

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 Thursday, November 19, 2009, at 7:30 PM, in the Town Offices, 3265 Creek Road, Youngstown, NY 14174

PRESENT: Chairman William H. Tower, Member Joe Fleckenstein, Member Peter Jeffery, Member Duffy Johnston, Member Irene Myers, Member William Leggett, Attorney Michael Dowd, Susan Driscoll and Roy Rogers, Building Inspector.

Chairman Tower called the meeting to order at 7:30 pm Chairman Tower asked if there were any additions or deletions to the August minutes. Duffy Johnston made a motion to accept the minutes as written and was seconded by Joe Fleckenstein. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; Irene Myers-yes; Joe Fleckenstein-yes and Chairman Tower-yes. **All in Favor. Motion Carried.**

Chairman Tower read the following:

NOTICE IS HEREBY GIVEN THAT, pursuant to Section 267 of the Town Law and Local Law No. 1 of 1968, 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 **November 19, 2009** at 7:30 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

Application of Joseph & Kelly Fleckenstein, 2332 Balmer Road, Ransomville, NY. Under Sections 401.3Y, 704.2 and 710, a variance is requested to construct wind energy conversions systems with a tower height of 120 ft. Property is in an ARR-100 Zoned District on the South Side of Balmer Road between Ransomville Road (East) and Dickersonville Road (West) in said Town.

Chairman Tower asked if anyone from the audience wished to speak. Mr. Andrew Watts, 2025 Ridge Road stated he would like information

about this tower. Who wants it and for what reason? He stated it is going to be seen for miles. Chairman Tower stated it is under the clean energy of NYS. Mr. Watts stated it is a detriment to the neighbors. I will be a neighbor, and I will be able to see it from my house. Do we want 20 or 30 around in Niagara County? Chairman Tower talked about the right to farm law. Attorney Dowd stated we have a wind energy conversation law in the Town of Porter with a tower height of 80' feet. These people need a variance to have a tower. We are granting a variance under reasonable regulations as to wind generating towers. It has been on the books for thirty years. The applicants are seeking funding on their own. They are required to look at the zoning regulations because they are permitted in this area. Whether it is noisy or a visual impact, we are going to consider the application. If they want funding, they can apply for grants whether or not the tower is in compliance. Most trees are 70' to 80'. This board is considering the application. We will take everything into consideration. The Planning Board recommended it should be approved. Mr. Joe Fleckenstein will excuse himself. Mr. Watts stated that he has a lot of friends on the Board. Irene Myers stated that she knows about 80% of the residents in this town. Duffy Johnston asked Mr. Watts if he has a straight view to Mr. Fleckenstein's house. You don't know which tower you can see. Irene Myers asked Mr. Watts if he find cells towers obtrusive. Mr. Watts stated I can see both cell towers and I am zoned farm and light industrial. Duffy Johnston stated you have to follow the guidelines. Attorney Dowd stated there are guidelines under site plan review. They are asking for a variance. You have to show it doesn't violate the harmony of the neighborhood. Wind energy and cell towers are part of our fabric now. Your opinion will be taken into consideration. Frank Westgate stated that he live in Olcott. He stated that he installed a wind tower on a farm in Rte 18 in Appleton. It is on the south side of the road. It was very well received by the neighbors. It actually looks like a toy. It is a residential sized turbine. Elaine Martin on Balmer Road stated she is a neighbor to Judy Fleckenstein and questioned the location of the turbine. Attorney Dowd stated that these are not commercial wind turbines. Irene Myers stated they had one at the Niagara County Fair. Chairman Tower asked if there was any further discussion. Duffy Johnston made a motion and was seconded by Peter Jeffery to close the public part of the hearing.

Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; Irene Myers-yes; Chairman Tower-yes. All in Favor.

Chairman Tower stated that he has a Short Environment Assessment Form which is answered in the negative and the Planning Board recommends approval. Chairman Tower stated that all we are looking for is a 20' variance in height. Attorney Dowd stated that there are specific criteria – the Planning Board has two requests, there are four criteria you have to consider for a variance and it is reasonable under guidelines.

Duffy Johnston asked Attorney Dowd if he got in touch with Ag & Markets. Attorney Dowd stated he did speak with Ag & Markets and the application still has to go through the Zoning Board of Appeals.

Chairman Tower read: Section 704.2 Area Variance.

Areas variances may be considered where setback, frontage, lot size, density or yard requirements of this Local Law cannot be reasonably met. The Board of Appeals may grant an area variance on the ground of practical difficulty, such practical difficulty to be determined by consideration of the following:

- How substantial the variation is in relation to the requirement;
- The effect, if the variance is allowed, of the increased population density thus produced on available governmental facilities (fire, water, garbage and the like);
- Whether a substantial change will be produced in the character of the neighborhood or a substantial detriment to adjoining properties created;
- Whether the difficulty can be obviated by some method, feasible for the applicant to pursue, other than a variance; and
- Whether in view of the manner in which the difficulty arose and considering all of the above factors, the interests of justice will be served by allowing the variance.

