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Town Manager

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## TOWN OF GREAT BARRINGTON MASSACHUSETTS

### OFFICE OF THE TOWN MANAGER

Selectboard Special Meeting via Zoom and in person at 334 Main Street Great Barrington MA  
Order of Agenda for Monday, April 3, 2023, at 6:00 PM

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/84727797185?pwd=NDFRUjFITE12eDN3bE5LaTNBQ0RmZz09>

Webinar ID: 84727797185

Dial-in, audio-only: (929) 205 6099

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's July 16, 2022 Revised Order extending remote participation by all members in any meeting of a public body, this meeting of the Selectboard will be conducted both in-person and via remote participation to the greatest extent possible. Specific information and the general guidelines for remote participation by members of the public and/or parties with a right and/or requirement to attend this meeting can be found on town's website, at [www.townofgb.org](http://www.townofgb.org). For this meeting, members of the public and committee members may attend the meeting in person, or, for those who wish to do so remotely may by following the instructions at the top of this agenda. For those who are not in-person every effort will be made to ensure that the public can adequately access the proceedings in real time, via technological means.

1. CALL TO ORDER SELECTBOARD REGULAR MEETING
2. SELECTBOARD'S ANNOUNCEMENTS/STATEMENTS
3. TOWN MANAGER'S REPORT
4. PUBLIC HEARINGS
  - a. Continued from March 13<sup>th</sup>, 2023: Special Permit application from Berkshire Aviation Enterprises, Inc., 70 Egremont Plain Road, Great Barrington, to permit the airport in an R4 zone, in accordance with Sections 3.1.4 E(1), 7.2 and 10.4 of the Zoning Bylaw.
    - i. Reopen Public Hearing
    - ii. Selectboard review and discuss draft findings
    - iii. Close Public Hearing
    - iv. Selectboard discussion
    - v. Vote on findings
    - vi. Vote on special permit
5. CITIZEN SPEAK TIME
  - a. *Citizen Speak Time is an opportunity for the Selectboard to listen to residents. Topics of particular concern or importance may be placed on a future agenda for discussion. This time is reserved for town residents only unless otherwise permitted by the chair, and speakers are limited to 3 minutes each.*
6. SELECTBOARD'S TIME

7. MEDIA TIME

8. ADJOURNMENT

NEXT SELECTBOARD MEETING

Selectboard Regular Meeting April 10, 2023

Selectboard Regular Meeting April 24, 2023

Town Meeting Monday May 1 @ 6:00PM

Town Meeting Second Night Thursday May 4 @6:00 PM, if needed



**Mark Pruhenski, Town Manager**

*Pursuant to MGL. 7c. 30A sec. 20 (f), after notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium. At the beginning of the meeting, the chair shall inform other attendees of any such recordings. Any member of the public wishing to speak at the meeting must receive permission of the chair. The listings of agenda items are those reasonably anticipated by the chair, which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may be brought up for discussion to the extent permitted by law.*

## **TOWN OF GREAT BARRINGTON**

### **PUBLIC HEARING**

The Great Barrington Selectboard will hold a public hearing on Monday, February 27, 2023 at 6:00 pm, to act on the Special Permit application from Berkshire Aviation Enterprises, Inc., 70 Egremont Plain Road, Great Barrington, to permit the airport in an R4 zone at 70 Egremont Plain Road, in accordance with Sections 3.1.4 E(1), 7.2 and 10.4 of the Zoning Bylaw. The meeting will be held at Town Hall, 334 Main Street, 2<sup>nd</sup> floor, Great Barrington, MA 01230, and also via Zoom remote video/teleconference. The Zoom link and meeting ID will be listed on the meeting agenda, which is posted to the calendar on the Town website at least 48 hours in advance of the meeting. The application may be viewed in Town Clerk's office or parties may email the Planning Department at [crembold@townofgb.org](mailto:crembold@townofgb.org) for an electronic copy.

Stephen Bannon, Chair

Please publish January 19 and January 26, 2023

Berkshire Eagle

*Continued to March 13*

*Continued to April 3*

**TOWN OF GREAT BARRINGTON**  
Application for a Special Permit  
to the Selectboard or Planning Board

FORM SP-2  
Long Form  
REV. 12-2020

TOWN CLERK  
GREAT BARRINGTON  
JAN 10 2023 PM 3:

**FOR OFFICE USE ONLY**

Number Assigned 932-23 Date Received 1/10/23  
Special Permit Granting Authority SB  
Copy to Recommending Boards 1/12/23  
Advertised 1/19 & 1/26  
Public Hearing 2/22/22  
Fee: \$300.00 Paid: ✓

APPLICATION FOR SPECIAL  
PERMIT UNDER TOWN ZONING  
BYLAWS FOR TOWN OF  
GREAT BARRINGTON,  
MASSACHUSETTS

**IDENTITY OF PROPERTY:** MAP 31 LOT 67 BOOK 280 PAGE 14

Address of property: 70 Egremont Plain Road

Zoning District(s): R4 Two Acre Residential; Water Quality Protection Overlay District  
including any  
overlay districts

**I. GENERAL INFORMATION**

- A. Type of Special Permit Requested: Selectboard Special Permit  
Under Section(s) 3.1.4.E, 7.2 and 10.4 of the Great Barrington Zoning Bylaws.
- B. Name of applicant: Berkshire Aviation Enterprises, Inc.
- C. Address & telephone no. of applicant: 70 Egremont Plain Road, Great Barrington, MA (413) 528-1010
- D. If applicant is not owner, state interest or status of applicant in land. Attach copy of any option or purchase agreement. N/A
- E. Name of owner exactly as it appears on most recent tax bill: Berkshire Aviation Enterprises, Inc.
- F. Address of owner: 70 Egremont Plain Road, Great Barrington, MA
- G. Telephone number of owner: ( 413 ) 528-1010
- H. Is the proposed development served by :  
Public Water System ( ) Yes ( X ) No  
Public Sewer System ( ) Yes ( X ) No
- J. Is an environmental study or document required for this project under state or federal laws?  
( ) Yes ( X ) No If yes, specify type of study and agency requiring it. \_\_\_\_\_
- K. Attach a brief description of proposed use of property, including the existing use of the property, and how the project is in harmony with the Great Barrington Master Plan. (Copies of the Master

Plan are available for free download from the Town website. Hard copies can be read at the Clerk's office or the Town libraries.)

- L. Attach a list of abutters, owners of land directly opposite on any public or private street or way and owners of land within 300 feet of the property line, including bordering towns. The list must be prepared and certified by the Great Barrington Board of Assessors office.
- M. Include information as applicable in Sections II, III, IV, V, VI and VII.
- N. One original and fourteen (14) exact copies of all required documentation must be submitted. One electronic version in PDF format must also be submitted.

## II. PLAN OF PROPERTY

- A. A site plan for the proposed development, drawn to a scale of 1"=40', each page of which shall be titled, dated, numbered and signed by the preparer. If the preparer is an engineer, architect, surveyor or other professional registered in Massachusetts, *each page shall bear his or her professional seal*. This plan shall clearly show the following:
  - 1. Owner and applicant
  - 2. Engineer or Architect
  - 3. Date
  - 4. Scale and north arrow
  - 5. Zoning district (s)
  - 6. Names of adjacent streets
  - 7. All existing lot lines and dimensions
  - 8. Lot size
  - 9. Locations and dimensions of all existing and proposed structures, including additions thereto
  - 10. Number of dwelling units existing and proposed
  - 11. Location and number of parking spaces, with each space numbered
  - 12. Location of driveways and/or access roads with directional arrows as needed
  - 13. Location of all streams, ponds, wetlands, steep slopes, and other significant topographic features of this property
  - 14. Provisions for drainage, watercourses, easements and systems
  - 15. Existing and proposed uses of structures
  - 16. Screening and/or buffer provisions, as well as all other landscaping proposed
  - 17. Site photos as needed to illustrate the existing and proposed conditions
  - 18. Locus map (locating site within the neighborhood and town)
  - 19. Proposed open space or park area(s) if any
  - 20. Such other data as the Planning Board may require
- B. Other requirements (if and as requested by the Planning Board, Conservation Commission, Selectboard, Board of Health or Building Inspector):
  - 1. General characteristics of land under a separate plan at a scale of 1"=100' showing the general characteristics of all lands within 200 feet of the site including structures, parking areas, driveways, pedestrian ways, natural features and existing land uses. Land uses shall be designated by shading the plan with colored pencil and using standard land use colors.
  - 2. Architectural drawings, prepared by a Registered Architect, at a scale sufficient to show the details of the proposed building (s) and signs but not less than 1/8"=1".
  - 3. A separate plan, prepared by a Registered Engineer or Architect, drawn to a scale of 1"=500' which shall clearly show:
    - a. the project site
    - b. location of public and private wells within ½ mile of any lot lines
    - c. Contour lines at 2-foot intervals

- d. Location of wells on the site or within 400 feet of lot lines
- e. Location of wetland area
- 4. Common ownership land/adjacent lots usage.
  - a. A copy of those portions of the Assessors' map(s) showing all contiguous land held in common ownership with the land affected by the special permit, or all contiguous land held in common ownership by the applicant
  - b. Land use of adjacent lots

### III. PUBLIC WATER – WASTE DISPOSAL

- A. Availability of public water
  - 1. Estimate demand.
  - 2. Submit documentation of available water pressure.
- B. Availability of public sewer
  - 1. Estimate daily flow of public sewer.
  - 2. Describe disposal facilities and submit evidence of all necessary state and local approvals.
  - 3. Submit evidence of all required approvals by the Massachusetts Department of Environmental Protection of any proposed wastewater treatment system requiring such approval and of any industrial waste treatment or disposal system

### IV. ENVIRONMENTAL REPORTS

- A. Submit copies of any environmental reports or documents prepared for the project required by State or Federal law or regulations.
- B. Submit copies of all environmental reports required by the Conservation Commission, Planning Board, Board of Health or any other local board or official.
- C. Description of open space or park(s) if any
  - 1. Letter to the Town of Great Barrington offering open land to the Town, *or*
  - 2. Document showing terms of permanent covenant of open space.
- D. Hazardous Materials
  - 1. A complete list of all materials, pesticides, fuels and toxic or hazardous materials to be used or stored on the premises. Generic names should be supplied as listed in the Massachusetts Department of Protection's Hazardous Waste Regulations (310 CMR 30.000) and, where applicable, the Industry and EPA Hazardous Waste Number should be supplied. The list should be accompanied by a description of measures proposed to protect from vandalism, corrosion, leakage and for control of spills.
  - 2. A description of possible toxic or hazardous wastes to be generated indicating storage and disposal method.

### V. PLANNED PHASING

Planned phasing, if project is to be constructed in more than one phase. For multi-family dwellings, cluster residential development and single family attached dwellings, the design of roadways, access roads, sidewalks, common drives, and utilities shall generally conform to the standards set forth in the Rules and Regulations Governing Subdivision of Land in the Town of Great Barrington; regardless of whether the development is a subdivision within the legal definition.

### VI. IMPERVIOUS SURFACES

Description of the extent of impervious surfaces, of provisions for collecting surface runoff and of provisions for on-site recharge and removal of contaminants.

**VII. GROUNDWATER**


Except for those uses applying for a special permit solely for excavating or drilling, a Groundwater Quality Certification, prepared by a Massachusetts Registered Professional Engineer, experienced in hazardous waste disposal, groundwater evaluation or hydrogeology may be required. Said Groundwater Quality Certification shall state that: "as a result of the project, the groundwater quality at the boundary of the premises, resulting from on-site waste disposal, other on-site operations, natural recharge and background water quality,

- a. will not fall below the standards established by the DEP in "Drinking Water Standards in Massachusetts", or
- b. Where existing groundwater quality is already below those standards, will not be further degraded."

Date: December 27, 2022

  
Owner Signature

\_\_\_\_\_  
Co-owner Signature

  
Applicant's Signature

**SPECIFICS:**

1. All site plans and specifications must be signed and dated by the preparer.
2. **ALL OWNERS** of property must sign the application
3. A copy of the special permit procedures is available upon request.
4. Fee for application is \$300.00 to cover the cost of the public hearing notices and notification to parties in interest.
5. Once all the necessary papers, maps, etc. as indicated above are correlated into fourteen sets, **call the Town Planner's office at 413-528-1619 ext. 7 to arrange an appointment to file your application.** The application will be reviewed for completeness and a date for a public hearing before the Granting Authority will be scheduled. Meetings before the recommending Boards such as the Planning Board, Conservation Commission and Board of Health will also be arranged at this time.

