Township of Bernards

1 Collyer Lane, Basking Ridge, NJ 07920
Phone: 908-204-3001; Fax: 908-204-3015; Website: www.bernards.org

FOR IMMEDIATE RELEASE – 1/25/2012

Company Name: Bernards Township

Contact Person: Denise Szabo
Telephone Number: 908-204-3014
Email Address: dszabo@bernards.org

Web site address: www.bernards.org

Subject: BAMBOO GRILLE SETTLES LIQUOR LICENSE AND NUISANCE ORDINANCE LITIGATIONS WITH TOWNSHIP AND DISMISSES LAWSUITS – STAY DISSOLVED AND SPECIAL CONIDITION OF RESOLUTION #2011-0300 BANNING OUTDOOR AMPLIFIED MUSIC IS IN FULL FORCE AND EFFECT

On June 28, 2011, the Bernards Township Committee (the "Township Committee") adopted Resolution #2011-0300 (the "Resolution") authorizing the 2011-2012 renewal of liquor license for Basking Ridge Restaurants, LLC t/a Bamboo Grille ("BG"). The Resolution renewed BG's liquor license for the license year July 1, 2011, to June 30, 2012, subject to imposition of the following special condition pursuant to N.J.S.A. 33:1-32 (the "Special Condition")

> "Licensee shall not permit on the patio area or to emanate onto the patio area any music except acoustic music. Acoustic is defined as describing music or a musical instrument that is not electronically amplified."

The Special Condition was concerning BG's plenary retail consumption license 1802-33-005-009 at the premises located at Block 17.01, Lot 12, 185 Madisonville Road.

On July 12, 2011, BG appealed imposition of the Special Condition (the "Appeal") and after pleadings filed by both BG and the Township, on July 21, 2011, Director Jerry Fischer of the State of New Jersey, Department of Law and Public Safety, Division of Alcoholic Beverage Control, entered an Order Extending Stay of Special Conditions Pending Appeal (the "Stay Order"). The Appeal was transmitted to the Office of Administrative Law for a contested hearing and was assigned to the Honorable Patricia M. Kerins. Discovery was conducted and the Appeal was set down for trial on January 23, January 24, January 25 and January 27, 2012. On the morning of January 23, 2012, settlement discussions with the input of the Honorable Patricia M. Kerins

occurred, at which time a settlement proposal put forth by BG was outlined on the record before Judge Kerins.

The settlement proposal was approved by the Bernards Township Committee in executive session at its Township Committee meeting on January 24, 2012, by Resolution #2012-0095. The settlement agreement has been signed by both BG and the Township.

The settlement terms are as follows:

- BG will dismiss the Appeal without prejudice. As a result thereof, the Resolution will now remain in full force and effect as originally adopted through June 30, 2012. Counsel for the Township has advised by letter and a copy of the Memorandum of Settlement to Judge Kerins and Director Fischer that both the Township and BG have consented to a dismissal of the Appeal and that the Stay Order issued by Director Fischer in his Order dated July 21, 2012, is dissolved and of no further force and effect.

- BG has agreed within five days of the date of adoption of Resolution #2012-0095 by the Township Committee approving this settlement, to file with the Superior Court Clerk, Somerset County, Law Division, a dismissal without prejudice of the action entitled Basking Ridge Restaurants, LLC v. Township of Bernards, Docket No. SOM-1964-11.

- Basking Ridge Golf Course, Inc. has obtained approval from the Somerset-Union Soil Conservation District, Application #2011-0287, to construct at Block 17.01, Lot 12, a proposed 10' high landscape berm with a top width equal to 5 feet and side slopes at a ratio of 2.1 along the side and rear yards of the Cunningham-Coneys residence, Block 17.01, Lot 7, and along the rear yards of the Ross residence, Block 17.01, Lot 6, and the Marion residence, Block 17.01, Lot 5, all in accordance with a plan prepared by Kevin G. Page, P.E.P.P. N.J. Professional Engineer License No. 25114 dated September 13, 2011, plan entitled Soil Erosion and Sediment Control Plan (the "Berm")

- Notwithstanding that the Stay Order has been dissolved, the Township Committee agrees that the Township will grant BG limited consent as the weather becomes warmer in May 2012 and before June 16, 2012, permission to have by way of a band or bands, outdoor amplified music on two evenings on Friday or Saturday from the hours of 7 p.m. to 11 p.m. No bands will play until the Berm is fully constructed. The Township's permission is expressly granted with the understanding that during the two outdoor band appearances, BG will hire an acoustical engineering expert to conduct decibel readings at the rear yard property lines of both the Coneys and Ross properties during the 7p.m. to 11 p.m. time periods. BG will hire bands typical of those utilized during 2010 and 2011, and regular patrons and the public should attend so as to ensure a level of noise normally associated with the use of the

Premises. BG will also permit to attend these two outdoor appearances Janis Cunningham-Coneys, Scott Ross, Kathleen Ross, two representatives of the Bernards Township Committee, representatives of BG, and counsel for the respective parties may attend, the latter not to act in the capacity as factual witnesses but merely to observe and provide any legal counsel at that time. The purpose of the latter attendance is to allow such persons to monitor the noise levels at the Ross and Coneys rear yards.

- BG and the Township also agree that during one or both of the two outdoor band appearances, BG will test an alternative location beside the area that the outdoor bands have performed at during the past few years, the area commonly referred to as the northwest corner (the "Nook"), where bands previously played when the Township had granted a license to the Ironwood Grille. The intent is to test or ascertain whether relocation of the bands to the Nook will result in the lessening of the outdoor amplified music level upon the adjoining residents. BG may also use sound mitigating devices including sound blankets and/or other devices of BG's choosing should it wish further to attempt to mitigate noise levels.

- That BG is hiring an acoustical engineering expert to monitor and take decibel levels is neither construed as an admission nor acknowledgement by the Township that in considering renewal of BG's liquor license for the year commencing July 1, 2012 to June 30, 2013, that any such decibel levels in accordance with either the New Jersey State Noise Control Act, N.J.S.A. 13:1G-1 et seq. or regulations thereunder at N.J.A.C. 7:29, in any way govern or are dispositive or supersede the Township's present ordinances, including the nuisance ordinance at Section 3-19 of the General Township Ordinances.

- BG and the Township expressly acknowledge as part of the settlement terms that no representations, promises, warranties or other assurances have been made with respect to renewal of BG's liquor license for the year July 1, 2012, to June 30, 2013, with the understanding that both BG and the Township reserve all rights under law concerning such renewal, including that the Township reserves the right to impose any Special Conditions, or not to impose any Special Conditions, and that BG reserves the right to challenge the imposition of any Special Conditions, including the right to appeal and/or seek a Stay from the Director of the Alcoholic Beverage Commission.