



**Office of  
Kingston Board of Appeals**  
Town House  
26 Evergreen Street  
Kingston, MA 02364

**BUSINESS MEETING MINUTES  
ZONING BOARD OF APPEALS  
January 21, 2009  
DRAFT**

**MEMBERS PRESENT:** Paul Dahlen, Carl Pike, John Haas, David Rose; **George Boerger OTHERS PRESENT:** Paul Armstrong, Zoning Enforcement Officer; Jay Talerman, Town Counsel

Mr. Haas opened the meeting at 7:30 pm

7:30 Fountain Knoll (40B)– Mr. Haas stated that he was contacted by the applicant and the applicant requested to the hearing open for about another month to cover the appeal period. Mr. Boerger moved to continue the hearing to March 4, 2009 at 7:30 pm. Mr. Rose seconded. The vote carried unanimously (voting were; J. Haas; G. Boerger; D. Rose; P. Dahlen)

7:35 Bastianelli – Special Permit

Mr. Pike recused himself from this hearing. Mr. Rose read the public hearing notice.

Mr. Rock Bastianelli of 45 Shore Drive discussed the changes to the plan referenced in the Special Permit previously issued. There was a change in the grading from the prior plan approved. Mr. Bastianelli explained that there was ledge discovered on the property which forced him to change the grade. He used a stone wall 15 feet from the house line and the house is three feet higher than the original plan due to the grade changes and the step in grade. Mr. Armstrong stated that originally the applicant was going to drop the grade and instead he raised the grade which raised the house three feet. Mr. Armstrong stated a concern that by raising the building up, larger windows can be placed on the lower part of the house. The issue is that the elevation of the building and the elevation of the lot changed. Mr. Armstrong stated he would like to see an amended set of plans.

An abutter at 43 Shore Drive stated he was in favor of the original plans but would have a problem if the building was higher than the original plan

The Board discussed that they would like to see amended plans and also discussed that the elevation of the roof should remain unchanged.

Mr. Boerger moved to continue the hearing to February 4, 2009 at 7:30 pm. Mr. Rose seconded. The vote carried unanimously.

Mr. Pike returned to the Board

7:50 Indian Pond- Modification to Comprehensive Permit

Mr. Rose read the public hearing notice. Attorney Fleming, Fred Tonsberg and Mark Flaherty, Engineer were present for the hearing.

Mr. Haas made an opening statement about the issue of unpaid bills relevant to the prior approval process. Mr. Fleming stated his client has never received the bills.

Mr. Haas also addressed another issue of unpaid sewer fees relating to the property.

Elaine Fiore, of the Water and Sewer Department, came forward and stated that since the Country Club has been connected to the sewer, there have been no sewer use fees paid and there is \$100,000 plus outstanding. Ms. Fiore

stated that the sewer department and Mr. Tonsberg have been back and forth with this issue and they have litigated the matter with High Pines LLC and now they are in an appeal process.

Attorney Jay Talerma referenced the statute and Article 5.4.1 of the General By-Laws which states that any unpaid chares or taxes that are reported to a licensing board, may be reason to deny a permit or revoke or suspend any existing permits. Mr. Talerma recommended that between now and the next session, that notice and a list be provided from the collector and that a concurrent hearing be held. Attorney Talerma also noted that according to the bylaw, if there are several entities that exist it can be considered one business enterprise.

There were further discussions concerning the bylaws. The consensus of the Board was that if the money is owed then it needs to be paid and this bylaw assists the Board as a collection mechanism and the Board should look into the issue further. It was discussed why the issue of outstanding sewer use charges never came up during the 40B process. Ms. Fiore stated she would provide copies of memos concerning this issue to the Board.

Attorney John Fleming stated that he had no advance notice of this issue. He stated that he disputes that the separate entities can be considered one entity and that Indian Pond LLC and High Pines could not connect to the sewer during the 40B process. He requested that since he just got notice of this issue, he would like the opportunity to address it further.

It was discussed that there should be more time allowed to work with the collector to get the notices and to allow time for the applicants attorney to review the issue. Mr. Boerger moved to continue the hearing to February 18, 2009 at 7:35 PM. Mr. Pike seconded. The vote carried unanimously

#### General Business

The minutes of January 7, 2009 were reviewed. Mr. Dahlen moved to accept the minutes as written. Mr. Pike seconded. The vote carried unanimously.

It was voted to adjourn at 8:45 pm.