Chairman Tower also read 704.3

No variance under the provisions of the part shall be authorized by the Board unless it finds that such variance:

- Will be in harmony with the general purposes and intent of this Ordinance or such regulation, taking into account the location and size of use, the nature and intensity of the operations involved in or conducted in connection with it and the size of the site in respect to streets giving access thereto.
- Will not tend to depreciate the value of the adjacent property, taking into account the possibility of screening or other protective measures to protect adjacent properties.
- Will not create a hazard to health, safety or general welfare.
- Will not alter the essential character of or be detrimental to the neighborhood.
- Is the minimum necessary to afford relief?

Chairman Tower read the following Planning Board recommendations:

“Joseph and Kelly Fleckenstein, 2332 Balmer Road, Ransomville, are requesting a special use permit and an area variance in order to erect a wind tower on their property. A map of the area was presented that had the tower site clearly indicated. The set back is 180 feet (this is one and one-half the height of the tower as required). The placement more than meets the regulations. The Planning Board as a whole does not have any problems with this request. Chairman Spira read the Zoning Law pg 112 regarding wind towers and guidelines that were submitted by Tim Toohey regarding Wind Energy Conversation Systems. The Planning Board has to receive documentation that this is a farm operation.”

Duffy Johnston stated it is in the back of the property. It is in the middle of no where. The tower will be 692.754 feet from the road. Peter Jeffery asked if you could go without the extra 20 feet. Joe Fleckenstein stated that the wind towers are around \$70,000. To go without the extra 20 feet, you will lose a lot of energy. Peter Jeffery stated you want to achieve 100% of your available power. Joe Fleckenstein stated it will provide power for all the barns, dryer for grain bins, farm shop and there are heaters.

Duffy Johnston made a motion to approve the special permit and variance of twenty feet for Joseph and Kelly Fleckenstein and was seconded by Irene Myers. Duffy Johnston questioned do you need any fences. Joe Fleckenstein stated you cannot climb up. Duffy Johnston stated it is all new to this Board. Attorney Dowd stated they still have to get a building permit. Peter Jeffery stated that his feeling it is extremely substantial with twenty feet higher. It is not a substantial variance or request in the ag and industrial district. Chairman Tower asked if there was any further discussion and called for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; Irene Myers-yes; William Leggett-yes; Duffy Johnston-yes; Chairman Tower-yes. All in Favor.

Chairman Tower read the following:

Application of Judith Fleckenstein, 1953 Balmer Road, Ransomville, NY . Under Sections 401.3Y, 704.2 and 710, a Variance is requested to construct wind energy conversions systems with tower height of 120 ft. Property is in an ARR-100 Zoned District on the North Side of Balmer Road between Dickersonville Road and Porter Center Road in said Town.

Chairman Tower asked if anyone in the audience wished to speak. Mr. Toohey stated that the short environmental assessment form needs to be signed by a Town Official. The Zoning Board needs to sign as the lead agency. Discussions that the State Department of Environmental Impact – Type 2 Actions – requires no further environmental assessments. That is why they are all answered in the negative. Duffy Johnston made a motion to close the public part of the hearing and was seconded by Irene Myers. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; Irene Myers-yes; William Leggett-yes; Chairman Tower-yes. All in Favor.

Chairman Tower read the Short Environmental Assessment Form (copy attached) and on Page Two (Part 11), questions A – E were answered in the negative. William Leggett made a motion to accept the SEQR and was seconded by Duffy Johnston that there was not adverse environmental impact. Chairman Tower asked for a Roll Call

Vote. Peter Jeffery-yes; Duffy Johnston-yes; Irene Myers-yes; William Leggett – yes; Chairman Tower-yes. All in Favor.

Chairman Tower read the Planning Board recommendations:

“Judith Fleckenstein (trustee), 1953 Balmer Road, Youngstown is requesting a special use permit and an area variance in order to erect a wind tower on her property. The property is 109 acres and a tower is an accessory to the dwelling. The tower is set back 190 feet (this is one and one-half the height of the tower as required). A Schedule F from 2008 income tax needs to be submitted in order to prove a farm operation.

The Planning Board recommends approval of the Joseph and Kelly Fleckenstein wind tower request and the Judith Fleckenstein wind tower request with the following:

- . approve site plan so that a building permit can be issued contingent upon satisfaction of proof that both quality as a farm operation.

- . a certificate stating that the tower will not exceed the one hundred ten (110%) percent requirement allowed bylaw from the applicant.”

Duffy Johnston made a motion to approve the special use permit and variance of 20 feet for the application of Judith Fleckenstein and was seconded by William Leggett. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; William Leggett – yes; Irene Myers-yes; Chairman Tower-yes. All in Favor.

Duffy Johnston stated that this is the first two in our area. Attorney Dowd stated farm towers are permitted. We are looking for a variance. Duffy Johnston stated this is almost a familiarity.

