

**DRAFT MINUTES - DRAFT MINUTES ---- DRAFT MINUTES --- DRAFT MINUTES
NOT APPROVED. NOT APPROVED NOT APPROVED.**

**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 May 19, 2016 at 7:00 PM, in the Town Offices, 3265 Creek Road, Youngstown, NY 14174

PRESENT: Chairman Duffy Johnston, Member Bryan Meigs, Member Terry Duffy, Member Jackie Robinson, Building Inspector, Roy Rogers, and Susan Driscoll, Assessor.

ABSENT: Member Irene Myers and Attorney Michael Dowd.

Chairman Johnston called the meeting to order at 7:00 pm.

Chairman Johnston asked if there were any additions or deletions to the April 21, 2016 minutes. None. Chairman Johnston asked for a motion to accept the minutes. Jackie Robinson made a motion and was seconded by Bryan Meigs to approve. All in Favor. Motion Carried.

Chairman Johnston 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 **May 19, 2016** at 7:00 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

APPLICATION OF TRACK VISION, LLC, 3095 Harlem Road, Cheektowaga, NY. Under Section IV and VIII, two Special Permits to operate a race track and go-kart track at 2315 Braley Road, Ransomville, NY 14131. Property is located in a RA Zoned District on the North Side of Braley Road between Ransomville and Dickersonville Roads in said Town.

It was noted that Jana Robinson was present. Chairman Johnston stated we could not transfer over the permit. Chairman Johnston asked if anyone from the audience wished to speak. None. Terry Duffy made a motion to close the public part of the hearing and was seconded by Jackie Robinson. All in Favor. Motion carried to close the public part of the hearing.

Chairman Johnston asked Jana Robinson if everything is going to remain the same—the go-karts on Thursday and race track on Friday and Saturday's. There is a change in ownership.

Bryan Meigs made a motion to approve the Special Permit for Track Vision LLC for the Go-Kart Track with the same provisions as the permit for S&K Auto Racing for a period of seven years and was seconded by Terry Duffy. Chairman Johnston asked for a Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Jackie Robinson-yes and Chairman Johnston-yes. All in Favor. Motion Carried.

Jackie Robinson made a motion to approve the application for a Special Permit for Track Vision LLC to operate a motor vehicle racing track with the same provisions as the permit for S&K Auto Racing for a period of seven years and was seconded by Bryan Meigs. Chairman Johnston asked for a Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Jackie Robinson-yes and Chairman Johnston-yes. All in Favor. Motion Carried

Chairman Johnston read the following:

APPLICATION OF DAVID JAKUBOWSKI, 1135 Cain Road, Youngstown, NY. To renew his Special Permit to operate a small golf club repair shop and club making business at 1135 Cain Road. The property is located in a LDR Zoned District on

the North Side of Cain Road between Creek and Lutts Roads in said Town.

It was noted the Mr. Jakubowski was present. Chairman Johnston stated that some signals were crossed last month. He asked if anyone from the audience wished to speak. None. Chairman Johnston asked for a motion to close the public part of the hearing. Jackie Robinson made a motion to close the public part of the hearing and was seconded by Bryan Meigs. All in Favor. Motion Carried.

Chairman Johnston asked Mr. Jakubowski if there were any changes to the permit. Mr. Jakubowski asked for a period of ten years. Chairman Johnston asked if the hours of operation would remain the same and he replied, "yes". Chairman Johnston stated that there were no complaints.

Bryan Meigs made a motion to approve the Application of Mr. Jakubowski to renew his special permit to operate a small golf repair shop and club making business for a period of ten years and was seconded by Terry Duffy. Chairman Johnston asked for a Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Jackie Robinson-yes and Chairman Johnston-yes. All in Favor. Motion Carried.

Chairman Johnston read the following application.

Application of Paul Lozzi, 1442 Lake Road, Youngstown, NY.
Under Article VIII, Section 108 an area variance is requested for a garage nine feet from the center line of abandoned Tower Road. Property is located on the South side of Lake Road in a RA Zoned District between Tower Road and Murphy's Corner Road in said Town.

It was noted that Paul Lozzi could not attend tonight but his son, Anthony was present. Chairman Johnston asked if anyone from the audience wished to speak. None. Terry Duffy made a motion to close the public part of the hearing and was seconded by Jackie Robinson. All in Favor. Motion Carried to close the public part of the hearing.

Roy Rogers stated that he doesn't have the property as abandoned. The building is in the right away. You have to go through a process for abandonment. It is not a used road and not an abandoned road. Roy Rogers also stated it is a variance of nine feet from the center of the road which is still in the right away. Chairman Johnston stated the size of the garage is 24' feet wide. Roy Rogers presented drawings to the Board as presented to him. The Zoning Board asked Roy Rogers some questions about the drawing as presented. Some questions were raised about the abandonment of the property. Roy Rogers stated it was a process. Chairman Johnston raised a question about who owned the road. Roy Rogers stated it has never been developed.

