

TOWN OF BENNINGTON

ZONING BOARD OF ADJUSTMENT

Minutes of the Public Hearing – January 11, 2007
Austin, Cox, Kane Appeal From an Administrative Decision
(Planning Board's Site Plan Approval)

ZBA Case No: 2006-03 – Austin, Cox, Kane Appeal/High Bank Properties, LLC

Present: Judy Heddy, Pro-Tem Chairperson
James Cleary
Glenn Loucks
Jane Pelletier

Applicants: Janet Kane
Peter Martel, authorized representative of Frank and Laurie Austin

Property Owner: Scott Baker, Contractor
Silas Little, Attorney

Attendees: Christopher Clough
Joseph Eisenberg, Planning Board Chairman
Edward Pelletier (with video camera)
Timothy Goodwin, Reporter/The Monadnock Ledger-Transcript
Joyce Miner
Joan Schnare
Arthur Thurber

NOTE: The Hearing was audio recorded by the Town of Bennington. The audio recording is the official record of the Hearing.

NOTE: The Hearing was scheduled as a continuance from the January 4, 2007 Public Hearing.

ZBA Pro-Tem Chairperson Judy Heddy reconvened the Public Hearing at 6:38 p.m. ZBA members present were James Cleary, Christopher Clough, Judy Heddy, Glenn Loucks, and Jane Pelletier. Due to a death in the family, Barbara Moorehead was unable to attend.

The Applicants tried to raise procedural objections to the Hearing. Pro-Tem Chairperson Judy Heddy noted that no public input would be allowed concerning the case.

Glenn Loucks noted that he had experienced a family emergency since the last Hearing (January 4, 2007) and had not reviewed any documents that may have been distributed since that date. James Cleary noted that the only document that had been submitted was the Unofficial Until Approved Minutes of the January 4, 2007 Hearing; no other documents were distributed.

ZBA – Minutes of the Public Hearing – January 11, 2007
Austin, et al Appeal From an Administrative Decision

Attorney Silas Little, representing High Bank Properties, LLC raised an objection to Christopher Clough's participation in the Hearing. Mr. Clough explained that he had been an employee of Terry Schnare, now Manager of High Bank Properties, LLC, twenty years ago. Mr. Clough stated that when he was employed by Mr. Schnare he had made a poor decision that resulted in his employment being terminated. Mr. Clough added that Mr. Schnare had defended his honor to the Police Department and that he does not hold Mr. Schnare personally accountable for his employment being terminated.

Attorney Little cited RSA 673:14 and noted that Mr. Clough would be disqualified as a juror if this were a jury trial. He noted that even though Mr. Clough does not harbor any ill feelings towards Mr. Schnare, a Court would not allow Mr. Clough to sit as a juror if this were a jury trial.

After much discussion, Christopher Clough voluntarily recused himself from participating in the Hearing.

Attorney Little noted that he had no further comments about Mr. Clough or any other members.

Peter Martel submitted a letter on behalf of the Applicants requesting a full Board be in place to continue their Administrative Appeal. The Board reviewed their Rules of Procedure and noted that at least three members are required to be in attendance to conduct a Hearing so there is a quorum, but that the Board should make every attempt to have five members present. The Board recognized that they had made attempts to gather a full Board, but due to an unexpected family emergency and Christopher Clough's recusal, they were left with four members.

Applicant Janet Kane noted that she objected to a partial Board conducting the Hearing. Peter Martel noted that Applicants Frank Austin, Laurie Austin, and Drusilla Cox were unable to attend due to illness but requested their objection to an incomplete Board be noted. Attorney Silas Little noted that he did not have any objections to the Board continuing with the Hearing.

Motion was made, seconded, and the Board unanimously voted to enter into executive session at 7:08 p.m. to review advice from Attorney Bill Drescher, the ZBA's attorney. The Board remained in executive session until 7:39 p.m.

The Board discussed whether they should continue the Hearing with four members. The Board unanimously felt that Barbara Moorehead has been a dedicated and active member of the Zoning Board throughout the Austin, et al Appeal in October 2006, the Request for Rehearing in November 2006, and sat on the first part of the Hearing on January 4, 2007. The Board felt that they should continue the Hearing until Thursday, January 18, 2007 in the hopes that Mrs. Moorehead would be able to review advice from Counsel, review the Minutes, and participate in the Hearing. If Mrs. Moorehead is unavailable on January 18th, the Board would proceed as long as there was a quorum of the membership. Motion was made, seconded, and the Board unanimously voted to continue the Public Hearing to January 18, 2007 at 6:30 p.m. at the Bennington Town Hall.

ZBA – Minutes of the Public Hearing – January 11, 2007
Austin, et al Appeal From an Administrative Decision

With the Public Hearing portion of the evening closed, Peter Martel, ZBA member, joined the Board.

There was a brief discussion on whether or not the Board would conduct their January meeting, as was originally planned. The Board felt that this case has consumed a lot of their time recently and will consume at least one other evening in January (the 18th). Motion was made, seconded, and the Board unanimously voted to cancel their January meeting and hold their next meeting on February 8, 2007, their next regularly scheduled meeting.

Respectfully Submitted,

Kristie French, Zoning Board of Adjustment Recording Secretary