



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: November 19, 2009

PETITION NO: #4282

HEARING DATE: November 12, 2009

PETITIONER: Kings Way Trust, et al, Sharon Donegan Trustee

**PROPERTY: 64 Kings Circuit, Yarmouthport
Map & Parcel: 0142.13-17; Zoning District: R40
Book & Page#: 5870/222**

MEMBERS PRESENT AND VOTING: Sean Igoe, Chairman, Joseph Sarnosky, Diane Moudouris, Debra Martin, Bob Palmer.

Notice of the hearing has been given by sending notice thereof to the Petitioner and all those owners of property as required by law, and to the public by posting notice of the hearing and publishing in *The Register*, the hearing opened and held on the date stated above.

The petitioner seeks to modify the language in the Board's decision in appeal #3555 by adding a provision allowing the applicant to promote up to 8,000 rounds of public play per season and or a Special Permit from bylaw §202.5 N6, which will allow the limited "Public Play" of the golf course at Kings Way. According to the Board's prior Decision (#3661, January 2001) public play expired on December 31, 2002, unless application were made for a further extension. The petitioner also seeks permission to proceed based upon the existing site plan, since no site alterations are proposed or requested.

The petitioner represents that the King's Way development is completed. The original permits/decision permitted public use of the golf course, in order to keep it self-funding until completion, so that it would not be an economic drain upon the developer or residents of the condominium complex. The original permit called for up to 750 residential units to be built, but only 475 units were built and 191 units were dedicated to elderly housing. However, resident and non-resident memberships are not sufficient to support the financial operation of the golf course.

Additionally, the Board finds that the golf course was permitted by way of a Special Permit issued by the Board in 1975. Since that time the Use Schedule of the By-Laws (§202.5 N6) has been amended to allow a public golf course use in the R-40 zoning district by way of a Special Permit.

Therefore, the Board of Appeals may apply the Special Permit standards set forth in the Section of 103.2 of the bylaw to determine whether the request should be granted.

The Petitioner represented that the allowed number of memberships at the golf course have never been attained and that the golf course is running an annual deficit that cannot be sustained.

Should the golf course fail, there would be a loss of value in the properties that comprise Kings Way and erosion to the tax base of the Town. Also, a deconstructed golf course may not be as aesthetically pleasing as the existing landscaped golf course.

With respect to hazard and congestion, the Board notes that the golf course operated from 1985 through 2001 with full public play and there were no issues concerning hazard, congestion or nuisance conditions. The site plan review team has examined the issue of access and parking and finds the parking facility to be adequate.

With respect to whether allowing up to 8000 rounds of public play per season would result in a substantial detriment to the neighborhood or Town, the Board believes that closing the golf course would be more detrimental than keeping it operating. Golf provides a substantial recreational outlet for people of all ages and is popular with the people in the Town of Yarmouth. The loss of revenue to Kings Way and the Town of Yarmouth would be detrimental.

Substantial correspondence in favor of the proposal was received by the Board. One abutter had concerns about golf balls coming off the 9th hole of the golf course on to their property. The Trustee indicated that they would contact that abutter and discuss ways to correct that problem. One other letter was received by an abutter objecting to the relief requested because he was of the opinion that golf courses were not allowed in the RS40 district, Kings Way is not in that district. It was also his opinion that the application was only seeking relief by variance from the previous decision # 3555. The Board members disagreed with his opinion, as the bylaw is clear that public golf courses are allowed by Special Permit in the R40 Zoning District.

Therefore, upon a motion made by Mrs. Martin and seconded by Mr. Palmer, it was voted to grant the Special Permit as requested, based upon the existing site plan to allow up to 8000 rounds of public play at the Kings Way Golf Course per season with the following conditions (1) the Board of Appeals will review the operation of the golf course after three years (November 2013) to determine whether any new modification of the operation is appropriate and (2) the Trust shall maintain accurate records of the rounds played by members of the public; (3) the number of public players reported semi-annually to the Yarmouth Building Department and the Yarmouth Zoning Board of Appeals; and (4) in all other respects, the conditions set forth in decision #3555 & #3661 shall remain in full force and effect. The members voted unanimously in favor.

No permit shall issue until 20 days from the filing of this decision with the Town Clerk. This decision must be recorded at the Registry of Deeds and a copy forwarded to the Board of Appeals. Appeals from this decision shall be made pursuant to MGL c40A section 17 and must be filed within 20 days after filing of this notice/decision with the Town Clerk. Unless otherwise provided herein, the Special Permit shall lapse if a substantial use thereof has not begun within 24 months. (See bylaw §103.2.5, MGL c40A §9)

Steven DeYoung, Clerk