

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 on April 25, 2019 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	04/25/2019	yes	
Terry Duffy	04/25/2019	yes	
Bryan Meigs	04/25/2019	yes	
Marshall Hibbard	04/25/2019		yes
Steve Zappy	04/25/2019	yes	
Atty Michael Dowd	04/25/2019	yes	
Peter Jeffery, Code Enforcer	04/25/2019	yes	

Chairman, Jackie Robinson called the meeting to order with the pledge of allegiance at 7:18 pm. The Board was waiting for Attorney Dowd who arrived at 7:25 pm and apologized to the Board.

Chairman Robinson asked for approval of the March 28, 2019 minutes. A motion was made by Bryan Meigs and seconded by Steve Zappy to approve the minutes. All in Favor. Motion Carried.

Chairman Robinson asked for approval of the April 11, 2019 minutes (Special Meeting). Terry Duffy made a motion and was seconded by Bryan Meigs to approve the minutes. All in Favor. Motion Carried.

Chairman Robinson stated that we need a motion to table the special use permit for the airport and airport strip while waiting for the pending information from the FAA and DOT. Terry Duffy made a motion as discussed above to table the application for the special use permit for the airport and airport strip while waiting for the pending information from the FAA and DOT and was seconded by Steve Zappy. Roll Call Vote: Terry Duffy-yes; Bryan Meigs-yes; Steve Zappy-yes and Chairman Robinson-yes. All in Favor to Table the Application for the airport and airstrip for Jason Berger, Thomas Neilson and John Huber. Chairman Robinson stated she will continue to reach out to the applicants.

Code Enforcement Officer, Peter Jeffery stated that he had nothing to report. He asked if everyone had received a copy of the summary chart. He then passed out a copy of the summary chart to each member.

Chairman Robinson read the following:

NOTICE IS HEREBY GIVEN THAT, pursuant to Section 267-a of the Town Law and Chapter 200 of the Code of the Town of Porter, New York "Zoning" as amended, a SPECIAL MEETING will be held by the Zoning Board of Appeals at the Town Offices, 3276 Creek Road, Youngstown, NY on Thursday, April 28, 2019 at 7:00 pm for the purpose of considering and hearing all interested persons concerning the following application(s). Notice of Appeal from Code Violation in the matter of Baker Farm Trust, 2432 Parker Road, Ransomville, NY 14131. Tax Map No. 62.00-1-31. Under Section 267-A, Item 7 of the NYS Consolidated Law a request for an appeal of the Code Enforcement Officer's determination. Property is located in a Rural Agricultural Zoning district on the West side of Parker Road one mile S of Rte 93 in the Hamlet of Ransomville in said Town.

Attorney Dowd stated as I understand it, Code Enforcement Officer (CEO), Mr. Jeffery had two notices of violation that were sent to the Baker Farm Trust on Parker Road. Attorney Michele G. Bergevin researched the issue, and stated it wasn't a violation and filed an Appeal to the code violation. Whether or not Mr. Jeffery was correct or not in the violation, if correct, you would deny the appeal; and it would be sent back to Judge Truesdale for further consideration in court. If you determine the Code Enforcement Officer was correct it would go back to the Court and possible do an Article 78. They are in the process of applying for a special use permit. Unfortunately, at the end of the day, did Mr. Jeffery properly issue a notice of violation – to operate a business on the premises; storage of equipment with Baker Bailey Enterprises and office on the facility. A special use permit for a home occupation would resolve the office portion of the violation.

Chairman Robinson stated we are to decide whether Mr. Jeffery was right.

Attorney Charles Naughton is here for the client. Attorney Dowd stated you can conduct a hearing. This Board can ask Attorney Naughton what was

his client's belief. You could treat as a trial. This is the first step of the Zoning Board of Appeals.

Chairman Robinson stated under Section 267-A an Appeal should be done within 60 days.

Attorney Naughton stated the timing was an issue. The violation was November 2, 2018. I will speak about the allegation. Even though we had 60 days, the complaint for the information was filed here in court against Baker Bailey Trust. We should have had at least 60 days for an administrative appeal. By filing the violation in court, the time to appeal was stayed. We think there are some errors in the violation, and we should go from there.

Chairman Robinson asked should we be hearing this?

Attorney Dowd stated he has two things to point out. In our Code, it says Board violations – that the time starts from 60 days from the date you filed the violation with the Town Clerk. NYS Town Law – 60 days starts from the date the violation filed by the Office of the Code Enforcement Officer. There are some grey areas as to whether it was filed, since this isn't a housing code violation, 60 days from when Code Enforcement Officer, Peter Jeffery filed in his own file. I think it makes sense for the hearing. To err on the side of being cautious, let the applicant have a hearing to avoid an Article 78.

