

**NOTICE OF PUBLIC HEARING:**

The Zoning Board of Appeals of the Town of Wheatland will hold a Public Hearing on **Tuesday, February 1, 2022** at 7:00 PM in the **Wheatland Municipal Building, 22 Main Street, Scottsville, NY** to consider the following:

The application of David Burns to seek an area variance of Article II, Sections 130-10., and 130-23 (B) of the Code of the Town of Wheatland, to extend the roof of an existing building 12', encroaching the 20' required setback by 6' in an AR-2 zoning district. The subject parcel is 1167 North Road, Scottsville, NY. Tax I.D. #199.02-1-6.

All interested parties are asked to attend and be heard or to submit written comment concerning this application.

Public access to view files using link:

[https://townofwheatland.sharepoint.com/:f/s/WheatlandPublicAccess/EjV1qV9gVSRKicp\\_WiKWTUEBiwVttCXSDlp7Jw5SV42XfA?e=chu5Xc](https://townofwheatland.sharepoint.com/:f/s/WheatlandPublicAccess/EjV1qV9gVSRKicp_WiKWTUEBiwVttCXSDlp7Jw5SV42XfA?e=chu5Xc)

Michael J. Grasso, Chairman  
Wheatland Zoning Board of Appeals  
Dated: January 6, 2022

## **NOTICE OF PUBLIC HEARING:**

The Zoning Board of Appeals of the Town of Wheatland will hold a Public Hearing on **Tuesday, March 2, 2021** at 7:00 P.M. in the “*virtual*” **Wheatland Municipal Building, 22 Main Street, Scottsville, NY** to consider the following:

The application of Alan J. Knauf, as agent for TWJ Rentals, LLC regarding 369 Lime Rock Road, LeRoy pursuant to Section 267-b.1. of Town Law of the State of New York and 130-64. & 130-65. of the Code of the Town of Wheatland to seek an appeal of the Building Inspector’s determination that an off road drag-race track and events are not a continuation of a pre-existing non-conforming Rod & Gun Club use and thus, constitutes a change of use. Subject parcel (Tax I.D. #207.04-1-16) is in an AR-2 Zoning District.

All interested parties are asked to **remotely** attend and be heard or to submit written comment to 22 Main St PO Box 15 Scottsville, 14546 or [building@townofwheatland.org](mailto:building@townofwheatland.org) concerning this application. Pursuant to Executive Order 202.1 as extended by Orders Number 202.14, 202.28 and 202.48, as may be and to the extent extended, and due to public health and safety concerns associated with the potential gathering of a large number of individuals who may wish to submit public comment, the public will not be permitted to attend the public meeting in person at the Town Hall. The public will have an opportunity to hear the meeting live and provide comments via the Microsoft Teams meeting format. To join the meeting please **CALL +1 585-491-9963** United States, Rochester (Toll) **Conference ID 800 865 308#**. To view documents prior to the meeting you may make an appointment to come to our office.

Michael Grasso, Chairman  
Wheatland Zoning Board of Appeals  
Dated: February 11, 2021

**Meeting Minutes  
Town of Wheatland  
Zoning Board of Appeals  
November 3, 2021**

The Zoning Board of Appeals of the Town of Wheatland held a meeting on Wednesday November 3, 2021, at 7:00 P.M. in the Wheatland Municipal Building, 22 Main Street, Scottsville, NY.

**First order of Business:**

Terry Rech, Building Inspector for the Town of Wheatland asked the Zoning Board for a motion to have Robert Hatch voted in as Acting Chairman for this evening's meeting. Chairman, Mike Grasso was out of town on business and unable to attend the meeting. Board Member, Laura Michaels made such a motion; Kane Gascon seconded the motion. The vote was as follows:

Laura Michaels -	Aye
Joe Burns -	Aye
Kane Gascon -	Aye
Robert Hatch -	Aye

All members voting in favor, the motion was carried.

Robert Hatch, Acting Chairman, called the meeting to order at 7:05 P.M and roll was taken.

**Board Members**

**Present:** Robert Hatch, Joe Burns  
Laura Michaels, Kane Gascon

**Absent:** Mike Grasso, Tim Steves

**Others Present:**

Ed Shero, Town Board Liaison  
Terry Rech, Building Inspector  
Ray DiRaddo, Town Attorney

**Second order of Business:**

Chairman Hatch asked for a motion to accept the Minutes of the October 5, 2021, meeting. The meeting minutes were approved as submitted. Joe Burns made such a motion; Laura Michaels seconded the motion. The vote was as follows:

Laura Michaels -	Aye
Joe Burns -	Aye
Kane Gascon -	Aye
Robert Hatch -	Aye

All members voting in favor, the motion was carried.

**Third order of Business:**

The application of Arthur Pfenninger, to seek an area variance of Article III, Sections 130-30. A. (1), of the Code of the Town of Wheatland, to allow a fence in a required side yard greater than 4 ft. (nominal 6' proposed) in an R-16 Zoning District. The subject parcel is tax I.D. #208.12-1-4, 148 Oatka Ave. Extension, Mumford 14511.

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The applicants, Arthur and Robin Pfenninger presented and discussed several reasons driving the need for this area variance application:

- Mr. Pfenninger explained that they would like to build a 6' x 29' privacy fence from the side of their home to the rear lot line. Town code limits the height to 4'.
- Mr. Pfenninger stated that the reason they would like the fence is to create privacy between their house and the neighbors. This will prevent the neighbors' two dogs from barking when they are in their own backyard; reduce noise from a stand-by generator and pool filter which are located near the lot line; block the spotlight over the above ground pool and create privacy between homes.
- Ms. Pfenninger stated that the benefit sought can not be achieved other than asking their neighbors to change their lifestyle which she does not feel is right.
- This will not have any effect on the environment.
- Mr. Pfenninger stated that this fence will give the neighbors privacy, will reduce noise and will be attractive to the neighbor on the other side, as it will match the border fence to the neighbor on the west side of them.

Chairman Hatch asked the Board Members if they had any questions. Board Member's asked Terry to clarify location of the fence. It was also mentioned that in the R-16 Zoning District the setback requirement for a fence is 50' and this request is set back further.

With no further questions from the Board the floor was opened for public comment at 7:10 P.M.

There being no comments, public comment was closed at 7:13 P.M.

The Board members considered and discussed the details and effects of the requested variance.

The Town of Wheatland Zoning Board of Appeals as authorized under Wheatland Town Code Section 130-66, after careful consideration and review of the evidence presented and having heard all the facts hereby, approves the application of Arthur and Robin Pfenninger. This motion was based upon the following finding of facts:

- 1) The granting of this area variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, demonstrated by: a small section of proposed fence will be higher than the required 4', approximately 30'.
- 2) The benefit sought by the applicant can not be achieved by some method, feasible for the applicant to pursue, other than an area variance, as shown by: proposed fence would be in violations of existing code and the height change is minimal.
- 3) The requested area variance is not substantial as evidenced by: this is a small section and does not extend beyond the front of the house.
- 4) The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district as shown by: there will be minimal amount of disturbance with installing a fence and should benefit the neighborhood.
- 5) And that the condition has not been self-created, as shown by: dealing with conditions beyond their control.

Further that this variance is subject to the following condition: no conditions were given.

Motion to approve the variance was made by Joe Burns and seconded by Laura Michaels. The vote was as follows:

Kane Gascon	-	Aye
Laura Michaels	-	Aye
Joe Burns	-	Aye
Robert Hatch	-	Aye

All were in favor and the motion was carried.

There being no further business, Kane Gascon entertained a motion to adjourn. Joe Burns seconded the motion. The vote was unanimous. The meeting was adjourned at 7:25 P.M.

Respectfully submitted,

*Lisa J. Bates*

Lisa J. Bates  
Recording Secretary

**Meeting Minutes  
Town of Wheatland  
Zoning Board of Appeals  
February 2, 2021**

The Zoning Board of Appeals of the Town of Wheatland held a meeting on Tuesday, February 2, 2021 at 7:00 P.M. in the “*virtual*” Wheatland Municipal Building, 22 Main Street, Scottsville, NY.

Mike Grasso, Chairman, called the meeting to order at 7:00 P.M and roll was taken.

**Board Members**

**Present:** Mike Grasso, Robert Hatch, Joe Burns  
Laura Michaels, Tim Steves

**Absent:**

**Others Present:**

Mr. Alan Knauf, Knauf Shaw LLP  
Mr. John Mancuso, Special Counsel  
Mr. Ray DiRaddo, Attorney for the Town  
Ed Shero, Town Board Liaison  
Terry Rech, Building Inspector

**First order of Business:**

Chairman Grasso asked for a motion to accept the Minutes from the October 6, 2020 meeting. The meeting minutes were approved as submitted. Robert Hatch made such a motion; Joe Burns seconded the motion. The vote was as follows:

Laura Michaels -	Aye
Joe Burns -	Aye
Mike Grasso -	Aye
Robert Hatch -	Aye
Tim Steves -	Aye

All members voting in favor, the motion was carried.

**Second Order of Business:**

Knauf Shaw representing T W J Rentals LLC d/b/a Falcon Trap and Game Club presenting an appeal of the determination of the Town of Wheatland Building Inspector, Terry Rech on the determination of use of property.

Chairman, Mike Grasso opened the meeting stating that Mr. Knauf is representing TWJ Rentals, operating as Falcon Trap & Game Club. The Building Inspector has issued a Notice of Violation to stop certain activities according to code. TWJ Rentals thinks that the determination is inappropriate.

Mr. Knauf stated they are here on an appeal on rulings made in August on claims that the Falcon’s use of the Club for recreational activities, primarily ATV vehicles violating various zoning provisions.

They have submitted an affidavit from Mr. Walter Whitfield, one of the elders of the Club along with a six-page letter with the application.

Mr. Marvin May, who is also on the call is the current owner of the Club. Mr. Knauf explained a brief history of the Club: The Club was founded in 1973 for Trap Shooting and Recreational services. Primarily used by African Americans from Rochester and Monroe County, it is a social club and carries on activities such as shooting, ATV riding, camping, social activities, etc. for nearly half a century. The Zoning records are sketchy.

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There was a building permit approved in 1976 identifying the property as a Gun Club, a variance granted in 1978 for lot set back requirements and a Building Permit issued and recognized the use of the property as a Gun Club. The members have carried on these activities for half a century, including riding the ATV's. They have been riding these vehicles on the property and the adjoining property (with permission) over the years including racing between individual ATVs'. The main complaint seems to be over the straight away, which happens occasionally on weekends where 2 ATV's run next to each other. These are just part of the activities that have been going on in the Club for decades. They believe they are following the noise ordinance, but if it is the noise that is a problem, then that is a completely different issue. They brought in an instrument that measures noise and it was not a problem. Mr. Knauf mentioned that there is another track in the next municipality that is very noisy. Mr. Knauf stated again that they do not just shoot there, it is a Club, and they have other activities just as a country club has other activities besides golf.

Mr. Knauf added that the Wheatland Town Code defines a Country Club to include golfing, horseback riding, hunting, fishing, etc. This is the same situation as a Country Club or Golf Club here, the Trap Club is not just a shooting club it is a social club, and they have other activities. Given the ATV riding has gone on for decades, they think it is encompassed within the allowed use. They understand they need to comply with noise ordinances, but their measurement indicated that they did not exceed the 40 decibels. There was some talk about a racetrack, but a racetrack is 3 or more motored vehicles. When they held the event, they were running on 2 vehicles, so it was not a racetrack.

Mr. Knauf stated that there was some talk about members distributing flyers or posting things on Facebook about a speed contest but that was not the members and will not be an issue in the future. They are doing activities that have been held there for decades. The Falcon Club wants to be a good neighbor, they certainly want to comply with the law. But they believe they have property rights; they are non-conforming vested rights that cannot be taken away from them.

Next month Mr. Knauf will present various witnesses who will testify to this history of the club with various activities and the noise measurements, etc. He asked that the Board Members please review the letter, the affidavit and the application and he will look forward to presenting next month.

Chairman Grasso asked the Board Members if they have any questions for Mr. Knauf. No questions were raised at this time. Board member Tim Steves will be recusing himself. He has a vested interest in the property, was looking to purchase it for a Gun Club. Mr. Knauf requested that they have a full board for this matter. Terry Rech, Building Inspector stated that we have a new member that will be appointed to join the board, so we will have a full board next month.

With no further questions, Bob Hatch made a motion to set a Public Hearing for the Falcon Tap and Gun Club for March 2, 2021 at 7:00PM for their appeal of the Building Inspectors determination. Joe Burns seconded the motion. The vote was as follows:

Laura Michaels -	Aye
Joe Burns -	Aye
Mike Grasso -	Aye
Robert Hatch -	Aye
Tim Steves -	Aye

All members voting in favor, the motion was carried.

All were in favor and the motion was carried.

**Future Business:**

Sabin Metal – seeking an area variance.  
No work session was scheduled.

There being no further business, Bob Hatch made a motion to adjourn. Joe Burns seconded the motion. The vote was unanimous. The meeting was adjourned at 7:25 P.M.

Respectfully submitted,

*Lisa J. Bates*

Lisa J. Bates  
Recording Secretary



**Meeting Minutes  
Town of Wheatland  
Zoning Board of Appeals  
March 2, 2021**

The Zoning Board of Appeals of the Town of Wheatland held a meeting on Tuesday, March 2, 2021 at 7:00 P.M. in the “*virtual*” Wheatland Municipal Building, 22 Main Street, Scottsville, NY.

Mike Grasso, Chairman, called the meeting to order at 7:00 P.M and roll was taken.

