

**TOWN OF POMPEY ZONING BOARD OF APPEALS MINUTES
MAY 25, 2017**

The Town of Pompey Zoning Board of Appeals meeting was held on Monday, May 25, 2017 at 7:00 pm at the Town Hall. Present were: Chairman David Tessier, Kevin Sharpe, Dave Hale, and Don Neugebauer and Pat Frazee. Also, Attorney Jeff Brown and Code Enforcement Officer Fred Hill.

Chairman Tessier opened the meeting at 7:00 pm.

This meeting was requested by Town Attorney Jeff Brown, Attorney Andrew Leja with his client Scott Schaal, Hunter Springs Landscaping Company, Inc., 3210 Gardner Road.

A stop work order was issued by Town Code Enforcement Officer Fred Hill. This meeting was advertised and some neighbors were contacted.

This is not a public hearing. We will discuss issues, procedures and then vote. The Board can ask the Town Attorney questions and the applicant, Scott Schall and his Attorney Andrew Leja.

The Board members have all the materials and are familiar with the issues.

Chairman Tessier then explained his background information. He is a licensed Landscape Architect in New York for over 40 years. He has worked in municipal planning, zoning, codes for 20+ years, Town of Pompey Planning Board for 6 years, Zoning Board of Appeals for 33 years, 25 years as Chair. He helped create CNY Storm Water Coalition, first Chairman, 4 years and past President of NY State Planning Federation. He is the current President of Onondaga County Planning Federation, 10 years. He has 50 years in the Christmas Tree business, including planting, shearing and selling at two locations in Pompey.

Attorney Jeff Brown asked the Department of Agriculture and Markets their opinion on activities and land uses conducted by Hunter Springs Landscaping Company.

Attorney Jeff Brown stated that status of the "served stop work order" ticket and how we could get to this Board to review the interpretation. Store the trucks with loaded material in the barn until the ZBA comes to a resolution.

At Town Court last week he was informed that the business could continue operations until the Zoning Board of Appeals meeting and then go back to court in two weeks.

Attorney Brown stated he understood the lawyer for the applicant, Andrew Leja referred to Code 267. that governs to interpret decision of the Officer of the Town, Code Enforcement Office Fred Hill. Applicant has applied for an interpretation of the Zoning Board of Appeals Board on the appearance tickets issued by Fred Hill, Code Enforcement Officer.

Chairman Tessier read from the letter from Ag & Markets dated April 12th stating that: “Based upon a description of landscaping services provided by the Company, activities associated with the production, preparation and marketing of nursery stock grown on the farm, including the sale, off-farm planting and limited maintenance of the nursery stock when survival guarantees are part of the purchase and installation of the same, are considered part of a farm operation under the AML. However, the other landscape services offered by the Company, including landscape design and outdoor construction activities using hardscape, woody materials and the construction of such things as pools and playgrounds, are not considered part of a farm operation as defined in the AML.”

At this time, Chairman Tessier asked the applicant or his attorney for comment.

Attorney Andrew Leja, Barclay Damon is requesting administrative interpretation of 267. His client is surprised and bewildered. He has been there conducting business for the last twelve years. He has kept the Town apprised of what he has been doing there in 2006, 2007, 2009 and 2011. He has received no previous citations from the Town.

The Board has been given a package which includes letters from 2006 to 2011 that were sent to the Town’s lawyer, also Google maps of the site, letter the Town sent to Ag & Markets for their opinion, answer to the Town from Ag & Markets, a copy of the Farm Business Overlay Zone District and a copy of the Stop Work Order.

He has not expanded the footprint since 2005 except for the roof extension.

The scope of the activities are landscaping in concert with the nursery. The Town has taken twelve years to say it is illegal. Landscaping goes along with the nursery.

Scott grew up in Otisco and has been involved for over 30 years in this vocation. He bought it in 2003. Jack Niles farms it. It is all protected activity under Ag & Markets.

