



# TOWN OF PORTER

3265 Creek Road ♦ Youngstown, New York 14174 ♦ (716) 745-3730, ext. 7 ♦ fax (716) 745-9022 ♦

STATE OF NEW YORK

COUNTY OF NIAGARA

ZONING BOARD OF APPEALS

TOWN OF PORTER

The regular meeting of the Town of Porter Zoning Board of Appeals was held April 28, 2022 at 7:00 PM, in the Town Hall Auditorium located at 3265 Creek Road, Youngstown, NY 14174.

	<u>Date</u>	<u>Present</u>	<u>Absent</u>
Jackie Robinson, Chairman	04/28/2022	yes	
Terry Duffy	04/28/2022	yes	
Paul Brown	04/28/2022	yes	
Scott Szarejko	04/28/2022	yes	
Steve Zappy	04/28/2022	yes	
Atty Michael Dowd	04/28/2022	Video conference	
Peter Jeffery, Code Enforcer Officer	04/28/2022	yes	

Chairman, Jackie Robinson called the meeting to order with the pledge of allegiance at 7:00 pm.

Chairman, Jackie Robinson asked for approval of the March 24, 2022 minutes. Terry Duffy made a motion to approve the minutes and was seconded by Paul Brown. Roll Call Vote-Paul Brown-yes; Terry Duffy-yes; Steve Zappy-yes; Chairman Robinson-yes; All in Favor. Motion Carried.

It was noted that both Jason Berger and Tom Neilson were present.

Chairman Robinson stated that tonight we have a Special Use Permit in front of us for Shear Airport dated June 20, 2019 to operate Shear Airport – private airstrip. The property is located in a Rural Agricultural Zoning District on the South side of Braley Road between Youngstown and Porter Center Roads in said Town. When we initially got their permit, it didn't run as stated as the business was still in the process of getting FAA, NYSDOT and Town of Porter permits. It was a three year time frame; on site/off street parking for ten (10) vehicles, not including employees. Chairman Robinson asked if there was anything we wanted to

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change? Steve Zappy stated wheels on ground 30 minutes after published sunset. The Planning Board recommended 30 minutes past sunset the plane must be landed. If we approve this permit, it will have to match the other permit. Jason Berger stated they have 101 acres.

Chairman Robinson stated on the original permit the time frame was 3 years; we allowed on site/off street parking for ten vehicles, not including employees; hours of operation: Seasonal – May to end of October; 9:00 am until sunset; and fire access road must be maintained according to regulations and as per the Planning Board site plan approval. Paul Brown stated the off street parking cannot block the fire lane. Last year there was a lot of mud. Jason Berger commented technically there are two driveways. The second driveway is not in use. We put a pipe there. People were going over it, and it is not completed. We have told people not to use it. We widened the first driveway. Paul Brown commented the main driveway is the fire access road. Tom Neilson and Jason Berger both explained the roads going in. Paul Brown commented we can't have the main driveway blocked. Tom Neilson questioned the ten vehicles and CEO Jeffery stated we added it to satisfy the code with the minimum number of spaces with zoning regulations and that was where the 10 number was derived. Chairman Robinson stated it is a problem if we leave the parking open ended. CEO Jeffery stated 10 minimum all parking for business and festival events out of the right away and not on the road. Attorney Dowd stated perhaps you could give CEO Jeffery a single site plan showing the two access points and put it in the permit. Possibly they could provide a schematic as part of the permit. Chairman Robinson stated I believe CEO Jeffery has those. CEO Jeffery stated I worked with them last year regarding additional parking over and above the 10. It could be incorporated into the permit. Chairman Robinson stated a site plan should be attached to the permit. Attorney Dowd stated that fire /emergency access should be attached to the permit. It is in the code. I think it is a good idea to control it. CEO Jeffery should have a copy and could forward to the police if there is a violation. Chairman Robinson discussed the hours of operation: May 1 to the end of October; 9 am until sunset; it is time sensitive; plan no later; take off until published/established sunset and wheels on ground 30 minutes after sunset. Attorney Dowd commented you can't take off any later than sunset so that plane will be down at twilight. Chairman Robinson stated the original permit was three years; the Planning Board recommended five years. Attorney Dowd stated if the Board is satisfied and they are going to recommend seven years or whatever is

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appropriate. Chairman Robinson stated this is only for the airstrip. CEO Jeffery stated any questions on the time it is the Board's decision. Chairman Robinson asked if there was anything else.