Chairman Johnston stated to Anthony Lozzi that because we did not have counsel here tonight to help decide, we will have to table this application. He stated we need counsel present. We are going to have to wait until Attorney Dowd is present.

Jackie Robinson made a motion and was seconded by Terry Duffy to table the application of Paul Lozzi until the June meeting. Chairman Johnston asked for a Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Jackie Robinson-yes and Chairman Johnston-yes. All in Favor to table the application of Paul Lozzi for 30 days (June meeting).

Chairman Johnston read the following application:

Application of Scotty Jones and Alison Dorries, 3735 River Road, Youngstown, NY. Under Article IV and Article VIII, Section 107 a special permit is required for a dock. The property is located on the East Side of Lower River Road in a WR-MDR Zoned District between Youngstown and Collingwood Estates in said Town.

It was noted that Scotty Jones was present. Chairman Johnston stated that they bought the DeFazio property. The original permit cannot be transferred to the new owner. They have all the paperwork and the transfer of the original permit from the DEC. Chairman Johnston asked if anyone from the audience wished to

speak. None. Terry Duffy made a motion and was seconded by Jackie Robinson to close the public part of the hearing. All in Favor. Motion Carried to close the public part of the hearing.

Chairman Johnston asked Roy Rogers if everything was in order. Roy Rogers replied "yes".

Jackie Robinson made a motion to accept the application of the Special Permit for Scotty Jones and Alison Dorries for a dock at 3735 River Road on the East side of Lower River Road in a WR-WDR Zoned District between Youngstown and Collingwood Estates and was seconded by Terry Duffy. Chairman Johnston asked for a Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Jackie Robinson-yes and Chairman Johnston-yes. All in Favor. Motion Carried.

Chairman Johnston read the following:

APPLICATION OF JOSHUA SMITH, 3880 Dickersonville Road, Ransomville, NY 14131. Under Article II, Section 8, Article IV, Section 35; and Article VIII, Section 107, a Special Permit is required to sell and transfer of firearms mainly online or by appointment. Property is located on the West side of Dickersonville Road in a RA Zoning District between Balmer Road and where the Town of Porter ends in said town.

It was noted that Jeffery Smith was present.

Roy Rogers stated that the Attorney stated we would have to put the Notice of the Public Hearing on the Public Board at the Town Hall and that the Planning Board did have a public hearing.

Chairman Johnston asked if anyone from the audience wished to speak. None. Terry Duffy and Jackie Robinson made a motion to close the public part of the Hearing. All in Favor. Motion Carried.

Jeffery Smith stated the Joshua plans on selling to the military and police force. It is on-line sales, by appointment only and no inventory.

Chairman Johnston commented that it is a quite operation. Roy Rogers stated that there were no problems. Chairman Johnston stated that he had Planning Board approval.

Bryan Meigs made a motion to approve the application of Joshua Smith for the sale and transfer of fire arms mainly on line and to expire when the FFA license expires in April 2019 and was seconded by Jackie Robinson. Chairman Johnston asked for a Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Jackie Robinson-yes and Chairman Johnston-yes. All in Favor. Motion Carried.

Chairman Johnston read the following:

Application of Thomas Fleckenstein for Judith Fleckenstein, Living Trust, 1953 Balmer Road, Ransomville, NY 14131.
Under Article IV, Section 33.4(a), Article II, Section 8 and Section 60, three variances are required. A variance for the time completion of the pond from the required one year; a variance from maximum lot coverage from 15% to 19.6% and a variance for the removal of the soil under paragraph (a) under Section 60. Property is located on the North side of Balmer Road between Porter Center Road and Dickersonville Roads in said Town.

Thomas Fleckenstein was present. Chairman Johnston stated that there are two variances. Chairman Johnston asked if anyone from the audience wished to speak.

Amy Witryol from Lewiston approached the Board to offer some comments. She stated that she lives on River Road and her residence would not be impacted but she does travel through the town. She stated that her concerns are public interest. She is a retired commercial banking officer and has processed thousands of applications. She stated that she asked for a copy of the business plan from the Planning Board. There is a potential liability – scope and nature of problems. I have concerns about a mining entity which would likely invalidate the Town code.

Chairman Johnston asked if she was referring to the ponds. I know the history of Lewiston. We are not Lewiston. Ms. Witryol stated if the Town of Porter acts on an application that is not complete as to

the uses, it could be construed as a mining and the Town could enforce the policy. I was at the Planning Board meeting, and I have made some phone calls. What is being proposed in this plan has not been successful in the State of New York relative to the size of the ponds.