The Town has focused on not living on site. He stores boulders, etc. It is not a retail sale place. He goes to the customer. The hardscape is not stored at the site. Only reason there is any stored in back is leftover from a job and hopes to use on another job.

95% of what you see is protected by Ag & Markets. Very little hardscape. It is in an Ag District.

In 2006 the Town asked for more information and we gave the Town extensive information. We heard nothing. In 2009 the Town again asked for detailed description. We gave the information on the roof extension.

The activities now are the same as in 2005, landscaping, nursery and farming. Six trucks are not a lot of traffic. He has 15 employees.

From 8:00 am to 5:00 pm only the receptionist and landscape architect are there. End of the day brings the trucks back. Saturday is a half day, taking care of plants and nothing on Sunday. The actual activity over seven days is minimal.

Trucks are loaded and then take off for the day and return at end of day. This occurs over a 34 week period. Because of the nature of the work, need daylight. He can't landscape or do nursery work at night. Nothing is turned on before 7:00 am. When the Town issued the Stop Work Order, 15 people would be out of work.

It is not good for the trucks to be loaded at night. Town also wants to consolidate hours. He thinks it is unreasonable and is asking the Board to look at the law.

Look at the Farm Zone intent or the Commercial District intent. There is not a lot of traffic or space. Commercial needs space, main road. He meets every requirement for the Farm Business Overlay District. This is only his base of operation, most of his work is at the customer's place.

Nursery falls as accessory use under Ag & Markets.

If Hunter Springs goes away, then nursery goes away. Mutual dependence between the two. Landscaping is a natural offshoot to nursery. He has been at this location for at least twelve years. Not sure what the Town wants.

Site Plan approval for nursery bed? You've all seen the site and it is well taken care of. The only one to actually see the operation is Mr. Chuck Hudson. He is extremely supportive of Mr. Schall. He is the neighbor that gets noise. Mr. Hudson is on Pratts Falls Road and has the Christmas trees. Most neighbors agree. He will get a letter from Mr. Hudson.

There is a trail of correspondence, over twelve years. The Town took no action. Why would he believe he is doing anything wrong. It is very confusing and troubling.

He is asking for the interpretation of two things: What he is doing at 3210 Gardner Road is legal under the law. Hardscape accessory use is not covered by Ag & Markets and the business qualifies as farm business and meets all the criteria.

Pat Frazee was wondering why we are here? Certainly hope we are not counting trucks. He runs trucks 24-7. He was gracious about limiting hours of operation and not loading trucks at night.

Code Enforcement Officer Fred Hill said that there is no permit fee, but the applicant is required to have a building permit. Plumbing, electrical, need separate inspections.

Pat Frazee said he has applied for a permit and was told he doesn't need one.

Chairman Tessier stated there is no evidence of that in the code.

Fred Hill stated he gets a permit application package on structure built and keeps it in a file.

Chairman Tessier stated that if there are bathroom facilities, a septic system is required.

Scott Schaal stated that is County Department of Health.

Attorney Andrew Leja said they are not here to place blame. We have agreed to do a Site Plan.

Don Neugebauer stated that he doesn't understand the permits and Site Plan approval.

Chairman Tessier said that the building permits are required in regulations to make sure it is safe to be occupied. With Site Plan approval is the site, set-backs, etc. Fred Hill inspects the structure. Other inspections are done by Department of Health, or electrical inspectors.

It needs to be safe for occupancy. The Town wants to support agriculture. The definition of the Farm Overlay District is to bring more to farming. You have a business that could be anywhere. Plants covered could be done anywhere along with hardscape materials.

Attorney Jeff Brown said it is important that we have a letter from Ag & Markets for an opinion on this. It has been going on for months. In regard to the Farm Overlay District, Accessory use is subject to the Site Plan.

Andrew Leja said we have agreed to do a Site Plan.

Chairman Tessier stated it is required for the Farm Business Overlay District.

Andrew Leja said they have stamped plans for building. Why is there a Stop Work Order?