Attorney Dowd stated we did a SEQR and basically they are the same. The Board moved a negative declaration. Duffy Johnston made a motion to accept the Seqr form and issue a negative declaration on the application of Judith Fleckenstein and was

seconded by Peter Jeffery. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; William Leggett – yes; Irene Myers-yes; Chairman Tower-yes. All in Favor.

Reid Petroleum, 100 W. Genessee Street, Lockport, NY – They would like to amend their Special Permit No. 295-2008. They would like the operating hours for gas dispensing for 24 hours. Duffy Johnston stated that there was no one here from Reid Petroleum. The question was also raised whether it should be advertised. Irene Myers stated that a representative should be present and that a letter be send to Reid Petroleum asking them to be present at the December 10, 2009 meeting.

Peter Jeffery stated that he thinks there should be a public hearing. Peter Jeffery made a motion to table this application for 30 days and was seconded by Duffy Johnston. All in Favor. Attorney Dowd is to advise if we need a public hearing.

Mary Beth DeFazio, 3735 Lower River Road, Youngstown, NY – She would like am amendment to her Special Permit No. 302-2009 to eliminate the requirement to remove the dock. Chairman Tower stated that the Army Corp of Engineers is the lead agency in the river. They feel the dock can remain in the river. Roy Rogers stated that the current permit is to take the dock out of the river. Mary Beth DeFazio was not present tonight. The question was raise about advertising. Duffy Johnston stated the neighbors are not going to know if we don't advertise. You have to have this publicized so neighbors can respond. They have to know what is going on.

Attorney gave a reference to the Donut Shop. If they just decided to stay open for 24 hours, you would be in violation. It would appear the person would be grieved. If we didn't advertise we could end up in court. We have had so many problems with not notifying the neighbors.

Geri Serchia, 3739 Lower River Road stated she is the neighbor next door. The dock has to come out. We were not notified. The dock is still in the water in spite of what you said in May – it would have to come out by the end of October. Now, they want to amend the permit for the dock. Chairman Tower stated, originally, the application

stated it was a seasonal dock. Since that time, the Army Corp of Engineers has no seasonal requirement that the dock needs to be removed. The owners are asking for an amendment to the permit to leave it in all year long. Geri Serchia stated the dock is still in. Chairman Tower stated that the Army Corp of Engineers is the lead agency. Several points Geri Serchia mentioned – driftwood; continue dealing with all kinds of erosion. We would have gone to court if we thought it was going to be there all year long.

Attorney Dowd stated that the dock is in after it was supposed to be pulled out. The applicant made a request to change the permit and filed a formal application to amend the permit. If there is no amendment, they will be in violation. Technically, they are in violation, but once you file an application with the Zoning Board of Appeals, you have to wait for the Board of Appeals to make a decision. Duffy Johnson stated Mary Beth DeFazio is two months late. Attorney Dowd stated since there is an application pending her, the Code Enforcement Office cannot impose; everything is on hold. Geri Serchia stated it was originally presented as a seasonal dock. We have pictures showing damage. Attorney Dowd stated we have the right to issue a permit. At the time they applied, it was a seasonal dock. Now, they are asking for a permanent dock. Peter Jeffery stated that we have to decide whether it should be seasonal or permanent. Attorney Dowd stated you can be more restrictive. Geri Serchia stated they pivot the dock around. Peter Jeffery stated we need to see the neighbors concerns. Duffy Johnston stated I think we should take a look at it. Joe Fleckenstein asked if the Board can go down as a full Board. Attorney Dowd stated you can all go down, but you can't say anything.

Duffy Johnston made a motion to table the application for 30 days for Mary Beth DeFazio and was seconded by Irene Myers. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; Irene Myers-yes; William Leggett-yes and Chairman Tower-yes. All in Favor.

Joe Rollain approached the Board about a pizza parlor in the old fire hall in Ransomville. He would be redoing the inside and out. Irene Myers questioned the septic system. It was stated it directly behind towards the tower. Attorney Dowd addressed Chairman Tower. I

think if you are talking about parking you need a site plan. Under the zoning manual, it lists the number of parking spots that are needed. It is in the book. Attorney Dowd told Mr. Rollain, you need a variance to let the Board know what you are going to do. You definitely need a site plan. Attorney Dowd stated the difference is the parking. You need to go the Planning Board for a site plan review. Attorney Dowd also mentioned the holding tank. Mr. Rollain stated that Mr. Erway will put in a new system if required. Attorney Dowd asked Mr. Rollain, "How many people?". Mr. Rollain replied three booths seating 16 people. Attorney Dowd stated you need eight off the street parking spots. You need to be prepared to go to the Planning Board with other areas you think people can park. Just be prepared to answer it.

Chairman Tower asked if there was any further discussion.

Irene Myers made a motion to close the meeting and was seconded by Duffy Johnston. The meeting was adjourned at 8:55 pm. The next regular meeting will be held on **Thursday, December 10, 2009.**

Respectfully submitted,

Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals