetermination had been made by the Brewster Committee. Further, a majority of the Commission felt that an outright denial of any access onto Route 6A was arbitrary and capricious.

FINDINGS:

The Commission made the following Findings of Fact:

1. That the Brewster Committee did act in an arbitrary, capricious or erroneous manner in determining that the Applicant's application was inappropriate for the area. 3-0-1.

DETERMINATION:

Based on the above findings, the appeal is allowed and a Superceding Certificate of Appropriateness will issue based on plans now on file with the Brewster Committee. In making this determination, the Commission wishes to stress to the Applicant that any access onto Route 6A should be as unobtrusive as possible.

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 Brewster Town Clerk.

Christopher R. Miner
Chairman