

# State of New Hampshire Supreme Court

NO. 09-\_\_\_\_\_

JANET SAUNDERS &a.

v.

TOWN OF KINGSTON

NOTICE OF MANDATORY APPEAL  
Pursuant to Supreme Court Rule 7(1)(A)

By: Joshua L. Gordon, Esq.  
Law Office of Joshua Gordon  
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# State of New Hampshire Supreme Court

## **NOTICE OF MANDATORY APPEAL**

This form should be used for an appeal from a final decision on the merits issued by a superior court, district court, probate court or family division court except for a decision from: (1) a post-conviction review proceeding; (2) a proceeding involving the collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; (6) a probation revocation proceeding; (7) a landlord/tenant action or a possessory action filed under RSA chapter 540; (8) from an order denying a motion to intervene; or (9) a domestic relations matter filed under RSA chapters 457 to 461-A, except that an appeal from a final divorce decree or from a decree of legal separation shall be a mandatory appeal.

**1. COMPLETE CASE TITLE AND DOCKET NUMBERS IN TRIAL COURT**

*Janet Saunders & a. v. Town of Kingston, No. 08-E-0357*

**2. COURT APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S)**

Rockingham County Superior Court (*Kenneth R. McHugh, P.J.*)

**3A. NAME & ADDRESS OF APPEALING PARTY**

Janet & Peter Saunders  
187 Main St.  
Kingston, NH 03848  
(603) 234-0682

**3B. NAME, FIRM, ADDRESS & TELEPHONE  
NUMBER OF APPELLANT'S COUNSEL**

Joshua L. Gordon  
New Hampshire Bar No. 9046  
Law Office of Joshua Gordon  
26 S. Main St., #175  
Concord, N.H. 03301  
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4A. NAME & ADDRESS OF OPPOSING PARTY

Town of Kingston  
Kingston Town Hall  
163 Main Street  
PO Box 657  
Kingston, NH 03848  
(603) 642-3112

4B. NAME, FIRM, ADDRESS, & TELEPHONE  
NUMBER OF OPPOSING COUNSEL

Peter J. Loughlin, Esq.  
144 Washington Street  
PO Box 1111  
Portsmouth, NH 03801  
(603) 431-6466

5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT

Representing applicant/intervenor:

David W. Rayment, Esq.  
Cleveland Waters and Bass PA  
2 Capital Plaza  
PO Box 1137  
Concord, NH 03302-1137  
(603) 224-7761

Representing other abutters:

Michael L. Donovan, Esq.  
Donovan Law Office  
72 North Main Street  
PO Box 2169  
Concord, NH 03302-2169  
(603) 224-4230

6. DATE OF CLERK'S NOTICE OF DECISION  
OR SENTENCING

Clerk's Notice of Final Order,  
December 5, 2008

DATE OF CLERK'S NOTICE OF DECISION  
ON POST-TRIAL MOTION

January 12, 2009

7. CRIMINAL CASES: DEFENDANT'S  
SENTENCE AND BAIL STATUS

n/a

8. APPELLATE DEFENDER REQUESTED?

No.

9. IS ANY PART OF CASE CONFIDENTIAL? IDENTIFY WHICH PART AND CITE AUTHORITY

None known.

10. IF ANY PARTY IS A CORPORATION, NAMES OF PARENTS, SUBSIDIARIES & AFFILIATES

The Applicant/Intervener, Konover, is believed to be a corporation. Its corporate structure is unknown.

11. DO YOU KNOW ANY REASON WHY ONE OR MORE SUPREME COURT JUSTICE WOULD BE DISQUALIFIED FROM THIS CASE?

There is no known basis for recusal.

IF YES, FILE MOTION FOR RECUSAL, SUPREME COURT RULE 21A

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY?

Yes.

IF YES, COMPLETE TRANSCRIPT ORDER FORM

13. LIST SPECIFIC QUESTIONS TO BE RAISED ON APPEAL, EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE, BUT WITHOUT UNNECESSARY DETAIL. STATE EACH QUESTION IN A SEPARATELY NUMBERED PARAGRAPH.

- I. Did the court misconstrue the Town of Kingston's zoning ordinance, which says that "Properties whose frontage lies partially within the District, shall be considered within the District" to mean that zoning restrictions pertaining to districts which the property also falls within do not have to be complied with?
- II. Did the court fail to evaluate the proposed development in accord with the most restrictive zoning, as required by RSA 676:14?
- III. Did the court err in finding that matters stated in a previous opinion of this court are conclusively determined as law-of-the-case when those matters were not the subject of dispute in the previous litigation?
- IV. Did the court misconstrue the law-of-the-case doctrine to limit the issues available to be litigated on remand, when the ordinance was amended, new facts were discovered, and circumstances changed?
- V. Did the court err in finding that the proposed development does not violate various provisions of the zoning ordinance?
- VI. Did the court err in taking jurisdiction over this case, or in ruling that it had jurisdiction, given that the court also ruled that the underlying planning board decision was only conditional and not yet final?

#### 14. CERTIFICATIONS

I hereby certify that, upon information and belief, every issue specifically raised has been presented to the court below and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading.

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Joshua L. Gordon, Esq.

I hereby certify that on or before the date below copies of this notice of appeal were served on all parties to the case and were filed with the clerk of the court from which the appeal is taken in accordance with Rule 26(2).

February 11, 2009

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Joshua L. Gordon, Esq.

#### ATTACHMENTS

- |     |  |   |
|-----|--|---|
| (1) | CLERK’S NOTICE (of denial of motion to reconsider) (Jan. 12, 2009) ..... | 7 |
| (2) | FINAL ORDER (Dec. 5, 2008) .....   | 8 |

## TRANSCRIPT ORDER FORM

### INSTRUCTIONS:

1. If a transcript is necessary for your appeal, you must complete this form.
2. List each portion of the proceedings that must be transcribed for appeal, e.g., entire trial (see Superior Court Administrative Rule 3-1), motion to suppress hearing, jury charge, etc., and provide information requested.
3. Determine the amount of deposit required for each portion of the proceedings and the total deposit required for all portions listed. Do not send the deposit to the Supreme Court. You will receive an order from the Supreme Court notifying you of the deadline for paying the deposit amount to the trial court. Failure to pay the deposit by the deadline may result in the dismissal of your appeal.

LIST EACH PORTION OF CASE PROCEEDINGS TO BE TRANSCRIBED						
Date of Proceeding	Type of Proceeding	Length of Proceeding	Name of Judge(s)	Steno/ Recorded	Previously Prepared?*	Deposit
11/12/08	Hearing	½ day	McHugh, J.	Recorded	no	\$450
<b>DO NOT SEND DEPOSIT AT THIS TIME</b>						<b>TOTAL DEPOSIT: \$450</b>

### SCHEDULE OF DEPOSITS

#### Length of Proceeding

#### Deposit Amount

Hearing or trial of one hour or less  
Hearing or trial up to ½ day  
Hearing or trial of more than ½ day  
Previously prepared portions

\$ 175  
\$ 450  
\$ 900/day  
Number of pages x \$.50 per page per copy if additional copies are needed

NOTE: The deposit is an estimate of the transcript cost. After the transcript has been completed, you may be required to pay an additional amount if the final cost of the transcript exceeds the deposit. Any amount paid as a deposit in excess of the final cost will be refunded. The transcript will not be released to the parties until the final cost of the transcript is paid in full.

\* For portions of the transcript that have been previously prepared, indicate number of copies that were prepared.