**PLEASE READ AND SIGN BELOW**

ALL COSTS INCURRED BY THE TOWN FOR THE EMPLOYMENT OF EXPERTS OR CONSULTANTS REQUIRED BY ANY TOWN BOARD FOR THE PURPOSE OF ANALYZING OR EVALUATING ANY PROJECT THAT IS A SUBJECT OF A SPECIAL PERMIT APPLICATION SHALL BE ASSESSED TO THE APPLICANT AND SHALL CONSTITUTE PART OF THE APPLICATION FEE. A COPY OF THIS REGULATION SHALL BE PROVIDED TO EACH APPLICANT WHO SHALL SUBMIT WITH HIS APPLICATION A SIGNED STATEMENT THAT HE HAS READ THIS REGULATION AND AGREES TO BE BOUND BY IT.

I have read the above regulation and agree to be bound by it.

Applicant's Signature 

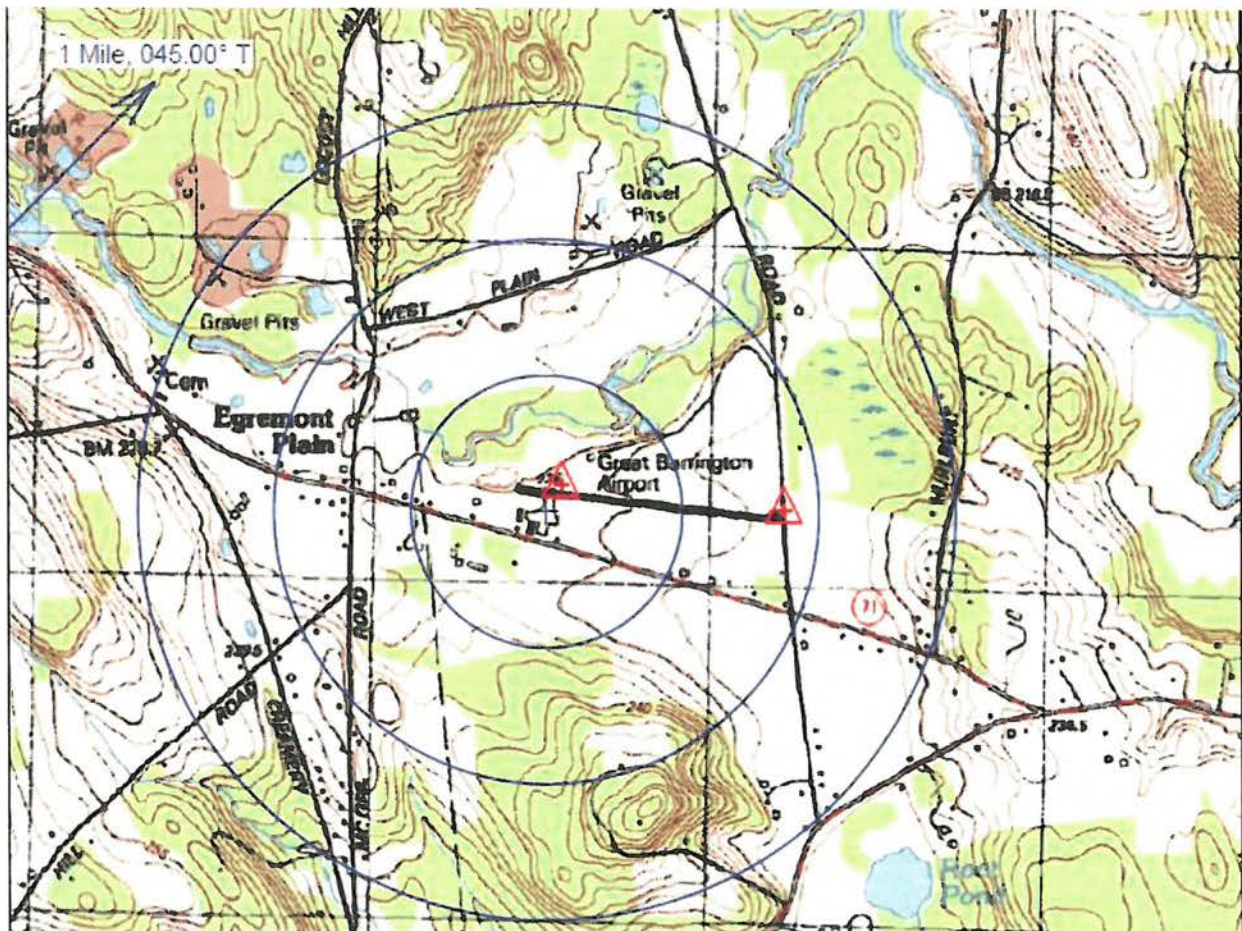
Date December 27, 2022

## ADDENDUM TO APPLICATION FOR A SPECIAL PERMIT TO THE SELECTBOARD

Berkshire Aviation Enterprises, Inc., Owner and Applicant  
70 Egremont Plain Road, Great Barrington, Massachusetts (Assessors Map 31, Lot 67)

The Applicant is the owner of multiple parcels of land comprising approximately 92.5 acres of land (collectively, the “Property”) known as Walter J. Koladza Airport a/k/a Great Barrington Airport (the “Airport”), which is located in the R4 Two Acre Residential Zoning District within the Water Quality Protection Overlay District.

**Figure 1. Locus Map**



The Property has approximately 1,140 feet of frontage on Egremont Plain Road and approximately 1,971 feet of frontage on Seekonk Cross Road. There are four structures located on the Property – 1. office, flight school and operations building; 2. hangar; 3. hangar shop; and 4. “old hangar” – as well as a paved taxiway, grass taxiway, aircraft parking area; two aircraft parking “tie down” areas, and a gravel parking lot for automobiles. See the



enclosed site plan prepared by James M. Scalise II, a licensed engineer, titled “Existing Conditions Plan Prepared For: Great Barrington Airport Located at Egremont Plain Road, Great Barrington, Massachusetts” dated January 17, 2020, as revised August 4, 2020, August 18, 2020, and October 13, 2020, by S-K Design Group, Inc., Civil Engineers Surveyors Consultants, 2 Federico Drive, Pittsfield, MA 01201.

Public Utilities: The Property does not utilize public utilities- it is serviced by a private drinking water well and onsite sewage disposal system.

Environmental Reports: The Application does not involve new construction. Therefore, no environmental reports are required.

Planned Phasing: There is no planned phasing in connection with the Application.

Impervious Surface: The Application contemplates no change to the impervious surface located at the Property.

Groundwater Analysis: There is no change contemplated with respect to the Property. Therefore, a groundwater analysis is not required.

Community Master Plan - Town of Great Barrington: The Airport is in harmony with the Town of Great Barrington Community Master Plan (the “Master Plan”) because it “...combines the best aspects of rural living with amenities and services of an urban community.” (Community Master Plan, Volume 1, Land Use, P. 18) The Airport also promotes the core initiatives of the Master Plan by protecting “the special places and features- our compact village centers, historic treasures, natural resources, farms, and open space – that contribute to Great Barrington’s distinctive character.” and supporting “technology, land use and development practices, public transportation and infrastructure that reduce reliance on fossil fuels, enhance our economic base, and promote connectivity.” (Community Master Plan, Volume 1, Core Initiatives, PP 4-5)

The Property has been used continuously as an airport since at least September, 1931. (See “*Great Barrington Great Town Great History*” by Bernard A. Shaw, 1999, PP 606-608, with a citation to “*Airport dedication in Great Barrington draws 6500 during three days,*” *Berkshire Evening Eagle*, 8 September 1931). Zoning was first enacted in Great Barrington on March 31, 1932. Moreover, in his opinion dated March 23, 2022, in connection with a request for opinion regarding an application for site plan approval submitted by the Applicant on January 21, 2022, Town Counsel, David J. Doneski, Esq., notes that “a 2017 special permit decision of the Zoning Board of Appeals (Decision No 867-16), on an application to build a deck at the rear of the existing office building, stated: ‘The Board unanimously agreed that the Airport was a legal pre-existing nonconforming property.’” (See **Exhibit A**) Therefore, based on the information set forth herein, pursuant to M.G.L. ch. 40A, § 6, ¶ 1, the use of the Property as an Aviation Field is a nonconforming use, which is protected by law.

In order to address the legal status of the Airport and address historical concerns about potential expansion of the Airport, the Applicant requests a special permit pursuant to Section 3.1.4.E(1) of the Town of Great Barrington Zoning Bylaw (the “Zoning Bylaw”) establishing Aviation Field as a legal use at the Property. To be clear, this Application contemplates the continued existence of the Airport as currently constituted – the Applicant does not propose any new construction or other expansion of the current nonconforming use.

To the contrary, in connection with the Application, the Applicant proposes that the following conditions be placed on the Special Permit, none of which are currently required pursuant to the Airport’s current nonconforming status:

1. Hours of Operation:
  - a. During fall, winter and spring, there shall be no continuous takeoffs and landings after 8:00 pm.
  - b. During summer, there shall be no continuous takeoffs and landings after 7:00 pm, unless unusual circumstances, such as a new student solo flight, are present.
  - c. There shall be no unnecessary aircraft “run-ups” before 8:00 am.
  - d. On Sundays, there shall be no continuous student takeoffs and landings before 9:00 am.
2. There shall be no helicopter flight school operated at the Property.
3. With respect to “Blackhawk” helicopters, the Airport shall use its best efforts to work with the United States Army to limited training activity at the Airport (the Airport has no control over current training activity).
4. There shall be no glider aircraft activity, except in extraordinary circumstances.
5. No jet aircraft greater than 6,000 pounds ramp weight shall use the Airport, except in the event of an emergency.
6. Parking shall only be allowed in Airport parking lots.

## **Special Districts**

Flood Plain Overlay District (FPOD): Section 9.1.5 of the Zoning Bylaw consists of the following:

**9.1.5 Special Permit Required.** Any person desiring to establish any permitted use in a FPOD involving or requiring the erection of new structures and/or alteration or moving of existing structures or dumping, filling, transfer, relocation or excavation of earth materials or storage of materials or equipment, or parking of recreational vehicles, shall submit an application for a special permit to the Special Permit Granting Authority (SPGA) in accordance with the provisions of Section 10.4. The Selectboard shall be the SPGA for floodplain special permits.

The floodplain associated with the Property is located along the Green River as shown in Figure 2. The Application does not involve any of the activities requiring a special permit under Section 9.1.5 of the Zoning Bylaw. Therefore, a FPOD special permit is not required.

Water Quality Protection Overlay District (WQPOD):

Section 9.2.11 (Nonconforming Uses) of the Zoning Bylaw provides, in pertinent part: “Continuation of a legally preexisting nonconforming use shall be allowed, provided that: 1. The nonconformity is not increased or expanded...” **The Application does not involve increasing or expanding the nonconformity. Therefore, the existing nonconforming use is allowed in the WQPOD.**

Section 9.2.12 (Uses and Activities Requiring a Special Permit) consists of the following:

**9.2.12 Uses and Activities Requiring a Special Permit.** The following uses and activities are permitted only upon the issuance of a special permit by the Selectboard under such conditions as it may require:

1. Enlargement or alteration of existing uses that do not conform to the WQPOD;
2. Those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use, permitted in the underlying zoning district (except as prohibited hereunder). Such activities shall require a special permit to prevent contamination of groundwater;
3. Any use that will render impervious more than 15% of any lot or parcel or 2,500 square feet, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For nonresidential uses, recharge shall be by stormwater infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all nonresidential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner. Special permits for nonresidential uses as described in this subsection are not allowed in the Surface Water Source Protection Zones A and B.

The Application does not involve any enlargement or alteration of existing uses that do not conform to the WQPOD. In addition, the handling of handling of toxic or hazardous materials at the Property is exempt from the provisions of Section 9.2.12.2 pursuant to the provisions of Section 9.2.8(4)a. because the Airport is a very small quantity generator pursuant to 310 CMR 30.00. Finally, the Application does not involve any change to the impervious area of the Property.

## Special Permit Criteria

Pursuant to the Zoning Bylaw, the criteria for granting of a Special Permit for an Aviation Field are set forth in Sections 7.2 and 10.4 of the Zoning Bylaw.

Section 7.2 of the Zoning Bylaw consists of the following:

### 7.2 AVIATION FIELDS

**7.2.1 General.** Any aviation field, public or private, with essential accessories, shall comply with the following special requirements:

1. It shall be so located that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic or other objectionable condition.

2. In accordance with Chapter 90 of the Massachusetts General Laws, as amended by Section 35B, no person shall erect or add to the height of any structure within a rectangular area lying 1,500 feet on either side of the extended center line of a runway or landing strip of an airport approved by the Commission for a distance of two miles from the end of such runway or landing strip so that the height thereof will be more than 150 feet above the level of such runway or landing strip, nor, within that portion of such area which is within a distance of 3,000 feet from the end of such runway or landing strip, so that the height thereof will be greater than a height above the level of such runway or landing strip determined by the ratio of one foot vertically to every 20 feet horizontally measured from the end of such runway or landing strip, unless a permit therefore (sic) has been granted by the Commission (Massachusetts Aeronautics Commission).