Attorney Charles Naughton asked to waive the time violation. We are going to have the hearing. Terry Duffy made a motion to waive the 60 day issue and proceed with the hearing and was seconded by Bryan Meigs. Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Steve Zappy-yes; Chairman Robinson-yes. All in Favor to Waive the 60 day time violation.

Attorney Dowd wanted to point out that Mr. Jeffery doesn't have any witnesses here, and we also don't have anyone from Baker Bailey Trust. I think it would be appropriate to let Mr. Jeffery say what he saw or heard.

Code Enforcement Officer, Peter Jeffery stated we have a long history here. He has property history report data from our computer on days at the parcel in question. Some actions started in 2015 and numerous things occurred within the Town of Porter. On December 7, 2017 at 2432 Parker

Road I did an inspection, based on a telephone call complaint. On the 12/11/2017, I had logged in my computer a potential violation on storage of equipment.

Attorney Naughton objected to going back to 2017. Everyone knows there is a history.

Attorney Dowd: Stick to the violation in hand.

Code Enforcement Officer, Peter Jeffery. Cited Section 7 – permitted uses table. The permitted uses table presents a list of permitted uses, the district that the use is permitted in, and the permit process necessary for each use, which may vary by zoning district. RA district does not permit a Landscaping Business operation. What I saw on 10/16/2018 and 11/2/2018 stated as inspection on Notice of Violation. Based on the equipment that I saw, I believe were Bailey Baker landscaping equipment. I do have photographs that were submitted.

Attorney Dowd asked Mr. Jeffery how he got there. You went out and took photographs. Do you have them here? Did you take them yourself?

CEO - Yes.

Attorney Dowd: How many do you have?

CEO - Mr. Jeffery replied 16 photographs, and he showed them to Attorney Naughton.

Attorney Naughton objected to the February 6, 2018 and October 22, 2018 photographs. Attorney Naughton asked Mr. Jeffery if the time dates were accurate.

CEO - Mr. Jeffery replied yes.

Attorney Naughton stated he had no objection to the 11/2/2018 photographs.

Attorney Dowd stated that he had no objection to the photographs taken on 10/16/2018 and 11/2/2018.

Attorney Dowd asked Mr. Jeffery if he took the photographs and are they accurate? Attorney Naughton objects to the photographs taken not on the dates on the violation. Attorney Naughton has no objection to the dates in the objection.

- Photographs dated on the violation are permissible.
- Photographs take on the Notice of Violation dated 11/2/2018.

CEO - Mr. Jeffery stated I had to do an investigation.

Attorney Dowd stated the photographs show activities related to the landscaping business. Mr. Jeffery stated the trucks and equipment were parked at the site.

Attorney Dowd asked Mr. Jeffery to describe the photographs.

CEO - Mr. Jeffery stated pick-up truck with Bailey Brothers landscaping on the side and a dump trailer. The pictures are not great photographs. This was the date I sent the violation out. Calls started long before 11/2/2018 and other photographs show violation of the code we were investigating before I issued the violation.

Attorney Dowd asked if tickets were written? You personally observed activity going on before those dates. Were the photographs taken on the same day the as the Violation or some days before?

CEO - Mr. Jeffery replied the Apparent Notice of Violation letter was dated October 31, 2018. On 10/22/2018 a pre Apparent Notice of Violation inspection was made. Photographs, from that inspection, show a blue Ford Focus belongs to the secretary/clerk (employee) that works in the office activity on site. Also, a yellow dump truck used as a salt truck by Bailey Brothers Enterprises is parked on site.

Attorney Dowd you took photographs and sent a letter (Apparent Notice of Violation) prior to issuance of "Notice of Violation" in your file and maintained by you as the Code Enforcement Officer. Did you maintain them?

CEO - Mr. Jeffery replied "yes".

Attorney Dowd - As a result of these two investigations you issued a Notice of Violation for operation and storage of equipment from the landscaping business. Attorney Dowd stated one violation for both activities.

CEO - Mr. Jeffery replied Bailey Brother Enterprises business which is not a permitted use in a RA zoning district.

Attorney Dowd stated he would ask that the Board see all the photographs.

Attorney Naughton objected to the relevance to the subject's violation charged. Observations from other days (not on specific dates) are not relevant to the Notice.

Attorney Dowd stated he believes the Code Enforcement Officer is required to send a letter of Apparent Violation before he issued an actual violation; conduct an investigation; that would be admissible. The Board was asked if they wanted to see the photos; and asked whether to consider.

Attorney Dowd stated you should look at all of them and admit into evidence. In the Code he has to actually send a warning letter. On the specific date he issued the investigation, did he provide the adequate evidence that there was an actual violation.

