



# PLANNING BOARD TOWN OF PORTER

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*Approved at Special Meeting, May 16, 2016*

**Thursday, May 5, 2016.**

The regular meeting of the Town of Porter Planning Board was called to order at 7:00 p.m.

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

Absent: Special Council Kyle Andrews

## **Approval of minutes from the April 7, 2016 Planning Board meeting**

Chairperson Jeffery read highlights of the minutes of the April 7, 2016 Planning Board meeting, which included all listed agenda items.

With no additions or corrections Member Bis made a motion to approve the minutes as submitted. Member Collard seconded the motion. All in favor, motion carried.

## **Public Hearing for Site Plan Review of Jeffery and Joshua Smith — Home Occupation, 3880 Dickersonville Road, Ransomville.**

Chairperson Jeffery read the public notice that was mailed to residents within 500 feet of the Jeffery property and published in the Niagara Gazette. Mr. Joshua Smith's Federal Firearms License was submitted for the record as well as a tax map and google map location for the site plan.

Mr. Jeffrey Smith stated that Mr. Joshua Smith would like to have a home occupation where he would sell guns online with his customers picking the guns up at his home (face to face). Guns would not be ordered until they were sold so there would be no stock. Ammunition, if sold, would only be sold in bulk. Mr. Joshua Smith lives with Mr. Jeffrey Smith. Because the sales would be limited, there would be no increase in traffic.

Chairperson read the Home Occupation requirements from section 35 of the Zoning Law.

Mr. Jeffrey Smith stated that there would be no signage, as Mr. Joshua Smith wants to keep the business "quiet."

Attorney Dowd asked who the Federal Firearms License was issued. Mr. Jeffrey Smith stated it was in Mr. Joshua Smith's name but that he was listed as Vice President of the business and that he had his own license.

Chairperson Jeffery opened the meeting to the public. No residents spoke. The public hearing was closed with a motion by Member Collard and seconded by Member Bis.

Chairperson Jeffery stated that there were no issues with the site plan. A motion was made to approve the site plan by Member Fox and seconded by Member Bis.

With no further discussion, roll was called:

Member Fox: Yes

Member Collard: Yes

Chairperson Jeffery: Yes

Member Tower: Yes

Member Bis: Yes

Motion Carried.

Chairperson Jeffery stated that a recommendation needed to be made to the Zoning Board for the Special Use/Home Occupation Permit. A motion was made to recommend approval of the Special Use/Home Occupation with an expiration date of April 2019 — the same date as the Federal Firearms License expiration — was made by Member Collard and seconded by Member Fox.

With no further discussion, roll was called:

Member Fox: Yes

Member Collard: Yes

Chairperson Jeffery: Yes

Member Tower: Yes

Member Bis: Yes

Motion Carried.

### **Update on Site Plan Review for Michael McCabe — Service of Garden/Farm Equipment, 2384 Lake Road.**

Attorney Dowd excused himself from the meeting. Code Enforcer Rogers updated the Planning Board that farm status determination had been made for Mr. McCabe and his property is now qualified as a farm operation. With the farm status, Mr. McCabe is relieved of several violations on his property including the pond (which is now a farm pond, not a recreational pond), the side setbacks and the removal of dirt from the property. The pole barn building permit is now valid (was originally temporary).

Mr. McCabe's Attorney, Charles Malcomb, stated that there is a violation outstanding in the Lewiston Court for an allegation of commercial machines being serviced. This violation occurred in 2014. He stated that because of the farm status determination, there are no other outstanding violations on the property.

Chairperson Jeffery stated that because Special Council Andrews was not present at the meeting, the Planning Board would make no legal decisions this evening, however, a public hearing would be scheduled at the June meeting if Special Council Andrews could be present.

Attorney Malcomb stated that the concerns that the Planning Board sent in March were returned with answers to Attorney Andrews in April. The response was not forwarded to the board so Attorney Malcomb provided Chairperson Jeffery with a copy.

Member Tower asked how the violations "disappear". Code Enforcer Rogers explained that with the farm determination, issue 1: A, B and C (from the letter) do not apply. Attorney Malcomb stated that the Site Plan Application is specific to the Service of Farm/Garden equipment and the pond and other buildings should not be included as part of discussion. Chairperson Jeffery stated that the Planning Board needs to know where the Service of Farm/Garden equipment will occur so that the Site Plan review is comprehensive.

Mr. William Dean asked about the farm determination and Site Plan. Chairperson Jeffery stated that because Attorney Andrews was not present, and therefore the Planning Board had no legal representation, the floor was

not going to be open for discussion at this meeting. At the public hearing in June parties who wish to speak may do so.