**Board Members**

**Present:** Mike Grasso, Robert Hatch, Joe Burns  
Laura Michaels, Kane Gascon

**Absent:** Tim Steves

**Others Present:**

Mr. Alan Knauf, Knauf Shaw LLP  
Mr. John Mancuso, Special Counsel  
Mr. Ray DiRaddo, Attorney for the Town  
Ed Shero, Town Board Liaison  
Terry Rech, Building Inspector

**First order of Business:**

Chairman Grasso asked for a motion to accept the Minutes from the February 2, 2021 meeting. The meeting minutes were approved as submitted. Joe Burns made such a motion; Laura Michaels seconded the motion. The vote was as follows:

Laura Michaels -	Aye
Kane Gascon -	Abstain
Joe Burns -	Aye
Mike Grasso -	Aye
Robert Hatch -	Aye

New Board Member, Kane Gascon abstained from the vote due to his absence from the February 2<sup>nd</sup> meeting; with all other present members voting in favor, the motion was carried.

**Second Order of Business:**

The application of Alan J. Knauf, as agent for TWJ Rentals, LLC regarding 369 Lime Rock Road, LeRoy pursuant to Section 267-b.1. of Town Law of the State of New York and 130-64. & 130-65. of the Code of the Town of Wheatland to seek an appeal of the Building Inspector’s determination that an off-road drag-race track and events are not a continuation of a pre-existing non-conforming Rod & Gun Club use and thus, constitutes a change of use. Subject parcel (Tax I.D. #207.04-1-16) is in an AR-2 Zoning District

Mr. Alan Knauf is representing TWJ Rentals, LLC doing business as Falcon Gun & Trap Club and is here on an appeal regarding determinations of the Building Inspector. There are a series of emails and letters from August 2020 that they are appealing. Mr. Knauf is not exactly clear of the allegations. It seems that the use of ATV’s was in violation of the Zoning Law and some of the recreational activities are in question.

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The main point Mr. Knauf would like to point out is that this club has been in place since the early 1970's, this is a pre-existing use. There were a series of permits to operate as a Trap & Shoot Club which are grandfathered in. There is a permit from 1973 for a Club House which identifies it as a Trap Shoot Recreation Facility and a permit in 1976 as a Gun Club. The facility has been there since the 70's and has been used for a wide variety of activities, not just Trap & Shooting. They have had events which include camping, riding ATV's, dinners, and gatherings. They have ridden and raced ATVs in the past and have continued to do so. Mr. Knauf made a statement that the Town Code includes use of a Country Club. There are other activities that go on at a Country Club. Just the same here, it was a Social Club. This is a non-conforming use and is grandfathered in and can continue even though the level of use has changed overtime.

Mr. Knauf stated that affidavits have been submitted. There are some complaints about noise, but the Zoning Board does not have jurisdiction over noise complaints. They believe the noise is coming from a nearby Speedway. Mr. Maye, the current owner of the Club, did do noise measurements and the noise did not read over 40 decibels, they measured the noise from the Speedway and that measured over 85 decibels. There is concern about a straight away, the ATV's have been used on several different parts of the property. Just because they moved the location of the race area does not take away that this is a non-conforming use. The entire property is grandfathered in.

The Club did come upon some financial hardship. Activity did slow down but never stopped. Mr. Maye stepped in to bail out the club. Membership has increased and there may seem like there is more activity now.

The Town of Wheatland's code states a racetrack is 3 or more vehicles racing and this is not the case here. They have two ATV's going against each other. This is a grandfathered use. This should not be a question for the Zoning Board, this is approved. They are not asking for a variance or special permit.

Mr. Knauf asked if the Board had any questions.

Board Member, Laura Michaels asked if the property has been in continued use all along. Mr. Knauf stated that Mr. Maye will speak to that.

Board Member Kane Gascon stated that Mr. Knauf refers to this as a racetrack. He questioned why it is not referred to as a Drag Strip which races 2 vehicles. Mr. Knauf stated he was referring to our zoning code definition of a racetrack which is 3 or more vehicles. Over the years they have had ATV's running against each other throughout the entire property, so it is grandfathered in.

Chairman Grasso corrected Mr. Knauf and read the definition of the Code of a Racetrack. It read: Any land where 3 or more motor driven vehicles operate simultaneously or under timed conditions at any speed. He stated 2 vehicles on a drag strip being timed falls under the definition. The definition of an Off-Road Track is as follows: operation of motorized vehicles at any speed on the same parcel of land regardless of whether they are involved with the aspect of racing and the off-road track is defined by the absence of natural vegetation. Mr. Grasso stated which, the track at the club definitely has a lack of vegetation and a lack of topsoil as well. Chairman Grasso stated he would say it meets the definition of both of those codes.

Mr. Knauf rebutted back that he understood the concern of lack of topsoil, but two vehicles is not 3. Chairman Grasso stated "Or, under timed conditions."

Board member Joe Burns asked Mr. Knauf if the Trap Houses are still functional and was there Trap Shooting involved in 2020. Mr. Knauf stated that Mr. Maye will need to answer that.

Mr. Marvin Maye, Owner of the TWJ Rentals, LLC stated that the Club started back in 1973. It started out with African Americans that wanted a sport shoot and trap club and hold recreational events. The elders were denied access to other shooting clubs in the surrounding area for years. An opportunity came up when they purchased the land at 369 Lime Rock Road. They built a two-story structure equipped with a dining room,

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commercial kitchen, bar, and showers. Many activities have been held on this property; cook outs, target practice, volleyball events, hunting events, camping, four-wheel races, and fishing derbies have all culminated on this property.

Mr. Maye joined the club in 2000, attendance has changed over the years, but they are lucky to still have some of their elders still present. Last season they discussed restricting the riding to a designated area for safety reasons. He stated it should have been discussed prior but they always rode ATVs for camping.

Mr. Maye stated he was told by the Building Inspector that the ATVs are not a part of Gun Clubs and that they were in violation of a noise ordinance. He did not think they were in violation, they have always had four-wheelers, they used them for hunting and there has never been an issue. As for the noise ordinance, they purchased a noise measurer to see if they exceeded the noise ordinance, they measured from different points on the property and never went over 40 decibels. They never regarded this as a racetrack, a racetrack is typically oval with a straightaway including with classes, winners, losers, registration fees, pits, etc. Mr. Maye stated they do not have any of those types of classifications. This is what they do next door at the speedway.

Mr. Maye would like to minimize the noise in the effort to be neighborly. They would like to move the track to the East end of the property. This location would be the start, which is at the highest accelerations and then ride 300' towards the road and then turn around. They would like to continue their fundraisers to benefit their club and to help meet their financial goals each year.

Mr. Maye states that the Town has benefitted from the economic boost that their guests and members have contributed to several retailers. They still host shooting events; they had one last April when he first purchased the Club. Mr. Maye added that the Town has not done anything regarding the noise from the Lime Rock Speedway in Caledonia. That has noise running until 11:00PM, those events produce way more noise than they do.

He understands how it may seem like the Club had been abandoned at times because most of their events are held on weekends and that their members were lax on their duties as they were going thru some financial hardship. They did use the trap machines in 2020 and they still intend on using them in 2021. The reason they would like to move the straight-away is because of safety reasons. They would like to move it away from the houses and the trap area. The events in 2021 were family friendly, they had a great attendance, they have 46 members in the club.

Mr. Knauf will email the Chairman the membership list. He stated the club is still active.

Board Member Laura Michaels asked Mr. Maye if he was aware of the Club prior to 2019, when it seemed like it was not in use. He states that they will have someone speak about that.

Board Member Joe Burns asked if there was an existing set of bylaws that exists with the current membership. Mr. Maye stated that the bylaws have been amended and that they will be submitted for the Board to review.

Mr. Whitfield spoke on behalf of the Falcon Club, he stated he has been a member since the beginning. He is 92. Mr. Knauf read the affidavit Mr. Whitfield submitted. Mr. Whitfield is one of the founding members of the club. They purchased the property in 1973 and it operated mostly on weekends. This property was purchased as a means of outdoor recreation for families. The Falcon Club has predominately served African American families in the Greater Rochester area who were historically denied access to similar clubs with mostly white members. Many of the members lived in the City of Rochester and did not have access to large areas of private land to enjoy outdoor activities. Since the club was founded members and their families came out to enjoy the outdoors and recreational activities such as sport shooting, hunting, camping. Members and their guests often brought and rode terrain vehicles. They rode the ATVs on the property while hunting and often raced throughout the property. He stated that members from other clubs would come for recreational activities. Mr. Whitfield stated that he loves the Club.

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Board Member Joe Burns state that it sounds like the use of ATVs was mostly used for hunting and stated he could relate to that.

Mr. Warren Sanders is 83, he has been a member since 1976. Mr. Knauf asked Mr. Sanders if he recalled ATVs being used at the Club. Mr. Sanders stated that in 1976 the ATVs were used for hunting and pleasure riding. Other activities they did at the club were hunting, fishing, trap shooting, camping, and having picnics. He was asked by Mr. Knauf if people would race ATVs and Mr. Sanders stated that there were about ten ATVs and they would ride them socially.

Board Member, Kane Gason asked Mr. Sanders if any ATV activity took place where they rode from Point A to Point B or was it mainly riding around? Mr. Sanders stated they did social riding all over the property. Kane asked if any of the Members of the Club attended any of the events last year? Mr. Sanders said he attended four-wheeler events.

Chairman Grasso asked if any of the members of the club participated in the races and Mr. Sanders replied yes.

Club Member Mr. Frasier submitted a statement which was read by Mr. Knauf. Mr. Frasier has been a guest and club member for over 30 years. He lives in the City of Rochester and understands that Mr. Maye is being questioned on the current activity of the club. He has personally ridden his ATV on the property. It is a great outing for him and his kids. He has never heard of any complaints in all the years he has been there, but next door there is a racetrack that runs into the middle of the night. That track does monster truck and motorcycle racings. This has been a long-standing activity and should not be taken away just because a neighbor has raised the issue. They enjoy their weekend events there whether it is shooting, golfing or trail riding. He wishes to express his support to allow these activities to continue. People were riding ATVs 30 years ago; they would ride around the property. The club has been operating continuously, they would have dinners, turkey shoots and camping. Mr. Frasier is concerned because they are trying to exist and every place they go people do not want them around.

Board Member Laura Michaels asked if someone could tell the Board what percent of the people that participate in the events are members? Mr. Frasier stated he is not sure. Mr. Maye stated that different people come, and members can invite them, but he believes that 50% are members and the others are guests.

Mr. LeRon Johnson spoke in favor of the Club. He has been a member for 10 years. He enjoys the picnics, gatherings, and ATV riding from time to time.

Ms. Lorraine Rozario, member of the Falcon Club stated that she put a post on Face Book about the races which she realizes she should not have done. She did not get approval to do that, and the races were not part of the Club. She and her family went to the club and had a good time. She thought it would be a good idea to host an event and to invite others to get more members. She created a group on face book with ten people and it grew and got out of hand, she has since stopped the group. She did not have permission to do the page.

Board Member Laura Michaels asked Ms. Rozario if she could explain the history as what resulted from the face book post. Ms. Rozario stated that none of the owners of the club gave her permission to do the face book page. It became a problem because people were saying that the club was a drag race club and the neighbors complained due to the events. They are not holding the races anymore.

Board Member Joe Burns questioned if the races stopped. He stated that he can see where they held races in June, July, August, September, October, November and into next year. Board Member Burns asked who is in charge?

Mr. Maye is in charge and Lorraine thought it was a good idea to hold these events. Based on the letter they received from the Code Enforcer they wanted to make sure they are off to the right start for this year to be able to hold events.

Board Member Robert Hatch stated, if TWJ was not affiliated with the Grass Race Club and TWJ is owned by Marvin and his wife, then who owns the Grass Race Club that is operating at their location? Mr. Maye stated he does not own that; they do the straight away but does not run or operate it as such.

Mr. Alan Knauf stated that the ATV riding has gone on over the decades. Yes, they moved the track to one location for safety reasons, A few members started the face book page but that was never the club. They want to continue as a club, they are grandfathered in with these activities, they are willing to change the starting place, but they will not be holding the face book events.

Chairman Grasso asked if Mr. Knauf knows when the code was enacted that would allow this kind of use? Mr. Knauf stated that the town interpreted that this was allowed in the code back in the 70's because it repeatedly issued permits for the club. So, the interpretation for the Town was that it was a legal use under the Town Code and continued for decades. Chairman Grasso also asked if the club in existence before they purchased the property. Mr. Maye stated they obtained a corporation; he does not know who was using the club before they used in 1973. He did not have the club's name, but they were able to hunt on the property before they purchased it.

Chairman Grasso asked Mr. Maye if they have an agreement with neighboring properties to use their land. Mr. Maye stated that they own 18 acres; two acres are located in Livingston County. They have an agreement with a neighboring property that has 200 acres east of the club, they can ride on their property as well.

The floor was open for public comment at 8:16 P.M.

Mr. Mike Streb stated that he did submit an affidavit. He is a resident and this last year has been vastly different than the past 5 years. There visibly was no activity until early last spring of 2020. The Club may have existed, but he is curious that if there is no official non-conforming use on record of the town and the property has been abandoned for several years doesn't the town code have a 12-month abandonment clause that would remove any non-conforming use if one existed? He stated that the argument of continued use of non-conformation use is very contested by the residents, witnesses, and businesses in the area. As for the Gun Club, he has never heard any gun activity at that club since December 2015. He stated he submitted a statement that he would directly refute that this property has been in use. There was a foreclosure sign on the property, and it was clearly abandoned and completely unmaintained for the past 5 years up the spring of 2020.

Ms. Maureen Leupold stated that she and her husband, Steve own property on Lime Rock Road, where their daughter lives. They purchased the property 5 years ago and never heard any activity at the club. They can hear the racing on Sundays now. This past summer the noise goes on all weekend long and has been very disturbing. She and her husband own property across the creek, north of the club and on Sundays they can hear the racing from their house. She stated she has not measured the noise, but it is very loud, and they are a mile and a half from the club.

