

Town of Murray
Zoning Board of Appeals
3840 Fancher Road, Holley, NY 14470

MEETING DATE: July 10, 2023

BOARD MEMBERS PRESENT: Eric Collyer - Chair
William Silpoch
David Leach
Adam Moore

BOARD MEMBERS ABSENT: Dan Seeler

CODE ENFORCEMENT OFFICER: Chad Fabry

APPLICANT PRESENT: Theodore Spada

OTHERS IN ATTENDANCE: Bridget O'Toole, Esq. –Heath & O'Toole attorneys
Corey Auerbach, Esq. – Barclay Damon
Ericka Elliott, Esq. – Murray Town Attorney
Cindy Oliver, Dorothy Morgan, Gerald Rightmyer, Michelle Stoll, J. Scott Bringley, Elaine Berg, David Knapp
Amy Machamer, Joe Sidonio, Jeanne Spada, Dirk Lammes, Don Strabel

RE: Code Interpretation No. 2023-01
16067 Telegraph Road
Tax id# 64.-2-26

Pledge of Allegiance

Mr. Silpoch made a motion to start the meeting; Seconded by Mr. Leach. All "Ayes" motion approved.

Mr. Silpoch made a motion to approve the minutes from December 5, 2022; Seconded by Mr. Leach. All "Ayes" motion approved.

Legal Notice that was published in the Batavia Dailey News, June 29, 2023.

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Town of Murray will hold a public hearing on Monday July 10, 2023 at 7:00 P.M. at the Murray Town Hall, 3840 Fancher Road, Holley, New York for a Code Interpretation Application Theodore Spada ("Applicant") 16197 Telegraph Road Holley, NY, tax map parcel 64.-2-20.21. To appeal the decision by Code Enforcement Officer to issue a building permit to 16067 Telegraph Road Holley, NY tax map parcel 64.-2-26. Pursuant to the Town of Murray Zoning Ordinance Section 510; Residential/Agricultural (RA) District Section 512 Permitted Uses. An opportunity for public comment will be provided. A copy of the application and supporting materials is on file and available for inspection at the Murray Town Clerk's office during regular business hours.

Mr. Collyer introduced the board members and the attorneys to all that were present. He then went on to tell each party that they will have 15-20 minutes to present to the board and then we will take public comments.

Mr. Silpoch made a motion to open the public hearing at 7:10pm; Seconded by Mr. Leach. All "Ayes" motion approved.

Ms. O'Toole – submitted a request of interpretation letter to board members

Summary of the presentation by Ms. O'Toole, Esq. represents Mr. & Mrs. Theodore Spada:

- The building permit for a pole barn for which this interpretation is all about, will not be used for farming
- The property zoned (R/A) Residential Agriculture this pole barn is not allowed as an accessory structure with- out a primary structure
- This is not considered a commercial enterprise
- The Agriculture Advisory Committee met last fall and their recommendation was not to approve the building permit unless applicant can show evidence of being engaged in commercial agriculture which has not been done
- The building permit for a pole barn was issued in February 2023
- The building permit was never posted at the location so that is why this Appeal is timely
- Maintaining trails and mowing is not a farm operation
- Not consistent with the Zoning Code and the character here
- Ms. O'Toole read what was allowable in the (R/A) Residential Agricultural zoning district from the Murray's Zoning Ordinance
- Granting this building permit is inconsistent with denial of other applications and creates a double standard and inconsistent precedent

Presentation by Mr. Spada:

- **Power point presentation attached**

Summary of the presentation by Mr. Auerbach, Esq. represents Mr. Scott Bringley:

- Under NYS Town Law §267-a (5) (b) an administrative appeal to the ZBA "shall be taken within 60 days after the filing of any order, requirement, decision, interpretation or determination of the administrative official.
- Building Permit was issued on February 16, 2023 and the appellants had until April 17, 2023 to appeal
- Appeal was filed June 1, 2023 45 days after expiration of the limitations period
- Appellant was intimately involved in proceedings surrounding owner's building permit application
- Failure to appeal within 60 days also mandates that the application be dismissed
- Appeal must be denied, the Pole barn is part of a "Farm Operation ", expressly permitted
- NY law requires the ZBA to construe the zoning law in a light favorable to the Owner
- NYS Ag and Markets encourages municipalities to allow "start-up" operations at least 2 years to achieve production, includes crops and apiaries.
- Town of Murray "Right to Farm Law" specifically recognizes Farm Operations, whether they are operated for profit or otherwise