Attorney Naughton stated they did not get proper notice of all the violations. The whole issue that I am addressing, the Notice of Violation that was issued on 11/2/2018 – I would ask that was investigated and only those pictures taken on 11/2/2018.

Chairman Robinson stated I would consider those perimeters. Mr. Jeffery couldn't do this all in one day.

Attorney Naughton stated my argument is Notice was inadequate. Specific dates of violation; wants to testify on dates before he issued violation; other dates should have been on the notice; he should have noticed in the Notice of Violation. I have to make the argument.

Attorney Dowd stated Mr. Jeffery had to investigate. Whatever, it happened in October is part of the business record, that doesn't mean that anything was wrong in November. You have to decide is it relevant - what happened in October and November.

Bryan Meigs asked why can't we see pictures that were taken in between.

Attorney Dowd replied how much relevance?

Terry Duffy asked the question, "When did the first complaint come in?"

CEO - Mr. Jeffery stated that violation calls after a violation was completed in the Justice Court in 2017. I had complaints as early as February 2018.

Chairman Robinson asked if they could ask Mr. Jeffery questions on a particular day.

Attorney Dowd stated I would have no objection to asking Mr. Jeffery questions.

Attorney Naughton stated his argument, you can ask any question you like. The whole notice should not have been issued. Some of the equipment, etc., you are on a fine line.

Chairman Robinson asked is there a farm there. Ag & market you have to actually be farming. The Trust doesn't farm.

Attorney Dowd stated you can look at them. The Board wants to see the photographs.

Terry Duffy asked the question: "Do they show activity?"

CEO - Mr. Jeffery stated: The rule in all regulations, a Notice of Apparent Violation letter was sent on 10/31/2018 to the owners of record. I was out there on 10/22/2018, and I was there to take photographs and to talk to residents in the neighborhood. We went to the site and made observations and mailed the Notice of Apparent Violation.

Attorney Dowd asked "If this was proper in the normal course of business?"

CEO - Mr. Jeffery replied “yes’. The Notice of Violation was not cured.

Attorney Dowd questioned “Why not cured?”

CEO - Mr. Jeffery explained on 11/2/2018 stated other complaints witnessed similar activities—trucks and equipment from Bailey Brothers—some pick-up trucks. Mr. Jeffery replied he was not on the property. It was observed from the right away; limited view. Witnessed what I know to be the secretary/clerk (employee of Bailey Baker Enterprises) doing office work. I observed her vehicle on site.

Attorney Dowd: Any other observations?

CEO - Mr. Jeffery stated that is why I issued the violation.

Attorney Dowd. No further questions.

CEO - Mr. Jeffery presented photographs to Attorney Naughton. The Ford Focus was the employee and the dump truck (Bailey Baker Enterprises) witnessed being used as a salt truck.

Attorney Naughton stated would it be permissible to operate dump truck in a rural zone? If a piece of equipment (dump truck) parked on the property in a rural residential district, would it be allowed to be there?

CEO - Mr. Jeffery stated under some circumstances, yes. If it is licensed and road worthy and its primary use is permitted.

Attorney Naughton asked if it is a farm district, is it permitted.

Chairman Robinson stated you are confusing farm district and farming. You are using them incorrectly. I am a farmer. Just because it is an agri district, doesn't mean that you can do anything. They are not operating a farm.

Attorney Naughton stated having a truck sitting on the property is it something that would be violating in the district? What part of landscaping uses salt trucks?

CEO - Mr. Jeffery replied that Bailey Bros. Enterprises is their formal name. I don't know exactly their scope of work is. Landscaping is not however all they do; plowing and salting is a service they provide.

Attorney Naughton - If this was an operating farm, would the trucks be allowed?

CEO - Mr. Jeffery replied "no".

Attorney Naughton asked "Did you go in their office on those dates you saw the Ford Focus? You presumed it to be her car.

CEO - Mr. Jeffery replied I have been in the office on previous dates. I have spoken with the clerk on a previous date, and I have seen her driving it (Blue Ford Focus) from the site. Mr. Curtiss Bailey does not live on the property. No.

Attorney Naughton asked if he parked his personal truck on the property, he had every right to park there – whether or not he had logos on or not. Mr. Jeffery replied that his contention was that he was there as part of Bailey Bros. Enterprises.

Attorney Naughton questioned the dump trailer. Is there anything illegal about parking a dump trailer on this property? If someone owns the property and parks next to the farm is it a zoning violation?

CEO - Mr. Jeffery replied it could be. If the trailer's is owned and operated with its primary use, by a non-permitted entity, it is not allowed in that Zoning District. This is my position.