Ms. Christine Miller stated she has lived in this area since she was born. The noise starts at 8:00am and runs late into the evening, she also stated that the music is very loud, she can not enjoy her home. She stated that she attended events at the club in the past and that she knows some of the founding members that were there, in fact, her Uncle is one of them. Ms. Miller stated that this club was a hunting and game club. There was never any racing that occurred there, recreational riding yes, but never any ATV racing.

Mr. Oliver Miller stated he submitted an affidavit and would like to point out a few things that are not consistent, he stated that the founding fathers speak of coming out to this area for peace and quiet and to be with nature but there is a drastic change in the use with the racing of ATV's. Mr. Miller shared an ariel map that showed how the land has been manipulated for the purpose of racing. The noise of 40 decibels is the noise an average home puts out and that 85 decibels is damaging. He stated you cannot purchase a noise meter from a big box store and get an accurate reading. This requires the proper

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type of instrument and a skilled licensed technician. He stated that this should happen before it is entered into the record.

Mr. Miller stated that the argument is that the racing never occurred but there are numerous posts on face book that indicate there is a fee to enter the race, there are classifications, and a statement saying if you throw in more money the bigger the pot, winner takes all.

Another issue that is not consistent is safety. He stated that the club members have stated that they are moving the racetrack for safety reasons but placing hay bales between the track and spectators is not safe, small children are ring vehicles that are way too big for them to handle.

Testimony from Morgan Scott-there was technical difficulty. Mr. Miller will forward the video so that the Board can review Ms. Scott's testimony.

Becky Wehle- President and CEO of the Genesee Country Village & Museum stated that their property runs continuously with the Falcon Gun Club. The museum has been in existence since 1966. The museum's parking lot and admissions area is approximately half a mile away from the Gun Club and the nature trails run just along the property line that they share. They are the largest attraction Wheatland and bring in about 98,000 visitors. People go there to step back in time and enjoy a peaceful visit in village and to walk around on the nature trails. The museums visitors' do not expect to hear loud music and drag racing in the parking lot when they first arrive. Ms. Wehle stated that there was recreational ATV riding in the past but that is all it was. A handful of people riding on an occasional Sunday but nothing in large groups in any kind of organized fashion. They have peacefully co-existed since 2020 and have had minimal issues regarding noise from the club. There has not been much action in the past 5 years. Towards the end of 2019, beginning of 2020 Ms. Wehle stated she was approached about purchasing the property, so there was a period where it was not being used much at all. In the summer of 2020, they could regularly hear significant noise from the Gun Club on Sundays including a loudspeaker announcing the races, music, along with motors revving. The noise was easily heard in the parking lot and admissions area where all the visitors come through and it was disruptive to them. This kind of noise is not something they expect to hear and had an impact on their experience. If the noise continues to move forward, it will affect the viability of their business to deliver the kind of experience they say people will have when they come to the museum/

Alicia Luke stated that she purchased the campground across the street from the club. This has made a negative impact on their business. Seasonal campers stated that they will not come back if they cannot guarantee the noise will stop. Many of their campers have complained about migraines There is also a concern about lead in the soil from when they were running the gun club. They hear profanity over the loudspeakers that you can hear from the furthest part of the campground (60 acres). You can hear the music and swear words and she state it is not family friendly.

Mr. Knauf commented on a few points that were raised. Mr. Knauf asked Mr. Maye if the club has been operating every year with activity. Mr. Maye stated that there were shoots every year. Activity did fall off, but they were utilizing the Club. He stated they are currently restoring the club and making interior and exterior improvements. It has been in operation every year, but some years activity has been off. He stated that the measurements from the noise were taken at the edge of the track and to the road at 50'. 85 decibels at the track and down to 40 decibels at the 50' mark. He believes it is no louder than a lawnmower. But noise is not the issue for the Zoning Board.

Mr. Maye stated that he received a letter from the DEC that states that the lead dust was registered. He had a risk accessor test the soil and the levels came back to be less than 400. The code states that levels of 1200 and above indicate there is a problem. The test indicated well below the code; this will be submitted for the record.

Mr. Knauf would like to clarify that in a letter Mr. Whitfield did state that there has been racing of ATVs in the area. He would like to make it clear that racing has been going on over the years and that it is grandfathered in. It is not a problem for the club to sponsor

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races, just like a golf club can sponsor tournaments but, the events that occurred last summer were sponsored by members without approval and that will not happen in the future. They would like to continue to use the property and they understand there is a noise ordinance. Mr. Knauf stated to the board that he would like to get the opportunity to respond to the video/testament that Mr. Miller will send from Ms. Morgan Scott. Chairman Grasso agreed to that.

Mr. Maye stated that if music is an issue, they can discontinue the music. They can move the track back and they can have the noise tested if needed.

Chairman Grasso stated that noise is a big issue, but it is not what this appeal is for. Chairman Grasso asked board member Kane Gason if he could share his experience with sound measuring. Board member Gason stated that he had to apply for a Special Exception Use on his property for recreational use. He was required to have no sound past his property line. He could only have ambiance sound, ambient level of 36-38 decibels. He hired someone from Pennsylvania, and they had to do several tests to get an accurate reading.

Mr. Oliver Miller stated he would like to bring up the Lead Measurement for further discussion. He stated that the State of NY has dug wells in that area look for TCE. Chairman Grasso stated that the Town is aware of that.

With no further comments from the public, Chairman Grasso asked for someone to make a motion that we table the appeal of the TWJ Rentals, LLC and leave it open and continue the public hearing on Tuesday April 6, 2021 at 7:15PM in the “*virtual*” Wheatland Municipal Building, 22 Main Street, Scottsville, NY. Robert Hatch made the motion; Joe Burns seconded the motion. The vote was as follows:

Laura Michaels	-	Aye
Kane Gason	-	Aye
Joe Burns	-	Aye
Mike Grasso	-	Aye
Robert Hatch	-	Aye

All members voting in favor, the motion was carried.

There being no further business, Joe Burns made a motion to adjourn. Laura Michaels seconded the motion. The vote was unanimous. The meeting was adjourned at 9:15 P.M.

Respectfully submitted,

*Lisa J. Bates*

Lisa J. Bates  
Recording Secretary

**Meeting Minutes  
Town of Wheatland  
Zoning Board of Appeals  
April 6, 2021**

The Zoning Board of Appeals of the Town of Wheatland held a meeting on Tuesday, April 6, 2021 at 7:00 P.M. in the “*virtual*” Wheatland Municipal Building, 22 Main Street, Scottsville, NY.

Mike Grasso, Chairman, called the meeting to order at 7:00 P.M and roll was taken.

**Board Members**

**Present:** Mike Grasso, Robert Hatch, Joe Burns  
Laura Michaels, Kane Gascon

**Absent:** Tim Steves (recused)

**Others Present:**

Mr. Alan Knauf, Knauf Shaw LLP  
Mr. John Mancuso, Special Counsel  
Mr. Ray DiRaddo, Attorney for the Town  
Ed Shero, Town Board Liaison  
Terry Rech, Building Inspector

**First order of Business:**

There were no questions regarding the March 2, 2021 meeting minutes however, Chairman Grasso suggested that they not be approved at tonight’s meeting due to the amount of information that is included. Bob Hatch made a motion to table the acceptance of the March 2<sup>nd</sup> meeting minutes to allow time for additional review. Laura Michaels seconded the motion. The vote was as follows:

Laura Michaels -	Aye
Kane Gascon -	Aye
Joe Burns -	Aye
Mike Grasso -	Aye
Robert Hatch -	Aye

All members voting in favor, the motion was carried.

**Second Order of Business:**

The application of Alan J. Knauf, as agent for TWJ Rentals, LLC regarding 369 Lime Rock Road, LeRoy pursuant to Section 267-b.1. of Town Law of the State of New York and 130-64. & 130-65. of the Code of the Town of Wheatland to seek an appeal of the Building Inspector’s determination that an off-road drag-race track and events are not a continuation of a pre-existing non-conforming Rod & Gun Club use and thus, constitutes a change of use. Subject parcel (Tax I.D. #207.04-1-16) is in an AR-2 Zoning District

Terry Rech, Building Inspector for the Town of Wheatland stated that the Town received additional information and documents that have been uploaded for review in the Public Access folder and that the public hearing is still open.

The second order of business is a presentation by Terry Rech, Building Inspector for the Town of Wheatland.

Mr. Rech stated he is going to take us through the history of the parcel that will exhibit recent change of use and the change of business use not permitted in an AR-2 Zoning District. He will



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present the file record to the best of his availability to exhibit, recreate the use of the parcel and he will answer questions that were raised at the last meeting as to what the actual violations are. He will explain and show how he arrived at his determination of change of use. Terry stated he will also highlight some inconsistencies in statements made and will raise some further questions for the Board's consideration.

### History Timeline–

Mr. Rech looked back into the archives and had to re-create some of the early history of the property.

1973- The first record of permit activity evidence of a pre-existing, non-conforming use/expansion of use.

1976 and 1978 - There were permits in for further expansion of that use but no mention of a non-conforming use or that a use variance was required.

1978-2014 the Falcon Gun Club remained without incident and the Town received no complaints.

2014-2020 the Town received repeated contact of prospective purchasers which made Mr. Rech aware that there was less activity and interest of selling the property.

March 2020 – new owner; TWJ Rentals, LLC

June 2020 – off road racetrack activity (still not on the town radar)

July 2020 – continuation and expansion of the race activity

August 2020 – Placed on Town radar, A nearby town resident called inquiring what was going on. There had been two consecutive Sundays with four-wheeler drag racing and noise. This was Mr. Rech's first time of hearing anything about this activity.

August 6, 2020- Mr. Rech did an initial inspection and saw camping activity and contacted the new owner and initiated some discussion.

August 9, 2020 – Mr. Rech reviewed social media information and noted that a posted event was cancelled due to “Noise Complaint to Town”. There was a transfer of information that they might not be carrying on as a permitted use.

August 23 – November 8, 2020 – “Grand Re-Opening” and continued “Race Club” events ignoring the Order to Cease.

The current Residential Zoning District AR-2 permitted uses are A. A single family detached dwelling. B. Agricultural. This remains the same from the previous zoning listed as Residential AAA.

In 2020 there was a clear change of use. There was more than one use; the pre-existing Gun Club use, the skeet shed were still there, but the Drag Race business had taken over as the actual primary use.

The applicant has stated that they were not clear as to what the violations were, Mr. Rech showed the Board pictures of the violations that were given.

### Notice of Violation 8/26/2021-

“Town of Wheatland Code 130-10 Table of Use Regulations (AR-2 Residential) ATV.off road drag racing advertised and entry fees charged is a business use and not listed/permitted in the AR-2 Zoning District table under “Business Uses”. This activity was evident thru a social media posting.”

Mr. Rech cited TWJ Rentals for Town of Wheatland Code 139-9 A. “Use of a lot for more than one principal / primary use. ATV/Off Road Drag Racing advertising and entry fees would be a business use and is not a permitted use in an AR-2 Zoning District. The established use of this parcel is a Gun Club/ Rod & Gun Club as a pre-existing, non-conforming use.” On August 6<sup>th</sup> Mr. Rech stated he observed a racetrack constructed and observed again on August 18, 2020. Various neighbor contacts and social media posts confirming the drag race activity which was witnessed by the Fire Marshal on August 23, 2020. (Mr. Rech showed video footage provided by the Fire Marshal).

Also noted “Town of Wheatland Code 67-3A. Excavations for sand bank, sand pit, gravel bank removal, gravel pit, rock or stone pit, topsoil removal, soil or earth removal, topsoil stripping, turf removal and other substances removed from the ground shall not be commenced or extended except in conformity with this chapter.” In addition, Mr. Rech noted in the notice that he was

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contacted by the DEC with a concern with the disruption to the gun range; there is a concern for disruption of the lead dust when it is disturbed.

Additionally included was the Excavation Violation of Town Code 67-3 of that dirt on the track.

#### Permit Activity-

1973- First Permit for the Club House – The permit application stated, “under construction”, so it was noted that some construction was already underway at the time of the application. Terry mentioned “it was a different world of regulation than it is today”.

The permit that Terry shared on his screen noted:

Existing use and occupancy – Trap Shooting -75 grounds

Intended use and occupancy – Trap Shooting 100 building

Mr. Rech stated that he did not know what the 75 and 100 meant, maybe 75% and 100%, that is not clear.

The previous zoning district and permitted uses back in that time were in the Town of Wheatland Residential AAA and the permitted uses at that time were single family, residential and agricultural, the same as they are now. It stated on the application; “does the proposed construction violate any zoning law, ordinance, or regulation?” – the answer on the application is “NO”. Mr. Rech stated that obviously the building inspector at the time issued the permit so if there was a concern with the use of the parcel it would have stated it on the application. It is clear to Mr. Rech that this was a pre-existing, non-conforming use, stayed off the radar, and peacefully co-existed with the neighborhood, which is the purpose and the intent of zoning...that there is a compatibility in the neighborhood.

1976 another permit was issued to erect a storage building and again on the application; existing use & occupancy – “Gun Club”. Intended use and occupancy – “Storage house”.

1978 – Permit for addition to the club house that required a variance. The ZBA signed off and the area variance was approved on 6/22/1978. This was simply an area variance, no mention of the use. Existing and intended use – Gun Club. At this point the Zoning was changed to and remains today as AR-2, the same residential uses apply. Terry reviewed the minutes from that meeting and the area variance was approved and no conditions were noted. There was no mention of the use. The original AAA Zoning permitted uses did not contain “Gun Club”, “Country Club”, it solely lists six uses; Single Family, Farms, Educational or Religious Building, Library, Professional Office, Boarders or Lodgers (not to exceed 4 in one family building. No mention of a Gun Club or a Country Club. The current AR-2 Zoning lists; General Community facilities, Country Club - Special Exception Use – (Planning Board). Motorized recreational vehicle outdoor racetrack and off-road track require Special Exception Use through the Planning Board. Mr. Rech stated that any of the activity that was mentioned, like a Country Club, would require a Special Exception Use. Any of those uses maintained would have to have had a closer look at the request by the Planning Board.