- NYS “Right to Farm Laws” were expanded to expressly include “apiaries” and other beekeeping operations
- Agricultural Advisory Committee documents requested:
 - *Legal farm business entity has been formed*
 - *Equipment purchased with copy of receipt*
 - *US Dept. of Agriculture Farm Operating Plan prepared*
 - *Farm Service Agency registration completed*
 - *Portion of property being actively farmed and has been leased specifically for “crop farming and/or agricultural purposes*
 - *Owner filed application to be included in Orleans County Agricultural District 1*
- The Town has previously recognized an apiary and contributing structures as a permissible use at 3924 Hulberton Road also zoned (R/A) Residential Agriculture Zoning District in 2018
- The Pole barn need only contribute to the production of corn or apiary products
- The proposed pole barn is undeniably a building that contributes to the production, preparation and marketing of crops as a commercial enterprise, Building Permit No. B-08-23 was properly issued and the Appeal must be dismissed.

Mr. Collyer asked the Code Officer about building permits and the size of a structure.

Mr. Fabry responded with anything smaller than 144 sq. ft. does not require a building permit and it's unusual to require a farm building to have a permit. I think it may have been an administrative move usually farm buildings are permitted by right.

Public Comments:

Jeanne Spada – my concern is that we are only asking about the local law and that local law states you must have a primary structure before an accessory structure. We are not talking about farming, ag or his hobbies or the organizations he has joined. We're asking for the law interpretation right on the line where it says you must have a primary structure first. They do this so we have a residential community and we are not putting stuff up all over the place where people are doing what they are doing out of it. We are not Pittsford but we are not West Virginia either. Yes, this is our house and do we want buildings up all around us, no we don't cause it's a community it's a residential area and it's just not right. The local law states you have to have a primary doesn't say anything about agriculture nothing. The Right to Farm means you have the right to farm because you can get up on a Sunday morning start up your tractor and your neighbor can't say “you woke me up” you have the right to farm it doesn't mean you can go to any land you want and farm on it. It means you have a right as a farmer. If I went out and got a helicopter license and I put in a helicopter pad, am I ok with that no, I have to follow the law. The Local Law states that you have to have a primary structure.

Mr. Fabry – the Local Law doesn't state that you have to have a Primary structure or an Accessory structure. Zoning is about Use so the Local Law states that you have to have a Primary Use. The Primary and Accessory Uses are defined in code, really the building would be accessory to the Use. If it's a Primary Use it's allowed then a building for that Use is allowed as well. So, let's take it away from farming totally and turn the Primary Use into a campground. A campground doesn't necessarily have structures but that's a Primary Use that's allowed in the Zoning with a Special Permit so you would make an application based on that and then one

would assume with a campground comes structures so none of those structures would be a Primary Use in that instance they would all just be part of a campground which is an allowed use. That is what we are talking about Uses not necessarily structures and whether the structure is necessary for the Use.

Ms. O'Toole – she didn't want to contradict Mr. Fabry but Accessory Structure is defined separately from Accessory Use in the Code.

Mr. Fabry- it might be but doesn't change the fact that any structure that fits a Primary Use is the Primary Structure that's how it works.

Mr. Auerbach- there is a list of Primary Permitted Uses in the R/A zoning district, how do we know what is allowed we go through the list in that list is farm operations, that is one of the principal permitted uses. Then you go to the definition of Farm Operation. He then read the definition for Farm Operation and said it specifically called out for buildings this is not an Accessory Structure to a Principal Structure. The barn is an on-farm building that contributes to the preparation, production and marketing of crops. We have a start-up farm we already have five acres of corn, that will be sold for commercial purposes. I would agree if there was no farm operation here and this was just a small piece of land out there you just couldn't put a barn up there. The fact that this barn contributes to production, preparation and marketing of crops that's what makes this allowed and that what makes this a permitted use. That is why the Code Enforcement Officer after intaking the permit application looked at this code revision and gave a building permit that was the proper thing to do this is a permitted use in this district.

Jeanne Spade – when he first came to the Town for his permit the Code Enforcement Officer told him we do not issue permits for secondary buildings. Mylynda said that she didn't agree with that but the Town doesn't issue them. Our Town has buildings that have been let go, they are single buildings without a house.

Mr. Auerbach – he has no reason to not to accept everything Ms. Spada said was true. What I do know for an absolute fact is that on February 24, 2023 a building permit was issued for this pole barn as a farm operation and that's a fact that can't be disputed.