**7.2.2 Exemption.** The provisions of this Subsection shall not apply to structures which will be 30 feet or less in height above ground.

The Airport, as a public use airport, is exempted by Massachusetts General Laws, Chapter 90, Section 39B, ¶ 5 from Section 7.2 of the Zoning Bylaw because Section 7.2 has not been approved by the Aeronautics Division of the Massachusetts Department of Transportation.

G.L, c. 90, § 39B, ¶ 5 provides as follows:

A city or town in which is situated the whole or any portion of an airport or restricted landing area owned by a person may, as to so much thereof as is located within its boundaries, make and enforce rules and regulations relative to the use and operation of aircraft on said airport or restricted landing area. Such rules and regulations, ordinances or by-laws shall be submitted to the commission and shall not take effect until approved by the commission.

G.L. c. 90, § 35 sets forth the following definitions:

The following words and phrases used in sections thirty-five to fifty-two, inclusive, shall have the following meanings, unless a different meaning is clearly apparent from the language or context, or unless such construction is inconsistent with the manifest intention of the general court:-- ...

(e) "Airport", any area of land or water other than a restricted landing area, which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

(f) "Restricted landing area", any area of land or water other than an airport which is used, or is made available, for the landing and take-off of aircraft; provided, that the use of such an area may be restricted from time to time by the commission.

In the case of *Roma III Ltd vs Board of Appeals of Rockport*, 478 Mass. 580, 592 n. 9 (2018) the Massachusetts Supreme Judicial Court held that while a "noncommercial private restricted landing area" is not exempted from local zoning by G.L. c. 90, § 39B, the Court stated as follows in n. 9 (bold face type added for emphasis) referring to Aeronautics Division of the Massachusetts Department of Transportation:

**Nothing in this opinion is intended to disturb** either the notice and safety requirements for noncommercial private restricted landing areas mandated under G. L. c. 90, § 39B, fourth par., or **the continuing authority of the division under the aeronautics code over aircraft landing areas that do not fall within the narrow definition of a noncommercial private restricted landing area.**

Further, 702 C.M.R. 2.01(1) sets forth the following definition (bold face typed added for emphasis):

As used in 702 CMR, the following words shall have the meanings set forth in 702 CMR 2.01, unless otherwise required in 702 CMR 2.00. ...

Private Restricted Landing Area. A landing area that is used **solely** for non-commercial, **private use by the owner or lessee of the landing area.**

The fact that Section 7.2 of the Zoning Bylaw predates M.G.L., c. 90 § 39B does not change this analysis.

The case of *Pearson v. Town of Plymouth*, 44 Mass. App. Ct. 741, 741-742 (1998) involved a town by-law that was approved by the Town of Plymouth, Massachusetts Town Meeting in 1977 which provided that no float planes could operate from or upon any pond in Plymouth, except upon an emergency basis. In 1980 a provision was added to G.L. c. 131, § 45 providing that local rules or regulations affecting the use and operation of float planes on great

ponds partially or completely located within the boundaries of such municipality “shall first be approved by the Massachusetts aeronautics commission [the commission].” The Town of Plymouth argued that, despite the new provision added to G.L. c. 131, § 45, the by-law prohibiting float planes continued to be valid because the new provision could not be enforced retroactively.

The Appeals Court in *Pearson* provided, in pertinent part:

“Even if we were to characterize the relief sought as “retroactive” because it attacks the present validity of the previously valid by-law, we would not regard the nullification of the by-law as impermissibly retroactive. The proviso, for the reasons described below, is “remedial in a broad sense,” *Welch v. Mayor of Taunton*, 343 Mass. 485, 488, 179 N.E.2d 890 (1962), and that legislative purpose, coupled with the absence of any adverse effect on the previous exercise of a vested right, permits its retroactive application. *Ibid*. The complaint seeks only a declaration that the town may not henceforth enforce the by-law; the plaintiff does not seek relief from a fine or penalty for the previous exercise of a presumed vested right.

The sole issue in this case as it relates to Section 7.2 of the Zoning Bylaw is whether Section 7.2, which has not been approved by the Aeronautics Division, is enforceable against the Airport. Under the cases cited herein (and several others), the answer is simply “no.”

Therefore, in considering the Application, the Selectboard cannot and should not consider the criteria set forth in Section 7.2 of the Zoning Bylaw.

Section 10.4.2 of the Zoning Bylaw consists of the following:

**10.4.2 Criteria.** Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this Bylaw, the determination shall include consideration of each of the following:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;

5. Impacts on the natural environment; and

6. Potential fiscal impact, including impact on town services, tax base, and employment.

1. Social, economic, or community needs which are served by the proposal: The Airport has been operating as an Aviation Field since at least September, 1931. The Airport currently serves Great Barrington and surrounding communities by providing a community general aviation airport in furtherance of the Commonwealth of Massachusetts' goal of advancement of aeronautics in the Commonwealth. The Airport provides a landing area for emergency medical transportation aircraft. The Airport operates a flight school which provides educational opportunities and career advancement to the citizens of Great Barrington, Berkshire County, and beyond. The Airport regularly attracts visitors to Great Barrington, which, in turn, has a positive economic impact on the Town of Great Barrington. In addition, the Airport provides employment to the citizens of Great Barrington and surrounding communities.
2. Traffic flow and safety, including parking and loading: The Airport is a very low traffic generator. The Airport provides adequate off-street parking. There will be no change to traffic flow and safety or parking and loading.
3. Adequacy of utilities and other public services: The Airport does not utilize public utilities. The Property is serviced by a private drinking water well and septic system, both of which are sufficient for the Airport's current needs, as well as its needs for the foreseeable future.
4. Neighborhood character and social structures: As previously stated the Airport has been operating as an Aviation Field since at least September, 1931. Therefore, much of the neighborhood has "grown up" around the Airport. Surrounding uses include residential and agricultural. The conditions proposed by the Applicant set forth herein will improve the neighborhood character and social structure.
5. Impacts on the natural environment: Grant of a special permit will have no additional impacts on the natural environment.
6. Potential fiscal impact, including impact on town services, tax base, and employment: There will be no adverse fiscal impact or other impact on town services if the special permit is granted. To the contrary, granting the special permit will ensure that the current employees of the Airport remain employed and the fiscal benefits currently enjoyed by the Town of Great Barrington, including, without limitation, real estate tax receipts and tourist dollars, as a result of the Airport's operations continue.

**By submitting this special permit application and seeking issuance of a special permit, Berkshire Aviation Holdings, Inc. and Berkshire Aviation Enterprises, LLC, are not waiving any of their rights, including, without limitation, their rights under M.G.L. c. 90, § 39B, ¶ 5 and their rights as Defendants-Intervenors and Counterclaim Plaintiffs in the pending Land Court case of Holly Hamer, Marc Fasteau and Anne Fredericks vs. Zoning Board of Appeals of the Town of Great Barrington, No. 22 MISC 000244 (GHP). All such rights are hereby expressly reserved. This application is submitted in the hope of reaching a settlement of outstanding zoning issues concerning the Airport, thereby avoiding the need for Great Barrington taxpayers, the Application, and the three Land Court plaintiffs to spend many thousands of dollars in litigation that may take years to reach a final resolution.**









Figure 2

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT OnLine. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps, check the FEMA Flood Map Store at [www.msc.fema.gov](http://www.msc.fema.gov)

EXHIBIT A

David J. Doneski Opinion

Dated: March 23, 2022



*The Leader in Public Sector Law*

T: 617.556.0007 F: 617.654.1735

101 Arch Street, 12<sup>th</sup> Floor, Boston, MA 02110

***By Electronic Mail***

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To: Planning Board  
cc: Town Manager

From: David J. Doneski

Re: Application of Berkshire Aviation Enterprises, Inc.  
for Site Plan Approval, 70 Egremont Plain Road

Date: March 23, 2022

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You have requested an opinion regarding the site plan approval application of Berkshire Aviation Enterprises, Inc. (BAE), submitted on January 21, 2022. The application describes BAE's proposed demolition of the existing office building at its airport property at 70 Egremont Plain Road and construction of a new building in its place, on the same footprint. You have asked whether nonconforming use issues, as presented in the February 23, 2022 letter to the Planning Board from Attorney Thaddeus Heuer on behalf of certain Seekonk Cross Road residents, make the site plan ineligible for approval. In my opinion, for the reasons stated below, the Planning Board may act on the application and approve the site plan if it finds that the plan complies with the standards for approval in Section 10.5 of the Zoning Bylaw.

Section 10.5 of the Zoning Bylaw sets forth the requirements and procedures for "Site Plan Review." Subsection 10.5.1, Applicability, states as follows:

The following types of activities and uses require site plan review by the Planning Board:

1. Construction, exterior alteration or exterior expansion of, or change of use within, a municipal, institutional, commercial, industrial, or multi-family structure;
2. Construction or expansion of a parking lot for a municipal, institutional, commercial, industrial, or multi-family structure or purpose involving more than 6 spaces; . . .

BAE's application acknowledges that the proposed demolition and reconstruction will involve each of these two activities.

Memorandum to Planning Board, March 23, 2022

Subsection 10.5.5, Approval, states:

Site Plan approval shall be granted upon determination by the Board that the plan meets the following objectives. (emphasis supplied) The Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations.

Subsection 10.5.5 continues: "New building construction or other site alterations shall be designed with consideration of the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, in order to:" It then lists six sets of development impacts that are to be "minimize[d]," including cutting and filling, obstruction of scenic views, visual intrusion, and contamination of groundwater; together with a set of design elements that should be "maximize[d]," accessibility, and pedestrian and vehicular safety. A final standard to be met is stated as "8. Ensure compliance with the provisions of this Zoning Bylaw, including parking and landscaping."

In my view, the eight criteria in subsection 10.5.5 relate, by their terms, to physical and development standards that construction or site alterations must meet. The criteria are applicable to "design" of building construction and site alterations.

On the issue of nonconforming use raised in the letter of opposition, there are numerous cases addressing rights and restrictions applicable to non-conforming uses under both the state Zoning Act, G.L. c. 40A, and local zoning bylaws and ordinances. In my view, it is not necessary to include here an extensive discussion on the applicable principles from those cases. Instead, I would direct your attention to three points from the case law:

- 1) The Rockport bylaw that was challenged in the Berliner v. Feldman case cited in the letter provided that "[a]ny lawful building or structure or use of a building, structure, or premises existing at the time this by-law is adopted, even if not in conformity with its provisions, may be continued [and may be] rebuilt if damaged or destroyed," subject to certain conditions, including board of appeals approval for enlargement. The Supreme Judicial Court found that the bylaw was valid, and included the following statement in its decision: "there is no statutory prohibition against a zoning provision which grants special rights to the owner of a preexisting nonconforming use to rebuild a structure which has been destroyed by catastrophe." 363 Mass. at 770.
- 2) In the case of Welch-Filippino v. Zoning Board of Appeals of Newburyport, 86 Mass. App. Ct. 258 (2014), a decision dealing with an appeal of a special permit (under the zoning ordinance) for replacement of a dimensionally conforming structure for a nonconforming nursing home use with a new facility, the Appeals Court stated the following:

Memorandum to Planning Board, March 23, 2022

*Berliner* did not involve the grandfathering protection afforded to a preexisting nonconforming use under G.L. c. 40A, § 6. Rather, it involved interpretation of the provisions of a *local zoning by-law* regarding whether a preexisting nonconforming structure (an inn) that was damaged or destroyed by fire might be rebuilt. Because *Berliner* concerned the reconstruction of a preexisting nonconforming structure devoted to a nonconforming use (conducting an inn in a residence district), to the extent that the statutory predecessor of G.L. c. 40A, § 6, was implicated at all, the applicable provision was that allowing for local regulation when there is a “reconstruction, extension or structural change” of a nonconforming structure. See *id.*, at 771, 773, 774. See also Healy, Massachusetts Zoning Manual § 6.7.2 (4th ed. 2007) (building in *Berliner* appeared to be dimensionally nonconforming). Accordingly, the court’s statement to the effect that the statute “does not confer the right to erect a new building in place of an existing building used for a nonconforming purpose,” *Berliner v. Feldman, supra*, at 770, must be read in that limited context. 86 Mass. App. Ct. at 264-265.