Chairman Johnston asked Ms. Witryol, "Where did you get your research from?" Ms. Witryol stated that she talked to other farmers. The business plan doesn't explain where the costs would come from? For the project in the business plan, you need one or two acres for talipia; whereas, the walleye and perch I have not been able to locate anyone who is able to operate profitably. No explanation in the business plan—sales price; pond acreage, etc. I am offering my own opinion. With respect to clay mining—there is approval to construct the first pond; and if successful, then construct the second pond. If 12% of the 25% was clay excavated at \$150K an acre there is a profit of 1.7 million dollars for the first pond.

Chairman Johnston asked where did you come up with these figures. Ms. Witryol stated from other land owners. Any names? No. You can talk to the other people with clay mining. I certainly welcome you to verify anyone you know.

Chairman Johnston stated to Ms. Witryol that you have five more minutes. She asked the Board to keep the public hearing open to the economics of clay mining. If you invest \$160K and you sell \$30K in fish, then you will lose over the 18 month time frame -- \$200K or \$300K. If you have gotten through that 18 month window -- \$300 million dollars for clay mining if the business fails. There is no such operation that could be profitable in NYS. The success of the operation is not the main criteria. Whether or not this project is approved, they will have no problem finding clay for the year. Even the trucks for the clay have to come through the town. (990 cubic yards – approximately 50,000 trucks.) Chairman Johnston asked Ms. Witryol if she was assuming the clay will go to the land fill? It will not stay in the Town of Porter. Maybe there is a long-term sustainable value. Does this have a chance of succeeding? I would encourage the Zoning Board to ask questions. Piloting the talipia whether indoor or outdoor or ask council to look carefully whether this application is agri vs. clay mining.

Chairman Johnston stated you have a lot of information. I don't know how you got the numbers you documented. If you want my comments in writing you will have to wait a couple of days. I obtained the information from the Freedom of Information and I received them today at 11:00 am. Chairman Johnston stated we have a recommendation from the Planning Board. It is a timely manner. I appreciated your comments. Ms. Witryol asked if the Board would leave the public part of the hearing open. You don't have to act tonight. Call a special meeting next week.

Jackie Robinson made a motion to close the public part of the hearing and was seconded by Terry Duffy. Terry Duffy stated that he would like her to give her opinion in writing. Mr. Fleckenstein commented that this application has been open for two years, and we have been to the Planning Board. We have been over this for months. Everything to do this process has been done correctly. It has been two years. The DEC has been on going. The Town has Lead Agency status. The Town of Lewison has no standing in this town. Chairman Johnston stated that because the Town of Lewiston messed up, we are protecting our town. We have been through this with – soil and water; Zoning Board; Building Inspector; and Town Board.

Roy Rogers was asked if he had anything to add. Chairman Johnston stated we are looking at two variances not the business plan. Your comments could be redirected to the Planning Board. One variance is for the amount of acres and the second is for the amount of time. Member Terry asked if we should accept Ms. Witroyl's comments. Chairman Johnston stated that we have two variances and that is what we are doing. Jackie Robinson commented about the 22 acres that they are using. It is pretty marginal farm land. We are not losing 22 acres of farm land.

Chairman Johnston stated we have a motion to close the public part of the hearing by Jackie Robinson and seconded by Terry Duffy. Roll Call Vote. Terry Duffy-no; Bryan Meigs-yes; Jackie Robinson-yes and Chairman Johnston-yes. Motion Carried to close the public part of the hearing.

Chairman Johnston stated to Amy Witroyl that your comments were on the business part of it. We are here tonight for the variance.

Chairman Johnston stated the Planning Board recommends the variance for maximum lot coverage and recommends the time frame based on attorney Dowd's recommendation.

Chairman Johnston read the following from Attorney M. Dowd.

**STATE OF NEW YORK
COUNTY OF NIAGARA**

**ZONING BOARD OF APPEALS
TOWN OF PORTER**

Resolution Granting Variances and Issuing Interpretations of the Town of Porter Zoning Code.

WHEREAS, Thomas Fleckenstein and the Judith A. Fleckenstein Living Trust (the "Applicant") submitted an application to construct an aquaculture facility (the "Facility") to the Town of Porter Planning Board (the "Planning Board"); and

WHEREAS, in connection with the Facility, the Applicant submitted a request for variances and/or code interpretations to the Town of Porter Zoning Board of Appeals ("ZBA"); and

WHEREAS, the Facility is a farm operation, pursuant to the New York State Agriculture and Markets Law and is a Type II action pursuant to the New York State Environmental Quality Review Act ("SEQRA"); and

WHEREAS, the ZBA held a public hearing on the applications for variances and code interpretations; and

