

Meeting Minutes  
Town of Richmond  
**ZONING BOARD OF APPEALS**  
Tuesday, March 20 2018 7:00 PM

**Board Members:**

John Morsheimer (Chairman)	Present
Steve Ryan	Present
Mary Beth Sauerteig	Present
Dave Baker	Present
Jared Ransom	Present

**Alternative Board Member:**

John Marrapese	Present
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**Code Officer:**

Spencer Shumway	Present
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**Secretary:**

Lindsay McMillan	Present
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**Town of Richmond Counsel:**

Sheila Chalifoux	Present
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**PUBLIC:**

Jamie McIntee	Kathie & Jim Musclow	Erica Edwards	Dan Locker
Michelle McIntee	Khris Bailey	Dave Richardson	Roy Becker
Kayla Bailey	Brian Conway	Wendy Richardson	Michelle Hodgeman
Aaron Mesdandsdo	Lisa Soliday	Josh Richardson	Doug Soel
Beverly Bailey	Rhonda Bailey	Jeanie Fyfe	Sue Kerling
Dennis Hilburger	Ed Bott	James Fyfe	Jacqui Boorman
Kristin Owens	Kris Gulin	Jim & Vicky Mangan	Dave Violas
Julie LiVecchi	Cindy M	Renee & Greg Cherwomie	Kathy Perovich
Kurt & Bonnie Jaeckel	Eric M	Darren Chantos	Kenneth Bayne
Aaron & Sara Graham	Ryan Biron	Jane Affalter	Mary Gutto
Clint VanDewark	Steve	Jeffery Woodard	Corey Auerbach

John Morsheimer called the meeting to order at 7:00 PM with the Pledge of Allegiance.

John Morsheimer made a motion to approve the February 20, 2018 meeting minutes. Mary Beth Sauerteig seconded. Ayes unanimous.

**PUBLIC HEARINGS**

Pursuant to Section 200-67 of Town Law, John Morsheimer motioned to open the public hearing for the **Appeal of a Determination** for the Bailey property located at 5297 County Road 37 in Honeoye, NY Tax ID #149.900-1-41.100, as requested by the Neighbors for the Enforced and Updated Codes (NFEUC), represented by Barclay Damon. Mary Beth Sauerteig seconded the motion, ayes unanimous.

Morsheimer opened the hearing by explaining the events that led up to the Appeal brought by the NFEUC. On November 30, 2017, the Town of Richmond Code Enforcement Officer Spencer Shumway made a determination that the Bailey property was not in violation of any local codes at the time, and that the activities being conducted at the property such as motocross, motocross track development, and ATV riding were allowable without permit. In response to this decision, the NFEUC issued an appeal of the Code Enforcement Officer's determination. Morsheimer clarified that the Town is not being sued. The public hearing is to allow all interested parties to provide comments. The ZBA will not make any final decisions at this time, but is gathering information to determine if the CEO acted correctly in his determination.

Corey Auerbach from the law firm of Barclay Damon explained the basis for the interpretation appeal. On July 28, 2017, and application was submitted to the Town by the Baileys for a soil erosion and sedimentation

control permit and steep slope permit. The description of the work was a 15-foot wide dirt recreational track. The Bailey's application for the permit was withdrawn and not issued by the Town. Auerbach continued that there is no question that the property currently has a dirt bike recreational track.

Morsheimer asked if changes have been made since the original plan was submitted, and Spencer Shumway said yes, changes have occurred. Rhonda Bailey said that after hearing from the DEC, their own lawyer, the Town's lawyer, and an engineer, they decided to pull the application as they determined they would not be able to build the motocross track they had originally intended to, with berms and jumps. Morsheimer asked if soil disruption has happened since then. Khris Bailey explained that a trail system was developed with a small bobcat, and that the property was previously brush hogged. Four piles of soil were created, no trees were removed. The bobcat driver confirmed that the dirt piles are no higher than his knees, and that the proper techniques were used to protect the land.

John Morsheimer reminded the group that the property is an agricultural district and that a farmer could rent the land and till the entire 47 acres and the Town could do nothing about it from a code perspective. A permit must be issued before 5,000 sq. ft. of soil is disrupted, and it is Spencer's opinion that 5,000 sq. ft. of soil was not disrupted.