- 3) “General Laws c. 40A, §6, however, creates a statutory requirement that “sets the floor” throughout the Commonwealth for the appropriate protections from local zoning bylaws to be afforded properties and structures protected under that statute. . . . A municipality’s bylaws may not afford fewer protections to preexisting nonconforming structures or uses than does the governing statute. Bellalta v. Zoning Board of Appeals of Brookline, 481 Mass. 372, 386 (2019). In other words, a municipality may afford greater protections.

The Great Barrington Zoning Bylaw does afford greater protections, directly addressing replacement of nonconforming structures in section 5. 7, entitled ‘Reconstruction After Catastrophe or Voluntary Demolition.’ Section 5.7 provides as follows: “A nonconforming structure may be reconstructed after a catastrophe or after voluntary demolition in accordance with the following provisions. For the purposes of this subsection, the term “reconstruction” shall mean the rebuilding after catastrophe or the rebuilding after demolition of the building.”

In this instance, BAE is proposing to demolish the existing office, flight school and operations building and construct a new building within the same footprint and having the same height and area as the existing building. Section 5.7 does not specify that demolition and reconstruction of a non-conforming structure is available only in connection with a conforming use. Although the use of a property for which site plan approval is requested is, in my opinion, a valid consideration in reviewing the site plan application, the question of the extent of the applicability of section 5.7 to BAE’s proposal is not, in my view, a determination that the Planning Board is required to make in connection with the site plan application. That issue will

Memorandum to Planning Board, March 23, 2022

be part of the demolition and building permit application process if site plan approval is granted. For reference, though, it should be noted that a 2017 special permit decision of the Zoning Board of Appeals (Decision No. 867-16), on an application to build a deck at the rear of the existing office building, stated: “The Board unanimously agreed that the Airport was a legal pre-existing nonconforming property.”

805707/GRBA/0001





## 300 foot Abutters List Report

Great Barrington, MA  
December 27, 2022

### Subject Property:

Parcel Number: 31-67-0  
CAMA Number: 31-67-0  
Property Address: 70 EGREMONT PLAIN RD

Mailing Address: BERKSHIRE AVIATION ENTERPRISES  
P O BOX 179  
GT BARRINGTON, MA 01230-0179

---

### Abutters:

Parcel Number: 30-1-0  
CAMA Number: 30-1-0  
Property Address: 75 EGREMONT PLAIN RD

Mailing Address: TOLLNER RICHARD & CONNIE  
75 SALISBURY AVE  
GARDEN CITY, NY 11530-3940

Parcel Number: 30-2-A  
CAMA Number: 30-2-A  
Property Address: 81 EGREMONT PLAIN RD

Mailing Address: SHAPIRO HILDA BANKS  
81 EGREMONT PLAIN RD  
GT BARRINGTON, MA 01230-1732

Parcel Number: 30-2-C  
CAMA Number: 30-2-C  
Property Address: 77 EGREMONT PLAIN RD

Mailing Address: SHAPIRO JONATHAN  
P O BOX 283  
GT BARRINGTON, MA 01230-0283

Parcel Number: 30-4-0  
CAMA Number: 30-4-0  
Property Address: EGREMONT PLAIN RD

Mailing Address: WHEELBARROW HILL FARM LLC  
99 PARK AVE SUITE 2200  
NEW YORK, NY 10016-1601

Parcel Number: 31-40-0  
CAMA Number: 31-40-0  
Property Address: 20 WEST PLAIN RD

Mailing Address: COONS VICKI J & ROBERT COONS  
WEST PLAIN RD FARM NOMINEE TRU  
20 WEST PLAIN RD  
GT BARRINGTON, MA 01230-1573

Parcel Number: 31-47-A  
CAMA Number: 31-47-A  
Property Address: 35 WEST PLAIN RD

Mailing Address: GREAT BARRINGTON RUDOLF STEINE  
SCHOOL INC  
35 WEST PLAIN RD  
GT BARRINGTON, MA 01230-1573

Parcel Number: 31-47-F  
CAMA Number: 31-47-F  
Property Address: 43 WEST PLAIN RD

Mailing Address: HANKIN JONATHAN B ZHEUTLIN  
BARBARA  
43 WEST PLAIN RD  
GT BARRINGTON, MA 01230-1573

Parcel Number: 31-49-0  
CAMA Number: 31-49-0  
Property Address: SEEKONK CROSS RD

Mailing Address: BERKSHIRE AVIATION ENTERPRISES  
P O BOX 179  
GT BARRINGTON, MA 01230-0179

Parcel Number: 31-50-0  
CAMA Number: 31-50-0  
Property Address: SEEKONK CROSS RD

Mailing Address: COONS ROBERT A  
20 WEST PLAIN RD  
GT BARRINGTON, MA 01230-1573

Parcel Number: 31-51-0  
CAMA Number: 31-51-0  
Property Address: 95 SEEKONK CROSS RD

Mailing Address: SHERON JOANNE L  
95 SEEKONK CROSS RD  
GT BARRINGTON, MA 01230-1565



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12/27/2022

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## 300 foot Abutters List Report

Great Barrington, MA  
December 27, 2022

Parcel Number: 31-51-A CAMA Number: 31-51-A Property Address: 91 SEEKONK CROSS RD	Mailing Address: SILBER MARCI (IND) SHAPIRO ALAN TRUSTEE 40 ANNANDALE DR CHAPPAQUA, NY 10515-1812
Parcel Number: 31-51-B CAMA Number: 31-51-B Property Address: SEEKONK CROSS RD	Mailing Address: SILBERT MARCI (IND) SHAPIRO ALAN TRUSTEE 40 ANNANDALE DR CHAPPAQUA, NY 10514-1812
Parcel Number: 31-51-C CAMA Number: 31-51-C Property Address: SEEKONK CROSS RD	Mailing Address: SILBERT MARCI (IND) SHAPIRO ALAN TRUSTEE 40 ANNANDALE DR CHAPPAQUA, NY 10514-1812
Parcel Number: 31-51-D CAMA Number: 31-51-D Property Address: SEEKONK CROSS RD	Mailing Address: SILBERT MARCI (IND) SHAPIRO ALAN TRUSTEE 40 ANNANDALE DR CHAPPAQUA, NY 10514-1812
Parcel Number: 31-63-0 CAMA Number: 31-63-0 Property Address: 99 SEEKONK CROSS RD	Mailing Address: HAMER HOLLY 99 SEEKONK CROSS RD GT BARRINGTON, MA 01230-1565
Parcel Number: 31-64-0 CAMA Number: 31-64-0 Property Address: 101 SEEKONK CROSS RD	Mailing Address: SHAW BRIAN A 384 LIME KILN RD GT BARRINGTON, MA 01230-9111
Parcel Number: 31-65-0 CAMA Number: 31-65-0 Property Address: 103 SEEKONK CROSS RD	Mailing Address: WESTERLING KARA TRUSTEE SEEKONK CROSS NOMINEE TR 900 HIGH ST DEDHAM, MA 02026-4114
Parcel Number: 31-66-0 CAMA Number: 31-66-0 Property Address: 109 SEEKONK CROSS RD	Mailing Address: MUSAYEV ALEXANDER BOLAND RANA JOY 109 SEEKONK CROSS RD GT BARRINGTON, MA 01230-1572
Parcel Number: 31-68-0 CAMA Number: 31-68-0 Property Address: 80 EGREMONT PLAIN RD	Mailing Address: SILVER STANLEY M GLASSMAN MELISSA S 80 EGREMONT PLAIN RD GT BARRINGTON, MA 01230-1551
Parcel Number: 31-68-A CAMA Number: 31-68-A Property Address: 78 EGREMONT PLAIN RD	Mailing Address: SHAPIRO CLAUDIA J PO BOX 112 SOUTH EGREMONT, MA 01258-0112
Parcel Number: 31-72-0 CAMA Number: 31-72-0 Property Address: 76 EGREMONT PLAIN RD	Mailing Address: KASS STEPHEN R & LUCIE M 425 EAST 79TH ST #3N NEW YORK, NY 10075-1005
Parcel Number: 31-73-0 CAMA Number: 31-73-0 Property Address: 54 EGREMONT PLAIN RD	Mailing Address: ISRAEL LANA TRUSTEE LANA ISRAEL REVOCABLE TRUST-20 54 EGREMONT PLAIN RD GT BARRINGTON, MA 01230-1691



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12/27/2022

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## 300 foot Abutters List Report

Great Barrington, MA  
December 27, 2022

Parcel Number: 31-75-0  
CAMA Number: 31-75-0  
Property Address: 48 EGREMONT PLAIN RD

Mailing Address: PARRISH ROBERT E  
PO BOX 742  
GT BARRINGTON, MA 01230-0742

Parcel Number: 31-76-0  
CAMA Number: 31-76-0  
Property Address: SEEKONK CROSS RD

Mailing Address: BERKSHIRE AVIATION ENTERPRISES  
P O BOX 179  
GT BARRINGTON, MA 01230-0179

Parcel Number: 31-77-0  
CAMA Number: 31-77-0  
Property Address: SEEKONK CROSS RD

Mailing Address: BERKSHIRE AVIATION ENTERPRISES  
P O BOX 179  
GT BARRINGTON, MA 01230-0179

Parcel Number: 31-78-0  
CAMA Number: 31-78-0  
Property Address: SEEKONK CROSS RD

Mailing Address: BERKSHIRE AVIATION HOLDINGS IN  
PO BOX 179  
GT BARRINGTON, MA 01230-0179



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12/27/2022

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Page 3 of 3

**EXHIBIT A: FINDINGS OF FACT**                      **DRAFT**

**Re:**                      **Special Permit #932-23**  
**Applicant:**        **Berkshire Aviation Enterprises, Inc.**  
**Site:**                    **70 Egremont Plain Road**

**A. Introduction**

The application was filed on January 10, 2023 by Berkshire Aviation Enterprises, Inc., seeking a special permit from the Town of Great Barrington Selectboard per Zoning Bylaw Sections 3.1.4 E(1), 7.2, and 10.4, to operate an Aviation Field in an R4 zone, at 70 Egremont Plain Road, as described in the application narrative and associated plans. The airport, commonly referred to as the Walter J. Koladza Airport or the Great Barrington Airport, is a privately owned and operated airfield. The site is in an R4 residential zone and a Zone II of the Water Quality Protection Overlay District (WQPOD), but the requirements of the WQPOD are not triggered by this application.

The application materials include the special permit application form, a nine-page narrative addendum and a two-sheet scaled plan set dated January 6, 2023 prepared by James Scalise, PE, of SK Design Group, Inc. (SKDG) showing the airport’s existing site conditions.

The application states that the site has been in use as an airport since September 1931, prior to adoption of zoning in Great Barrington, and that the use of the property as an Aviation Field is a protected nonconforming use. The application also states the Applicant seeks the special permit for the purpose of “establishing Aviation Field as a legal use at the Property” and that the application “contemplates the continued existence of the Airport as currently constituted.” and the application also proposes six special permit conditions that would limit and control operations at the Airport.

The following comments were received from reviewing boards and commissions. The Conservation Commission reviewed the application and stated that they have no jurisdictional issues with the use of the subject property as currently constituted. The Planning Board made a positive recommendation on the special permit for the aviation use, while recommending the Selectboard work with Town Counsel on the applicability of Section 7.2 of the Zoning Bylaw. The Board of Health reviewed the application and issued a letter to the Selectboard dated February 17, 2023 with three recommendations.

Written correspondence from parties in support of and parties in opposition to the application received by the Selectboard before the close of the public hearing is incorporated into the record of proceedings for this special permit. In general, supporters of the application stated that the airport is an important component of the area economy and a use that provides important services such as the flight school and emergency services use. Supporters of the airport delivered a petition in support of the airport with 6,500 signatures, collected online, as well as many letters of support. In general, opponents of the proposal expressed concerns about increasing air traffic and noise; contamination threats to the Town’s municipal drinking water source; and safety of vehicles on roads adjacent to the airport runways. Some letters in opposition to the special permit also stated the writers were opposed because the airport was seeking to expand operations, and/or that they have concerns but are in support of the current operation and of so-called small airports. Finally, of the 19 unique abutters (within 300 feet of the property and not counting properties owned by the Applicant), four abutters are on record in support of the application, two are against, one is in support of the current operation but against expansion, and the other 12 did not take a public position during this process.

**B. General Findings**

The site is situated in an R4 residential zone on Egremont Plain Road and Seekonk Cross Road. It is bordered by these two roads, the Green River, and several residential properties. The site is also in a Zone II of the Water Quality Protection Overlay District. Land uses surrounding the Airport are primarily single unit residential and agricultural, with areas of wetlands and forest along the Green River. There is also a private school in the area, located on West Plain Road. The character of the area is decidedly rural residential/agricultural, and this character is buttressed by the fact that some of the Airport land itself is utilized for agriculture. However, the Airport has existed at this site for 90 years, and over that time it has also become a part of the neighborhood character.