Mr. Rech showed slides of aerial views, he noted there is no presence of the track (1995, 2006, 2015, 2018 all showed non-existence of a racetrack.)

#### Definitions for the Board:

All-Terrain Vehicle or ATV- Any motor vehicle, designed for off -highway use and designed to travel on not less than three low pressure tires, having a seat or saddle designed to be straddled by the operator and handlebars for steering control. As used in this chapter, all-terrain vehicles shall mean all-terrain vehicles and utility – terrain vehicles.

ATVs came around 1973 same as the noted Gun Club activity.

Utility Terrain Vehicle or UTV - more for hunting, outdoor activity.

Any motorized vehicle with four or more low pressure tires signed for off highway use having a bench or bucket seating for each occupant and a steering wheel for control. As used in this chapter, all terrain vehicles shall mean all-terrain vehicles and utility terrain vehicles (added 4-17-2014 by L.L. No. 1-2014).

Motorcycle – A unclosed motor vehicle having a saddle for the use of the operator and two or three wheels in a contact with the ground, including but not limited to motor scooters and mini-bikes (added 447-2014 by L.L.No.1-2014).

### Town Code Definition

Member Activity or Racetrack?

130-4 Racetrack – Three or more motor-driven vehicles operating simultaneously., or under timed conditions, at any speed.

Off Road- An open area of land used for the operation of motorized vehicles, at any speed, on the same parcel of land, regardless of whether or not the vehicles are involved with any aspect of racing.

Mr. Rech stated this is the case and clearly is a pertinent definition, he is not sure how there can be a dispute. Mr. Rech then showed pictures of races going on at the Lime Rock property. He stated that this is not (member activity) on open land of use for the operation of use for motor vehicles at any speed on the same parcel of land.

History on Special Exception Use and ATV Use on AR-2 Land –

The Planning Boards intent was not to regulate what would be considered appropriate, customary personal recreation/chore use of off-road vehicles. One would expect the occasional use for hunting, chores, youth recreation as a component of rural lifestyle. What is happening now is not aligned with those reasonable expectations.

Mr. Rech questioned, is this member activity or a business? Mr. Rech has determined the activity conducted is not just ancillary club member activity, the excavation constitutes an off-road racetrack. There is clearly a gathering of 3 or more motor-driven vehicles with intent to race, constituting a racetrack and racing events. The advertised events and merchandizing constitute a separate business use not permitted in the AR-2 Zoning District.

Mr. Rech showed pictures of the Gun Club in 2013 and stated that the previous member activity is a complete contrast from the activity that occurred last year. Various slides were shown from 2013 to 2014 showing pictures of members trap shooting, gun activity, training, and indoor social gatherings. Forward to pictures of last year, 2020 which showed pictures of racing events, over 30 plus motor-vehicles running simultaneously running (6/28/2020).

Mr. Rech stated that the County Tax Records has the property listed as Property Class 920 “Private Hunting /Fishing”. There was a land survey from prior to last year clearly not noting a racetrack. Mr. Rech showed pictures of before and after the excavation of the racetrack. He noted, the track and the backstop are close to the road. He said, “definitely a racetrack and looking at this, one would expect a timed competition event to take place. He then showed several additional pictures of before and after of the property.

Mr. Rech showed pictures from a flyer from an event on 7/19/2020 that was posted on Facebook indicating fees for drivers, entry fees for the public and a statement to “de-thrown the King”. Mr. Rech stated that this is clearly a business endeavor and then showed a picture of the winner of the race.

A picture from the August 2, 2020 event flyer was shown this was labeled Drag War & King of the Track, Mr. Rech stated that that event had a few “kings” of the track, and then he showed a posting from Facebook that indicated that the August 9, 2020 event was canceled due to noise complaint.

The flyers all indicate Grass Race Club, there is no mention of the Falcon Club, Falcon Trap & Game Club. Mr. Rech stated we have focused on ATV use which is just members riding around on their ATV’s. But it just is not ATV’s. He then showed a post from August 2, 2020 stating that there were snowmobiles, ATV’s, motorcycles, and lawnmowers. “This is not members riding around for hunting activities, it is a Drag Race Club.” Additional photos were then shown with large groups of motorized vehicles running and Terry stated, “clearly a gated situation, a business activity.”

Mr. Rech then showed a video that the Fire Marshal took of the race event that occurred on August 23, 2020 and noted activity operated through November. Pictures of an additional post stating that the track will be open 10am – 5pm on November 8, 2020, a picture of a large sign, which was a business sign, without a permit, also Drag Race merchandise for sale; a business operation. Mr. Rech showed another video before the track excavation and then after. He stated, way more than three motorized vehicles operating simultaneously. He stated, the sound (which could not be heard thru the video for those viewing) is most likely over 40 decibels and then showed a video of the track being groomed as he stated, “Does not look like members riding around during hunting activity”.

Mr. Rech showed a slide of additional violations:

- Racetrack without Special Exception approval
- ATV use in violation of Town Code.
- Open burning with out Town Operating Permits in violation of NY Part 1203
- Events without Town Operating Permit in violation of NY Part 1203
- Tents/Membrane Structures without Town Operating Permits in violation of NY Part 1203
- Noise
- No excavation permit in violation of Town Code
- Dust & environmental concerns, disruption of previous gun range and potential of lead dust that could have been released from the recent activity.
- Excavation without Environmental Review
- Failure to obey order of the Building Inspector.
- Potential campground without approvals (Town & County)
- Signage without a permit

Mr. Rech listed the definition of noise. He stated that the noise is difficult to enforce. You need to be there at the time, and it needs to be calculated with a calibrated meter. He then showed a video, but we could not hear the noise. He stated that his presentation will be posted in the record so the Board will need to scroll thru and listen to it.

Regarding the concern of the disruption of lead dust, Mr. Rech stated the DEC was involved. The DEC had sent the Town a letter and explained if there was going to be a change in the gun range there is a process for that, and the DEC should be involved in it. It is listed in the NYS DEC A pert 364-Under regulatory classification of waste transporter, lead shot and / or lead permit may be required unless the transportation meets an exemption in 6 NYCRR 374.2.1(b) (5). Ranges should contact the Division of Water in their local Regional DEC Office before beginning any construction or lead recovery activities. Terry stated that he does not know if the was contacted prior so there may be some issues with that. Terry stated that he received a soils report submitted by an associate of the appellants with the same last name. He stated that it stated that they did not find traces of lead, but it should be reviewed by the Board.

Dust- Mr. Rech showed several pictures of the dust being lifted into the air. The picture also indicated that the racetrack is where the skeet sheds use to be. Mr. Rech stated that it would be absurd to assume the skeet sheds would be operating at the same time as the races considering where the racetrack is. But, from showing these pictures he stated, “you can get a clear understanding that this is not just a few members riding around. The footage on the video showed a contestant parade. (showing over 40+ racing vehicles lined up).

Mr. Rech showed additional slides, showing a post Caution for the Ears, indicating the loud noise. Additional slides were pictures of bonfires, stating bonfires require a permit. Definition of a recreational fire is a 3x3x3 contained fire with a resource available to put the fire out.

Mr. Rech stated there are various other violations –

Public assembly and event without operating permits 19 NYCRR 1203.3, (g) operating permits, (iv) buildings containing one or more areas of public assembly with an occupant load of 100 persons or more and 2020 FCNYS section 403.12.2.(NY) 403.12.2 Public Safety plan for gatherings.

Operating Permits for Public Assembly inside building occupancy load of 100+ persons or public safety plan for outdoor activities. Permits required for tents, temporary special event structures and other membrane structures.

3103.3 Outdoor assembly event – Mr. Rech stated for the purpose of this chapter, an outdoor assembly event shall include a circus, carnival, tent show, theater, skating rink, dance hall or other place of assembly in or under which persons shall gather for any purpose. Fire Code has concerns with large gatherings and events like bonfires.

Camping may or may not be regulated depending on the amount that goes on. Monroe & Livingston County have regulations in place for outdoor camping.

Mr. Rech stated again that Grass Race Club is noted throughout all these events but not Falcon Trap & Game Club. This club seems to be the business taking over, not a trap & gun club.

Mr. Rech showed another slide with a posting of food items for sale. He stated he wondered if County Health Department was involved and stated that it seems like there are a lot of unregulated activities going on.

Mr. Rech then stated the questions raised are as follows:

- Where did the entry driver and public fees go?
- Will the tax returns for Falcon Club show any Grass / Drag Race Club income?
- Will TWJ Rentals show rental/lease income from the land/event lease?
- Is Grass/Drag Race Club a separate entity filing tax returns and showing race / merchandise income?
- Did Falcon Club not use the property for gun club activities after 2014 through 2019 thus abandoning non-conforming use?

Mr. Rech ended his presentation and asked if there were any questions.

Chairman Grasso stated that in affidavit filed by Mr. Maye it states that the club was incorporated in December 1973 and purchased in February of 1974 yet, Terry is showing activity before that. Terry stated that there was permit activity that was filed in May of 1973. The records are not extremely clear from back then. Grasso stated that they are looking to nail down the pre-existing, non-conforming use decision. Activities that took place from 1973 – AR-2 zoning was implemented, and the laws changed? That is what can be considered as pre-existing. Mr. Rech stated that his assumption is there was a pre-existing use prior to 1973 of that gun club activity, because with the 1973 permit application there was no mention that this was not a permitted use. The building inspector did not send it off to the Zoning Board to gain a use variance for the building club house for a gun club and the argument could be made it was an expansion of a non-conforming use; it should have gone to the Zoning Board, but it did not. Mr. Rech also stated that the Zoning Board did not raise the issue, they issued area variances so the use component of it realistically must fall away. It was a pre-existing, non-conforming use. He stated that he does not think there is any way to refute that.

Chairman Grasso asked Terry at what point did it become non-conforming? Mr. Rech answered June of 2020 when it became a Drag Race Club. Chairman Grasso if the Gun Club would be non-conforming in an AR-2 Zone. Mr. Rech stated it would be non-conforming in the Residential AAA Zone, presumably it was there prior to zoning or there was an error with the Building Inspector at the time. Chairman Grasso stated that we will stipulate that it was existing before the Zoning before 1973. He asked if there is not a time when zoning changes when it becomes no longer an allowed use and it is only grandfathered in? Mr. Rech said that was its status up until June 2020. The Chairman stated then when Zoning laws are changed does not it essentially become prohibited except that it was there before it, so it can continue? Mr. Rech stated yes, that is the concept of pre-existing, non-conforming. Chairman Grasso asked but if it weren't existing before the date the zoning was changed would it be pre-existing? Mr. Rech stated that if it was voluntarily abandoned for a year then the pre-existing, non-conforming status falls away. That has not been established, that is not what we are here for, we are here for the change of use to the Drag Race Club and the off-road race activity. Chairman Grasso stated that Mr. Knauf's argument is that there was always this activity going on, be it a lesser entity so what he is trying to get at is if there were no ATV's riding around racing each other before the AR-2 Zoning was implemented then ATVs were not a pre-existing use.

Laura Michaels indicated that according to Mr. Mayes affidavit, the Evergreen Rod & Gun Club was incorporated on May 14, 1957 and Falcon trap & Game was an evolution of that when two other gun clubs combined with Evergreen and had been operating since May 14, 1957.

Chairman Grasso asked if they were using the property before they purchased it. Laura stated that Evergreen Rod & Gun Club existed at that location, incorporated on May 14, 1957 and it started out as Evergreen so that clarifies the use before 1973.

The Chairman stated, if the ATVs were driven by a couple of members in the mid 80's, do we still consider that a pre-existing use even though they were not permitted to do that in 1980? Mr. Rech stated that he would look at it as that would not be unusual for a member of a gun club/hunting club to have a 4-wheeler onsite to go collect a deer out of the woods. It would be difficult to establish that there was never an ATV on that property for a certain number of years, but as an accessory use, an ancillary activity to the gun club. A reasonable person would not find it surprising that there would be an ATV associated with a hunting activity. The same goes for that same reasonable person to look at the videos shown and say what was shown was ancillary gun club activity.

Chairman Grasso stated prior to the AR-2 implementation they had the club, the club house, and gatherings but they did not do the shooting activities. He asked, they couldn't start the shooting activities in the 80's and call it pre-existing use, correct? Mr. Rech stated, that was correct. So, the Chairman stated, before the regulations for these things they had to be operating the ATV's. Mr. Rech asked, so you're saying if ATVs did not exist in 1973 when it was residential AAA the riding of ATV vehicles would be a non-permitted use. Mr. Rech explained that the Residential AAA Zoning category is the same, the gun club is pre-existing non-conforming. Chairman Grasso stated the appellant is claiming that the ATV racing was relevant as well. There was a quote from one of the affidavits that members would ride ATV's around and even race each other. If they were not doing those things before a certain date than can we call them pre-existing? Chairman Grasso was looking to see if they were doing those types of activities during that time frame.

Mr. Rech stated that in 1973 ATV's were around, the Building Inspector did not site them for the use of ATV's. Mr. Rech stated that he did not know if we can conjecture anything from there. He stated that we can establish the difference between a couple of members riding around and a drag race/Grass Race Club events that the videos clearly show.

Alan Knauf, attorney for TWJ, Falcon Gun Club stated that he did submit affidavits from Marvin Maye, LeRon Johnson and Lorraine Rosario who was running the racing operation. He has submitted the bylaws that were requested and the test results along with the Membership Roster for Falcon.

