



# PLANNING BOARD TOWN OF PORTER

3265 Creek Road • Youngstown, New York 14174 • (716) 745-3730 • Fax (716) 745-9022

*Approved June 2, 2016*

**Monday, May 16, 2016.**

The Special Meeting of the Town of Porter Planning Board was called to order at 6:10 p.m.

Present: Chairperson Jeffery, Vice Chairperson Anthony Collard, Member John Bis, Member Mark Fox, Member Robert Tower, Assessor Susan Driscoll, Attorney Michael Dowd

## **Approval of minutes from the May 5, 2016 Planning Board meeting**

A motion was made to approve the minutes of the Planning Board meeting from May 5, 2016 by Member Bis and seconded by Member Collard. All in favor, motion carried.

## **Review of Site Plan for Judith Fleckenstein Trust — 22 Acre Aquaculture and Aquaponics Facility, 1953 Balmer Road, Ransomville.**

Thomas Fleckenstien presented his plan for a 22 acres aquaculture and aquaponics facility to the Planning Board on May 5. During that presentation, numerous documents were provided to the Planning Board. A copy has been distributed to the members for review. Documents included a business plan, mining land use plan, a disclosure letter (which was put on record for the May meeting), insurance documentation, a site plan map and a copy of the DEC permit for Niagara Frontier Clay Inc.

Attorney Dowd stated to the Planning Board that he spoke with Mr. Fleckenstein's lawyer, Mr. Malcomb about the cost recovery fee. An estimate was provided to the Town from CRA for on-site engineering on the project for four years, however Attorney Dowd stated that he felt that quote was not accurate. Mr. Fleckenstein's property has been deemed a farm and therefore the expenses cannot burden the cost of the project. As recommended by the Planning Board, Attorney Dowd and Attorney Malcomb are close to a resolution on the agreed upon amount. Attorney Dowd will inform the Zoning Board of this agreement for their meeting on May 19, 2016.

Chairperson Jeffery asked where the haul road would be located on the property. Mr. Fleckenstein stated it would be centered in the field with access by the gate. It will continue due North to the pond area. Chairperson Jeffery asked about the impact of the creek with the ponds being on both sides. Mr. Fleckenstein stated there would be a culvert across Twelve Mile Creek that is 4ft in diameter. He claims that Mark Cider from Niagara County Soil and Water Department agreed to this size and stated it will not impede the flow of water. Mr. Fleckenstein stated that Mr. Cider helped with the layout of the ditches in the property as well. He stated there would also be a 12-18ft culvert before the creek.

Chairperson Jeffery stated that the ponds will be located 30ft from the property line, but asked where the working area would be located. Mr. Fleckenstein stated that as material is excavated, it would be removed from the property.

Chairperson Jeffery asked about the position of berms. Mr. Fleckenstein stated that berms are only being used to prevent ingress from the fields into the ponds. He stated that the berms will only be a foot higher than elevation. Chairperson Jeffery asked if berms would be used during construction to shelter construction noise and said that section 3.5 on the mining plan stated that berms would be used for visual and noise reduction on the East and West sides. Mr. Fleckenstein stated that he did not plan to install additional berms. Chairperson Jeffery stated that it was a discrepancy on the mining plan versus the site plan. He said that the mining plan stated that the ponds would be 25ft deep while the site plan stated they would be 30ft deep. Mr. Fleckenstein said he would prefer the 30ft as it is a deeper area for the fish to brood, however, he is bound by the DEC permit. Chairperson Jeffery stated that he didn't want the inconsistencies to lead to problems going forward, therefore the site plan should reflect what is granted in the DEC permit.

Chairperson Jeffery asked about the wind turbines. Mr. Fleckenstein stated that 2 turbines already exist on the property and that he has the permit for the third turbine, which will be installed once the area has been tiled.

Attorney Dowd stated that there were conditions that should be on the site plan including the haul road and culvert locations so that the DEC permit is reflected. Mr. Fleckenstein stated that the haul road would be put back in as top soil when the project is complete. Attorney Dowd stated that Mr. Fleckenstein does have a bond for road maintenance reclamation.

Mr. Fleckenstein stated he would need to develop a market for his product because what he is proposing has not been done before. He has already invested the money into the equipment and is committed to the project. He feels that with the organic standard of his process, he should be able to sell the fish for between \$10-15 per pound.

Chairperson Jeffery stated that he was concerned that if the project were not viable, there would be 22 acres of holes in the ground. Attorney Dowd stated that a legitimate farm operation could take 10-15 years for a profit based upon the crop. Mining for clay has a much quicker return and the Planning Board needs to make sure that they plan for "down the road" by verifying this is not a mining operation only. Member Fox asked about the money that would be made from the clay, as it was not included in the financial plan provided. Mr. Fleckenstein stated that the clay would be mined in exchange for the ponds being dug and he would not benefit from the sale of the clay. The value on his property will come when the ponds are stocked and complete.