The Airport site consists of two principal parcels totaling approximately 91 acres, as shown on the plan submitted. These parcels are identified as Parcels 76 and 67 on Assessor's Map 31. Parcel 76 is 3.25 acres, and Parcel 67 is 87.7 acres and includes various developed areas such as the runways, taxiways and parking lots, as well as existing buildings including the office or "terminal" and four hangar buildings (labelled on the site plans as existing hangars). The balance of the site is wooded, lawn, or crop land. Other facilities on the site include the gas pumps, including an underground storage tank, and grass areas where planes are tied down.

The length of the main paved runway has been identified as 2,572 linear feet. The Airport does not own any additional land on either end of the runway for purposes of a so-called "runway safety area." However, a September 29, 2020 email from the Director of Aviation Planning at the Mass DOT Aeronautics Division to the Assistant Town Manager stated that the Airport was not required to own such additional land.

The Applicant does not propose to alter the layout of the site, nor does the application propose to substantially expand the Airport use or operations. The application states that it is for the existing Airport as it is currently constituted. The Applicant does not seek permission to expand buildings, runways, impervious surfaces or other aspects of the land use. The current use of the site for aviation purposes consists of activities normally associated with an aviation field, including aircraft operations (flights), aircraft storage and parking (in hangars and outside), aircraft maintenance and fueling, and the airport office including flight school facilities. From time to time, by license or permit from the Selectboard, the Airport has been used for fundraising events to benefit local not-for-profit organizations. The Applicant has stated that it does not seek to add any uses that do not currently exist on the site.

There is no definitive record of how many flights occur at the Airport. The Applicant reported that it does not systematically track daily flight operations, and could not provide that kind of data to the Selectboard. However, the Applicant also reported during the hearing that in the past there have been more flight school instructors than there are now. The type of aircraft using the Airport is mostly fixed wing single engine aircraft, with some helicopter and two engine craft. The Airport is used as needed by emergency medevac helicopters (e.g., Life Flight) to transport patients out of the area to other hospitals. The Airport is also used by U.S. military helicopters training for night maneuvers. There is a concern expressed by many of those who commented during the hearing process that the flight operations, particularly the continuous nature of student training flights, causes disruptive noise. The Selectboard has little control over flight operations per se—that is the domain of the Federal Aviation Administration (FAA) and the Massachusetts Department of Transportation (MassDOT)—but the Applicant has volunteered some operations parameters to mitigate noise impacts.

The Airport employs mechanics and conducts maintenance of aircraft in the existing maintenance hangars. There are potentially hazardous materials associated with this activity and the application states that the Airport is a Very Small Quantity Generator (of hazardous waste) according to the regulations of the Massachusetts Department of Environmental Protection (DEP) at 310 CMR 30.00.

Airplanes refuel at the Airport via on-site, self-serve pumps dispensing unleaded and leaded fuel. The fuel is stored underground in a recently upgraded double-wall tank. The underground fuel tank has leak detection equipment, and there have been no known leaks. There is no evidence that the leaded aviation fuel has polluted or is a threat to the public water supply managed by the Great Barrington Fire District. Nor, based on previous soil tests, is there evidence that the Airport grounds are contaminated.

A 2003 MassDEP Source Water Assessment and Protection (SWAP) Report for the Great Barrington Fire District (which operates as a public water supplier for the Town) lists “airports” as one of eight land uses that are high threats of contamination to the District’s water supply area. Other high threat uses include agricultural uses (manure spreading, fertilizers, and pesticides), and underground storage tanks. Medium threat uses include residential fuel oil storage uses.

The Airport is served by an existing private well for drinking water and an existing septic system for sewage disposal. The Selectboard is not aware of any public health concerns caused by the on-site drinking water well or the onsite septic system.

Traffic congestion is not a concern, but there are concerns for the safety of vehicles on Seekonk Cross Road near the eastern end of the runway, where low-flying planes (taking off or landing) could cause plane-car collisions.

A portion of the Airport property is enrolled in the Chapter 61A agricultural land taxation program, providing for a reduced tax payment on those portions of the property in agricultural use. The Town’s Assessors’ records indicate that 52.6 acres are in agricultural use, but there is no map on file that shows or certifies this acreage.

### **C. Findings related to Section 7.2, Aviation Fields**

The Town has the authority to regulate Aviation Fields as a land use under Section 7.2 of the Zoning Bylaw. The Town may not regulate flight and related activities that are under the jurisdiction of the FAA or MassDOT. Section 7.2 states, in part, “Any aviation field, public or private, with essential accessories, shall comply with the following special requirements: 1. It shall be so located that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic or other objectionable condition.”

As the Airport is already in existence, the Selectboard can only apply Section 7.2 to the extent any changes to the use might be more objectionable than the present use. To do otherwise could amount to a *de facto* prohibition of the aviation use, something the Selectboard understands the Town is preempted from doing by federal and state law. Since the application does not propose to change or expand the current use or its activities, the Selectboard finds there are no objectionable conditions created by this application. On the other hand, if a special permit is granted and the applicant is willing to abide by certain conditions, then conditions associated with normal airport use, such as airplane noise, could be mitigated more than they could be under the Airport’s present status.

Noise: The Selectboard has heard many written and oral comments that the existing Airport operations are objectionable because of noise. Many of these comments were from Great Barrington residents, many of whom do not live near the Airport. It has also heard some comments that the noise is not objectionable. The Selectboard has not heard from every abutter to the Airport, only some. Presumably, some neighbors do not find the noise objectionable. Based on the comments and evidence presented, the Selectboard does not find that the existing noise is objectionable. Nevertheless, the Selectboard will consider conditions, similar

to those offered by the Applicant, which could mitigate some of the existing noise and prevent noise from certain louder aircraft types.

Traffic: There have been infrequent, but dangerous, plane-vehicle interactions at the end of the runway at Seekonk Cross Road. Unless air traffic is limited, which the Selectboard cannot do, or safety measures are put in place, the traffic safety concerns will remain unchanged.

Other: Many commenters have stated concerns about groundwater quality and the Town's drinking water supply, and threats of contamination from leaded fuel or other hazardous materials associated with the airport activities. The Selectboard recognizes these legitimate concerns, but, given the long existence of the Airport's use without any demonstrable harm to the environment, the Selectboard does not find these concerns to be an objectionable condition.

#### **D. Findings related to Section 10.4, Special Permits**

Section 10.4.2 of the Zoning Bylaw, criteria for the granting of a special permit, requires a written determination by the Special Permit Granting Authority "that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site." This determination must include consideration of the following six criteria:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and,
6. Potential fiscal impact, including impact on town services, tax base, and employment.

The Selectboard's considerations in relation to each of these criteria are detailed below. These considerations relate to the existing Airport operations and the statements in the application and from the Applicant during the public hearing process that the special permit is requested for the existing Airport as currently constituted and that no new activities are proposed.

##### **1. Social, economic, or community needs which are served by the proposal.**

Finding 1: The Airport serves the Town of Great Barrington and the regional area by providing employment for 12 employees, five of whom are full time, and a convenient and safe place for medical air evacuations and disaster response operations. It provides convenient access to the Town and region for travelers from destinations across the country. Numerous letters in support of the existing Airport and its flight school have been received by the Selectboard.

The Airport is an important component of the local and regional economic, transportation, and emergency network. The Airport conforms with those aspects of the Town's Master Plan that call for balancing rural living with the amenities of an urban community and which encourage economic flexibility, the retention and attraction of businesses, and the provision and maintenance of a strong transportation network.

##### **2. Traffic flow and safety, including parking and loading.**

Finding 2: The Airport is located at the corner of Egremont Plain Road and Seekonk Cross Road, which safely accommodate vehicular traffic to and from the Airport. There have been public comments and letters regarding unsafe conditions on Seekonk Cross Road as a result of planes using the eastern end of the runway. The Selectboard has heard that there have been near misses, and there have also been some documented collisions. The Selectboard agrees this is not a safe condition, but it cannot relocate the runway or the roadways.

### **3. Adequacy of utilities and other public services.**

Finding 3: The utilities and services at the Airport are adequate to serve the existing use as currently constituted.

### **4. Neighborhood character and social structures.**

Finding 4: The Airport has been in operation as an airfield since 1931. It is true that some residences in the area predate the Airport; it is equally true that other homes were built after the Airport began operations. The predominant character of the area is rural residential/agricultural, but the Airport is also an established part of the neighborhood, and has been acknowledged as such by supporters and opponents of this application. In terms of zoning, the Airport is in a residential/agricultural zone; the residences and farms are not in an airport zone.

Neighbors to the Airport, as well as Great Barrington residents who do not live near the Airport, or even in Great Barrington, have complained about noise impacts, unsafe flying, low-flying planes, and other elements of the Airport's operations. Neighbors complain of non-adherence to a noise-mitigating flight path. The Airport owners have stated that they have tried to enforce that flight path but that they cannot prevent pilots from ignoring it.

Based on testimony received during the public hearing, the Selectboard finds that growth at the Airport beyond its current level of use and type of operations, including types of aircraft, could detract from the rural residential/agricultural character of the area. However, this application does not propose to expand operations, and the Applicant has expressed willingness to abide by conditions to mitigate noise and hours of operation.

### **5. Impacts on the natural environment.**

Finding 5: The Airport is within the WQPOD, but the wellhead for the Town's drinking water supply provided by the Great Barrington Fire District is more than a mile away, is separated from the Airport by both Seekonk Cross Road and Hurlburt Road, and no contamination of that water supply relative to the Airport has ever been reported or identified. The past and current use of leaded aviation fuel may contribute to background levels of air or water contamination; however, an acute harm to the local environment has not been demonstrated. On the contrary, soil lead tests at the Airport show otherwise. There have been fuel or oil spills, and the Airport is regulated as a Very Small Quantity Generator of hazardous waste. From the evidence presented, the existing operations have not had demonstrated negative impacts on the natural environment. Given this history, the Selectboard does not see a reason to require soil and water testing at the Airport.

### **6. Potential fiscal impact, including impact on town services, tax base, and employment.**

Finding 6: The Airport has a positive economic and fiscal impact in that it provides employment, some



real estate taxes, and draws people to the area who support local and regional businesses. This is a positive for the Town.

There are over 52 acres of Airport land enrolled in the Chapter 61A agricultural land taxation program. This land is not subject to taxes based on a full market value. Its tax value is lower in recognition of its importance to farming, an intangible asset to the open space character of this area, and to the community. This acreage will be subject to a total real estate tax of less than \$200 in FY23, roughly \$4,500 less than it would be if assessed at full value.

Section 10.4 Finding:

In consideration of the above Findings, the Selectboard finds that the benefits of the Airport as it is currently constituted outweigh the potential adverse effects. The Selectboard also finds that the conditions to be imposed will help to ensure that the overall benefits continue to occur and that potential adverse impacts are minimized and eliminated to the extent possible.

Proposed Conditions:

1. Grant of this Special Permit is for the Airfield aviation use as it currently exists. The creation of new structures, the expansion of any existing buildings by more than 250 square feet, new pavement, or the addition of any other airport related activities not conducted at the Airport at the time of the special permit application, including but not limited to restaurants, warehousing, shipping and distribution, are prohibited under this Special Permit.
2. During the summer, i.e., from Memorial Day weekend through Labor Day weekend, there shall be no continuous takeoffs and landings of aircraft after 7:00 pm.
3. During the remainder of the year - fall, winter, spring – there shall be no continuous takeoffs and landings of aircraft after 6:00 pm.
4. There shall be no unnecessary “run-ups” before 9:00 am or after 7:00 pm.
5. On Sundays, there shall be no continuous takeoffs and landings of aircraft before 9:00 am or after 5:00 pm.
6. There shall be no helicopter flight school or helicopter sightseeing operated at or from the property.
7. The Applicant shall use its best efforts to limit military helicopter training activity at the Airport.
8. There shall be no glider activity at or from the Airport.
9. There shall be no turbo jet aircraft operations at the Airport.
10. Customer vehicle parking shall be only in the current Airport parking lots, except for special events permitted by an entertainment license granted by the Selectboard.
11. All exterior lighting except for that required by the FAA or MassDOT, shall be fully shielded, Dark Sky compliant, and shall not create glare or spillover across property lines.

12. The Applicant shall provide to the Town all records on waste oil and disposal of hazardous materials at or from the Airport when such records are submitted to any state or federal regulatory agency or authority.

13. Within six months of the recording of this Special Permit, the Applicant shall provide to the Selectboard and the Assessors a map and calculation of the amount of land of the Airport in the Chapter 61A agricultural land tax program so that the Assessors can determine if there is any land that is subject to conveyance or roll back taxes.