Chairman Tessier said we have to try to separate the hardscape and nursery. You mentioned that hardscape is only 5% of the business, with 15 employee and 7 trucks. Farms are different. You go to your customer's homes. Looks like this business could be anywhere, and does not need to be on farm land. Anywhere with appropriate zoning.

Chairman Tessier said there is no production on this site.

Pat Frazee sees no difference, clearly agriculture. Trees are growing on the site. He had equipment on Estey Road, generating 165 trucks in two days.

Fred Hill stated that John Radway had a nursery for 50 years on Gardner Road. There were no trucks, pay loaders or other equipment.

Dave Hale asked Scott Schaal when he went to Lloyd Sutton (previous Code Enforcement Officer)?

Scott Schaal stated he doesn't understand what is going on. He went to Lloyd Sutton and told him his intent was to produce on the entire acreage. He is just trying to make a living.

Don Neugebauer asked that out of landscaping plants, what comes from your own stock?

Scott Schaal said he wouldn't have the building, etc. if Lloyd didn't want it there. He has the specs on the trusses. He was barely alive in the bad years. He has already gone through one lot of trees, another lot on the East is nearly gone. Pulling trees out on the North side. He has a time line of what has been going on for the last twelve years. He feels this has come out of nowhere. He has pictures of his place. Everybody likes him, one neighbor can't even see him. No one has ever knocked on his door. One guy has never stepped on his property.

Scott Schaal stated that he gets dragged into criminal court. He is running a successful business. He feels like he is being dragged down. In the summertime, you can't even see his property.

Chairman Tessier said he is glad to hear about the plants. It is a neat and clean operation.

David Hale stated that it doesn't say how many plants you need to grow for agriculture. We just see 15 employees and 6 trucks. For an Ag operation, we need to know a lot more.

Attorney Jeff Brown stated that one of the things noted in the Ag & Markets letter was a significant point that hardscape, pools, landscaping are not agricultural.

Don Neugebauer asked if a certain amount of hardscape is acceptable? When does it become an issue? No legal interpretation. What percentage? It is a bit hard to determine.

Pat Frazee asked what is the solution? We need to find out where we are comfortable.

Attorney Andrew Leja stated that principal use is more than 50%. So, accessory use would be less than 50%.

Don Neugebauer stated there are a lot of ways to figure the percentage.

Attorney Andrew Leja stated he is just giving history. Zoning code is the Board's knowledge. Is landscaping so easily separated? Same equipment for both codes. Nursery usage protected in farm zone. Landscaping is an accessory. Puts in pool, pond along the way. Then usually wants plants around. It should not be held against him in Pompey at a site where he does the actual work, not on Gardner Road. The line of communication with the Town, no one can say they didn't know about it. The Board needs to take into account the history of the site.

David Hale asked about the last page of the last exhibit (in hand out to the Board), Para E, page 3 of 3.

Chairman Tessier stated that it is part of the Farm Business Overlay District and is not relevant.

This is not a public hearing, but we have a request to open up to the audience.

Attorney Jeff Brown stated that you could have informal public comments.

Bob Knapp, 7055 Broadfield Road. He asked what is the population change in Pompey from 1984 to present? Last ten years? Maybe it is time to change the zoning. He has no problems with the business.

Matt Duby, 7450 Pratts Falls Road. He was introduced to Scott when he started the business. He thought vehicle traffic was excessive and went to talk to Scott. Scott honored his request and reduced the speed of the trucks. He can hear Palladino's corn dryer going at all hours. It is open to interpretation.

Renee Rotondo, 7466 Pratts Falls Road. She has complained previously. She is put off by the way he treats people. There is no way that the business is the same today as it was when it started. It has grown. It is not a large lot. It is not a farm. Her property is zoned exactly the same as his and she doesn't have a business. Every morning his trucks go by. It has gone from a couple of cars to two rows of cars parked at site. There never was a permit for driveway East of Gardner Road. She doesn't know if the County would have approved.