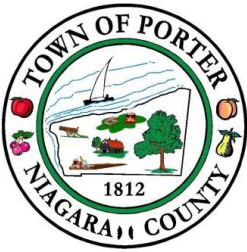
Terry Duffy made a motion for the Shear Airport (private airstrip); 1. Time frame: Seven years expiration April 28, 2029. 2. Parking: Ten vehicle minimum – all parking for business and festival events on site. 3. Hours of operation: May 1 to October 31; timeframe 9:00 am until the published sunset (in the NWS). Operations would call for no take offs to occur following established sunset per NWS and wheels on the ground 30 minutes after sunset time. 4. Road access. Parameters to address emergency parking for fire and safety access subject to the oversight by CEO Jeffery in terms of monitoring and was seconded by Paul Brown. Roll Call Vote: Paul Brown-yes; Terry Duffy-yes; Scott Szarejko-yes; Steve Zappy-yes and Chairman Robinson-yes. All in Favor. Motion Carried.

Chairman Robinson stated that Skydive the Falls public hearing is closed. Chairman Robinson stated the following: As determined by the CEO of the Town of Porter, a skydiving operation is a permitted use as a Commercial Recreational Facility in a RA district. By code, Section 200-122; any commercial activity conducted for gain which is generally related to the entertainment field, including but not limited to bowling alleys, roller skating rinks, miniature golf, golf driving ranges, billiard halls, and commercial swimming pools, but not including indoor theaters, massage parlors, model studios or places in which pornographic materials are displayed, sold or distributed or in which lewd or obscene activity is conducted.

As determined by the public hearing held March 24, 2022, the complaints and support from property owners neighboring the skydiving operation are roughly equal in number. The number of complaints is a small percentage of nearby property owners. The primary complaints are: noise, jumpers screaming as they jump, after hours loud noises, hours of operation, jumpers landing on private property, and the weekend festival.

The business is overwhelming by letters from the community members, local business, local business associations, members of the "jumping community, and people who have jumped.

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Regarding noise complaints from operation of the business, zoning code Section 200-74(12) states: Exceptions. In addition to specific exceptions provided above, these provisions shall not apply to the following; noise from any legitimate commercial or industrial use or activity located in its proper zone as long as the noise emanating therefrom does not begin prior to the hour of 7 am and does not regularly run beyond the hour of 12 am or is not otherwise scheduled to run beyond 12 am. These are in the noise regulation found in the Town Code.

Chairman Robinson stated when we first addressed this application three years ago, none of us had any idea of how it was going to go. Jason Berger stated the aircraft they used last year, which is more efficient, has more of a humming because of the turbine engine, and we like it better. It is a quieter airplane, and we like it all around.

Chairman Robinson stated that CEO Jeffery would like a little more transparency when something changes with your major business. If people get a call, CEO Jeffery needs to know. The other issue is the plane is bigger, and you have more people jumping. Is this as big as you want it, to be for future growth? Jason Berger stated I don't think we can handle a bigger plane. Chairman Robinson stated the plane you now have holds 19 people. Jason Berger replied this plane holds 19 people. The plane last year held 23 people, which we used for events. I don't see us ever using that plane. It is not what we are looking for. Chairman Robinson questioned, "What happens when your plane has to go for maintenance?" Jason Berger stated that they have a smaller plane which we could use depending on what the maintenance issue is. The owner will replace it with a caravan which is the same size. Chairman Robinson asked, "Are you at your capacity as to where you want to be?" Jason Berger replied "yes". Tom Neilson also replied the size of the airplane is where we want to be because of the staff. Jason Berger stated maximum plane where we are at. Jason Berger stated I don't think the field could handle more. On a number basis I don't think our field could sustain. Attorney Dowd stated we could put in the permit you couldn't have any more than one plane. If you want two planes, then you will have to come in and amend the permit. If the plane is 17 people max, if you want to change it, or you will just have to limit it.