DRAFT

COHEN | KINNE | VALICENTI | COOK

Dennis G. Egan Jr.  
Admitted in MA, NY and CT

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Cell phone 413 446 1126  
Direct fax 413 553 0334

March 31, 2023

Mr. Stephen Bannon, Chair  
Town of Great Barrington Select Board  
334 Main Street  
Great Barrington, MA 01230

Re: Response to Question Raised at March 13, 2023 Great Barrington Select Board Hearing  
Application for Special Permit – Berkshire Aviation Enterprises, Inc. –  
70 Egremont Plain Road

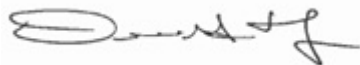
Dear Mr. Bannon:

I am submitting the attached Massachusetts Statewide Airport Economic Impact Study Update – Executive Summary 2019, on behalf of our client, Berkshire Aviation Enterprises, as a follow up to a question raised at the Great Barrington Select Board hearing that took place on March 13, 2023, with respect to the application for special permit filed by Berkshire Aviation Enterprises, Inc. in connection with the property located at 70 Egremont Plain Road.

Should you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,

**COHEN KINNE VALICENTI & COOK LLP**



Dennis G. Egan, Jr.

DGE/  
Encl.

303274

COHEN | KINNE | VALICENTI | COOK LLP *Attorneys*  
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Pittsfield, MA 01201

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Williamstown, MA

# Massachusetts Statewide Airport Economic Impact Study Update

EXECUTIVE SUMMARY

JANUARY 2019



MASSACHUSETTS



# MASSACHUSETTS AIRPORTS: A Catalyst for Business Growth and Development

In a world where communications are instantaneous, and time means money, businesses rely on aviation for the rapid delivery of goods and services to distant locations, often inaccessible or difficult to reach. Massachusetts' system of 39 airports provides the Commonwealth with a vital link to the regional, national, and international markets that drive our emerging economy.

*Airports in Massachusetts connect us to worldwide markets and destinations, sustaining the Bay State's rapidly expanding business community and its world-renowned tourist destinations.*

One of the most important factors in today's global economy is having access to a transportation system that promotes the safe, efficient, and rapid movement of people and goods. Massachusetts' system of public-use airports is a key component of the overall transportation system and plays important roles both as a catalyst for local and regional economies, which generate billions of dollars in economic development, and as a vital transportation link for Massachusetts businesses, residents, and visitors, supporting thousands of jobs.

Airports stimulate economic growth and development in many communities because aviation is essential for the attraction and retention of businesses. Aviation improves overall efficiency by enabling businesses to expedite customer service and the delivery of their products to market. In effect, Massachusetts' airports connect the Commonwealth to the national air transportation system and the global economy.

Airports also serve as gateways to premier tourist destinations such as the Berkshires and the Cape and Islands region, as well as the many cultural and historical attractions found throughout the Commonwealth. Visitors arriving at Massachusetts' commercial service and general aviation airports spend money for food, lodging, retail purchases, recreation, and ground transportation, all of which drive growth in local and regional economies. Conversely, Massachusetts residents also use aviation for their own leisure travel outside of the Commonwealth, connecting them to family and friends and vacation destinations throughout the world.

To better understand the economic benefits of Massachusetts' public-use airports, the Massachusetts Department of Transportation Aeronautics Division completed Airport Economic Impact Study updates in 2011 and 2014. This study is a continuation of that overall planning effort that began in 2009 with the Massachusetts Statewide Airport System Plan (MSASP), which examined the structure and long-term development of the Statewide Airport System as a whole. The 2019 Economic Impact Study will serve as a specific update to the previous economic studies to show how aviation propels the economic growth of the Commonwealth, as well as documenting some of the many other benefits that air transportation brings to its host communities.

The Aeronautics Division has taken a new approach to this study, to share in layman's terms some of the many unique stories that each of Massachusetts' diverse airports bring to their host communities.



**Promote aviation throughout the Commonwealth, while establishing an efficient, integrated airport system that will enhance airport safety, customer service, economic development, and environmental stewardship.**

— MassDOT Aeronautics Division Mission Statement

## Study Overview

This report details how Massachusetts' 39 public-use airports are economically valuable to the Commonwealth by quantifying employment, payroll, and economic output. The economic impact analysis considers the annual impacts associated with on-airport, aviation-related businesses and government organizations, capital improvement projects, military aviation, the spending of visitors who arrive via scheduled commercial service airlines, and the spending of visitors who arrive on privately-owned general aviation aircraft. Economic impacts are presented for each individual airport and the Commonwealth as a whole. It is important to note that an economic impact study provides a "snapshot in time" with respect to airport operations and economic conditions. The data collection process, economic modeling, and state of the economy for this study update are all specifically related to 2017.

## The Massachusetts Public-Use Airport System

Massachusetts' system of public-use airports is comprised of nine commercial service and 30 general aviation airports, 11 of which are privately owned and operated.

The MassDOT Aeronautics Division supports the operation and development of 36 of these airports through:

- Grant funding
- Airport inspections
- Technical guidance
- Statewide planning initiative
- Aviation education outreach
- Communication with local, state, and federal officials

The **Massachusetts Port Authority (Massport)** owns and operates the three remaining airports, including Boston Logan International Airport (BOS), Laurence G. Hanscom Field (BED), and Worcester Regional Airport (ORH).



Multiple factors account for the growth in economic impacts generated by Massachusetts' public-use airports since the completion of the 2014 Economic Impact Study. The primary driver is the overall increase in airline passenger traffic (both domestic and international) at Boston Logan. Other factors include increased spending per person by visitors arriving in Massachusetts on passenger airlines and general aviation aircraft, growth in business/air charter operations and the addition of new on-airport businesses. Similarly, strategic investments from the state had an excellent return on investment, and public private partnerships such as that with Gulfstream also had a very positive impact on the economy of the surrounding communities during this time.

	Total Employment	Total Payroll	Total Output
2014 Study	162,256	\$6,094,002,000	\$16,555,117,000
2019 Study	199,237	\$7,243,169,000	\$24,692,585,000
<b>PERCENT GROWTH</b>	<b>23%</b>	<b>19%</b>	<b>49%</b>

## Behind the Numbers

This study collected information from airport sponsors, on-airport businesses and government agencies, visiting pilots and passengers, and other sources, all of which served as the input for an economic impact model. This model estimated each airport's impact generated by aviation activities occurring directly on the airports, such as operations by aircraft maintenance businesses, flight schools, and concessionaires, as well as capital improvement projects.

**The benefits of an airport go beyond what is seen on the airfield.** As the diagram shows, there is a great deal of economic activity that takes place beyond the airport fence. Expenditures by the airport and businesses/government agencies on the airport trickle through the economy, influencing people and businesses nearby. For example, when an aircraft mechanic working on the airport purchases local goods and services, such as gas or groceries, that spending circulates through the local economy by supporting the jobs and payroll of other businesses and thereby generates additional economic activity that is referred to as multiplier impacts. Additionally, visitors flying to the area typically spend money in the local community. The total impacts reflect all of the economic activity, not just what can be witnessed on the airport. The methodology used in this report, which follows FAA guidelines, has successfully quantified the benefits of airports and airport systems throughout the U.S.

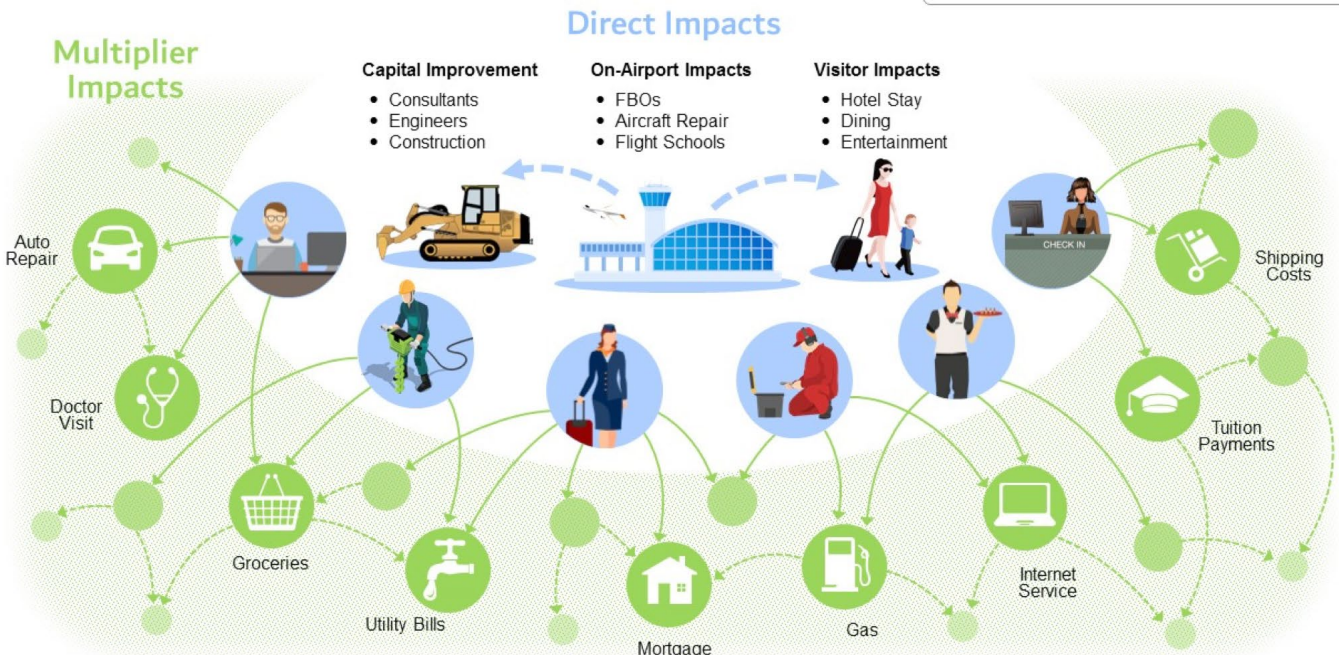


### BARNSTABLE MUNICIPAL AIRPORT- BOARDMAN/POLANDO FIELD

## Strategic Investments Position HYA for Economic Growth

Over the last 10 years, the FAA, MassDOT, and Barnstable Municipal Airport (HYA) have made significant strategic investments into airport infrastructure, which has helped to position the airport for future economic growth while enhancing airfield safety. With its new airport terminal building, HYA has been able to attract JetBlue to provide seasonal service from New York to Cape Cod.

## ECONOMIC IMPACT MODEL



# How Aviation's Benefits Are Quantified

## MEASURES OF ECONOMIC IMPACT

**Employment** – Employment is the measure of full-time equivalent jobs, where two part-time positions are the equivalent of a single full-time position. Seasonal jobs are treated proportionally as appropriate.

**Payroll** – Payroll represents the costs associated with the annual salary, wages, and benefits earned by all the full-time equivalents measured under employment.

**Output** – Output is the quantity of goods and services generated annually by an airport and its associated activities and businesses, expressed in dollars. Output is estimated using an organization's annual sales, or its annual operating costs, which assumes that its output is approximately equivalent to what it expends.

## TYPES OF ECONOMIC IMPACT

**Direct Impacts** – Direct impacts account for the initial point where the money from aviation-related activity enters the economy. On-airport direct impacts can be found at the airport while visitor-related direct impacts take place off-airport.

**Multiplier Impacts** – Multiplier impacts result from the re-circulation and re-spending of direct impacts within the economy. This re-spending of money can occur multiple times. For example, as airport employees spend their salary on clothing at a local retailer, those expenditures circulate through the economy, resulting in increased spending, payroll, and employment throughout Massachusetts.

**Total Economic Impacts** – Total impacts are the sum of all direct and multiplier economic impacts attributable to an airport or the system of airports.