Chairperson Jeffery stated that he did not have a scope of service for what Mr. McCabe planned to do within the Service of Farm/Garden Equipment. He also stated that the operation needed to be screened from the neighbors. Chairperson Jeffery read section 56 of the Zoning Book, which discussed Vehicle Repair Stations (as indicated as Issue 2 from the letter). Attorney Malcomb stated his client has no issues following any of the regulations under this section.

As addressed in Issue 3, Member Collard stated that sufficient screening needed to be applied to shield the business from the neighbors. Attorney Malcomb stated that Mr. McCabe was open to screening. It was suggested that a vegetative berm be considered.

Mr. McCabe's engineer John Battaglia stated that a landscape plan was submitted and that his client would be open to suggestions for screening. He stated that Mr. McCabe likes to display old tractors and asked if this would continue to be OK within the landscaping plan.

Member Collard asked if the driveway would be improved either by blacktop or concrete. Chairperson Jeffery also stated that parking would need to be designated (both addressed as Issue 3). Attorney Malcom stated he had no issue complying with both requests.

Attorney Malcomb addressed Issue 4 by stating that the building toilet is a tied into a Niagara County approved system. Mr. McCabe stated it was tied into the house line. Mr. Battaglia stated that documentation would be provided.

Code Enforcer Rogers stated that a drainage plan has been submitted (Issue 5) and that he would double check with Town Engineer Amico that the plan has been approved.

Chairperson Jeffery stated again that the Planning Board needs a list of the scope of services prior to the public hearing. Attorney Malcomb provided a copy of an email that listed the types of equipment to be serviced at the property. It included:

- Tractors of less than 95 hp
- Lawn mowers, riding and push
- Lawn tractors
- Equipment trailers not more than 20 feet long
- Farm tractors
- Tillage equipment
- Harvest equipment

Member Collard asked if dump trucks would be serviced. Chairperson Jeffery stated that the Planning Board would not permit dump trucks to be serviced. He also stated that sandblasting and painting would not be permitted. Mr. McCabe stated he had not done sandblasting in over 10 months. Chairperson Jeffery stated that commercial vehicles should not be serviced, but farm equipment would be acceptable.

A motion to have the public hearing in June, with the specification that Special Council Andrews is available, was made by Member Collard and seconded by Member Fox.

With no further discussion, roll was called:  
Member Fox: Yes

Member Collard: Yes  
Chairperson Jeffery: Yes  
Member Tower: Yes  
Member Bis: Yes  
Motion Carried.

**Recommendation to Zoning Board for Track Vision LLC, for Special Use Permit for Speedway, 2315 Braley Road, Ransomville.**

Code Enforcer Rogers stated that Track Vision LLC has applied for two Special Use Permits — one for racing cars and the other for racing carts. Dr. Atwal purchased the track. Code Enforcer Rogers read out loud both permits as last issued.

Chairperson Jeffery asked what the provision was if the races were running late. Code Enforcer Rogers stated that either he, Duffy Johnston (Zoning Board Chairperson) or Supervisor Wiepert were to be notified.

Member Collard asked how the noise is addressed. Code Enforcer Rogers stated that the public address system is directional and all racing is complete by 11:00 p.m. (cart) or 11:45 p.m. (auto).

Code Enforcer Rogers stated that Track Vision LLC is looking for the same regulations as the previous permits. The Zoning Board will have the public hearing for the permit during their May meeting.

A motion of referral with the same terms as the previous permits, including 7-year renewal, was made by Chairperson Jeffery and seconded by Member Collard. All in favor, motion carried.

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

Chairperson Jeffery asked that the letter received from Mr. Thomas Fleckenstein be presented as public record declaring that Town Board Member Joseph Fleckenstein is his brother.

Attorney Dowd stated that he, Code Enforcer Rogers, Mr. Fleckenstein and Supervisor Wiepert met. Because Mr. Fleckenstein's proposal is a farm operation, a Site Plan Approval and public hearing is not required under the Agriculture and Market law, however, the Planning Board can have one if they felt it was reasonable. Attorney Dowd stated that because this is new activity on the land, a sketch plan is required and the health and safety of the project should be a priority during consideration.

Mr. Fleckenstein was asked to summarize his plan. He stated that he is planning to construct a 22-acre aquaculture and aquaponic facility on his farm where he will raise Walleye and Perch and also have a greenhouse facility for plant production. He stated that he would be using a proprietary organic process. Production will take four year and he expects to have 900,000 yards of material to move.

Attorney Charles Malcomb is representing Mr. Fleckenstein and stated that business plan has been completed which shows a commitment to the project. The DEC permit for the soil and water design has been completed and because Mr. Fleckenstein is applying for USDA organic status, no runoff can go into the ponds. Therefore ditches will be needed for drainage and protection. Mr. Fleckenstein stated that the fish would grow in tanks with the wastewater circulated and used in hydroponics of leafy greens. Once the fish are fingerling size, they will be transported to the ponds for approx. 18-24 months before they are harvested.