Potential impact on water quality is a concern. A neighbor spoke on her concerns associated with the adjacent stream, which is a main contributor to the sediment load and debris into the lake.

Corey Auerbach referenced the documents that were included in the appeal determination packet that was submitted to the Town on behalf of the NFEUC. The purpose for appeal is to have the ZBA step into the shoes of the CEO to assess his determination, and to decide whether to uphold it, modify it, or reverse it. The controlling law is the Town's Code, which states that for each of the zoning districts in the town any activity that is not expressly permitted is prohibited. Each district has a principle use, and each principally permitted use is allowed accessory uses, which are incidental to the permitted use. A list of the ten principally permitted uses appear in the NFEUC appeal and are as follows:

1. Agricultural activities and structures.
2. Single-family dwellings.
3. Professional offices, provided that such professions and activities are carried on in a residence by a members of the family occupying such residence; home occupations.
4. Proprietary care facilities; bed and breakfast operations, provided that an adequate means of septic disposal is available.
5. Day care centers approved by the NYD Department of Social Services.
6. Cemeteries.
7. Public Parks and public recreation areas operated on a non-for-profit basis.
8. Mobile homes on individual lots as temporary dwellings while permanent structures are being built (renewable permit).
9. Pre-manufactured modular homes with full perimeter frost-free foundations.
10. Any other use which is deemed by the Zoning Board of Appeals as being in the nature of and compatible with permitted principal uses in the district.

Discussion on the types of activities that may or may not be considered as accessory uses of the principally permitted use ensued among board members and Mr. Auerbach.

Mr. Auerbach clarified the obligation of the Board, which is to:

1. Identify to the public which one of the principally permitted uses the ATV track falls under or,

2. Find which principally permitted use the Baileys are making of the property, and whether the use of recreation for ATVs is customarily incidental to that use.

The NFEUC position is that the current use of the property is in violation of the code and that permits should have been obtained for the dirt bike track.

Mary Beth asked about hunting on land that does not have a principally permitted use. Under his interpretation, Mr. Auerbach said that there is currently no principally permitted use that would allow for this type of outdoor recreation.

Morsheimer stated that the code is not written in such a manner that it tells you everything that is allowable on your property. He read the noise ordinance that specifically references motor bikes, motorcycles, ATVs and other motor propelled cycles from Provision 43-1: Prohibitive Acts and Noise. Being that these types of motor vehicles are referenced in another provision, it could be inferred that they are allowed, even if not specifically listed under the ten permitted uses. This supports the fact that not every use is listed in the Town's code, and that some interpretation must be allowed for. Auerbach responded that the noise ordinance is not under the zoning code.

Steve Ryan asked if outdoor recreation is permitted in any district. Auerbach responded that outdoor recreation is not a principally permitted use, but it would be allowed as an accessory use to a principally permitted use.

Auerbach closed by reiterating the request for the board to either identify the principally permitted use the ATV track would fall under, or to determine which use the property would fall under and whether the ATV track is incidental to that use.

Morsheimer opened the floor up for public comment.

Doug Soel spoke to the fact that many of the outdoor recreation activities already occurring in the town would be considered in violation of code.

Ed Bott referenced two zoning districts that appear on the Town of Richmond map: Residential / Agricultural and Residential / Recreation, the latter of which sets the premise for recreational use in the area. A barn is not considered a residence. Excavating on a 15% slope should be subject to permits. The ZBA needs to make a determination if permits should have been issued, and to ensure proper procedures were followed.

Brian Conway, a neighbor at 5335 County Road 37, identified himself as one of the 15 landowners on County Road 37 that make up the NFEUC. A petition of 177 names including 59 of the 62 neighbors was submitted, urging the Town to uphold local zoning laws. The group feels that the proper processes for the Bailey property were bypassed by the Town, which resulted in the appeal. There have been numerous resident complaints since June 2017 that have gone unanswered by the town.

Rhonda Bailey responded that no complaints have been made to the family directly, however the complaints that she heard secondhand did not qualify as code violations. No heavy machinery was used on the property. The second story of the barn is planned for a residence, but there is no clear timeline laid out by the Town for this work to be completed.