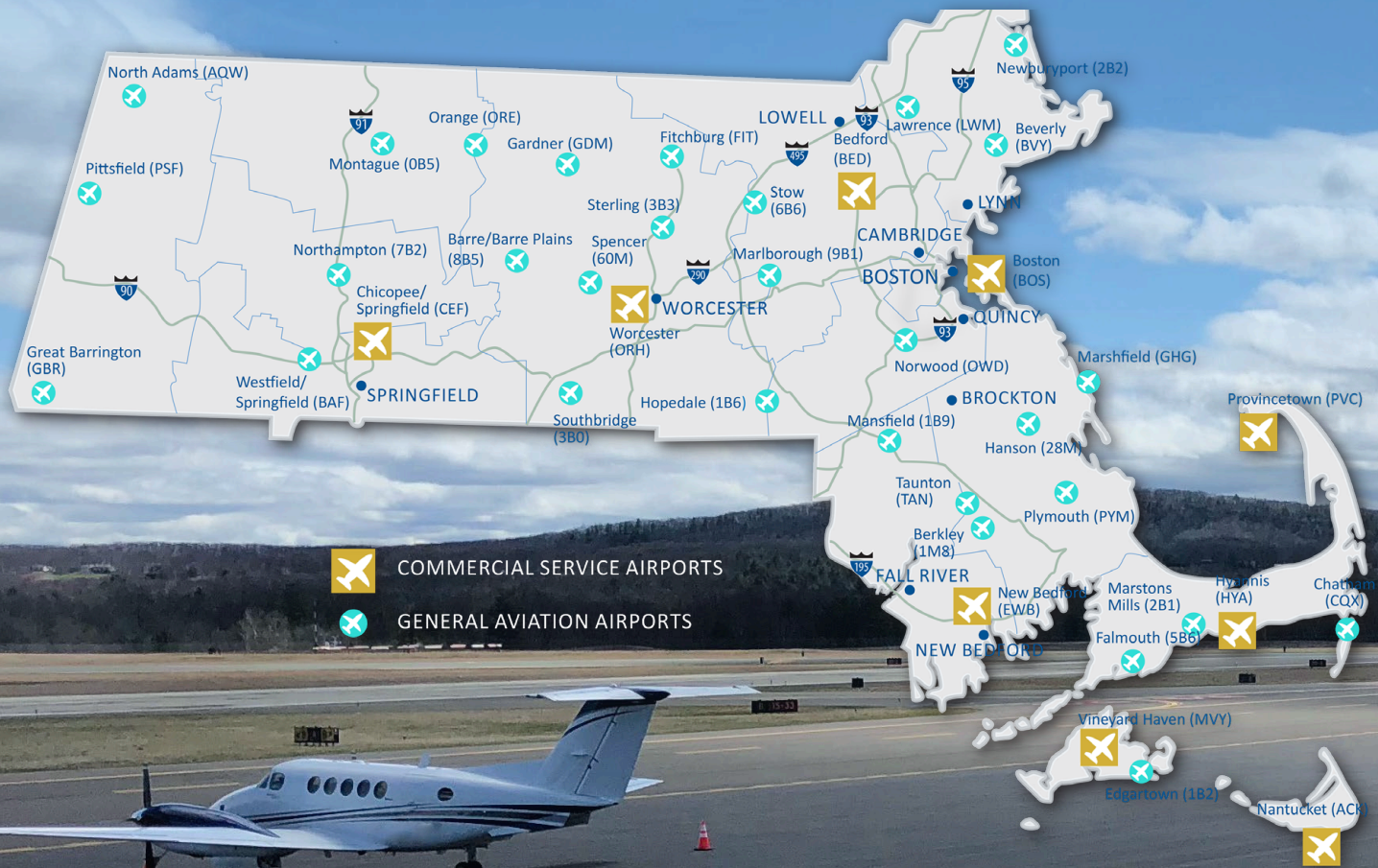


# Total Economic Impacts Of Massachusetts' Airports

COMMERCIAL SERVICE AIRPORTS				
Associated City	Airport Name	Total Employment <sup>2</sup>	Total Payroll <sup>2</sup>	Total Output <sup>2</sup>
Bedford	Laurence G. Hanscom Field <sup>1</sup>	19,587	\$527,823,000	\$6,709,016,000
Boston	Boston Logan International Airport	162,266	\$5,974,587,000	\$16,325,472,000
Chicopee/Springfield	Westover Air Reserve Base/Metropolitan Airport <sup>1</sup>	4,571	\$172,687,000	\$245,257,000
Hyannis	Barnstable Municipal Airport-Boardman/Polando Field	1,724	\$73,761,000	\$157,240,000
Nantucket	Nantucket Memorial Airport	3,268	\$118,249,000	\$323,044,000
New Bedford	New Bedford Regional Airport	277	\$11,025,000	\$29,598,000
Provincetown	Provincetown Municipal Airport	390	\$13,958,000	\$34,856,000
Vineyard Haven	Martha's Vineyard Airport	1,401	\$50,939,000	\$140,551,000
Worcester	Worcester Regional Airport	587	\$29,617,000	\$96,746,000
<b>COMMERCIAL SERVICE AIRPORTS TOTAL</b>		<b>194,071</b>	<b>\$6,972,646,000</b>	<b>\$24,061,780,000</b>

<sup>1</sup> Includes economic impacts associated with military operations located on the airport. See page 8 for specific military totals.

<sup>2</sup> Total impacts include all on-airport business and government agency, capital improvement project, visitor, and multiplier impacts.



# Total Economic Impacts Of Massachusetts' Airports

GENERAL AVIATION AIRPORTS				
Associated City	Airport Name	Total Employment <sup>2</sup>	Total Payroll <sup>2</sup>	Total Output <sup>2</sup>
Barre/Barre Plains	Tanner-Hiller Airport	18	\$294,000	\$702,000
Berkley	Myricks Airport	0	\$0	\$58,000
Beverly	Beverly Regional Airport	269	\$11,638,000	\$34,302,000
Chatham	Chatham Municipal Airport	156	\$4,777,000	\$13,919,000
Edgartown	Katama Airpark	19	\$636,000	\$2,087,000
Falmouth	Falmouth Airpark	7	\$294,000	\$641,000
Fitchburg	Fitchburg Municipal Airport	162	\$6,573,000	\$17,619,000
Gardner	Gardner Municipal Airport	8	\$279,000	\$1,028,000
Great Barrington	Walter J. Koladza Airport	56	\$1,827,000	\$5,213,000
Hanson	Cranland Airport	11	\$351,000	\$990,000
Hopedale	Hopedale Industrial Park Airport	13	\$719,000	\$1,010,000
Lawrence	Lawrence Municipal Airport	403	\$18,363,000	\$49,885,000
Mansfield	Mansfield Municipal Airport	112	\$4,490,000	\$12,455,000
Marlborough	Marlboro Airport	1	\$34,000	\$189,000
Marshfield	Marshfield Municipal Airport - George Harlow Field	82	\$5,177,000	\$15,897,000
Marstons Mills	Cape Cod Airport	8	\$303,000	\$937,000
Montague	Turners Falls Airport	30	\$1,420,000	\$3,924,000
Newburyport	Plum Island Airport	6	\$167,000	\$295,000
North Adams	Harriman-and-West Airport	122	\$5,427,000	\$18,398,000
Northampton	Northampton Airport	32	\$806,000	\$3,202,000
Norwood	Norwood Memorial Airport	467	\$19,854,000	\$59,266,000
Orange	Orange Municipal Airport	110	\$4,297,000	\$11,067,000
Pittsfield	Pittsfield Municipal Airport	219	\$13,421,000	\$40,262,000
Plymouth	Plymouth Municipal Airport	368	\$19,273,000	\$62,910,000
Southbridge	Southbridge Municipal Airport	57	\$2,280,000	\$6,185,000
Spencer	Spencer Airport	3	\$100,000	\$356,000
Sterling	Sterling Airport	18	\$601,000	\$1,871,000
Stow	Minute Man Air Field	210	\$7,576,000	\$25,844,000
Taunton	Taunton Municipal Airport - King Field	25	\$1,060,000	\$3,543,000
Westfield/Springfield	Westfield-Barnes Regional Airport <sup>1</sup>	2,174	\$138,486,000	\$236,750,000
<b>GENERAL AVIATION AIRPORTS TOTAL</b>		<b>5,166</b>	<b>\$270,523,000</b>	<b>\$630,805,000</b>

<sup>1</sup> Includes economic impacts associated with military operations located on the airport. See page 8 for specific military totals.

<sup>2</sup> Total impacts include all on-airport business and government agency, capital improvement project, visitor, and multiplier impacts.

## TOTAL ECONOMIC IMPACTS FOR ALL AIRPORTS COMBINED



**199,237**

**TOTAL EMPLOYMENT**



**\$7,243,169,000**

**TOTAL PAYROLL**



**\$24,692,585,000**

**TOTAL OUTPUT**

## Massport Airports

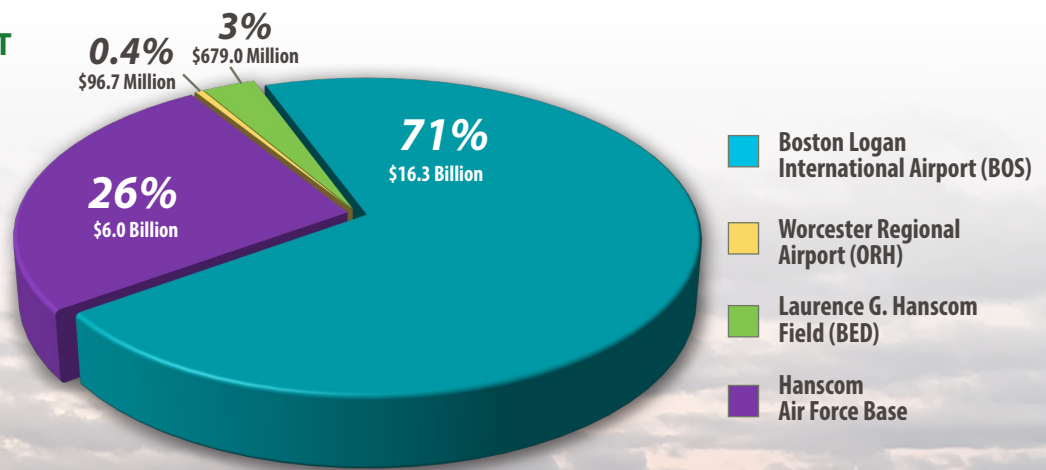


The Massachusetts Port Authority (Massport) is committed to connecting Massachusetts and New England to the world. Massport prioritizes safety, security, efficiency, and cost-effectiveness in its mission to help people and goods travel through diverse facilities found across the Commonwealth. In achieving its mission, Massport aims to serve the surrounding community who live and work around those facilities in a manner that is inclusive and economically prosperous yet mindful of the impacts on residents and the environment.

Massport owns and operates three airports - Boston Logan International Airport (BOS), Laurence G. Hanscom Field (BED), and Worcester Regional Airport (ORH) - each

playing a significant and unique role as a transportation and economic hub. Serving as the primary gateway for airline passengers in New England, BOS links the region to over 130 domestic and international destinations via more than 40 different airlines. BOS accommodated more than 38 million passengers and over 400,000 aircraft operations in 2017, ranking as the 16th busiest airport in the U.S. ORH offers commercial service provided by four different air carriers and supports general aviation and cargo services, with convenient access for a large population in central Massachusetts. BED offers general aviation access and features an ideal location off Interstate 95 just outside of Boston, with facilities for business, research, and military groups.

**TOTAL ECONOMIC IMPACT**  
**\$23.1 Billion**



*The data collection process, economic modeling, and state of the economy for this study update are all specifically related to 2017.*



# Additional Economic Benefits of Aviation in Massachusetts

## MILITARY AVIATION

Dating back to colonial times, Massachusetts has had a long and distinguished military history supporting multiple branches of the service. Home to four active military installations – Hanscom AFB, Barnes ANGB, Westover ARB, and Joint Base Cape Cod – Massachusetts benefits from military aviation activities and the economic impacts attributed to each of those facilities.

Military Air Facility	Total Employment	Total Payroll	Total Output
Hanscom AFB	17,344	\$393,836,000	\$6,030,000,000
Westover ARB	4,384	\$161,257,000	\$212,534,000
Barnes ANGB	1,519	\$85,742,000	\$104,359,000
Joint Base Cape Cod	299	\$10,800,000	\$28,969,000
<b>Total</b>	<b>23,546</b>	<b>\$651,635,000</b>	<b>\$6,375,862,000</b>

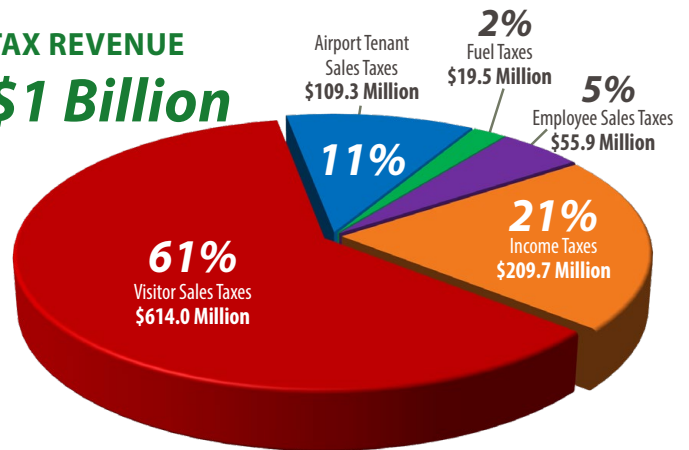


## AIRPORT-RELATED TAXES

Massachusetts' airports support the businesses and associated jobs that generate substantial taxes for the Commonwealth. A tax analysis for this study examined the revenue generated by the state sales tax; local sales tax; and lodging, restaurant, rental car, state income, and aviation fuel taxes. These taxes are paid by on-airport businesses, visitors arriving by both commercial airlines and general aviation aircraft, and employees supported by airport-related activity. For example, an airport employee who refuels aircraft pays income tax. The owners of those aircraft pay aviation fuel tax, and if visiting from outside the area, they also pay hotel, restaurant, and rental car taxes. The hotel receptionist and restaurant waitress pay income taxes and sales tax on purchases in Massachusetts. Added all together, this airport-related activity generates an estimated \$1.0 billion in tax revenue for Massachusetts.