Mr. Fleckenstein anticipates that rain water will fill the ponds and would prefer not to use hydrants. Because the property to the north is treated with Round Up, Mr. Fleckenstein said he cannot use runoff and must be 30 feet from the property line to meet organic requirements.

Member Bis asked if the fish would be processed onsite. Mr. Fleckenstein said yes and Attorney Malcomb stated that he could do so without a permit because of the Agriculture and Market laws. He stated the building with the processing area is on the sketch plan and is already an existing building. The room will be approx. 20 x 30 feet. Fish will be sold live or as vacuum packed, frozen filets. If an individual wishes to purchase fish, they would do so just as they would beef — reserving the amount and picking it up when ready.

Attorney Malcomb stated that the DEC issued a negative declaration for the project.

Attorney Dowd stated that the sketch plan should include a detailed narrative of intended use.

Member Bis asked what would be done with the fish remains not sold. Mr. Fleckenstein stated it would be turned into fish food and used within the facility.

Attorney Dowd again suggested that the Planning Board take into consideration the public health and safety of the project including traffic, construction, parking, etc.

Mr. Fleckenstein stated that the ponds would be a four year period of construction. Attorney Dowd stated that the sketch plan should include how many trucks will be in and out of the facility each day. It was also suggested to indicate what routes the trucks would be taking in the county and stated that the contractors are required to clean up any debris in the road.

Chairperson Jeffery felt it would be good to outline the questions/concerns so that everything can be provided to code. Member Collard asked if it was appropriate for a special meeting to formulate the outline.

The Planning Board was asked to make a recommendation to the Zoning Board for 3 variances.

1. Lot coverage requirement — Chairperson Jeffery stated that as a farm use the Agriculture and Markets law covers this as a reasonable request. A motion to approve the lot coverage variance was made by Member Bis and seconded by Member Collard.

With no further discussion, roll was called:

Member Fox: Yes

Member Collard: Yes

Chairperson Jeffery: Yes

Member Tower: Yes

Member Bis: Yes

Motion Carried.

2. Extension of permit terms — Chairperson Jeffery stated that the code states that farm ponds be constructed within one year of obtaining the building permit. The DEC permit is valid for five years. Mr. Fleckenstein stated that it will take approx. one year for ½ a pond and that the entire project will be done in phases. Attorney Dowd stated that the permit could be approved on a phase basis every two years. If Mr. Fleckenstein can show activity on the property then the permit could be renewed at the end of two years. Attorney Malcomb stated that there will not be huge progress in the first two years and asked for an extension to match the DEC permit (of five years). A motion was made to approve the extension of permit terms based upon the recommendation of Attorney Dowd by Member Bis and seconded by Member Collard.

With no further discussion, roll was called:

Member Fox: Yes  
Member Collard: Yes  
Chairperson Jeffery: Yes  
Member Tower: Yes  
Member Bis: Yes  
Motion Carried.

3. Variance from the engineering cost recovery fees of \$9,400.00 — Attorney Malcomb stated that the DEC will be doing on-site inspections and that a NYS licensed surveyor will be hired by Mr. Fleckenstein to meet the mining permit requirements. All of this information will be provided to the Town Engineer and Attorney Malcomb felt it would be redundant if the Town Engineer was on-site. Therefore he felt that the fee should be reduced. Chairperson Jeffery stated that for 900,000 cubic yards \$9400 is not unreasonable. He stated that this project should not be exempt from this fee when other farm ponds are not. It was determined that Attorney Dowd and Attorney Malcomb would discuss the fee and come to a reasonable amount. A motion was made to allow Attorney Dowd to recommend an engineering cost recovery fee by Chairperson Jeffery and seconded by Member Collard.

With no further discussion, roll was called:

Member Fox: Yes  
Member Collard: Yes  
Chairperson Jeffery: Yes  
Member Tower: Yes  
Member Bis: Yes  
Motion Carried.

4. Prohibition on removal — Attorney Dowd stated that this variance is not needed, as the material will be taken offsite.

Chairperson Jeffery stated that the Zoning Board would have their recommendation for the May meeting and that the Planning Board could make a decision in June. Member Bis felt it was reasonable to have a public hearing because Mr. Joseph Fleckenstein is the applicant's brother. This way there is complete transparency.

A motion was made to schedule the public hearing for the June Planning Board meeting by Chairperson Jeffery and seconded by Member Fox. All were in favor, motion carried.

Chairperson Jeffery agreed that a special meeting would be beneficial prior to the public hearing and therefore the special meeting will be on Monday, May 16 at 6:00 p.m. A notice will be sent to the newspapers (not as a classified ad, but as a public notice) and a posting will be displayed at the Town Hall entrance on the bulletin board.