Attorney Dowd stated that there was an operation on Ridge Road in Lewiston that claimed that they would going to create a 50 plus acre pond for fish farming only to have the project end as a clay mine. He suggested that a "phase in" approach be used for this project to protect the Town from this happening and also protected Mr. Fleckenstein's investment in the project. Mr. Fleckenstein stated he had no issue digging one pond at a time and felt that a phase in plan was appropriate.

Attorney Dowd asked what the timeframe looked like if the approval was given at the June 2, 2016 Planning Board meeting. Mr. Fleckenstein stated that he was not able to commit a timeframe as it would depend upon when the company would be able to start digging the ponds, however, he felt that 18-24 months was reasonable to dig, fill the ponds, wait for the debris to settle/clear and to stock the pond. He stated that the fish would be in the tanks and leafy greens would be grown. Mr. Fleckenstein stated that a lot of the timeframe also had to do with weather (cannot dig in the winter) and that he would utilize the first pond before digging the second. If the first pond is not viable, he will not dig the second pond.

Attorney Dowd said that if the goals of the timeline are met, Mr. Fleckenstein could continue with his project (the second pond). Attorney Dowd asked if ½ of the pond with fish stocked would be reasonable to happen

within 18 months of the start of digging. Mr. Fleckenstein said that this timeframe sounded reasonable. He also stated that the aquaponics facility, the water recirculation system and the green house would also be functional within 18 months. Attorney Dowd stated that the Planning Board could make a recommendation to the Zoning Board based upon this timeframe. He stated he would provide Secretary Freiermuth the wording for the proposal to the Zoning Board for their meeting. This wording would also include the recommendations regarding the variances needed and the cost recovery fee.

A motion was made to revise the recommendation to the Zoning Board using a timeframe of 18 months from the beginning of excavation to include:

- ½ pond being stocked with Walleye
- the aquaponics facility to be in use
- the tank and recirculation system operational
- leafy greens being produced

The motion also approved revising the recommendation to the Zoning Board as per Attorney Dowd's wording provided to Secretary Freiermuth. The motion was made by Chairperson Jeffery and seconded by Member Tower.

With no further discussion, roll was called:

Chairperson Jeffery: Yes

Member Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Motion Carried.

Chairperson Jeffery stated that the public hearing for the project would take place on June 2, 2016. He also stated that the culvert, turbine and solar array needed to be included in the site plan and that this should be provided to the Planning Board at least 10 days prior to the June 2 meeting.

### **Discussion of Sales and Service of Farm/Garden Equipment law change as requested by the Town Board.**

Chairperson Jeffery informed the Planning Board that the Town Board is looking for recommendations regarding the law for Sales and Service of Farm and Garden Equipment in a Rural Agricultural Zone — Law 2014-71. The law requires a Site Plan Review for Sales/Service but does not require a Special Use Permit, which would allow for more stipulations for the activities on the property including the number of employees, size of equipment permitted, hours, square footage, etc.

Chairperson Jeffery stated that within the RA Zone it might be more appropriate to allow for a home occupation type of business rather than a commercial business. Commercial sales and service could be kept within the commercial districts as indicated in the Master Plan.

Prior to the law change in 2014, a Special Use Permit was required for Sales and Service of Farm and Garden Equipment. Chairperson Jeffery stated that with a Special Use Permit, if a business was not in compliance, the permit could be rescinded. Currently a Site Plan cannot be pulled once approved.

Section 35 of the Town of Porter Zoning Law addresses Home Occupations. Keith Shaw's business on Lake Road is a prime example of Sales and Service of Farm and Garden Equipment where a Special Use Permit has been issued. Mr. Shaw keeps his property clean and there are no visible business activities outside of the building where the business takes place.

Member Bis suggested that the Home Occupation section be renamed and modified to cover Business Activity. He stated that it seemed like the Town Board is looking for a recommendation on rewriting the Zoning Law.

Attorney Dowd stated that the Home Occupation section could be used as the base and expanded for business activity.

Chairperson Jeffery read the Home Occupations requirements as listed in Section 35 (on page 46).

- A. A home occupation shall be conducted entirely within a dwelling or existing accessory structure.

Member Fox asked if the business would need to occur within a dwelling. Chairperson Jeffery stated it could occur in an accessory structure or within a home office. Member Fox asked that if somebody brings a tractor to be worked on, would it need to be worked on within a building. Member Bis stated that brings up the topic of Sales of Farm and Garden Equipment and allowing tractors, etc., to be for sale on a property. Chairperson Jeffery stated that one of the stipulations of a Home Occupation is that there is no stock and trade, so sales would need to be addressed separately. Attorney Dowd stated that the Planning Board could make the recommendation for service only. Chairperson Jeffery stated that Sales and Service of a larger size should be limited to Commercial Zones. Member Tower stated that the purpose of the Master Plan was to create Commercial Zones to keep larger activity in those areas. Chairperson Jeffery and Member Bis agreed that the service distinction should be made and large sales should not be allowed.