Dorothy Morgan – is the Chairperson for the Planning Board and Mr. Bringley came in front of us and we all agreed after a lot of discussion that the permit was allowable according to our code. There was no back door favoritism and I very much resent that comment none of us knew Mr. Bringley, none of us said that the building permit was allowable because we were favoring somebody.

Mr. Collyer- questioned if it was the Planning Board that met with Mr. Bringley because he only knew about the Agricultural Advisory Committee.

(There was confusion on if the applicant had come before the Planning Board and after discussing it with the secretary and members of the Planning Board that were present at the Interpretation it was confirmed it was not the Planning Board but the Agricultural Advisory Committee that Ms. Morgan is also a member of.

Ms. Morgan- apologized to the board and wanted the record corrected to state it was the Agricultural Advisory Committee that met with Mr. Bringley. She went on to say that the Agricultural Advisory Committee looked at the code and we made their decision based on the Town Code we did not base it on what someone thought it might be used for. We based it what he wrote on the building permit application stating what he was going to do there was nothing mentioned about deer or food plots it was based on what he told the committee about his bee business. Nothing was mentioned about tax assessments because that was not applicable to the permit and everything was done by studying the Town Code.

Ms. O'Toole – went on to say that is the first she had heard of the application going in front of the Planning Board. The Interpretation belongs to this board and really what we are asking you about is to interpret what a farm operation is and whether or not this qualifies.

Ms. Morgan – wanted to add that she farmed that land in the 70's and 80's and it was over 40 acres.

Mr. Auerbach – stated that New York State would like Municipalities to give start up farms (apiary) at least a 2-year period to get established. At the Agricultural Committee meeting Mr. Bringley stated that he would use this building to contribute to the apiary. That alone is suspicion under the definition that if this building is going to contribute to the production of that. The Ag Committee requested certain documents, who's recommendation is not binding in anyway on this board. They recommended certain documentation and it is all provided in the documentation I gave you, registration of the business, certain other filings which have no relevance to the definition in the Town Code. These documents have been complied with and as this building has been testified that it will contribute to the production of agriculture and the apiary.

Ms. Machamer – The Agricultural Committee discussed that and the members of that committee were Mylynda, myself, Dorothy and Eric. We also had a separate meeting and at that meeting we concluded the following things with the letter we composed and submitted. The conclusion of our committee was that he needed further documentation of being in actual agriculture. The point Ms. Morgan made that everyone said that it was fine is not accurate.

Mr. Collyer – that meeting was in September and the determination was in October.

Mr. Auerbach – Mr. Spada actually objected to the jurisdiction of the Agricultural Advisory Committee in his written testimony. The Agricultural Committee is according to the Town of Murray Right to Farm Law, it is really used to mediate disputes between farmers. The documentation that was asked for at the agriculture meeting has been provided to board members. That leads to decide if New York States recognition of start up farms. The Ag Committee saying you need to show actual production is contrary to NYS Ag & Markets start up farm requirements which reflect that there is a lead up period before an actual farm starts producing, it takes time there are agricultural practices before you actually enjoy it.

Mr. Rightmyer – There actually is precedent with respect to Mr. Bringley's property, there is another piece of property right down the road from me on the Southwest corner of 31 and Hulberton. It has a pole barn and was built in recent past; he also has an apiary and his farm is I believe 49 acres. Pretty much the same situation actually I think Mr. Bringley has more tillable ground that is being leased to farm. So, we have precedent we got another piece of property in the exact same situation.

Ms. Spada – when I believe he came before your Planning board he had six bee hives, is an apiary six?

Mr. Collyer – a commercial apiary is 300 hives, when I went to the FSA office and discussed this it was 300 to 350 it is one of those deals where we got to start producing something. I understand that being in agriculture you understand how involved that is. It's one of those kinds of situations where if you see 3 bee hives, I know you have to start somewhere but 3 and 350 is a huge number and a big difference.

Mr. Auerbach – but the definition in the code does not require that you have 300.

Mr. Spada – one thing on page 74 this is dated and it's a statute 483 Real Property Tax Letter. These are exceptions from taxation structures, buildings essential to the operation agriculture and horticulture. Shall not include structures, buildings used for the production of honey, royal jelly, bee pollen, propolis and beeswax those structures and buildings used for storage of bees. For purposes of this section this shall not include those structures or buildings and portions therefor used for sale of maple syrup or sale of honey and beeswax. The reason why the state does this is because anybody can have bee boxes in their backyard and claim themselves as a farmer, they're not farmers. There is no ag exemption for bees for your buildings it's right there, this is a statute no application or nothing it's a statute of law as it's written. His lawyer is talking about bee operations, forget the bee operations this is the statute.