### **CWM site visit discussion**

Chairperson Jeffery stated that because no discussion could occur at the Site Visit of CWM, the Planning Board was able to have an open discussion at this evenings meeting. Member Bis stated that he felt the visit was very informative and brought up concerns about other area businesses (outside of CWM), but that he had no questions. Other members agreed.

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

The Town Board is asking for a recommendation from the Planning Board for local law 2014-71 regarding the Sales and Service of Farm/Garden Equipment in a Rural Agricultural District for the June meeting. It is suggested that the Planning Board look at the use of Special Use Permits perhaps in place of the law so that more restrictions can be applied — including employees, hours, size, equipment, signs, etc. Chairperson Jeffery stated that he felt the law could be repealed except for in commercial districts and that Special Use Permits could be used in its place.

So that the Planning Board has time to research and formulate an opinion, this recommendation will be on the agenda for the above-created Special Meeting on Monday, May 16, 2016 at 6:00 p.m. At that point Attorney Dowd said that the Planning Board could draft a proposed amendment, as it will be July before the Town Board can take any action.

### **New / Miscellaneous Business**

Christopher Guard was in attendance to present a preliminary plan review this evening and in June the Sketch Plan Review will be on the agenda.

Mr. Guard is planning to build a subdivision on 104 acres off of River Road. There is 335 feet of River frontage with docks below street level. The plan is to create 12 docks based upon subdividing the 335 feet into 3 lots allowing for 4 boats in each lot.

Chairperson Jeffery, Zoning Chairperson Duffy, Attorney Dowd, Mr. Guard and Code Enforcer Rogers previously had a meeting to discuss options.

Mr. Guard made it clear that the docks will not become a commercial marina and most likely will be tied to a Homeowners Association. All docks will be tied to homes built within the subdivision. There will be a 30-foot finger pier that is permanent with floating docks for the slips. The slips can be removed and stored on the shore below the hill. The Army Corps of Engineers has been contacted and the project would be in compliance.

Chairperson Jeffery stated that he didn't feel there would be subdivision issues, but feels there will be more research needed on the Homeowners Association and docks.

Mr. Guard stated that phase 1 of the project would include 20 homes with plenty of green space. The Zoning Board will need to approve an area variance and Attorney Dowd stated that there would be deed restrictions with the docks and the address ownership. It is proposed that the front parcel (the three lots totaling 335 feet) will be deeded to the Homeowners Association.

The formation of a Homeowners Association needs to be approved by the Attorney General and there are provisions from the State for the docks/slips.

Attorney Dowd stated that the request for variance would need to be a separate application from the Sketch Plan Review. The Sketch Plan review will take place in June and at that time the Planning Board may be able to make a recommendation on the variance to the Zoning Board.

Attorney Dowd also stated that the Homeowners Association should address public access to the docks, parking, etc. He stated that the Homeowners Association would be a Special Permit and if the regulations of the

Special Permit are not met, the Permit can be rescinded. It was suggested that the Homeowners Association restrictions be presented to the Planning Board in June so that a recommendation to the Zoning Board can be based upon the restrictions.

Resident Rosemary Lahey asked how the variance would be approved if the Attorney General had not approved the Homeowners Association. Attorney Dowd stated that the Zoning Board could make the variance contingent on the approval of the approved Homeowners Association.

Again, Mr. Guard stated that this would not be a commercial marina but rather a community area available only to homeowners. There will be no fuel sales, no store and no commercial services. A small (approx. 12 x 15 ft.) clubhouse will be available to the users that would include power and a restroom.

#### **Code Enforcer Rogers report**

Code Enforcer Rogers handed out his report, but did not present the report.

#### **Attorney Dowd report**

Attorney Dowd did not have a report to present.

A motion was made to adjourn the meeting by at 10:20 p.m. by Member Bis and Seconded by Member Tower. All in favor, motion carried.



April 26, 2016

Merton Wiepert, Supervisor  
Town of Porter  
3265 Creek Road  
Youngstown, New York 14174

Re: Niagara Aquaculture: Aquaculture Pond Facility  
Property Owner: Judith A. Fleckenstein Living Trust  
Building Permit Application  
Variance Application

Dear Mr. Wiepert,

Please let this letter serve to notify you, the Code Enforcement Officer, the Town attorney and the current board members that pursuant to New York State General Municipal Law, Section 809. Disclosure in certain applications; that Joseph G. Fleckenstein, Town Councilman is my brother.

Regards,

A handwritten signature in black ink that reads 'Thomas E. Fleckenstein'. The signature is fluid and cursive.

Thomas E. Fleckenstein

cc: Roy Rogers  
Town of Porter Code Enforcement Officer

John "Duffy" Johnston, Chairman  
Town of Porter Zoning Board of Appeals

Michael Dowd, Esq.  
Town of Porter Town Attorney

Peter Jeffery, Chairman  
Town of Porter Planning Board