Mr. Knauf stated that Mr. Rech raised a lot of issues about code issues, but they are not really before this board. The only thing before the board is the Zoning issue to whether this is allowed under the Zoning law. The main issue is if the running of the ATV's, the racing, is encompassed under the pre-existing, non-conforming use or is it an additional new use that would require a special permit.

August 6<sup>th</sup> and no one has appealed that this is a pre-existing non-conforming use. As indicated Falcon was formed in 1973 by a merger of three black gun clubs. He stated that there are two articles attached to Mr. Mayes affidavit. They explain the black gun clubs were having discrimination problems with some of the other clubs, so they formed their own club, and they formed the Falcon in late 1973 my merger. One of those clubs was Evergreen Rod & Gun club, which was incorporated in 1957 but it had been hunted on since the 1940's. In 1974 they built the club house, permits were granted indicating it was a pre-existing, non-conforming use. A variance in 1978 approved the use. Mr. Knauf stated that the pre-existing use is not just for the building it is for the property.

Mr. Knauf stated there has been some suggestion that the club was abandoned. That is not the case. It is true that the property was not kept up or maintained but it was not abandoned. It is also true that they were having financial issues and were behind on their taxes, but the activities have continued. Mr. Mayes affidavits indicate that he has been a member since 2000, Mr. Johnson since 2010, Mr. Whitfield, one of the founding members, since 1973. They all attest that the members have continued to use the club and there has been shooting there every year, so it is pre-existing, non-conforming.

Mr. Maye holds the LLC, his wife is the managing member and owns the property, but the Club is now their tenant, they have not been able to collect any rent yet because there is not enough money for the Club. But they are a tenant of the LLC, so the club has continued to function. Mr. Knauf stated that like any other club, there are a variety of activities. He stated if you call it a trap and gun club that does not mean that is all you do. He stated that the Falcon has held a wide variety of activities at the club. The news article talks about people camping, social activities including dinners and parties and there has always been people riding ATV's and according to Mr. Whitfield they would hold speed contests amongst themselves. The ATV activity has gone on since 1974. Mr. Knauf made a correlation between evolution and computers. He stated that in 1974 computers were not around so does that mean that computers are not allowed? He stated it is all in evolution. The change of various activities does not mean it is not the same club. Mr. Knauf made a comment that it seems that riding ATV's is a common practice in Wheatland, riding is allowed. He did not see anything in the Towns Zoning laws that we require someone to get a permit to ride an ATV in Wheatland. Mr. Knauf stated that the question is the issue of whether the ATV racing is a new activity that is not part of the grandfathered club activities. There position is yes, there has always been ATV activity. He stated that there are more people on the property this year with ATV's, but the rule of law is the change in intensity whether expansion or decrease does not mean you lose your grandfather.

He stated that there was talk about the straight away. They moved the straight away to make it safer, he is not sure if it was an excavation, but they are not here to talk about an excavation. On the straight away they have not run more than two vehicles at one time. He saw videos of a lot of vehicles running at one time on the property, but they have not held races with more than two ATV's.

Mr. Knauf mentioned the noise but stated we are not here to talk about the noise. Mr. Maye did measurements at the time and the only evidence they have is that when the noise was measured there were no exceedances.

The DEC responded to the Town that if they disturb the soil at a closed down gun club there could be problems. Mr. Maye the soil tested and yes it was his daughter, she is certified in this field. The only evidence they have is there is no exceedances, but he stated again this issue is not relevant to the issues as to why they are here before the board.

Bon fires, same thing, they have been made aware of some of these things that he thinks will not happen again now that the people in the club have been made aware of them. But again, these things are not for the Zoning Board. The issue is what is the non-conforming use and is the running of ATV's encompass within that. Mr. Knauf state that Mr. Maye was not aware of a lot of the Facebook posts and did not know about the advertising. He did know about the races but did not know about the prizes. He has indicated that he would like to be a good neighbor they feel they are within their rights because they have always been able to use the ATV's. He understands the objectives about the selling of the baked good, implying that it was a separate business. He does not agree but if they are right, it does not affect the non-conforming use of the club. Mr. Knauf asked the Board if they have read thru the material that has been submitted. The club has a long standing, the point is the use and adding features to the non-conforming use does not change it. The town has endorsed this as a non-conforming use. It should be allowed to continue. The only question Mr. Knauf feels is within the board's jurisdiction is whether the running of the ATVs over the past summer is a new business or activity that is not encompassed within the non-conforming use. Mr. Knauf says that it is, it is just a change in intensity of the use.

John Mancuso, Attorney representing the town asked if Mr. Knauf submitted the lease to the board. Mr. Knauf state there is no lease, it is just an oral agreement. He stated that Marvin bought the property to save the club, he paid the taxes and put it in an LLC to allow the club to use it. Mr. Maye stated that there are two pieces they are utilizing. He mentioned that renovations need to be done and some members helped him get the club ready so he allowed them to use the club for the ATV Club and they have other members that are helping with the gun club so the traps can be rebuilt. People have been shooting there every year even without the traps.

Chairman Grasso confirmed that there is not a written lease, there is an informal verbal lease and Mr. Maye stated that was correct.

Board Member, Laura Michaels asked for clarification, the rental company owns the property. The Falcon Gun & Game Club has a verbal lease to operate there and separately the Grass Race Club is also using the property, separately from the Falcon Gun & Game Club. Mr. Maye stated it was not separate it was still part of the Falcon Trap. Mr. Knauf stated that a group of people from the club started those events.

Laura Michaels stated that when she reads the bylaws from the Falcon Game Club it talks about conserving, restoring game, fish, and other wildlife in its natural habitat. Seeking and procuring for the better fishing and hunting and providing hunting, fishing and trap shooting and general recreation for sportsman. She stated to her that implies hunting, fishing, etc. Promote and maintain friendly relations with landowners and fellow sportsmen. She stated she can see the trap and game, but she does not see the faction operating under those bylaws.

Mr. Knauf stated that they have a draft of new bylaws, he is not sure if it addresses that, but it is encompassed within the general recreation.

Chairman Grasso asked if anyone else would like to speak before they close the public hearing.

Mr. Maye stated that he wanted to say a few words to the Board. He wanted to talk about the statement that Terry commented about the DEC because he recollected it differently. He stated that Terry said the DEC reached out to the Town when in fact the Town reached out to the DEC. When he received the letter, it stated what the confines were and it said there could be an issue with lead dust if it is not maintained properly which is fine, but it did not state it was contaminated and then regarding the soil, it stated if they were to do any excavating to the soil and remove it from the property there are certain requirements with that. As a lead abatement contractor, he is familiar with the parts of removing that soil from the property because you must do a deep clip (?). The letter stated that if you kept it on the property everything is fine. He wanted to clarify that they do not have a problem with the DEC and that he has already spoken to them about all of this.

Mike Balonek stated that he wanted to bring up that six or seven years ago on North Road a piece of property was purchased, and the gentleman created a track for he and his brother to use. The town at the time made him remove the track because of complaints from the neighbors. He wanted to bring this up to point out the fact that ATV laws have been enforced in the past. Chairman Grasso stated that yes, that individual was sited and had to restore the ground.

Mr. Oliver Miller lives in the vicinity of the Club. He stated that there are several gun clubs in that area that are using the facilities for that activity, they are not racing. He understands the discussion is about non-conformity, but they are concerned about the noise, that is the issue. He stated that you can not measure noise with a handheld meter, you need a professional. He is glad that some other issues have been brought up, but it all comes back to noise. He also stated that the other issue is safety, and it is just a matter of time before someone gets hurt and sues the Town. He stated that he and the neighbors just want to be able to enjoy their property without the noise and that this kind of activity should not be happening at all.

Chairman Grasso stated again that they are not dealing with the noise or safety here, the discussion comes down to is the racing of the ATV's part of the pre-existing, non-conforming use that they club can continue.

Mike Streb is a neighbor and he stated he would like to address the Zoning issue with the non-conforming use continued. He stated that as the Zoning Board Law states an abandoned property over a 12-month period removes any pre-existing, non-conforming use. He has been there since 2015 and stated that there has not been any activity from that site. The neighbors can all attest to that as well. The lawn was never mowed, buildings were falling, a sign was falling. He stated there has not been any activity on that property from 2015 to the start of the use last year, which was well over a 12 month period, so the non-conforming use status should be removed due to the abandonment of that property.

Maureen Leupold has property on Lime Rock and Oatka Trail. She stated that her right to living in an AR-2 residential agricultural land is being violated by the activity that is happening. She is not able to have a peaceful weekend without noise and feels that the Club is tramping on their rights.



Mr. Maye stated he would like to bring up the issue with noise complaint from the campground. He stated that he does not understand why they are complaining about the noise from the Falcons when there is a racetrack with micro carts that is across the street from them. That is loud and has been going on for years. He stated he did not know why they were complaining about noise from them but not from that other racetrack.

Steve Leupold spoke and stated that the racetrack that Mr. Maye is referring to is in a different county and they are following all the laws that are required in that town. They are not doing anything illegal or anything wrong according to Livingston County or the Town of Caledonia.

Alicia Luke, owner of the Campground stated that the racetrack they are referring to is in a different county. They follow all the rules and stop the racing at exactly 11:00pm and they are permitted to operate, and they are doing it legally and safely unlike the other club.

Board Member Kane Gascon stated he needed some clarification about the use prior to this complaint. He stated that Mr. Knauf is saying that this is a continuation of evolution of the 2 to 3 ATV's that would be on the property for hunting and fishing. So, from 1973 to present that evolution from hunting and fishing ATV activity is now 60-70 ATV's racing in a straight line? He was just wondering if that is what he meant as to pre-existing use and how it is an evolution. And going back to the statement of "we don't need a permit to have computers" prior to the 1974, stating that you would not need a change of use to have a computer in your house today. He just needs some clarification as to what Mr. Knauf meant.

Mr. Knauf stated that he was not sure that he used the word evolution but what he is saying is that ATVs were an established use on the property but now you are saying that if you have a lot more of them do you lose your grandfathering? Under the law, just the change in intensity does not mean you lose the grandfathering because they could use the ATV's. The trying to make a point that things change over time. Once the use was established the fact that there are a lot more does not change the fact it is a permitted use.

Board Member Gascon stated that the club does have great history, he read the news articles but one thing that the articles lack is the AVT use in general. None of the articles mention it at all so he is wondering where this comes into play as part of this prior outside of just the testimony. Mr. Knauf stated that Mr. Whitfield one of the founders, has stated the ATV use in is affidavit. Board Member Gascon asked if that is the only confirmed use is in that statement. There is information in the new articles about camping and events but there is no mention of ATV's.

Christine Miller lives on Lime Rock Road would like to make sure that the videos she submitted are in the record.

Board Member Michaels asked for clarification regarding the bylaws. She asked if the bylaws are in the process of being updated, are they going to add racing or ATV activity into the bylaws and if you would not that change the focus of the club to add something that was not in them before.

Mr. Knauf stated that the update does not mention racing, it mentions sporting events, it does not mention racing. The new bylaws have not been adopted; it is just part of the proposal.

Resident, Shaun Smingler asked how many Board members are there and how many vote on the bylaws. Mr. Knauf stated there are 25 Board Members and all members vote.

There being no further public comments, the public comment was closed at 9:02 P.M.

Chairman Grasso suggested to adjourn the meeting for this evening and pick it up at next months meeting. He stated this will give the board a chance to digest all the information and he suggested that everyone should look at the everything that was added to the record. There are videos that are testimony by long time neighbors, former workers at the club and Mr. Miller's power point presentation.

Laura Michaels made a motion to table the appeal of TWJ Rentals, LLC to the May 4, 2021 meeting at 7:00PM in the “*virtual*” Wheatland Municipal Building, 22 Main Street, Scottsville, NY. Bob Hatch 2<sup>nd</sup> the motion. The vote was as follows:

Laura Michaels	-	Aye
Kane Gason	-	Aye
Joe Burns	-	Aye
Mike Grasso	-	Aye
Robert Hatch	-	Aye

All members voting in favor, the motion was carried.

New Business

Terry stated there are a few area variances on the horizon.

There being no further business, Bob Hatch made a motion to adjourn the meeting. Joe Burns seconded the motion.

The vote was unanimous. The meeting was adjourned at 9:15 P.M.

Respectfully submitted,

*Lisa J. Bates*

Lisa J. Bates  
Recording Secretary

**Meeting Minutes  
Town of Wheatland  
Zoning Board of Appeals  
May 4, 2021**

The Zoning Board of Appeals of the Town of Wheatland held a meeting on Tuesday, May 4, 2021 at 7:00 P.M. in the “*virtual*” Wheatland Municipal Building, 22 Main Street, Scottsville, NY.

Mike Grasso, Chairman, called the meeting to order at 7:00 P.M and roll was taken.

**Board Members**

**Present:** Mike Grasso, Robert Hatch, Joe Burns  
Laura Michaels, Kane Gascon

**Absent:** Tim Steves (recused)

**Others Present:**

Mr. Alan Knauf, Knauf Shaw LLP  
Mr. John Mancuso, Special Counsel  
Mr. Ray DiRaddo, Attorney for the Town  
Ed Shero, Town Board Liaison  
Terry Rech, Building Inspector

**First order of Business:**

Chairman Grasso asked for a motion to accept the Minutes from the March 2, 2021 meeting. The meeting minutes were approved as submitted. Robert Hatch made such a motion; Joe Burns seconded the motion. The vote was as follows:

Laura Michaels -	Aye
Kane Gascon -	Aye
Joe Burns -	Aye
Mike Grasso -	Aye
Robert Hatch -	Aye

All members voting in favor, the motion was carried.