Chairman Robinson brought up fuel storage. CEO Jeffery you are on top of it. Since last year I reviewed it with the fire code, and we are in compliance.

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Tandem jumps – almost all are jumping tandem. Jason Berger stated 87.9% are tandem. Chairman Robinson asked if all the tandem jumps land accurately. Terry Duffy commented tandems are determined by the weather conditions. Jason Berger stated we have little more control over the weather. It is rare to land off. He stated 0.0154 jumpers offsite. Chairman Robinson stated a major concern is liability. We have a photo from J. Budd – grass field right in front of a red building. If anyone lands on my property and drives on my property will I be compensated. Jason Berger stated they have a three part liability for full coverage. J. Knack, “Will I always be covered if someone lands on this property and got hurt or damaged my property?” Jason Berger discussed membership coverage under USPA.

Attorney Dowd asked what insurance is available and what is covered and this should be provided and in the file. CEO Jeffery stated we have their general liability - USPA in the file. Jason Berger stated that if you come into their location, there is hanging on the wall with a group membership. There was additional discussion on the coverage, and Jason Berger commented that it is very detailed. Jason Berger to provide insurance that is available and provided details on available insurance to all users.

Chairman Robinson brought up about damage to the property. What happens when somebody lands offsite? I think that you should really have a written protocol – what to do if they land offsite and we need to have that always – a plan in place. What would be doable for you? Jason Berger stated we have full contact with the neighbors. Four times within three years I called the neighbors. We know before the jumpers know that they are not going to make it back. Paul Brown asked if you have a spotter in the field. Jason Berger replied – in the office; people land in groups. Paul Brown stated I am looking for a designated person on the ground. Jason Berger stated sometime we don't know exactly where they land. Chairman Robinson questioned if they jump with cell phones. Jason Berger replied it is a safety issue. Chairman Robinson stated if they have their cell phone they should call back. Tom Neilson stated there is an app that connects to our computer. In the office you get a beep that someone has landed offsite. Chairman Robinson stated I would like to be notified. Jason Berger stated there is a course on etiquette. We are trained to let neighbors know where you land. Chairman Robinson asked if you try to reach the landowners. Jason Berger stated he will be happy to call the owners. Chairman Robinson asked if

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the jumpers stay put. Tom Neilson stated we teach that in our first class – courtesy. Jason Berger stated they show them an aerial view of the drop zone. Paul Brown asked if there is a book or manual or do you teach or handout in the class. Jason Berger stated we are going over etiquette. Paul Brown asked if they had a PDF copy and Jason Berger said yes. Chairman Robinson asked if they could send CEO Jeffery the PDF copy for the file. Mr. Budde asked if they land on posted land are we ok to place charges. Chairman Robinson stated they are not going to do it on purpose. Attorney Dowd stated it is going to happen. You can call the police or contact the operator. My advice to you is that you have adequate insurance that the landowner is not responsible. Let's make sure there is insurance in place. It should be good for anybody. You can help if this situation arises. We are doing the best we can. Jason Berger stated he has no problem that you call the authorities. Please make sure it is your property.

Chairman Robinson stated you need to have more information. Attorney Dowd asked the applicant to go to the adjoining property owner and ask who to contact; at least you are going to get in touch with the proper contact. Jason Berger stated if the property owners aren't at home, I will leave a message.

Chairman Robinson asked Jason Berger you have one plane that carries up to 19 plus the pilot. Jason Berger replied we will have the other plane – 19 plus the pilot. It is extremely rare that we have that many on the plane. Paul Brown asked if that is the plane you have right now. Attorney Dowd stated it is the maximum capacity and that is it. No other plane unless they want to amend the permit.