How much of his income is landscaping? That is not what she sees. She has seen the business grow and vehicles going to landscaping jobs. What percentage of plants are used in landscaping. Can't see how you could possibly use significant amount coming from being grown on the property.

This landscaping business is across from Pratts Falls Park. We fought long and hard to keep it. He doesn't live here. Employees are not working at that site, so vehicles are left there.

Pat Frazee stated that working off site is not a factor.

Don Neugebauer stated of if he is out doing decks, pools, etc.

Attorney Jeff Brown stated nursery is protected. Landscaping is much more than a nursery, per letter from Ag & Markets.

Attorney Andrew Leja said letter from Ag & Markets regarding sale of farm planting.

Pat Frazee said we have a nursery and plants are agricultural. Talking about accessories, the percentage can be up to 49%.

Attorney Andrew Leja stated the two go hand in hand. Town did not have to bring his client to court. A decision has to be made. What is accessory? Hardscape is done off site.

Pat Frazee stated it is still operating a business out of there. Off site or not irrelevant. Doesn't matter where.

David Hale knows of a nursery in Town of Manlius where the equipment part is off site in the Town of DeWitt to keep separate.

Chairman Tessier stated it is a great place to grow plants, not a great place to have trucks in and out. Time is not an issue to enforce zoning.

Attorney Andrew Leja stated they have been there all this time. Town has left him alone. He has told the Town everything he has done. Confused. Why now? Why go after him now?

Pat Frazee said that Renee mentioned amount of truck traffic. Why would that have any bearing at all?

Kevin Sharpe stated that it seems from the number of trucks that hardscape has grown.

Kevin Sharpe said if this business expands – what stops them from bringing in pools? Is there any reason to stop him?

Attorney Andrew Leja said want to offer a number of options for business.

Pat Frazee said a fair sized tree is significant money.

Don Neugebauer said if we say okay and the hardscape business grows, and there are more trucks leaving site, is there a point when it is not agricultural?

Attorney Andrew Leja said they would be right back in front of you to explain.

Renee Rotondo said weight of trucks is an issue.

Chairman Tessier stated we can only make an interpretation and can't put in any restrictions. The Planning Board does the Site Plan with restrictions on size, hours, etc.

Attorney Jeff Brown stated the allegations were they did not get Site Plan approval. They are required to get a Site Plan.

Don Neugebauer asked if site plan would only include hardscape?

Attorney Andrew Leja said the request was for an interpretation.

Chairman Tessier stated we need to break it down. You gave us two options. The Board will decide options by looking at the six items on the Stop Work Order and Appearance Ticket.

Attorney Jeff Brown stated per Zoning 165.6 code decision of Zoning Enforcement Officer, this is the way to go.

Chairman Tessier said the use is strictly speaking, not in compliance. If we determine it is a farm it would qualify. How do we determine?

Pat Frazee said it is clearly a farm.

Motion by Pat Frazee, seconded by Don Neugebauer, under Item #5 and #6 on an appearance ticket dated May 2, 2017 stating operating a business which constitutes an unpermitted use, that this is a farm use and is allowed upon approval of a Site Plan by the Planning Board.

Called for a vote – Pat Frazee – yes; David Hale – yes; Don Neugebauer – yes; Kevin Sharpe – yes; Chairman Tessier – yes. Motion Passed. The applicant must apply for a Site Plan for the business. The motion up holds Item #5 and #6.

Don Neugebauer asked what is the difference between 165.6 and 165.7?

Attorney Jeff Brown said both go to district regulations. Not two separate violations.

Fred Hill said determine if landscape business or a farm.

Attorney Andrew Leja said that outdoor storage and sales are commercial, use of land, sale of lumber, etc. There is no outdoor sales. Hardscape is stored remnant of jobs.

Attorney Jeff Brown said if this is approved, the Site Plan can address other issues.

Chairman Tessier said that if we vote for this, then we say it is a farm.