NOW, THEREFORE, BE IT RESOLVED by the ZBA of the Town of Porter that:

1. The Applicant's application for a variance from Section 33 Farm Ponds, A(4) to exceed the time of construction from one year until the expiration of the New York State Department of Environmental Conservation Mined Land Reclamation permit granted to the Applicant dated April 17, 2015 expiring on April 16, 2020 and is hereby GRANTED, subject to the following condition: the proposed aquaponics facility and greenhouse detailed on the site plan be completed and operational (evidenced by the marketing and sale of tilapia and leafy green vegetables) within eighteen months from the date a site plan is finally approved and that the Applicant is beginning to receive gross revenue therefrom; and further that at least five acres of the proposed farm pond be completed and stocked with perch and/or walleye within eighteen months from the date pond excavation begins as detailed in the site plan. The ZBA hereby determines that the benefit to the Applicants outweighs the detriment to the health, safety, and welfare of the community. The ZAB determines that the variance will not create an undesirable change in the character of the neighborhood or community. The benefit sought by the applicant cannot be achieved by some other method; this project required time to complete; it will be consistent with the DEC permit timeline. The area variance is substantial, but weighing all the factors together, the ZBA determines that the variance should be granted. While the hardship may be deemed to be self-created, that shall not in and of itself preclude the granting of the area variance. But it should be noted that a business of this type and size cannot be completed within one year. In considering all the factors together, the ZBA determines that the variance should be granted. The requested variance is the minimum necessary. As a further condition to this variance, in the even the Applicant meets the conditions set forth above but fails to complete the excavation described in

the site plan by the expiration of the DEC mining permit the applicant will reapply to the Town Zoning Board and Planning Board for any further extension of time the Applicant seeks to obtain from the DEC.

2. The Applicant's application for a variance from Section 8(B) Yard and Bulk Requirements to exceed the maximum lot coverage (15%) to +/- 19.6% is hereby GRANTED upon the condition that the conditions set forth in section "1" above have been met. Pursuant to Town Law Section 267-b(3), the ZBA hereby determines that the benefit to the Applicants outweighs the detriment to the health, safety, and welfare of the community. The variance will not create an undesirable change in the character of the neighborhood or community. The 4.6% variance is not substantial. While the hardship is self-created, that shall not in and of itself preclude the granting of the area variance. In considering all the factors together, the ZBA determines that the variance should be granted. The requested variance is the minimum necessary.
3. The ZBA hereby issues the following determination with respect to the interpretation of the Town of Porter Zoning Code: Section 69 Excavation is not applicable to the construction of a farm pond.
4. The Planning Board further recommends that the cost recovery fee be reduced by an amount determined between the applicant and the Town of Porter (the "Town") taking into consideration the guidance of the New York State Department of Agriculture and Markets related to stream lined site plan reviews for agricultural activity. The Planning Board does not feel a variance is necessary in this regard based upon this guidance. Instead, the Applicant will tender \$2,500.00 to the Town of Porter to be used during the site plan review process for the Facility. These funds shall be due within 15 days of site plan approval by the Planning Board and issuance of a building permit from the Town of Porter. The funds will be subject to an escrow agreement, to be negotiated between counsel for the Town and counsel for the applicant, consistent with the terms set forth herein, which will allow the Town to draw legal and engineering fees related to the review of the Facility construction. In the event the Town incurs expenses such as the clean-up and removal of excavated material or debris on any highways located in the Town which pose a danger to the health and welfare of its residents or an additional review of a new application relevant to this project is submitted, the Applicant will be responsible to reimburse the town for actual reasonable costs incurred by the Town.
5. This resolution is effective upon approval of the site plan submitted by the applicant to the Town of Porter Planning Board.

Chairman Johnston stated the area variance is 15 to 19%; the money was waived; time constraints – we don't know if we are going to get rain in June or July. The time restraints are constrictive. The variance is for 22 acres to start. The two councils have agreed and the Planning Board has recommended. The site plan has to go back to Planning, and there is a special meeting from Mr. Fleckenstein. These are the variances that in front of us right now.

Jackie Robinson made a motion to accept the variance as was written and read in the minutes by Chairman Johnston and seconded by Bryan Meigs. Chairman Johnston asked for a Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Jackie Robinson-yes and Chairman Johnston-yes. All in Favor. Motion Carried.

Chairman Johnston stated that there was a discussion to move the meeting to the Fourth Thursday of the month. Chairman Johnston asked for a Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Jackie Robinson-yes and Chairman Johnston-yes. All in Favor. Motion Carried.

A Motion was made by Bryan Meigs and seconded by Terry Duffy to adjourn the meeting. The meeting was adjourned at 8:20 p.m. The next regular meeting will be held on **Thursday, June 23, 2016.**

Respectfully submitted,

Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals