

TOWN OF BENTON  
ZONING BOARD OF APPEALS MEETING  
JULY 7, 2020

**PRESENT:** Dwight James; Tom Davie; Rich Meyer; Dewey Hauman, and Steven Vaughan.

Also Present: Warren and Elaine Brubacher; Kathy Ferron; Gary Lilyea; Raymond Hammond; Harold Zimmerman; Glenn Quackenbush, Town Councilman; Dick Harper, Town Councilman; Tom Fulkrod, Code Enforcement Officer, and Karen Ellis, Recording Secretary.

James began the meeting at 7:00 p.m. followed by introductions.

**MINUTES APPROVAL:** Meyer made a motion to approve the minutes from the June 2, 2020 meeting. Davie seconded the motion. All in favor.

**APPEAL #39SUP-20** – Application from Warren and Elaine Brubacker of 765 Route 14A, Penn Yan, NY 14527 for a Special Use Permit for a commercial dog kennel housing five adult dogs including an outside run. (AR1 District) (Tax Map #17.04-1-13)

No correspondence or phone calls had been received in response to this application.

The interior runs will be 2 ½ X 6 ft. At the one end they have a feeder room and the other end will be on a slant to keep the puppies down where its warm. The dogs will have water and feed inside the entrances. Those are all covered with felt carpet to keep the dogs comfortable. The building is heated and air conditioned. The size of the inside kennels do not quite meet the kennel laws. The biggest one is 16 sq. ft. which the two dogs are 35 and 40 pounds and the other dogs are maybe 20 pounds and those have a bit smaller from about 13 to 14 sq. ft. They didn't realize at the time that they built them that the requirement was 16 ft. She stated that can be changed. Hauman noted that the requirement in the Town of Benton is 16 sq. ft. The individual runs are 102 sq. ft. Most of them are 7 ft. X 39 ft. There is one that is a bit different because of the way they are doing the set-up. Where the entry room door there is a smaller jut-out where the feeder room used to be from the former owners. The dotted line shows the crush stone just at the top end and the rest is grass. A question was brought up in regards to waste removal. Brubacker noted she uses a forklift to pick it up and throw onto a compost pile. They are after the welfare, comfort and health of the dogs. There are several benefits to the crusyh stone over concrete, because Their goal is to rehome the dogs when they are older. If you have them on concrete all the time, they will rehome harder because they won't know how to walk on stones or any other surfaces. It is hard on their legs and hips. The stones and grass will allow the urine and the manure to soak in and the smell dissipates. They have insulated garage door panels which is over 6 ft. 4 in. in height. That is done versus the chain link fence, so the dogs won't see each other and bark. They will be breeding mini golden-doodles and cavalier cocker-spaniels. Hauman asked how far they are from the property line. Brubacker indicated that will be the problem, in that they have a 300 ft. wide property which is narrow and compounds a problem.

Tom noted it has to be 100 yards from the closest neighbor, which would be 300 ft. They are 233 ft. from one edge and 83 ft. from the other edge; there are no neighbors there. It is all open farmland. Fulkrod stated that it needs to be located at least 100 yards from any adjoining property lines.

Fulkrod then stated that the Yates County Planning Board denied the application on the area variance and special use. The reason was because it was already in operation. Fulkrod then noted that since this operation was found and he has been working with the Brubackers they have helped in every single manner to try to get everything in line that they could possibly do to make things ready. He was taken through the pens. Our laws ask the pens to be certain dimensions. Their kennels meet the sizes to the best of their ability. He stated this is a kennel where they have four females and its not like they are asking for 50 or 60, which is one thing the County brought up in that its not a big one. A few people at the county were just stuck on the fact that they wanted to deny it. Our Planning Board passed this without any recommendations.

Davie asked if in the future they plan on adding more dogs or are they going to pretty much stay with four females and one male? Brubacker stated that five is enough to keep her busy, along with the small children. She would rather give optimum care to the few that she has than have a lot and not take care of them properly.

**Appeal #20SUP-19** – Application From Kathy Ferron of 4679 East Bluff Drive, Penn Yan, NY 14527, location of the SUP Havens Corners Road requesting permission to run a business at this location to operate a private rail bike excursion service. (AR1 District) (Tax Map #28.01-1-19)

James indicated that last month we had some questions and the Board would like the answers to those questions regarding ownership of the railway.

Ferron stated she sent a copy of the quit claim deed for the property to Fulkrod and Prendergast, along with a copy of the pilot agreement with the Finger Lakes Economic Development. The tracks and the real property under the tracks are owned by the Finger Lakes Railroad Corporation and the pilot program is in place and the pilot program specifically says that the Finger Lakes would need written permission to sublease the property provided that any assignment of whole or sublease to anyone for the purpose of operating a railroad. They only needed written permission from Finger Lakes Economic Development if they were going to lease those tracks and that property to her for a railroad operation. She indicated she is not a railroad. Fulkrod noted he has copies of all of the property agreements, etc. He spoke with the IDA because they had contact<sup>4</sup>ed their lawyers to get the exact wording and Steve Griffen contact him and what she has stated is 100% true. They cannot step in any way. It is definitely the way this was written. Hauman asked who is going to be maintaining this and coming in and clear this property of the brush, the iron, and the railroad ties. Fulkrod stated that every part between Havens Corners Road to the corner of Flat Street, Mrs. Ferron will be in charge of making sure it is fixed, cleared and straight. As far as who will do the inspection, that is up to the Board to set guidelines on to what level this needs to be taken care of. Hauman stated that when he looks down the railroad right now, all he sees is trees and brush; it looks like it will be a nightmare.

James asked Ferron what she will be doing with the brush once its cut. She said she owns 66 ft. from the property. The ditch is on the property and no one has told her that she needs to maintain the ditch. Fulkrod noted that was one of the main concerns that have come through the office, because the farmers have maintained that ditch for many years and it needs to be kept clean, because when it does rain the water comes through there very heavily at times, and if the ditches aren't kept clear they overflow and all of the debris ends up in their fields. Ferron asked why were the ditches dug on the Finger Lakes Railroad property and why have they been maintained all of this time by someone trespassing on that property without their permission. Why weren't those ditches dug on the properties

of people that wanted the ditches on their property. Vaughan stated it is just like a road, it is eminent domain and you have no say. Lilyea said that if he hadn't maintained a lot of the ditch, the railroad wouldn't even be there, because a lot of it would have been gone. He noted he has seen the water go right over the railroad and on over the field. The only person that keeps that stuff out of the culvert is him and some of the other owners. Ferron said she did speak with an appraiser and they said that as long as they are paying taxes on that property that property is not abandoned.

Ferron said the way the property stands today is private property and she is currently leasing that property. It is not abandoned; they have payed their taxes every year. They have a pilot program and they have followed their agreement and they have not abandoned that piece of railroad. They have not maintained it, but its also not abandoned. She noted she has spoken with the Finger Lakes Railroad and there has been a longstanding battle between them and the Lilyea Farms. She stated that her feelings are that that is private property and he has no permission to be on the private property. If he wants a ditch, dig a ditch on his own property, or be cooperative and nice to her and she will keep the ditch clean. Hauman noted that it does come down to the fact that both sides of the ditches will need to be kept clean.

Ferron said that if she needs to figure out how to keep those ditches clean then she needs to figure out how to do that. They will be using brush-hog and chain saw to do the clearing. Ferron noted that she was told that if she gets a special use permit there will be stipulations on what will allow her to get the special use permit and she currently does not have one yet because she hasn't gotten the stipulations yet. Lilyea said there had better be a lot of stipulations in that special use permit.