Mr. Auerbach – Mr. Spada has miss construed the Zoning Board of Appeals for the Board of Assessment this has absolutely nothing to do with tax assessment absolutely nothing what so ever. We are not here asking you for an Ag Exemption this is just a simple determination.

Mr. Spada – this permit was issued as an Ag Exemption, if you look at the permit it's in there.

Mr. Auerbach – Code Enforcement Officers can't give exemptions for taxes.

No further public comments:

Mr. Silpoch made a motion to close the public hearing. Seconded by Mr. Moore; All "Ayes motion approved.

Mr. Collyer asked for a motion to go into executive session.

Ms. O'Toole – this would be a violation of the open meetings law to deliberate this in executive session.

Ms. Elliott – we are not going to deliberate in executive session I've already been very clear about that. There will be no determination made in executive session. The board just has some questions about procedure going forward under Town Law

Mr. Auerbach – for the record don't let me overstep my bounds but you are adjourning for the purposes of conferring with your attorney this is not an executive session, you are seeking legal counsel from your attorneys

Ms. Elliott – it is executive session to go into

Executive Session – 8:05pm – 8:17pm

Mr. Collyer – this board went into executive session to get advisement from our attorney and we did have some questions at this time we are not making a decision tonight this hearing is tabled and we will re-convene at a later date.

Mr. Silpoch made a motion to adjourn the meeting. Seconded by Mr. Collyer; All "Ayes" motion approved.

Respectfully submitted
Diane Herzog, Clerk Zoning Board of Appeals
July 13, 2023

Zoning Board of Appeals Dated: 10 July 2023

- ▶ Application for an Interpretation:
Building Permit B-08-23,
Issued by Mylynda Kuba, Murray Town Code Officer,
on 16 February 2023 to:

- ▶ J. Scott Bringley: 16067 Telegraph Road – No RFD Box
or
410 Lafayette Road
Rochester, NY 14609

- ▶ Applicant: Ted and Jeanne Spada
16197 Telegraph Road
Holley, NY 14470

- ▶ Counsel: Bridget O'Toole, Esq.

Applicants Fraud and Murray CEO's Illegal Double Standard

- ▶ **Wrongful** or criminal deception intended to result in financial or personal gain.
Building Application was **fraudulently** applied for by Mr. Bringley and was **illegally** issued by Ms. Kuba, Murray Town CEO. This was an Ag Exempt to a **NON-Farmer** which resulted in:
 1. No Building permit fee paid
 2. 10 year tax exemption, thus a minimum lost town taxes \$1,700-\$2,000, lost county taxes \$3,600-\$4,000, and lost state taxes \$10,000-\$12,000 on an illegal pole barn, totaling approx. \$16,650 that we the taxpayers would make up.
 3. An illegal pole barn in the town. To be used as hunting camp and outside dumping / storage site.

- ▶ **Exhibit 1:** Mr. Green's letter of thanks to Murray Town CEO's for help developing the Business Case, which was "copied / plagiarized" by Mr. Bringley.

- ▶ A person or thing intended to **Deceive** others, typically by unjustifiably claiming or being **Credited with Accomplishments** or qualities, of being a farmer
 1. On 9/29/2023 at the Ag Advisory Comm. Mr. Bringley stated that he has never filed a Federal Schedule F.
 2. On 9/29/2023 at the Ag Advisory Comm. Mr. Bringley stated that he has never filed a U.S Census of Agriculture.
 3. On 9/29/2023 at the Ag Advisory Comm. Mr. Bringley stated that he has no NYS Private Pesticide Applicator License.
 4. Bld. Permit date 2/16/2023, Mr. Bringley had an operating plan / application dated 9/27/2023 at FSA to be recognized as a farmer.
 5. Per Larry Meyer, Director of the Farm Service Agency Office in Albion, NY on 6/12/2023. An operating plan / application at FSA does not constitute one as a farmer. Ex. Selling vegetables at roadside w/ honey/wax from 2 bee boxes is not farming.
 6. **FARMER Eligibility Requirements:** land must consist of seven acres or more that were used in the preceding two years for the production and sale of crops, livestock, or livestock products. The annual gross sales of ag products must average \$10,000 or more for the preceding two years. Per Ag. Assess. Program / NYS Law **Exhibit 2**
 7. In May 2023 Mr. Bringley had someone plant corn on the 5.7 acre plot where there is now a stoned driveway and stone barn pad, with 2 beehives boxes. **Exhibit 3 and Exhibit 6: THIS IS A DEER FOOD PLOT!!!**