CEO Jeffery commented on the special events and the complaints – it has tripled; noisy and a lot of traffic. Keep protocol in place for the temporary permit for a special event. CEO Jeffery stated three days plus one additional for inclement weather. Three banner days – Thursday, Friday and Saturday. If one of those days is rained out or two ½ days you have Sunday. If not, you have three days; a fourth days for inclement weather. Chairman Robinson stated 3 days plus one for inclement weather, and CEO Jeffery confirmed three days and one flexible day for inclement weather. Jason Berger brought up about the helicopter. If the weather is good, can we do Friday, Saturday and Sunday. Attorney Dowd stated if you have your first three days in, it should be the norm but people would be able to stay there. There was a discussion on limitations on novelty aircraft. Attorney Dowd stated the first three days. Chairman Robinson stated if you choose it to be

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Thursday, Friday and Saturday and they are beautiful, that gives you a little flexibility. It could give the neighbors some peace and quiet. Attorney Dowd stated communicate with CEO Jeffery, if you need to adjust your schedule. Chairman Robinson stated I think we need to limit the length of hours specifically on Thursday and Sunday. We need to limit the lateness of hours 6:00 pm Thursday and Sunday and 8:00 pm on Friday and Saturdays. Paul Brown asked if this could be done in two days. Jason Berger talked about the by plane. The gentlemen is a crop duster. He might not be able to get there until Friday. Last year he didn't get there until Friday. The helicopter didn't get in until Friday. Attorney Dowd stated the point is we are setting the hours. It is up to them to operate the business within those hours. So work hard, making sure the novelty people can be there during these hours because they have more of an impact on the neighborhood after hours.

Chairman Robinson stated you have to get with CEO Jeffery for a temporary use permit before you start any advertisement and let the neighbors know so they can plan their weekend. Mr. Budde asked how big of an area do you consider. CEO Jeffery stated mailing from the airport. Jason Berger asked if it is in the code. CEO Jeffery stated 500 ft. in the code. The first year I used that as a template of notification, and it wasn't far enough. So I had increased it last year to a mile radius. Chairman Robinson commented on the roads it encompassed, and it is quite large. This is before you do any advertising. Jason Berger asked "Would it be our first advertisement?" and Chairman Robinson replied "yes". CEO Jeffery commented on the one mile radius, and I have a program that I use for public hearing notices.

Chairman Robinson asked if there were any more comments. Attorney Dowd stated the only thing I would add there is a noise ordinance in the Town with festivals. All noise ordinances will be in effect during the festival and operating hours and should be put in the permit. CEO Jeffery stated it is a RA district in the code.

Mr. Budde asked about paragliders, and Jason Berger replied that has nothing to do with us.

Paul Brown made the following motion for the Skydive the Falls.

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1. Operation is limited to one plane carrying no more than 19 passengers and the pilot.
2. Hours of operation will be 9 am until published sunset. Plane must have wheels on the ground by 30 minutes after sunset.
3. Business may operate May 1 through to October 31.
4. Aircraft fuel storage and refueling shall comply with the currently adopted fire code at all times.
5. All parking will be off-road, leaving the fire lane open and accessible at all times.
6. A written protocol addressing off site parachute landings shall be kept at the business, and a copy at the Town Hall. A call list of nearby property owners shall be included in this protocol.
7. Proof of liability insurance and indemnification shall be provided to the Code Enforcement Officer.
8. One special event is allowed each year, lasting no more than 3 days, with a one day additional in event of inclement weather. A temporary use permit must be obtained every year from the CEO, and neighbors must be notified of this event prior to any advertising – a one mile radius from airport. Novelty motorized aircraft used during the festival is not permitted after 6 pm on Thursday and Sunday, after 8:00 pm on Friday and Saturday.
9. Business must comply with town noise ordinance at all times.
10. This permit is issued for seven years.

and was seconded by Terry Duffy. Roll Call Vote: Paul Brown-yes; Terry Duffy-yes; Scott Szarejko-yes; Steve Zappy-yes and Chairman Robinson-yes. All in Favor- Motion Carried.

Ashley Daul asked if the special permit is going to affect this year's event. Chairman Robinson replied it is partially our fault, we couldn't renew this sooner. We feel an obligation to go with this year as much as possible. Paul Brown commented with respect to this year – Thursday night – we are going to follow through with the outline. Jason Berger stated there is another airport 13 miles from here and asked for people to check it out. Chairman Robinson told Mr. Budde that they are going to do their very best not to land on their property.

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A motion was made to adjourn the meeting at 8:25 pm by Terry Duffy and was seconded by Paul Brown. The next meeting is scheduled for Thursday, May 26, 2022.

Sincerely,

Nancy Smithson  
Secretary, Zoning Board of Appeals

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