

STATE OF NEW YORK
COUNTY OF NIAGARA

ZONING BOARD OF APPEALS
TOWN OF PORTER

The Special Meeting of the Town of Porter Zoning Board of Appeals was held on June 20, 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	06/20/2019	yes	
Terry Duffy	06/20/2019	yes	
Bryan Meigs	06/20/2019	yes	
Marshall Hibbard	06/20/2019	yes	
Steve Zappy	06/20/2019	yes	
Atty Michael Dowd	06/20/2019	yes	
Peter Jeffery, Code Enforcer	06/20/2019	yes	

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

Chairman Robinson read the following:

SPECIAL MEETING TOPIC:

Application of Jason Berger, Thomas Neilson, John Huber, 1698 Braley Road, Youngstown, NY 14174. Tax Map No. 47-00-1-30.

Under Article II, Section 200-8, Article IV, Section 200-48 and Article VIII, Section 200-107, a special use permit is required to operate Shear Airport –private airstrip. Property is located in a Rural Agricultural Zoning District on the South side of Braley Road between Youngstown Road and Porter Center Road in said Town.

It was noted that Jason Berger was present. They are waiting for a decision from the Commissioner of Transportation as to whether they can operate the airport.

Terry Duffy made a motion to the application to be sent to the Commissioner of Transportation for operation of the airport and was seconded by Marshall Hibbard. Roll Call Vote. Terry Duffy-yes; Bryan

Meigs-yes; Marshall Hibbard-yes; Steve Zappy-yes and Chairman Robinson-yes. All in Favor. Motion Carried.

Attorney Dowd will prepare the resolution and get it out to the Commissioner of Transportation. We have a special use permit application and we can make a determination on the application contingent on the Commissioner of Transportation approval. We could send a copy of the actual permit to the State.

Jason Berger stated that they have had a lot of people watch. The community is ok with the airstrip. We have neighbors coming over to watch. We have three years on the skydiving permit.

Bryan Meigs made a motion to approve the special use permit to operate Shear airport - private airstrip to reflect the same hours and stipulations on the skydiving application contingent upon the Commissioner of Transportation approval and was seconded by Steve Zappy. Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Marshall Hibbard-yes; Steve Zappy-yes and Chairman Robinson-yes. All in Favor. Motion Carried.

Mr. Berger talked about the hours of operation; private only; no public use.

Mr. Jeff Budd of Braley Road questioned "How many planes a day and the hours of operation, and do you have the minutes of the meeting?" He also questioned why he wasn't notified. Chairman Robinson stated that all the information was in the April 11 meeting. Peter Jeffery, Code Enforcement Officer stated that there was a notice in the paper and residents within 500 feet were notified. The rules are clear, and we are following them. Mr. Budd stated he was disappointed in the Town. He stated that he was going to complain to the Town. Attorney Dowd stated that we cannot notify everyone in the Town. Mr. Budd stated the he understood that they were approved but businesses like this everyone should be notified. Mr. Budd also stated you do only what you have to and not anything more. Chairman Robinson stated it is the law. Attorney Dowd stated we notify neighbors as a courtesy. Chairman Robinson stated no one knows the impact. We have no control over the helicopters.

Marshall Hibbard stated that the Board was going into Executive Session at 7:15 to seek counsel. No action was taken in the Executive Session and the Board returned at 7:25 pm.

Chairman Robinson read the following:

NOTICE IS HEREBY GIVEN THAT, pursuant to Section 267 of the Town Law and Local Law No. 2 of 2010, as amended, of the Town of Porter, Niagara County, New York, a PUBLIC HEARING will be held by the Zoning Board of Appeals at the Town Offices, 3265 Creek Road, Youngstown, NY on Thursday, **June 20, 2019 at 7:00 PM** for the purpose of considering and hearing all interested persons concerning the following application(s):

PUBLIC HEARING FOR:

Application of Bailey-Baker Farm Trust, 2432 Parker Road, Ransomville, NY 14131. Tax Map No. 62.00-1-31, Under Article II, Section 200-8; Article IV, Section 200-35 and Article VIII, Section 200-107, a special use permit is required for a Home Occupation for office. 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.

It was noted that Attorney Charles Naughton was present as well as Shawn Bailey. Attorney Naughton stated that they have been here before. We are asking for a special use permit for a home occupation. It is a pre-existing building; alleging non-conforming. We have met with the Planning Board on conditions that might be improved if granted. Attorney Naughton talked about the hours of operation – Monday – Friday 8:00am – 4:00 pm and on Saturday from 8:00 am – noon; three parking spaces; one employee; no employee meeting there and training at the other location; Fed Ex deliveries for office supplies only. Mr. Bailey is transferring the business to Balmer Road. Water was put in last week and electricity a few weeks ago. Mr. Bailey is aware of problem neighbors have had. They are expecting construction of the pole barn at the end of June. Shawn Bailey stated they are the next in line. It should take two weeks to get the shell up. He stated some equipment is still there. Some pieces we use on occasion. He stated he is in contact with CEO, Peter Jeffery. The pole barn is 7200 square feet. He stated he has been trying to keep off of Parker Road. Since 2017 when he broke ground, there were three phases. The shop was put in 2018. We have a lot of equipment, and I am getting all of my stuff over there out of view. He doesn't want to upset the neighbors. The office will be the third phase. We have been making progress. It is my ultimate goal to move forward.