Lisa Soliday lives a quarter mile down the road, and has not heard motorbikes. Neighbor discussions would be a better way to handle this situation.

John Morsheimer read the 200-12A Residential / Agricultural District intent, listing the ten principally permitted uses (listed above). The activity at the Bailey property may most closely resemble number seven:

public parks and public recreation areas. The board recognizes that recreation isn't clearly defined in any of the principally permitted uses.

Auerbach stressed the tenth provision of the permitted uses. The function of the zoning board is to act upon an appeal. The ZBA does not have original jurisdiction in this proceeding to make a determination that the property falls under provision ten. If the Baileys want to appeal to the CEO that the current use falls under provision ten as "similar use", the ZBA would then have jurisdiction to make that determination.

Jerry, a neighbor at 5286 County Road 57 expressed concern over the 1,000 foot gravel driveway and the amount of people that are making noise well into the evening hours.

Jackie Gorham urged the audience to consider that the property is only being used for personal use, and that not allowing the Baileys to enjoy their own property sets a dangerous precedent and may deter people from moving to the area.

Khris Bailey introduced himself and explained that he is open to listening to the concerns of the neighbors. The intent is to have family and a few select friends to ride ATVs, UTVs, and dirt bikes at the property. Anything larger would be liability concern, and does not interest the Baileys. They are not trying to create an environment where guests would be breaking laws. They will abide to the noise ordinance. Due to a busy schedule, the family will likely be at the property enjoying this use 6-8 times annually. Mr. Bailey urged the neighbors to call if there are times when neighbors are having parties and would like a quiet weekend; they can schedule their activities accordingly.

John Morsheimer submitted the names of the NFEUC group into the public record: Harrison Murphy, Fran Murphy, Doug Englert, Julia Englert, Hugh Ward, Jill Ward, Dave Richardson, Wendy Richardson, Brian Conway, and Sondra Affolter.

The action of the petition submitted to the Town of Richmond expressed the following: "We the undersigned, are concerned citizens who urge our leaders to act now to preserve and protect the community and neighborhood. To uphold local zoning laws for this district and zone. A residential / agricultural district under local zoning code 200-12. This zone is not a "Recreational District"." The petition was submitted for the record with 177 names; signatures were collected between 8/5/17 and 8/30/17.

Rhonda Bailey expressed concern over the validity of the petition, as she did not feel that there were any violations to warrant it. The Baileys have camped on the property twice, and she has the understanding that campers are allowed for 21 days as long as they are not hooked up to water or electric.

Several other attendees spoke in support of the Baileys, and in support of the NEFUC. The Baileys passed out business cards with their contact information.

A decision will be rendered by the Zoning Board of Appeals in 45-62 days. The next regularly scheduled ZBA meeting will not be an opportunity for public comment, but for the board present a summary of their findings.

John Morsheimer motioned to close the public hearing; however, the Town will accept public comments submitted in one week's time. The public comment period will commence at 8:47 PM on Tuesday, March 20<sup>th</sup> and will end at 8:47 PM on Tuesday March 27<sup>th</sup>. Steve Ryan seconded, ayes unanimous.

Morsheimer thanked the attendees for keeping the conversation cordial and professional.

The Zoning Board members then entered a discussion with the Town's attorney, Sheila Chalifoux.

**NEW BUSINESS**

None Presented.

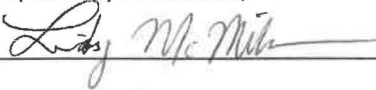
**OLD BUSINESS**

None presented.

John Morsheimer motioned to adjourn the meeting at 9:36 PM. Mary Beth Sauerteig seconded ayes unanimous.

The next regular meeting of the Town of Richmond Zoning Board of Appeals will be held at 7:00 PM on Tuesday April 17<sup>th</sup> 2018 at the Richmond Town Hall, 8690 Main Street, Honeoye New York.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Lindsay McMillan", is written over a horizontal line.

Lindsay McMillan, Secretary  
Richmond Zoning Board of Appeals

Dated: 4/17/18