James asked if she has had anyone look at the wash-out areas, i.e. engineer. Ferron noted she has a builder that will build her a bridge and then she will have to make sure that the tracks are appropriate width and then put gabions around the hills that are washed out and fill those with rocks. She has looked at bridges and culvert pipes and a bridge is a much more cost effective way to do it. Ferron stated she has a designer who has an engineering background. She does not have an engineer at this point. She then indicated that there will never be a train of any sorts on this track. James then asked if Yates County Soil and Water has looked at the drawings to make recommendations. They would be a good asset for her. Lilyea agreed that she can't go wrong with them.

James indicated that he doesn't see the SEQRA's for each of these applications, which will be necessary for us to make motions on these applications. We shouldn't be passing special use permits without the SEQRA's being done.

James noted that without the SEQRA's we will not be able to act on this application. He said that what he is hearing is that everyone needs to come together and we just struck a common chord with the Yates County Soil and Water. It sounds like we need some kind of design and they will be the first step on that washout. Davie said he would like to see a design of the bridge; just something to show how it will be stable in case it washes out anymore if we have a flood.

James stated that the farmers need to spray their crops, so we need to come up with a plan of how we can make that all work for everybody and not put anyone in danger. Whether Mr. Lilyea says he has to spray the corn that day. Lilyea said he doesn't have a spray schedule; if at 6:00 p.m. at night and the winds quit blowing and they have spray to do, they will go and do it. Ferron said she just needs to know what months the spraying is typically done. James said that is something that will need to be worked

out. Lilyea asked Ferron if she will be doing any spraying. Ferron replied that she has thought about it and she has a company that does railroads and they spray pre-emergent. Lilyea noted they never tell you what they use and maybe it will depend on the contractor, but there are things they do that have caused a lot of problems. Davie stated that it should be a licensed applicator. Ferron noted its Asplenda and they do railroads all over the country and they will come in after they do brush clearing. She noted they can do it after everything is harvested in the fall.

James indicated he needs to hear a motion to table this application until we can get a SEQRA and maybe she can present a plan of what she is going to do with all these areas.

Davie noted that there is a parking lot at the end of Havens Corners. We need some way to keep people going over to his property and taking pictures. People in the city do not see that and would take it for granted and walk over onto his property and infringe on his rights as a property owner.

Fulkrod asked how much of this is the Town of Benton going to be responsible for the safety; how much of this is going to be our responsibility. Ferron said she has a million dollars worth of liability on this and everyone will need to sign a waiver. The Town of Benton can also be put on the waiver. Fulkrod stated that town Supervisor asked to be on the insurance company as an additionally insured and to show that that they are held harmless. Ferron noted everyone will sign this and as part of the waiver she has to put in the Finger Lakes Railroad, she can put in the Town of Benton and she can put in Yates County.

James suggested Ferron come to the Town of Benton with a list of things that she proposes to do. That way if we say we accept hers, we won't have to throw a lot of stipulations at her to muddy up the water. If we have an accident on one of those cars half way down, how will we get the first responders in there. James indicated there are still a few more things we would like to see and we want to try and make everyone happy.

Davie made a motion to table this application for tonight. Meyer seconded the motion. All in favor.

Lilyea asked if everyone would agree to having a meeting down on the property so he can show his concerns. James noted that if we get some dialogue here it would be good. It's a good way to start.

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James indicated that because we do not have a SEQRA, we will need to table this application as well. He then gave the short environmental assessment form to the Brubackers that they will need to fill out and return.

James asked the Board to look at the kennel regulations before the next meeting. Davie indicated most kennels have dumpsters to get rid of the compost; horse and cow manure is a lot different than dog manure in that it contains bacteria. There is some disease that can be carried in the feces and we don't want it to get into the water to affect someone.

James noted that as part of the kennel regulations an inspection will need to be done every year to make sure that all of the stipulations are followed. It will not have to come back to the Board again, unless a change is needed to be made. Our job is to make it user friendly for everyone.

Davie made a motion to table this application. Meyer seconded the motion. All in favor.

**ADJOURNMENT:** Vaughan made a motion to adjourn the meeting at 8:10 p.m. Davie seconded the motion. All in favor.

Respectfully submitted,

*Karen M. Ellis*

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Recording Secretary