Chairman Grasso asked for a motion to accept the Minutes from the April 6, 2021 meeting. The meeting minutes were approved as submitted. Joe Burns made such a motion; Robert Hatch seconded the motion. The vote was as follows:

Laura Michaels -	Aye
Kane Gascon -	Aye
Joe Burns -	Aye
Mike Grasso -	Aye
Robert Hatch -	Aye

All members voting in favor, the motion was carried.

**Second Order of Business:**

The application of Alan J. Knauf, as agent for TWJ Rentals, LLC regarding 369 Lime Rock Road, LeRoy pursuant to Section 267-b.1. of Town Law of the State of New York and 130-64. & 130-65. of the Code of the Town of Wheatland to seek an appeal of the Building Inspector’s determination that an off-road drag-race track and events are not a continuation of a pre-existing non-conforming Rod & Gun Club use and thus, constitutes a change of use. Subject parcel (Tax I.D. #207.04-1-16) is in an AR-2 Zoning District

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Chairman Grasso stated that this is a continuation of the 369 Lime Rock Road appeal and the Public Hearing has been closed, there will be no more comments from the public. Both the appellant and the Building Inspector have stated their cases sufficiently, or to their satisfaction. Mr. Grasso stated that tonight the Board will talk about what they heard and try to come up with some finding of facts that they can use to include in the motion and deliberate on how they feel about the Notice to Cease and the Notice of Violation and the appellant's argument is that it was a continuation of a non-conforming use.

Chairman Grasso stated that the Board Members are welcome to jump into the conversation at any time.

Chairman Grasso stated that he has been relistening to the recordings and he has come to the understanding; as he asked Mr. Rech, Building Inspector, at the last meeting if there was a date prior that the Board should consider the activities, but he does not know if that is actually the case. He thinks that the Board should decide if the activity is in fact an expected activity for a Rod & Gun Club or and as well, they should decide if this is a new use all together, being that it is a different entity operating the events. What they heard and saw through the advertisements for all these events was that not once was the Falcon Rod & Gun Club hosting this. It was a different name, all run by a person not the owner of the property, so it could be decided whether they believe this is a new use all together and not a continuation of the pre-existing use. They may have operated ATVs on the property before and as Mr. Knauf pointed out at the last meeting the Town really does not have problem with people using ATVs on their own properties as a personal recreation, for doing chores, or for hunting. Chairman Grasso thinks it is mainly a question of if this use has changed and secondly, whether there are now two primary uses on the property. That was the second Notice of Violation Mr. Rech had served to the property owner. Chairman Grasso asked the Board members if anyone heard anything in the testimony that they would like to bring up to make sure that they think about it carefully and get it into the record as a finding of fact.

Chairman Grasso stated he listened to the testimony of the March 2, 2021 meeting where people were testifying as to when the activities were taking place, but he really did not hear a lot of testimony from the old members that were part of the club. New people more so, not a lot of older members stating any specifics with what was happening then.

Board member Joe Burns stated he spent several hours this afternoon reading all the affidavits and there were 14-15 letters from various neighbors who pretty much said the same thing, that the racing just started this past year and they had not encountered anything like that previously and they are all very genuine and honest. Mr. Burns stated that there were 5 affidavits from various club members and again, they were honest and sincere but what he got out of it was their vision of ATV riding was a member back in the day who possibly brought their ATV for the day rode around and maybe saw another club member out and raced back to the club house for a beer and was the extent of it, maybe towing a deer but nothing like what has transpired over this past summer. That is what he got out of it and it seemed as though it was a struggle to draw out of the members that there was even ATV use on the property. Most of them used it for shooting and pistol range, social events. Mr. Burns stated that that is what he got out of it. In his mind, he questioned using the logic that just because they did it 20 years ago makes it okay. So, he could say just because he raced his brothers on his property years ago, he would be entitled to put a track on his property and hold a meet this summer? He does not think that would go over very well and it is not his understanding of what past use and ancillary use of an ATV. He stated that about 70% of people have an ATV on their property right now and the Town does not have racetracks on 70% of the area in Wheatland.

Chairman Grasso stated that he thought that was a fair summary. He would like to point out again that what he got out of Mr. Rech's presentation is the is the important thing is what violations he sited the property owner for, and he had two main ones. A change of use, he claimed that the Grass Race Club advertised, charged admissions and such was not the same use as the Rod & Gun Club. He claimed it was a separate new use of the property because the next violation was having (2) Primary Uses on one property, which is not allowed. The second use, Drag Racing Club as a business was not allowed and having (2) Primary Uses on a property is not allowed. So those are the two violations he cited them for. A Rod & Gun Club being pre-existing, non-conforming he said nobody is arguing that is the case, but he thinks most of them take exception that the advertised commercial use of the property for a Grass Race Club is the same use even as a Rod & Gun Club. He did not notice on any of the advertisement postings the name Falcon Rod & Gun Club, maybe somebody else, maybe a member is running the show?

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Her (Ms. Razario) and her brothers were signing up campers and collecting entrance and spectator fees and selling merchandise. None of that, as far as we know, benefitted the Falcon Rod & Gun Club in any way. So those are the two things they need to consider, whether this is a new use and are there 2 Primary Uses on the property.

Chairman Grasso stated that Mr. Knauf has argued it is not a new use because it is a continuation of the pre-existing use and it is something that they might do in a normal course of business at a Rod & Gun Club, that they would have these kinds of races.

Board member, Laura Michaels stated that she would like to bring up that when you look at the Falcon Rod & Gun Club bylaws, the wording of the bylaws to her are inconsistent with running an ATV Drag Race Enterprise on the property to begin with. The Grass Race Club is a different entity than the Falcon bylaws. She read The Falcon Rod & Game Club bylaws provided by the appellant into the record. The purpose of this club is to conserve, restore and manage game, fish, and other wildlife in its natural habitat in New York State and its environs. To seek, to procure better fishing and hunting. To promote and provide hunting, fishing, skeet, and trap shooting and general recreation for sportsman. To promote and maintain friendly relations with landowners and fellow sportsmen. To cooperate in obtaining proper respect for and observation of the fish and game laws and to do any other act or thing incidental to or connected with any of the forgoing purposed. The Club shall operate without any pecuniary profit or financial gain of its members or officers. Ms. Michaels then stated, it looks to her that the Grass Race Club is not working to conserve, restore or manage game, fish, and other wildlife and in fact, was probably disturbing or disrupting that. She stated that the Grass Race Club was not following the Falcon bylaws because they were collecting money and selling merchandise to potentially non-members because it was advertised to the public. She stated that it was not like a member invited a friend, it was a publicly advertised so to her, that clearly says that the other club was not following the bylaws that the Falcon Rod & Gun Club has established as there purpose for existence.

Chairman Grasso stated that at this point they know that they the Falcon Rod & Game Club does not own the property. So, one might assume that they have nothing to do with the racing operation. And maybe the property owner was the one benefiting from the operation taking place on his property. He stated, it certainly seems like a new use, which is a business on this property.

Mr. Burns stated he concurs with what Chairman Grasso was saying because looking back at some of the information, the Falcon Rod & Gun Club was not even aware of what was going on. The owner did not know that the lady had posted it to run on their property. Chairman Grasso stated that the owner knew it was happening on his property, he does not know if he did not see the Facebook posting. If he did not know, he did not ask any questions or did not care whether it happened or not. He does not know if the Falcon Rod & Gun Club had any involvement in this. There is not evidence that they had. The property owner is not the Falcon Rod & Gun Club. He is a member, but he owns the property and within the regulations, he can do what he wants with his own property. The Club does not pay any rent, they have an agreement that the club can stay there. So, if he wanted to use it for other permanent uses, that would seem to be his right, but when it looks like a large business operation on his property, that is where the Board comes in. Or that is where Mr. Rech comes in and cites him for it.

Board member Kane Gascon stated he would like to point out that he does not think both activities could take place at the same time on the property because if you have people on the ATV portion Drag Racing, the skeet shooting could not take place. You would have all those folks in the shooting range portion of it, so he feels as though it is two separate businesses. Chairman Grasso stated that there would be no remotely safe way for shooting with all those spectators and riders in front of the launch houses.

Chairman Grasso stated that they have heard and are willing to stipulate that the Rod & Gun Club is a pre-existing, non-conforming use. The testimony is that it has been using that property since before the 40's or 50's. But, when the Building Permit was issued for the Club House in 1973 it was issued without any mention, they would need a variance and the property was zoned Residential or AAA, which had the same permitted uses as what is now AR-2 which is agricultural, residential. So, it was non-conforming. Chairman Grasso asked the Board if they were willing to agree that the Rod & Gun Club is pre-existing, non-conforming use. The Board agreed. Chairman Grasso stated he believed that the Building Inspector at the time believed it was a pre-existing. He issued the Building Permit for what most clubs consider a standard amenity of the Club House where they can get together and socialize. But they have not seen

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evidence of massive ATV, off road vehicles, motorcycles racing at this place like what was happening before this summer.

Chairman Grasso stated he looked at one of the videos Mr. Rech has posted and he could not count as quickly as the machines were running by, but he is guessing there was at least 50 ATVs and motorcycles rolling over the property at the same time on that one film. If he is not mistaken, 50 is more than the number of members they have in the Club. He stated it seems like it is not just the members using the property for a little recreation on their ATVs.

Mr. Gascon stated they he agrees with that.

Board member Robert Hatch stated the past use of the ATVs on the property was an ancillary use that most property owners in the Town of Wheatland enjoy. He does not believe there were any special activities associated with ATVs use on that property in any regard to what other property owners within the Town of Wheatland utilize their ATVs for. Chairman Grasso stated, if you have land and have the room to run an ATV nobody usually complains about it.

Board member Gascon stated that he feels in this situation, pre-existing use would be what is known here in the Town of Wheatland as just extracurricular ATV use in terms of hunting or people with large properties. He feels that the use that is on the property now is definitely not what we in Wheatland understand as ATV use. 50+ ATVs, he does not think anybody on a normal basis with normal ATV use would have that many ATVs together without it being a pre-set up, pre-planned whether it be advertised or not, get together vs. just having a Dad and son out riding from one side of the property to the other.

Chairman Grasso stated that the town did, after revising the Town Code for the off-road, racetrack portion of the code, they did shut down an operation very shortly after that was implemented because he had several friends coming to his property and they were racing around and around and around on what turned into a dirt track and was very disruptive to the neighbors. Chairman Grasso is not sure he got an official citation or if he just heard neighbors had complained so he talked to Mr. Rech and he did re-vegetate the worn areas and the town has not heard of any other further complaints. So, the Chairman stated, this is not the first time the Town would regulate the off-road track or racetrack. That is not what they are doing here, he just knows that someone had brought that up and he does not want anyone to think they are singling out this operation.

Mr. Gascon stated there are not too many historical articles on the Falcon Club but when he does come across an old Democrat & Chronicle article online there is a ton of history on the club itself but one thing it lacks period is any type of comment or gesture towards any type of ATV use. It was a group of guys, happy to have their own spot and to be able to shoot and be recognized at the end of the day. But, going through all the documentation, nothing states anything regarding any ATV use or anything like it as well, that he came across. Mr. Gascon also mentioned that you can also tell when people have a pre-existing use in terms of ATV trails in their backyard. It is easy to see those imprints and the long-term effects on continuously riding on the same area. That is something else that he feels that it did not prove to him that there was any type of significant ATV use taking place on that property from looking back at the google earth photos. There really was not much shooting as well, but none of the articles mentioned ATV use.

Chairman Grasso stated they do mention that they host events with other clubs. Mr. Gascon stated yes, other shooting events. The Evergreen Club and the Otter Club, that is what joined together to form the Falcon Rod & Game Club.

Ms. Michaels stated that she found the date to the bylaws. They were written on March 20, 2015. Chairman Grasso stated that one would expect if the club was active with members wanting to shoot that somebody might complain that they were violating the bylaws. That they could come out there on a Sunday to shoot skeet but because they have been prevented from using their club on Sundays this past summer. We heard more than once that the Club is used mostly on the weekends. He stated that he thinks Board member Ms. Michaels is completely right. That this goes completely against the mission in the bylaws more than supporting it, which goes towards more evidence that the Trap & Game Club really had nothing to do with the Race Club events. Ms. Michaels stated, "Right, which makes it new and another use on the property." Chairman Grasso stated, a new use and if the Trap & Game Club is still there, which they claim it is, a second use. Both new and second are against the code and what were the cited violations.

Chairman Grasso said that he noticed the first older member that Mr. Knauf had testify and he submitted an affidavit for his testimony on March 6<sup>th</sup>. Mr. Knauf essentially read the affidavit and asked Mr. Whitfield if that was correct and if you listen carefully, Mr. Whitfield never answered that it was correct. He went on talking about where they went for the events and the history of their club. I do not know if he intentionally avoided it, but he did avoid answering the question. His testimony that night does not include anything that he said in the affidavit. He did admit having signed it, his testimony was, and his affidavit was written by the attorney and signed by him. Chairman Grasso is certain that that he did not write the affidavit that he signed. His testimony does not say or prove anything what-so-ever and even the affidavit never states that they hosted drag race events. He does not know if at some point someone would host something like that to try to make the club money, they might get an argument from the Building Inspector, but he does not know that was the case here. He believes it was the property owner raising money.

The Chairman asked the board members again if anyone believes they have anything additional that they found that would be important to discuss from the testimony or documentation that was provided. There was a lot of testimony provided by neighbors. They stated they have all lived there for several years and there has been no ATV riding. There is a ponderance of testimony stating that this kind of thing has never happened before. People have lived there for a long time. Two people stated they worked at the club and they both claim there was no ATV racing or drag racing activities. They said they never saw ATVs there. Ms. Wehle, the Director of the Genesee Country Museum has been there quite some time and they are open on Sundays and she has never heard this kind of event going on pre-2020. That is a lot of people stating this is the first time that they have heard this kind of event going on.

Chairman Grasso asked the Board again if anyone else had anything they would want to bring up that they learned or heard. He wants to make sure they consider everything.