Murray Town CEO's Illegal Double Standard(s)

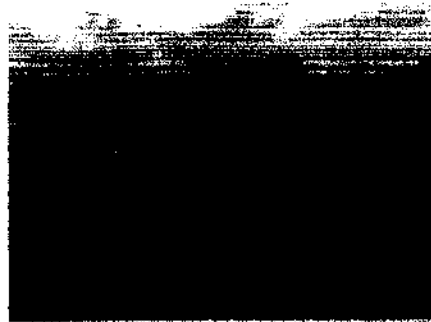
1. In 1978 we were raising beef livestock on Creek Rd. in Murray. We were negotiating the purchasing of more land from William Phillips' for livestock and wanted to build a barn. We were **denied!!** Mr. Bringley was issued the permit for the barn.
2. In 2007 we wanted to erect a second barn for hay storage, we were required to produce our Schedule F with the Murray Town CEO and the Assessors' office and we paid a building permit fee. **Mr. Bringley; No Schedule F and No fee**

Applicants Fraud and Murray CEO's Illegal Double Standards:

- ▶ On 16 February 2023 Building Permit No. B-08-23 was fraudulently applied for by Mr. Bringley and was illegally issued by Ms. Kuba, Murray Town CEO, as an Ag Exempt; No Fee \$. Mr. Bringley previously stated at the AG Committee Meeting on 29 Sept. 2022, he has never filed a Sch. F, a U.S Census of Agriculture, nor has a NYS Pesticide Applicator License. What has changed between Sept. 2022 and February 2023 for a building permit to be issued??
- ▶ "NOTHING", there was no primary structure erected between the aforementioned dates. Further, Mr. Bringley's occupation is a teacher for the Penfield School District, not a farmer, and he resides at 410 Lafayette Road – Rochester, NY 14609
- ▶ In May 2023 Mr. Bringley had someone plant corn on the 2.6 acre plot where there is now a stoned driveway and pad, thus there is 1.95 acres of corn and a 3.78 acre field with corn behind the one shown. For field and forage farming of corn and / or soybeans one would need a minimum capital outlay of \$500,00 for: tractors, tillage equipment, sprayer/applicators, a combine, a wet bin, a dryer, a finished bin, augers, and trucks, and infrastructure! The Return On Investment would be NEVER, Exhibit 5: ROI. This is nothing more than a DEER FOOD PLOT!!! with two boxes. S. Bringley is fraudulently window-dressing himself as a farmer. This is an INSULT to anyone that

Small Farming Operation without a Barn

- ▶ Location: Northwest corner of Rt. 31 and Hulberton Road
 - ▶ Presently raising eight (8) head of cattle on a 4.2 acre section.
 - ▶ Growing alfalfa-timothy, with mixed grasses on a 5.4 acre section.
 - ▶ Harvesting a forage crop with tractor, mower-conditioner, rake, baler and wagon without a barn.
 - ▶ This farming operation is well kept and orderly because the owner resides on the



- ▶ How can this person farm this operation without a barn and Mr. Bringley needs a barn for his bee box operation??

Conclusion: Murray Town CEO's "Return to a Zone of Common Sense"

- ▶ If Murray Town CEO's faithfully followed the zoning laws as enacted:
 - ▶ Primary structure $\geq 1,250$ sq. ft. residence is erected that the pole barn will be ancillary to Zoning Code 510
 - ▶ Or, a commercial farming operation with supporting financials records for two years. Exhibit: 2
 - ▶ (RPT) Real Property Tax Law Section 483, sub 2-d, e; shall not include buildings used for storage of bees or sale of honey or beeswax. Exhibit: 4
- ▶ We would not be here tonight if CEO Ms. Kuba "followed" the zoning laws, thus denying Mr. Bringley's application versus applying the Murray Town CEO's "Double Standard / Backdoor Favoritism".
- ▶ Path forward for the Murray Town CEO's is to faithfully follow and execute the Zoning Laws as legislated by the Town Board. By doing so, this will eliminate the "Double Standard / Backdoor Favoritism" which has existed!
- ▶ Remember, most importantly per the U.S. Constitution's 14th amendment, Section 1; to any person within its jurisdiction the equal protection of the laws. Simply stated, "both Mr. Bringley and Spada's along with future applicants must be treated EQUALLY as the Zoning Laws are written"!!!
- ▶ By doing so, neither Mr. Bringley nor the Spada's civil rights would be violated!!
- ▶ Thus Mr. Bringley's Building Permit Application must be DENIED!!