Attorney Jeff Brown said not making an interpretation it is a farm. The assumption is that a farm is exempt from Site Plan review.

Pat Frazee said if Site Plan is not for farms, each one we approve., what business can turn into and still be considered a farm. Trying to work with everyone. Can still amend Site Plan for future expansion.

Attorney Jeff Brown said will let the Stop Work Order continue as is until they go back to court.

Pat Frazee stated being a farm doesn't exempt you for everything. This is not an unreasonable request.

Motion by D. Neugebauer, seconded by D. Tessier to up hold Appearance Ticket #4 that he is in violation of Town of Pompey Code/Chapter 165 – Zoning/Section 165-44 Site Plan Review.

Pat Frazee said he has not been required previously to have a Site Plan. Been operating under the assumption he didn't need a Site Plan. He would feel he wasn't in violation, was told he didn't need one.

Chairman Tessier stated that there is concern for future development. We need a Site Plan. It would be stronger if we vote.

Pat Frazee feels he's not in violation. The is not required to do Site Plan. Everything he (Pat) does is through DEC for the farm. We want him to have a Site Plan to keep it as a business.

Scott Schaal said he is not a pool company. He does not do any pool installations.

Chairman Tessier is not sure the Site Plan reference in motion is strong enough to do Site Plan. Ask Attorney. Do you think it is strong enough?

Attorney Jeff Brown said it is a motion and seconded.

David Tessier – do we want to withdraw the motion?

Pat Frazee – OK, make stronger language.

David Hale – yes

Don Neugebauer – don't want him to be in violation, withdraw motion for #4

Kevin Sharpe – yes

Motion withdrawn.

Attorney Jeff Brown said to come under Farm Overlay Business District, he will need a Site Plan.

Attorney Andrew Leja said they would be willing to do the Site Plan.

Motion by D. Hale, seconded by K. Sharpe to determine #4 is correct. Code Enforcement Officer interpretation to be correct. All in favor. Passed.

Chairman Tessier stated that Ticket #2 is failure to obtain a building permit to construct the pole barn.

Attorney Jeff Brown said it is supported in the deposition. The building permit was never obtained.

Chairman Tessier said that #3 violation is failure to obtain a Certificate of Occupancy to operate a landscaping business in the Town of Pompey. Could combine both together. Motion for #2 and #3?

Kevin Sharpe asked if we include that it be inspected? It has already been built and used?

Attorney Jeff Brown stated the Code of Enforcement Officer would go and inspect.

Don Neugebauer said we would have to say in violation with #2 and #3.

Attorney Jeff Brown said we are not going to the judge and say, put in jail. Just go in and make sure it is okay. Give the CO.

Motion by P. Frazee, seconded by D. Hale to recommend the proper paperwork for Item #2 and #3 to uphold Code Enforcement Officer in his recommendation to get the proper building permit, inspection and Certificate of Occupancy within 60 days with no fines or penalty. All in favor. Passed.

Item #1 is Failure to submit and have approved a storm water management plan to operate in the Town of Pompey.

David Hale asked if one was required?

Chairman Tessier said that the Storm water Management Law was in 2007. It may come out of Site Plan approval. Do we agree with the Code Enforcement Officer?

Scott Schaal said he took it upon himself to do.

Chairman Tessier said he is not in violation, recommend the Storm water Management be included in the Site Plan.

Motion by D. Tessier, seconded by D. Hale to find that Fred Hill was correct on Item #1 and that condition be for applicant to include Storm Water Plan on his Site Plan. All in favor. Passed.

Pat Frazee said that the Code Enforcement Officer should have a form available to keep a written record of verbal conversations regarding applications that do not need a building permit.

Chairman Tessier said it needs to be in legislature. Needs to translate to the Board.

Motion to adjourn by D. Hale, seconded by P. Frazee at 10:30 pm.

Respectfully Submitted,

Darla M. Mawson, Secretary
Town of Pompey Zoning Board of Appeals