Mr. Grasso asked each of the Board members to write a finding of the fact. They must create an official document with paragraphs stating whereas this is true and gather everything for an official document they can enter into the record and make a motion on it. He has written a few that he thinks were important to him.

John Mancuso, Special Counsel stated that the Board needs to come up with a resolution of find of facts and conclusions based on the applicable provisions of the Town Code that relate to conforming uses. So essentially, they would do various paragraphs that would delineate the finds and the factual conclusions that you have been deliberating on tonight. Mr. Mancuso stated that he could be a part of that process, he is available to assist the board in crafting that document.

Chairman Grasso said that he would like members to record a few facts that true to them and try to make it a “statement of fact”. A fact is what we have entered into the evidence. For example, they held races at the track this summer, no one has refuted that, there is video evidence, and it was advertised. That would be an easy fact that they could state. He stated, they could say issued building permits in 1973 and again for an addition without the Building Inspector bringing up the fact they would need a use variance. So, they believe it was a pre-existing, non-conforming use and pointed out it is allowed to continue. Ms. Michaels stated it would be whereas Falcon Trap and Game was the pre-existing, non-conforming use. Something like that and then what their purpose or mission was. Chairman Grasso stated it could be, whereas the bylaws of the Falcon Trap & Game Club have the purpose of the things she listed. So, they are going to state that they, Falcon Trap & Game Club is the pre-existing non-conforming use. Mr. Rech pointed out that from 1974-2019 nobody had any complaints, and nobody is arguing there was a pre-existing use. Some people have questions they were continuous, you would have to argue that.

The Chairman stated that he would like everyone to get those to Mr. Mancuso, Mr. Mancuso will send out his contact information. Then once that is done, they will need to come up with some conclusions. They need to conclude, based on the facts of the more important evidence. They need to make a decision based on the record. They can use everything that has been submitted for the record, all the evidence they have talked about and submitted is part of the record now. They will use those things to come up with there conclusions after they evaluate all the evidence and facts. It will be a second step. They will come up with all the facts and then draft a conclusion and the resolution of determinations. At the June meeting they will put forth a resolution and approve or disapprove the resolution. They need to make a determination at the

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June 2<sup>nd</sup> meeting because of time limits that are imposed upon them to work in a timely manner. They need to finish this up so they can act at the meeting on June 2<sup>nd</sup>.

It was decided that since the mid May meeting work session already has several public hearings that there will be a Special Meeting added to the calendar for May 25, 2021 at 7:00PM. Meeting minutes will be done and sent to Board members as soon as possible. Chairman Grasso asked that the Board members get their fact statements to Mr. Mancuso in the next two weeks, then hopefully, he can polish them up and get them back to the Board so they can then come up with their conclusions at the May 25th meeting. They can then review them themselves before the June meeting so they can make an informed resolution and vote on one.

Mr. Mancuso stated that the document will be in draft form, the Board can make any modifications, corrections, additions, or deletions it needs to. Even after the fact, when it is before the Board for approval any additional changes can be done at that time as well.

Chairman Grasso stated that this is a document that the Board will take ownership of. Mr. Mancuso will help write, draft it but essentially it is the Boards information and responsibility, and it will be what they vote on.

Mr. Hatch made a motion to set a Special Meeting for the tabled appeal of TWJ Rentals, LLC to the May 25, 2021 meeting at 7:00PM in the “*virtual*” Wheatland Municipal Building, 22 Main Street, Scottsville, NY. Mr. Burns 2<sup>nd</sup> the motion. The vote was as follows:

Laura Michaels	-	Aye
Kane Gason	-	Aye
Joe Burns	-	Aye
Mike Grasso	-	Aye
Robert Hatch	-	Aye

All members voting in favor, the motion was carried.

### New Business

Terry stated there are a few area variances for the May 18, 2021 meeting.

There being no further business, Bob Hatch made a motion to adjourn the meeting. Joe Burns seconded the motion.

The vote was unanimous. The meeting was adjourned at 8:21 P.M.

Respectfully submitted,

*Lisa J. Bates*

Lisa J. Bates  
Recording Secretary



**Meeting Minutes  
Town of Wheatland  
Zoning Board of Appeals  
May 18, 2021**

The Zoning Board of Appeals of the Town of Wheatland held a meeting on Tuesday, May 18, 2021 at 7:00 P.M. in the “*virtual*” Wheatland Municipal Building, 22 Main Street, Scottsville, NY.

Mike Grasso, Chairman, called the meeting to order at 7:00 P.M and roll was taken.

**Board Members**

**Present:** Mike Grasso, Robert Hatch, Joe Burns  
Laura Michaels, Tim Steves, Kane Gascon

**Absent:**

**Others Present:**

Mr. Todd Markevicz  
Mr. Will Falcheck  
Mr. Jason Parker  
Mr. Rich Adams  
Ms. Danielle Parnell  
Ed Shero, Town Board Liaison  
Terry Rech, Building Inspector  
Ray DiRaddo, Town Attorney

**First order of Business:**

Chairman Grasso asked for a motion to accept the Minutes from the May 4, 2021 meeting. Chairman Grasso had one spelling change to the May 4, 2021 minutes which was noted. The meeting minutes were approved as corrected. Joe Burns made such a motion; Robert Hatch seconded the motion. The vote was as follows:

Laura Michaels -	Aye
Joe Burns -	Aye
Mike Grasso -	Aye
Robert Hatch -	Aye
Tim Steves -	Abstain
Kane Gascon -	Aye

All members voting in favor, the motion was carried.

**Second Order of Business:**

The application of Sabin Metal Corporation, owner, to seek an area variance of Article II, Sections 130-9., and 130-16 of the Code of the Town of Wheatland, to allow the construction (replacement) of a Guardhouse that will encroach the required 70’ front setback in the CIP zoning district. The subject parcel is 1647 Wheatland Center Road, Scottsville, NY. Tax I.D. #209.02-1-1.

Todd Markevicz with APD Engineering stated that he also has Will Falcheck, Project Manager with Sabin Metal also on the meeting. Mr. Markevicz stated that they are requesting a variance for front setback for 1647 Wheatland Center Road. Sabin Metal already has an existing Guardhouse adjacent to the roadway approximately 400 sq. ft. in size. The proposed scope of work includes removing the Guardhouse and erecting a new guardhouse in its place. The new one will be bigger, about 100 sq. ft and the purpose for the new guardhouse is to enhance the security features for the sight.

The new building will be further back and more rectangular and will include additional miscellaneous enhancements such as new sidewalks and fencing.

Mr. Markevicz stated that the Town Code requires 70' setback off the road. The existing building already does encroach into that setback. They are looking to get approval on the front variance setback. They are sliding the new building 7' back, thus reducing the existing variance which will now sit at 21' +/- off the roadway. This is still short of the variance but 7' further away.

Mr. Markevicz read thru his application and Chairman Grasso asked the Board Members if they had any questions.

Board Member, Laura Michaels asked if they were going to change any of the signage where the crosswalk is. She stated that the visibility is poor in that area. Mr. Markevicz stated that this project is not slated to do that.

Board Member, Joe Burns stated that this seems pretty straight forward, and they are moving it back in the right direction.

Chairman Grasso asked Building Inspector, Terry Reck for his input or the record. Mr. Rech stated that it is less of an encroachment and Sabin is their own neighbor so it will not create a negative impact. Mr. Rech also stated that the changes will be a positive impact.

The floor was open for public comment at 7:27 P.M.

There being no public comments, the public comment was closed at 7:38 P.M.

After discussing and considering the details and effects of the requested area variance with board members, Chairman Grasso formulated the following resolution:

The Town of Wheatland Zoning Board of Appeals as authorized under Wheatland Town Code Section 130-66, after careful consideration and review of the evidence presented and having heard all the facts hereby, approves with conditions the application of Nicholas Rehberg. This motion was based upon the following finding of facts:

- 1) The granting of this area variance **will not** produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties, demonstrated by:
  - The setback of the guardhouse is actually being increased by about 50%.
  - There is another building on the site that is about as close to the property line as the current guardhouse. This building is going to remain in place and will be closer to the property line than the re-located guardhouse.
- 2) The benefit sought by the applicant **can not** be achieved by some method, feasible for the applicant to pursue, other than an area variance, as shown by:
  - Plant security needs to be near the entrance to the plant where the current guardhouse is located.
- 3) The requested area variance **is** substantial as evidenced by:
  - The re-located guardhouse will only be 20.9' from the property line, approximately a 70% reduction in the minimum required, but will still be about 7' farther from the property line than the existing structure.
- 4) The proposed variance **will not** have an adverse effect or impact on the physical or environmental conditions in the neighborhood or the district as shown by:
  - The new guardhouse location will not be a big change to the plant overall, and the plant is essentially "the neighborhood".

5) The condition **has not** been self-created, as shown by:

-The existing guardhouse, and most of the other buildings, pre-date the current zoning code.

Further that this variance is subject to the following conditions:

-None.

The motion to approve the variance was made by Robert Hatch and seconded by Joe Burns. The vote was as follows:

Robert Hatch	-	Aye
Laura Michaels	-	Aye
Joe Burns	-	Aye
Tim Steves	-	Aye
Mike Grasso	-	Aye

All were in favor and the motion was carried.

**Third Order of Business:**

The application of Richard Adams, of RC Mower, to seek an area variance of Article II, Sections 130-9., and 130-14 of the Code of the Town of Wheatland, to seek an area variance for a rear addition to an existing building that will encroach the required 70' rear setback in a Highway Commercial (HC) zoning district. The subject parcel is 430 Scottsville Mumford Rd. Scottsville, NY. Tax I.D. #199.04-1-6.

Jason Parker and Rich Adams are the owners of RC Mower, they are looking to increase their building space 26' x36' off the back of the existing building. They need the variance because they will encroach the rear setback. Mr. Parker stated that they believe the rear of the building will be the best location for the addition. It will be less obtrusive to the neighborhood, most cost effective and require the simplest design. There will not be any change or effect to the environment.

Chairman Grasso asked Mr. Rech for his input on this variance request. Mr. Rech stated that he concurs with what has been said. The positive is that the exterior material that is there will come in under this so ultimately this request will have a positive benefit.

The floor was open for public comment at 8:05 P.M.

There being no public comments, the public comment was closed at 8:07 P.M.

After discussing and considering the details and effects of the requested area variance with board members, Chairman Grasso formulated the following resolution:

- 1) The granting of this area variance **will not** produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties, demonstrated by:
  - The rear of the building will be the least noticeable place for the addition.
  - There are no neighbors to the rear of the property.
- 2) The benefit sought by the applicant **can not** be achieved by some method, feasible for the applicant to pursue, other than an area variance, as shown by:
  - The extra space needed will be considerably more cost effective if added to the rear of the building. If added to the front of the building, the sales floor, canopy, sidewalk, and parking area would all need to be moved/re-located.

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3) The requested area variance **is not** substantial as evidenced by:

-The rear setback will be approximately 54' or 55', or approximately a 20% reduction in the minimum required. Being that the lot is substandard in size in the zone, a 15' reduction seems like less of a difference compared to the lot size.

4) The proposed variance **will not** have an adverse effect or impact on the physical or environmental conditions in the neighborhood or the district as shown by:

-The addition being allowed is rather a small building  
-There will not be much disturbance. No basement, no expanded parking.  
-The addition being allowed will not be visible from the street.

5) The condition **has not** been self-created, as shown by:

-The lot is, and has been, sub-standard size for the zone.

Further that this variance is subject to the following conditions:

-That the addition be limited to 26' in depth, within 6", so that the setback will end up about 54' or 55'

The motion to approve the variance was made by Robert Hatch and seconded by Tim Steves. The vote was as follows:

Robert Hatch	-	Aye
Laura Michaels	-	Aye
Joe Burns	-	Aye
Tim Steves	-	Aye
Mike Grasso	-	Aye

All were in favor and the motion was carried.

### **Forth Order of Business:**

The application of Daniel and Melanie Parnell to seek an area variance of Article II, Sections 130-9., and 130-11 of the Code of the Town of Wheatland, to allow an addition to existing garage and to construct a front porch that will encroach the required 75' front setback in an AR-2 zoning district. The subject parcel is 25 Goodwin Circle Mumford, NY. Tax I.D. #208.04-1-15.

Ms. Parnell stated they would like to tear off the existing garage and front porch and replace it with a bigger garage and a bigger porch. The porch will be 2' closer to the road and therefore she needs the variance. She believes this will enhance the neighborhood. They live on a dead-end road and they are the last house, she stated that this will not affect anybody in the neighborhood, nor will it affect the environment. Ms. Parnell stated that the reason for them doing this is because the garage is too small, and they would like a porch.

Chairman Grasso asked Mr. Rech to confirm that anything added onto the front of the house will be encroaching. Terry stated that this is correct, it is in an AR-2 district, so they require a 75' front setback. The original construction is non-conforming. Chairman Grasso asked Mr. Rech if he knew when the house was built and why it was built so close. Mr. Rech did not know.

Chairman Grasso stated that he would like to point out that if the garage gets any larger at all, it will increase the encroachment of the setback. In this case, the applicant is showing it moving in front of the front line of the house so that will be an increase in the already too small setback. Chairman Grasso asked Ms. Parnell if they could increase the porch and garage without making the encroachment bigger and she stated "no".

Board Member, Laura Michaels asked if the neighbors south of Ms. Parnell are in Livingston County and does this face the back of their houses. Ms. Parnell stated "yes".

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Chairman Grasso asked Mr. Rech if the garage is going to be okay with the side setback requirements. Mr. Rech pointed out that they would be fine with side setback. Mr. Rech also

stated, about the neighbors to the south, it is a fairly dense subdivision. Overall, the character of this neighborhood would not be affected in the least and he also wanted to point out that Goodwin Circle has recently been changed to a dedicated road.