Chairman stated you are aware if we are to approve the permit with these conditions you have to follow them. Just so you are aware if we adopt them.

Attorney Naughton stated the equipment should not be an issue within a month. Shawn Bailey stated that CEO, Peter Jeffery and I have a good relationship.

Chairman Robinson asked if there was anything else. Attorney Naughton stated that they asked for a three year permit. Shawn Bailey presented drawings to the Board.

CEO, Peter Jeffery stated there is equipment on Parker Road now. It is just temporary until the pole barn is up. The reason it is there now is you have a regular dump truck full of mulch and they need to be out of the way on Balmer Road. Shawn Bailey stated that they are trying to use Balmer Road as best as we can for fuel deliveries and mulch. It is not an everyday operation on Parker Road.

Chairman Robinson asked if there was anything else from the public.

Debbie Parker of Ransomville Road stated "On principle only, I say "no". I am the only person who showed up. I am glad you guys are doing good. There are so many past issues. There are a lot of gray areas. To give them the home office and for three years, if that is the purpose, I am skeptical. There is a lot of water under the bridge. I would say "no".

CEO, Peter Jeffery stated there are no gray areas regarding the office. Everyone is entitled to have a home occupation because it is allowed under the law.

Chairman Robinson asked if there was anyone else.

Terry Duffy made a motion to close the public hearing and was seconded by Bryan Meigs.

Chairman Robinson read the Planning Board recommendations dated 6/6/2019. Hours of operation: Monday-Friday, 8:00 am – 4:00 pm; Saturday 8:00 am – noon; Delivery of office supplies only; Parking for 3

vehicles only; No outdoor activities permitted. No employee meetings at this location. Special Use Permit issued for two years.

Shawn Bailey stated there are still fuel tanks on Parker Road. It has been there since the '70's. It is not being used to fuel equipment. There is only diesel on Parker Road.

CEO, Peter Jeffery commented that the property fuel tanks were discussed. Any of the trustees would be considered owners and could fuel vehicles on the property but the business could not. The trust may have multiple names on it.

Attorney Naughton commented that we are only asking for a use of an office. No intention of having any equipment there.

Chairman Robinson stated we are trying to cover everything to have something enforceable if there is an issue.

Terry Duffy stated no daily use. Let's give him 90 days to allow him to address the pole barn. Shawn Bailey stated it will only take two weeks to put up the pole barn. I want the floor put in around Fall. CEO, Peter Jeffery stated the equipment will come over to Balmer Road when the pole barn goes up. Shawn Bailey commented that he would be more than happy to discuss any issues. CEO, Peter Jeffery stated once you get the pole barn up and the floor in, I thought all the equipment is coming back to Balmer Road. Shawn Bailey stated that there will be some equipment at Parker Road. Attorney Dowd asked Shawn Bailey how long before all the equipment will be at Balmer Road from Parker Road – 120 days? Is that fair?

Terry Duffy made a motion for an office home occupation for Bailey-Baker Farm Trust at 2432 Parker Road, Ransomville, NY including all the equipment used by the landscape business to be moved to Balmer Road within 120 days and including the Planning Board recommendations: Hours of operation: Monday-Friday 8:00 am to 4:00 pm; Saturday 8:00 am to noon. Delivery of office supplies only; parking for three vehicles only; one employee; No outdoor activities permitted; no employee meetings at this location and the special use permit issued for two years and was seconded by Bryan Meigs.

Steve Zappy recused himself. Roll Call Vote: Terry Duffy-yes; Bryan Meigs-yes; Marshall Hibbard-yes and Chairman Robinson-yes. Motion Carried.

Notice of Appeal from Code Violation in the matter of Bailey-Baker Farm Trust.

It was noted that Steve Zappy recused himself.

Attorney Dowd commented that there was a code violation issued to said property owners that they are appealing. The Zoning Board of Appeals has to make a determination. If you uphold the findings of the CEO, Peter Jeffery, it would go back to the Justice Court. The applicant could challenge in an Article 78. The Zoning Board has heard from the CEO, Peter Jeffery and Attorney Naughton. It is up to the Board to make a decision in the form of a motion.

Chairman Robinson stated we make a recommendation to uphold Peter Jeffery's decision or grant their request. CEO, Peter Jeffery stated there was one violation. There was a discussion on specific dates with the Board and the CEO, Peter Jeffery.

Chairman Robinson asked if the Board was ready to take action.

Bryan Meigs made a motion that the Board should uphold CEO, Peter Jeffery's violation and was seconded by Marshall Hibbard. Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Marshall Hibbard-yes; Chairman Robinson-yes. Motion Carried.

A motion was made to adjourn the meeting at 8:05 pm by Member Bryan Meigs and was seconded by Terry Duffy. The next meeting is scheduled for Thursday, June 27, 2019.

Sincerely,

Nancy Smithson
Secretary, Zoning Board of Appeals