Attorney Naughton stated you can use the property just because it is sitting there you say he is operating the equipment.

CEO - Mr. Jeffery replied it is illegal if its primary use is for an un-permitted use.

Attorney Naughton questioned the are there landscaping stock piles on the parcel on 10/16?

CEO - Mr. Jeffery replied, I am not positive at this point without looking at the photographs.

Attorney Naughton - The storage of equipment and vehicles on the property you believe they belong to Bailey Bros. Enterprise. You believe it is the operation of the business.

CEO - Mr. Jeffery. Yes, they are primarily used for Bailey Bros. Enterprises.

Bryan Meigs asked, "Who are the vehicles registered to?"

Chairman Robinson stated they are should not be there at all. On 10/2016, they were told that they had to be moved. They continue to take their trucks to that site where the operation is and where the secretary is. Is it where they operate the business?

Attorney Naughton stated they moved "most" of the equipment to Balmer Road facility. It is not moved in its entirety, fuel for trucks at Balmer Road.

Chairman Robinson asked are the tanks on Balmer Road operational?

CEO - Mr. Jeffery stated they are with generators.

Attorney Naughton asked "Have you observed fueling on property"?

CEO - Mr. Jeffery replied I have observed wholesalers filling up trucks.

Attorney Naughton asked is there any violation of code with fueling tanks being fueled.

CEO - Mr. Jeffery questioned the number of times being filled for a single lady living on the property. Priscilla Bailey, mother of Curtiss, has life use of the trust.

Attorney Naughton asked would it be a violation if he went to his mother's house and filled up the trucks.

Attorney Dowd stated we are here today to see if the Code Enforcement Officer property issued the violation. This is a hearing. Whether you

believe the Code Enforcement Officer properly issued a violation. If you think he properly issued a violation and continue, it is up to the court to decide.

Attorney Dowd you don't have to make a decision tonight. It is obvious there is an operation going on there. The fact remains if the Board issued a special use permit with restrictions. It may have an impact on what you decide tonight whether Mr. Jeffery did or did not issue the violation properly.

Chairman Robinson stated this isn't going away.

Attorney Dowd stated if you see he properly issued the violation, it goes back to Judge Truesdale. You have an application pending with restrictions. You may want to hold off in making a determination.

Chairman Robinson asked Tony Collard where the application was with the Planning Board. It will be on the May and June meeting.

CEO - Peter Jeffery stated the Planning Board asked them for more information to make a preliminary ruling with additional information. I received some drawing from them today. I didn't have a chance to review them yet. I did receive it today. It will be at the Planning Board May meeting and a public hearing in June and a potential determination in June. I will be to the Zoning Board in June.

Tony Collard asked Code Enforcement Officer, Peter Jeffery, "Are they able to use this as an office?" Could you write a violation every single day if he uses it each day?

CEO - Mr. Jeffery replied "Yes", however, as of today there is a Notice of Violation submitted, there is pending remediation to the violation by submitting for the Home Occupation Permit. The pending permit stops further violation notices.

Attorney Dowd stated if somebody challenges the action of the Zoning Board of Appeals, once it comes before the ZBA, all enforcement stops. Attorney Dowd stated you can put restrictions on the special use permit on the number of vehicles.

Chairman Robinson stated they haven't done anything as to what they have been told. It has been three years.

Attorney Naughton commented they haven't done anything? The mulch is gone.

Chairman Robinson - If they get a home occupation, it is going to be extremely restrictive. Mr. Jeffery can't babysit. He has the whole Town to take care of. We hear it all the time.

Attorney Dowd stated you are her to decide whether or not Mr. Jeffery was right to issue the violation and let the Courts decide. Table your determination to see what is going on with the Planning Board site plan. If progress isn't made or solved, it will go back to the Court, if Attorney Naughton agrees with the adjournment. Tony Collard stated to Mr. Jeffery, the official agenda not out yet for the Planning Board May meeting.

Attorney Dowd stated not to take any action and decide to address it again at next month's meeting.

Attorney Naughton - No objection.

Terry Duffy made a motion to table discussion on tonight's meeting with Attorney Naughton's approval until May and until we have more detailed information from the Planning Board and was seconded by Bryan Meigs. Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Steve Zappy-yes and Chairman Robinson-yes. All in Favor to Table.

Tony Collard stated that Attorney Naughton saw frustration at the Planning Board meeting as well as this meeting.

A motion was made to adjourn the meeting at 8:50 pm by Member Bryan Meigs and was seconded by Terry Duffy. The next meeting is scheduled for Thursday, May 23, 2019.

Sincerely,

Nancy Smithson
Secretary, Zoning Board of Appeals

