



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

**BUSINESS MEETING MINUTES  
ZONING BOARD OF APPEALS  
February 18, 2009**

MEMBERS PRESENT: Paul Dahlen, Carl Pike, John Haas, David Rose; George Boerger  
OTHERS PRESENT: Jay Talerma, Town Counsel; Paul Armstrong, Zoning Enforcement Officer; Maureen Thomas,  
Conservation Agent

Mr. Haas opened the meeting at 7:30 pm

7:30 Mass Property Solutions

Mr. Rose read the public hearing notice. Mr. Haas read a letter from Attorney Kraus requesting a continuance. Mr. Boerger moved to continue the hearing to March 4, 2008 at 7:35 pm. Mr. Pike seconded. The vote carried unanimously.

7:35 Bastianelli – Special Permit

Mr. Rose read the public hearing notice. Mr. Haas read and email he received from Mr. Bastianelli requesting a continuance as the applicant didn't have plans ready. Mr. Boerger moved to continue the hearing to March 4, 2008 at 7:30 pm. Mr. Rose seconded. The vote carried unanimously. Mr. Pike abstained from the vote. (voting were P. Dahlen; J. Haas; D. Rose and G. Boerger)

7:37 Indian Pond LLC

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

Mr. Haas commented on the letters between Attorney Fleming and Town Counsel. Mr. Haas referenced and read the General ByLaws of the Town of Kingston which in part states an action can be taken by the Board for an applicant owing money to the Town.

Mr. Talerma referenced a report from the collector stating outstanding taxes and fees are due from the applicant. Mr. Talerma stated that it is no mandatory for the Board to take action concerning the outstanding fees and there are options including conditioning a permit or denying a permit.

There were discussions concerning the Board's involvement in the collection of the outstanding monies owed. It was established that the matter of collecting outstanding monies owed to the town from the applicant is already being pursued through pending litigation before the Plymouth Superior Court.

Mr. Haas stated that he feels the Board is not equipped to hear this case and it is best to be handled through the court system. In addition, the Board would not be able to hand down a decision that would preclude the case from proceeding forward in the Court system.

Mr. Boerger asked the applicant if there were any other entities besides the entity which is the subject matter of the current litigation in which Mr. Tonsberg owes any taxes or outstanding municipal charges. The applicant responded that there are none.

After discussion, the Board was polled: Mr. Boerger felt that we should go forward and hear the applicant regarding the changes to the comprehensive permit and let the court decide on the other matter. Mr. Rose feels that it is not appropriate to use the by law as a weapon to block the project and that the Board should hear and discuss the merits of the proposed changes and feels since there are no other delinquencies other than what is being litigated in court that the Board should continue with the hearing. Mr. Pike agreed that the Board should not be put in the position of collecting outstanding taxes and the court is the proper venue and that we should go forward with the hearing. Mr. Dahlen agreed with the consensus of the other Board members and felt that the Board should continue with the hearing.

Mr. Haas asked for comments from the public.

Matt Lanza of Country Club Way stated he is not opposed to the project but is concerned about the over 55 waiver and the impact it will have concerning density and safety.

Elaine Fiore of the Board of Sewer Commissioners wanted to make sure that the Board received the letter from the Sewer Commission dated December 2005. Mr. Boerger wanted to comment on the letter that the reference to outstanding sewer charges was the fourth bullet item in the letter. It did not indicate any specific amounts or itemizations and did not raise any "red flags".

Attorney John Fleming went over the three submitted proposed changes to the approved permit as follows: 1. To eliminate the age restriction requirement; 2. Change the order for the deadline of the five clusters; 3. Changing the number of units on some of the proposed buildings from 6 units to four units per building. Mr. Fleming added that the HAC does not consider the changes in the deadlines as substantial under the guidelines.

Mark Flaherty referenced the letter of December 8, 2008 and January 27, 2009 regarding the modifications. He went over the plans that were provided with the application. He went over the separation of the six-plex into a three-plex units and added that the changes are very minimal. The driveway and parking areas and number of units are not changed.

The Board felt that the change in the buildings were a more favorable design than before but would like the Fire and Police Department to comment on the changes.

Areas 1, 3 and 5 and the removal of the age restriction requirement were discussed. The Board is looking for information and data on how the removal of the age restriction will impact the project and the surrounding neighborhood including impact on traffic and the school system.

Mr. Tonsberg stated that he is having difficulty selling the units with the age restriction and the last few potential buyers he had could not qualify.

The sewer capacity was discussed. Mr. Flaherty stated that there will be no issues concerning sewer and that the system was designed based on Title V and the number of bedrooms. The original plans called for 30 units on sewer and the other 56 on septic. Now they are all on septic and are based on Title V and three bedrooms.

The Board would like to see the following for the next meeting:

1. Updated traffic study
2. Demographic study (number of children and number of adults);
3. Fire and police approval.
4. Pro Forma – existing and updated.
5. Deed restrictions
6. Matrix of phases – what was there and what is planned.
7. Resolution of the \$1600 invoice.

The phases were discussed and reviewed as outlined in the letter from the applicant showing the changes to the phases.

Mr. Boerger moved to continue the hearing to March 18, 2009 at 7:30 pm. Mr. Rose seconded. The vote carried unanimously.

#### 9:15 General Business

The minutes of January 21, 2009 were reviewed and revised. Mr. Rose moved to approve the minutes. Mr. Pike seconded. The vote carried unanimously.

It was unanimously voted to adjourn at 9:20 pm.