The Chairman asked Ms. Parnell if there is a substantial reason as to why the garage needs to be pushed in front of the front line of the house? Ms. Parnell stated that it is for aesthetic reasons and it would change the entire plan. The reason they did it this way was to change the look from a flat ranch to a more modern look.

The floor was open for public comment at 8:35 P.M.

There being no public comments, the public comment was closed at 8:37 P.M.

After discussing and considering the details and effects of the requested area variance with board members, Chairman Grasso formulated the following resolution:

- 1) The granting of this area variance **will not** produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties, demonstrated by:
  - The property is in a rather isolated neighborhood.
  - The property is adjacent to a more densely constructed neighborhood to the south.
  - The setbacks proposed are similar to the rest of the neighborhood.
- 2) The benefit sought by the applicant **can not** be achieved by some method, feasible for the applicant to pursue, other than an area variance, as shown by:
  - Porch: There really isn't another place for a front porch, other than at the front door.
  - Garage: The architectural style/look of the house will be improved by the garage being placed where proposed.
- 3) The requested area variance **is** substantial as evidenced by:
  - The new porch will need a reduction of approximately 37% reduction of the minimum required.
  - The new garage will need a reduction of approximately 30% of the minimum.
- 4) The proposed variance **will not** have an adverse effect or impact on the physical or environmental conditions in the neighborhood or the district as shown by:
  - The new structures will be relatively small.
  - There will be minimal disturbance. No basement excavation and no additional length added to the driveway.
- 5) The condition **has not** been self-created, as shown by:
  - The house was constructed many years ago and, if the other houses on the street are any indication, may have met code when it was built, but is sub-standard now.

Further that this variance is subject to the following conditions:

- None

The motion to approve the variance was made by Joe Burns and seconded by Tim Steves.  
The vote was as follows:

Robert Hatch	-	Aye
Laura Michaels	-	Aye
Joe Burns	-	Aye
Tim Steves	-	Aye
Mike Grasso	-	Aye

All were in favor and the motion was carried.

There being no further business, Robert Hatch made a motion to adjourn. Tim Steves seconded the motion. The vote was unanimous. The meeting was adjourned at 9:00 P.M.

Respectfully submitted,

*Lisa J. Bates*

Lisa J. Bates  
Recording Secretary

**Meeting Minutes  
Town of Wheatland  
Zoning Board of Appeals  
June 1, 2021**

The Zoning Board of Appeals of the Town of Wheatland held a meeting on Tuesday, June 1, 2021 at 7:00 P.M. in the “*virtual*” Wheatland Municipal Building, 22 Main Street, Scottsville, NY.

Mike Grasso, Chairman, called the meeting to order at 7:00 P.M and roll was taken.

**Board Members**

**Present:** Mike Grasso, Robert Hatch, Joe Burns  
Laura Michaels, Kane Gascon, Tim Steves (recused)

**Absent:**

**Others Present:**

Mr. Alan Knauf, Knauf Shaw LLP  
Mr. John Mancuso, Special Counsel  
Mr. Ray DiRaddo, Attorney for the Town  
Ed Shero, Town Board Liaison  
Terry Rech, Building Inspector

**First order of Business:**

Chairman Grasso asked for a motion to accept the Minutes from the May 25, 2021 Special meeting. Board Member, Bob Hatch had one spelling change to the May 25, 2021 minutes which was noted. The meeting minutes were approved as corrected. Robert Hatch made such a motion; Joe Burns seconded the motion. The vote was as follows:

Laura Michaels -	Aye
Joe Burns -	Aye
Mike Grasso -	Aye
Robert Hatch -	Aye
Kane Gascon -	Aye
Tim Steves -	Abstain

All members voting in favor, the motion was carried.

Tim Steves recused himself and left the meeting.

**Second Order of Business:**

The continuation of the application of Alan J. Knauf, as agent for TWJ Rentals, LLC regarding 369 Lime Rock Road, LeRoy pursuant to Section 267-b.1. of Town Law of the State of New York and 130-64. & 130-65. of the Code of the Town of Wheatland to seek an appeal of the Building Inspector’s determination that an off-road drag-race track and events are not a continuation of a pre-existing non-conforming Rod & Gun Club use and thus, constitutes a change of use. Subject parcel (Tax I.D. #207.04-1-16) is in an AR-2 Zoning District.

Chairman Grasso stated they are in the final part of the appeal process. He read through the conclusions that the Board had finalized. (the findings and facts were read at the May 25, 2021 meeting).

**CONCLUSION**

41. In accordance with the records, proceedings, and the above findings, the ZBA finds that: (i) the use of the Property as a “gun club,” “rod and gun club” or “trap shooting” club only is allowed to continue under Section 130-54(a) of the Town Zoning Ordinance as a pre-existing non-conforming use; (ii) the current activities consisting of the racing of motorized vehicles or ATVs are not encompassed within the Falcon Club’s preexisting non-conforming uses and thus are not permitted to continue; (iii) the Drag Race/Grass Race Club use is a new business use and thus not a permitted use in the AR-2 zoning district; and (iv) the Falcon Club use and the Drag Race/Grass Race Club use are two separate uses of the Property in violation of Section 130-9(A) of the Town Zoning Ordinance.

42. The Building Inspector’s issuance of the Notice of Violation is affirmed, and the Appeal is denied in its entirety.

Chairman Grasso asked the Board Members if they had any questions regarding the conclusions that he had just read. There were no questions.

Being there were no questions, Chairman Grasso stated that the last step of the process is the making of the resolution and bringing it to a vote. Chairman Grasso read the proposed resolution.

**RESOLUTION OF THE TOWN OF WHEATLAND  
ZONING BOARD OF APPEALS REGARDING THE  
APPEAL APPLICATION OF TWJ RENTALS, LLC**

WHEREAS, on October 5, 2020, Alan J. Knauf, as agent for TWJ Rentals, LLC d/b/a Falcon Trap and Game Club (the “Applicant”), filed an application (the “Appeal”) with the Zoning Board of Appeals of the Town of Wheatland (the “ZBA”) appealing the determination made by the Town of Wheatland Building Inspector Terry W. Rech (the “Building Inspector”) in: (1) an email dated August 6, 2020; (2) a letter dated August 19, 2020; and (3) the Notice of Violation – Order of Remedy dated August 26, 2020, all regarding the Applicant and its activity on 369 Lime Rock Road in the Town of Wheatland (the “Property”); and

WHEREAS, pursuant to the Appeal, the Applicant requests that the ZBA reverse the Building Inspector’s determinations and rule that the current activities at the Property are encompassed within the Applicant’s preexisting non-conforming uses; and

WHEREAS, on February 2, 2021, March 2, 2021, and April 6, 2021, the ZBA held regular meetings, which were duly noticed and published as required by law; and

WHEREAS, on March 2, 2021 and continued on April 6, 2021, the ZBA held a properly noticed public hearing with respect to the Appeal, and during the public hearing the Applicant, the Building Inspector, and all other appellants/residents/members of the public desiring to speak on the Appeal were given an opportunity to be heard and were heard, and also submitted affidavits, correspondence, memoranda, photographs, videos, PowerPoint presentations, and other documents for the ZBA’s consideration, and all those materials were considered by the ZBA as part of the administrative record for the Appeal; and

WHEREAS, on April 6, 2021, the ZBA closed the public hearing and tabled the Appeal pending deliberations by the ZBA; and

WHEREAS, on May 4, 2021, the ZBA commenced deliberations with respect to the Appeal and continued its deliberations at its special meeting on May 25, 2021 and June 1, 2021, which meetings were duly noticed and published as required by law.



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NOW, THEREFORE, BE IT RESOLVED, that each of the Whereas Clauses in this Resolution are incorporated by reference as specific findings of this Resolution and shall have the same effect as the other findings herein, and be it further

RESOLVED, that after duly considering all the evidence before it, the ZBA in all respects accepts, approves, adopts, and confirms the Findings set forth as Attachment A, which Findings are incorporated herein in their entirety as if more fully set forth herein; and be it further

RESOLVED, in accordance with the records, proceedings, and Findings set forth as Attachment A, the ZBA affirms the Building Inspector's determinations and issuance of the Notice of Violation–Order of Remedy; and be it further

RESOLVED, in accordance with the records, proceedings, and Findings set forth as Attachment A, the Appeal is denied.

Chairman Grasso asked the Board Members if they had any questions. There were no questions from the Board.

Board Member, Bob Hatch made a motion that the Board Members approve the resolution as stated. Board Member, Joe Burns seconded the motion. The vote was as follows:

Laura Michaels	-	Aye
Joe Burns	-	Aye
Mike Grasso	-	Aye
Robert Hatch	-	Aye
Kane Gascon	-	Aye

All members voting in favor, the motion has been carried.

There being no further business, Robert Hatch made a motion to adjourn. Joe Burns seconded the motion. The vote was unanimous. The meeting was adjourned at 7:20 P.M.

Respectfully submitted,

*Lisa J. Bates*

Lisa J. Bates  
Recording Secretary

**Meeting Minutes  
Town of Wheatland  
Zoning Board of Appeals  
October 5, 2021**

The Zoning Board of Appeals of the Town of Wheatland held a meeting on Tuesday October 5, 2021, at 7:00 P.M. in the Wheatland Municipal Building, 22 Main Street, Scottsville, NY.

Mike Grasso, Chairman, called the meeting to order at 7:00 P.M and roll was taken.

**Board Members**

**Present:** Mike Grasso, Robert Hatch, Joe Burns  
Laura Michaels, Tim Steves, Kane Gascon

**Absent:**

**Others Present:**

Ed Shero, Town Board Liaison  
Terry Rech, Building Inspector

**First order of Business:**

Chairman Grasso asked for a motion to accept the Minutes of the June 1, 2021, meeting. The meeting minutes were approved as submitted. Joe Burns made such a motion; Kane Gascon seconded the motion. The vote was as follows:

Laura Michaels -	Aye
Joe Burns -	Aye
Kane Gascon -	Aye
Mike Grasso -	Aye
Robert Hatch -	Aye
Tim Steves -	Abstain

All members voting in favor, the motion was carried.

**Second Order of Business:**

The application of Jonathan Peralta of 58 Blue Pond Manor to seek an area variance of Sections 130-9.A, 130-10, and 130-23.B.(2) of the Code of the Town of Wheatland to allow and construct an accessory structure that does not comply with the required front and side setbacks in an AR-2 residential zoning district. Tax ID # 185.19-1-22.

The applicant, Jonathan Peralta presented and discussed several reasons driving the need for this area variance application:

- Mr. Peralta stated he is requesting to build an accessory structure that does not comply with the required front and side setbacks in an AR-2 Residential Zoning District.
- The Town Building Code along with the DEC have created requirements to protect Blue Pond. This created a situation where the placement of an 8' x 10' shed is not feasible. The shed can not be placed further than the rear of the home structure to meet DEC requirements therefore the shed must be closer than 75' from the street and the property is less than 50' wide, therefore cannot be 20' from the neighboring properties.
- Mr. Peralta stated that the request will not create a negative effect to the neighborhood or neighboring properties, many of the homes in the area have sheds or garages in the same locations on their properties.

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- This will not have any effect on the environment. The shed will be a non-permanent structure on a gravel pad, anchored on two opposing corners. It will also be far enough from the pond to have no effect on the water shed.
- Mr. Peralta stated that the proposed location is the only place for the shed.

Chairman Grasso asked Terry Rech, Building Inspector if he had anything to add to this area variance request. Terry stated that “it is Blue Pond”, (many of these requests come through and need to go through this variance process).

Chairman Grasso asked the Board Members if they have any questions. Board Member Tim Steves asked how high the shed was going to be. Mr. Peralta did not have the height measurements on hand but stated there is not a second floor but there is crawl space.

With no further questions from the Board the floor was opened for public comment at 7:14 P.M.

Mr. Gary Hultz of 43 Blue Pond stated that he has some concerns as to where the shed will be placed. The lots are small, and the road is a single lane road. Other cottages do have sheds on their properties, but he would like to state that the septic systems have failed on many properties. Once Mr. Hultz realized the placement of the shed on the Peralta’s property, he was relieved and did not have any further questions or concerns.

There being no further comments, public comment was closed at 7:25 P.M.

The Board members considered and discussed the details and effects of the requested variance.

The Town of Wheatland Zoning Board of Appeals as authorized under Wheatland Town Code Section 130-66, after careful consideration and review of the evidence presented and having heard all the facts hereby, approves with conditions the application of Jonathan Peralta. This motion was based upon the following finding of facts:

- 1) The granting of this area variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, demonstrated by: many of the properties in the neighborhood have similar variances for accessory structures.
- 2) The benefit sought by the applicant can not be achieved by some method, feasible for the applicant to pursue, other than an area variance, as shown by: lot is too small to make structure meet setbacks.
- 3) The requested area variance is substantial as evidenced by: only a 6’ setback has been requested where 25’ is the minimum. Roughly 70% + reduction in minimum.
- 4) The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district as shown by: this is a small structure, requiring no or minimal excavation.
- 5) And that the condition has not been self-created, as shown by: the lot has always been very less than standard size.

Further that this variance is subject to the following condition: the shed is placed no closer than 6’0” to sideline and 29’ to road property line.

Motion to approve the variance was made by Joe Burns and seconded by Tim Steves. The vote was as follows:

Tim Steves	-	Aye
Kane Gascon	-	Aye
Laura Michaels-		Aye
Joe Burns	-	Aye

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Mike Grasso - Aye

All were in favor and the motion was carried.

There being no further business, Tim Steves entertained a motion to adjourn. Kane Gascon seconded the motion. The vote was unanimous. The meeting was adjourned at 7:40 P.M.

Respectfully submitted,

*Lisa J. Bates*

Lisa J. Bates  
Recording Secretary