- B. The home occupation is clearly incidental and secondary to the principal use of the dwelling. Suitable home occupations include, but are not limited to: office for professional (architect, attorney, accountant, etc.); instructors limited to one or two students at a time; barber limited to one chair; hairdresser limited to two chairs; computer technician.

Chairperson Jeffery stated that the above does not apply specifically to the Service of Farm and Garden Equipment except for it being clearly incidental and secondary to the principal use of the dwelling. Member Fox stated that it makes sense that a Special Use Permit is issued and that any business needs to meet the Home Occupation requirements.

Attorney Dowd stated that if the Planning Board feels that the other specifications within the Home Occupation section meet the recommendation, then the Planning Board can suggest that modification to the Town Board.

- C. The establishment of a home occupation shall not change the principal character or use of the dwelling unit involved.

Chairperson Jeffery stated the above was fine.

- D. A maximum of one (1) person other than members of the immediate family residing on the premises may be employed.

No discussion.

- E. A maximum of 25% of the floor area of one (1) story shall be devoted to the home occupation. This requirement shall not apply to family day care homes.

Attorney Dowd stated that this could apply to an occupation occurring within the home, but stipulations

should be made because this probably wouldn't apply to an occupation located in an accessory structure. He suggested that wording include that the space limitation would not apply to accessory structures.

- F. A home occupation shall not require internal or external alteration or invoke construction features not customarily in a dwelling.

No discussion.

- G. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street.

No discussion.

- H. Storage or display of materials, goods, supplies or equipment related to the operation of a home occupation shall not be visible from outside the dwelling.

No discussion.

- I. Mechanical, electrical or other equipment, which produces noise, electrical or magnetic interference, vibration, heat, glare of other nuisance outside the residential or accessory structure, shall not be used.

No discussion.

- J. A home occupation shall not be permitted which is noxious, offensive or hazardous by reason of hours of operation, vehicular traffic, generation or emission of noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare, refuse, radiation or other objectionable emissions.

No discussion.

- K. A home occupation shall not involve the use of advertising signs. Only one (1) non-illuminated nameplate, not to exceed one (1) foot by two (2) feet shall be allowed. It may display the name of the occupant and/or name of the home occupation.

No discussion.

Chairperson Jeffery stated that the requirements don't address stock and trade or sales and the recommendation could be that a Home Occupation is limited to service only. Attorney Dowd stated that sales could be limited to what can happen within an accessory structure (ie. lawn mower blades, spark plugs — common parts). The Special Use Permit can spell out what can occur on the property (ie. hours, exterior sales, etc.).

Attorney Dowd stated that a Special Use Permit would limit large-scale activity in the RA Zone.

Chairperson Jeffery stated that Service of Farm and Garden Equipment is an acceptable Home Occupation as long as it meets the criteria of a Home Occupation as indicated in section 35 in an RA district. Attorney Dowd stated that the change in permitted use of a Home Occupation would include the Sales and Service of Farm and Garden Equipment within an RA district and would require a Special Use Permit.

Member Collard asked if the scope of the business needs to be addressed within the section. Attorney Dowd stated that because large equipment will not fit into an accessory structure and that a business owner cannot

change the character of the property for the business, the scope does not need spelled out, but can be addressed when the Special Use Permit is granted (if need be).

Member Collard asked if the above was to help resolve the issue on Lake Road. Attorney Dowd stated that this change would not address Lake Road. This proposed change is so that in the future small businesses cannot get out of control and will offer protection to small operations.

Chairperson Jeffery asked if the above was the best direction for the Planning Board to move forward on the recommendation to the Town Board. Member Collard stated that he felt it was because there were more restrictions than the current law. Chairperson Jeffery stated this would reduce the scale of what can happen on a property. Member Tower stated that in going this direction, the Zoning Board of Appeals could pull a Special Use Permit if a business gets “out of hand”.

A motion was made to make the recommendation to the Town Board that Sales and Service of Farm and Garden Equipment become an acceptable Home Occupation that must meet the criteria of a Home Occupation in an Rural Agricultural District with the modification of Section 35 (Home Occupation), letter E be expanded to state that the space limitation would not apply to accessory structures. Motion made by Member Bis and Seconded by Member Collard.

With no further discussion, roll was called:

Chairperson Jeffery: Yes

Member Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Motion Carried.

A motion was made to adjourn the meeting by at 8:13 p.m. by Member Collard and Seconded by Member Bis. All in favor, motion carried.