### TAX REVENUE

**\$1 Billion**



### LAURENCE G. HANSCOM FIELD

## A Vital Business, Community, and Military Hub

Owned and operated by Massport, BED is strategically located 15 miles outside of Boston and adjacent to Interstate 95/128. It is the busiest general aviation airport in New England, supporting business aviation and the military. BED is a gateway for numerous sports team charters for all major professional and college sporting events in the Boston area. The tenants of BED support various non-profit charities such as Angel Flight Northeast and Pilots N Paws. Boston MedFlight has their air ambulance headquarters based at the airport.

# Unique Aviation Activities In Massachusetts

## Unmanned Aircraft Systems

Unmanned aircraft systems (UAS) have seen a dramatic rise in use across the country, a trend that is expected to continue. In Massachusetts alone, it is expected that the UAS industry will grow from approximately \$63 million to over \$285 million by 2026.

This growth is due to both technological advancements and the FAA's ratification of Part 107 regulations for small drone use. Part 107 stipulates that small UAS (between 0.55 lbs. and 55 lbs.) must be registered with the FAA, flown during the day within line-of-sight of the operator, kept within Class G airspace, and operated by pilots that have passed an aeronautical knowledge test, among other provisions. UAS pilots who wish to run drone operations not strictly adhering to Part 107 rules – such as night flying or operating a drone over 55 lbs. – may apply for a waiver. The FAA Reauthorization Act of 2018 repealed the Special Rule for Model Aircraft and now requires that recreational users also pass the aeronautical knowledge test.

Drones come in both fixed-wing and rotary-wing models and can be equipped with sensors such as HD cameras and thermal sensors. Some of the limitless applications for UAS include:

- precision agriculture
- construction
- infrastructure inspections
- aerial photography
- site mapping
- crowd control and security
- disaster management and response
- HAZMAT detection
- news reporting



**Drones offer a long list of safety, time, quality, and cost benefits.** UAS remove humans from potential hazardous situations, aid greatly in disaster response, save time and ensure quality by providing repeatable data and removing human error, and are extremely adaptable. Nearly every

benefit is tied to saving money, from the inexpensive training and greatly reduced time, to avoiding high insurance costs or those related to human injury and litigation.

**Massachusetts is at the forefront of UAS use in industry and government.** MassDOT's comprehensive Drone Pilot Program facilitates the adoption of drones in a manner that is safe, cost-effective, and secure and incentivizes applied research to solve realistic MassDOT drone challenges. Under the program, MassDOT uses UAS for infrastructure inspection, to oversee construction, and for emergency response. At airports specifically, MassDOT Aeronautics touts utilizing drones for runway, fence, and building inspections; obstruction surveys; wildlife surveys; and accident investigation.

MassDOT is also a participant in the Commonwealth UAS Integration Program (CUIP), a collaboration focused on creating a world-class drone ecosystem across government, industry, and academia in which innovative technologies were developed to facilitate practical integration of UAS into the Massachusetts economy. Work under CUIP includes delivery of medication to Martha's Vineyard with drone flights that go beyond visual line of sight and testing of drones at the MA UAC Test Center at Joint Base Cape Cod.

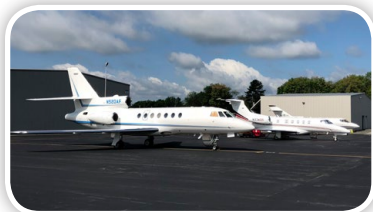
Multiple Massachusetts higher education institutions conduct drone training and research programs:

- UMassAir conducts UAS-based research projects related to operational safety and security, agriculture, infrastructure management, and public policy, while offering drone coursework.
- MIT's Lincoln Laboratory at Hanscom AFB is a participant in CUIP and home to the university's Autonomous Systems Development Facility (ASDF), a 17,000-square-foot test center equipped with motion capture sensors for accurate test results.
- Northeastern University has constructed the George J. Kostas Research Institute for Homeland Security. The facility includes a 150-foot by 200-foot, five-story-tall netted drone testing facility and will soon include an anechoic chamber for testing drones against counter-UAS interference.



## Business – Airport Synergies Throughout the Commonwealth

Airports have long provided a fertile environment for business development, and businesses situated on-site have provided a consistent revenue stream to support airport operations and the surrounding community. Airports and businesses located both on- and off-site have developed unique synergies with each other to take advantage of the dynamic environment of aviation. Activities at five of the Commonwealth’s airports showcase these opportunities:

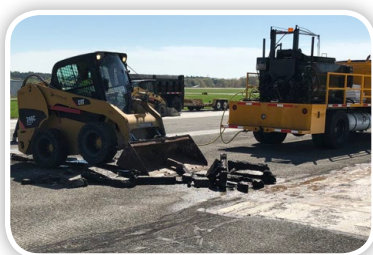


### **SOUTHBRIDGE – A KEY TO HYDE TOOLS SUCCESS**

Established over a century ago, Hyde is a leading provider of hand tools and an active

supporter of Southbridge Municipal Airport. Hyde Tools’ CEO sits on the Southbridge Airport Commission, and his family has facilitated the airport for many years by purchasing airfield equipment and volunteering their time for regular clean-up and maintenance activities at the airport.

in the country offering the AMT curriculum. AMT students who pass their FAA exams can begin their careers (upon graduation) as highly skilled, well-paid aircraft mechanics or apply those skills to their continuing education. The first class of 14 students is scheduled to graduate in June 2019.



### **BEVERLY – NAA DRIVES BUSINESS AVIATION**

As a lone fixed-base operator (FBO), North Atlantic Air has invested over \$1.3 million in the past 18 months

on airside and landside infrastructure improvements at Beverly Regional Airport. The boutique style FBO has greatly enhanced the customer experience, resulting in an increase of over 30 percent in business jet aircraft and a nearly 40 percent increase in the flowage of jet fuel.



### **MINUTE MAN AIR FIELD – STATE INVESTMENTS PROMPT TENANTS/PRIVATE DEVELOPERS TO FUND NEW AIRPORT INFRASTRUCTURE**

State investments for infrastructure have

prompted tenants and private sector developers to invest monies that have brought in more tenants and funded new and renovated hangar facilities. The airport’s tenants include the National Aviation Academy – offering FAA-approved AMT training to over 100 students and Nancy’s Airfield Café, which offers acclaimed “farm-to table” dining.



### **WESTFIELD-BARNES – PUBLIC PRIVATE PARTNERSHIPS STIMULATE WORKFORCE DEVELOPMENT**

Recognizing significant workforce development

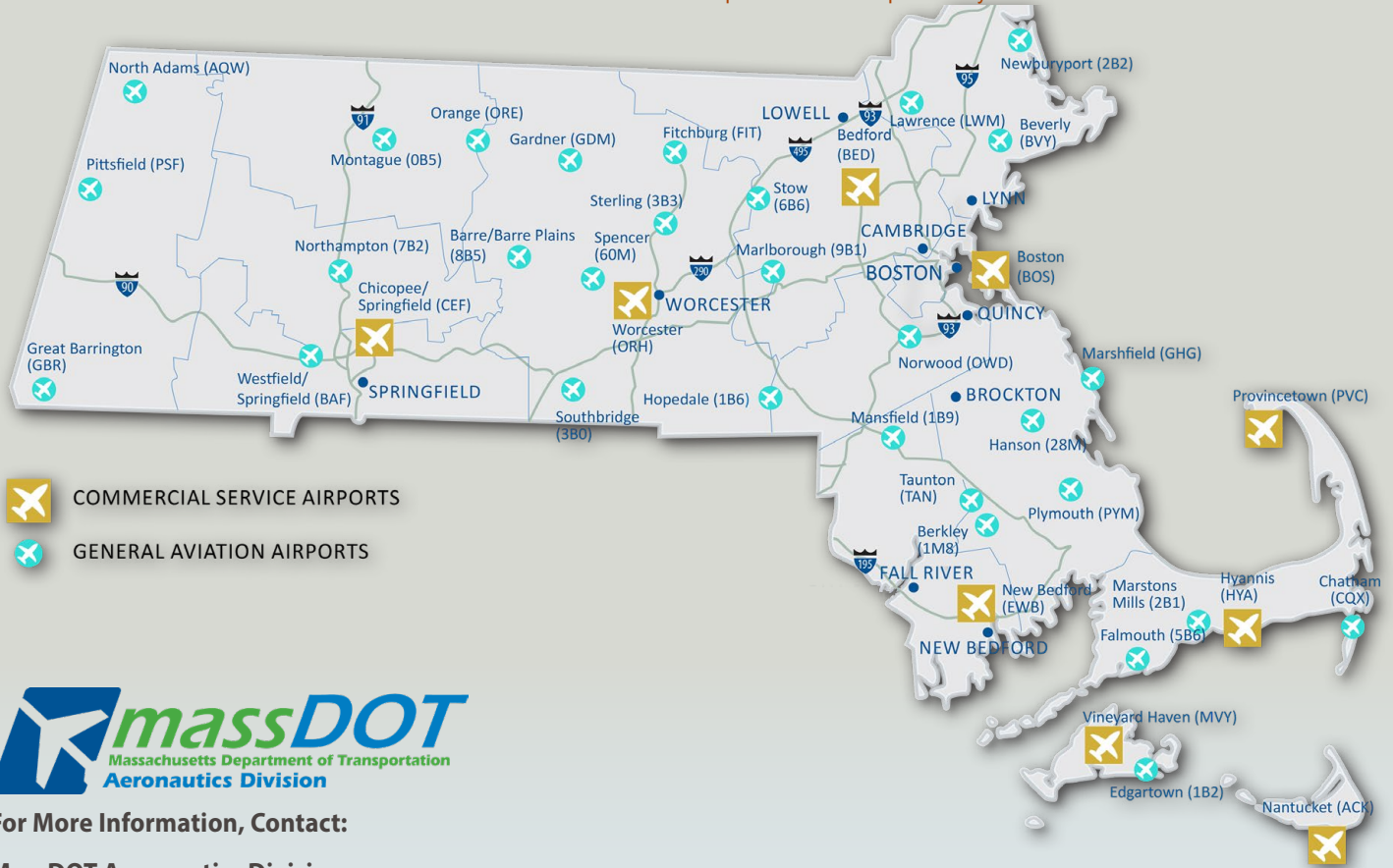
challenges in the aviation industry, the City of Westfield and Westfield Technical Academy (WTA) set out to establish an FAA-approved Part 147 Aircraft Maintenance Technician (AMT) program for high school students. WTA achieved this rigorous certification with the aid of Gulfstream and Bombardier and now stands as one of only three high schools



### **MARSHFIELD – COLLABORATIVE PARTNERSHIP WITH FIRST RESPONDERS BENEFITS LOCAL COMMUNITY**

Marshfield Municipal

Airport-George Harlow Field is an essential public safety transportation asset for the region. The airport holds an annual “Safety Day,” highlighting the strong partnerships between local, state, and federal first responders and how these agencies are working collaboratively in response to man-made disasters. An example of this partnership occurred when the airport’s FBO, Shoreline Aviation, provided aerial support (aircraft & pilot) to the Marshfield Police Department when the State Police Air Wing’s helicopter was unavailable for a search-and-rescue effort. This search effort resulted in a timely arrest of a wanted suspect on the run within the community.



- COMMERCIAL SERVICE AIRPORTS
- GENERAL AVIATION AIRPORTS



**For More Information, Contact:**

**MassDOT Aeronautics Division**  
Logan Office Center  
One Harborside Drive, Suite 205N  
East Boston, MA 02128-2909  
617-412-3680  
[www.mass.gov/orgs/aeronautics-division](http://www.mass.gov/orgs/aeronautics-division)

**Project Management Team:**  
MassDOT Aeronautics Division  
Aircraft Owners and Pilots Association (AOPA)  
Massachusetts Port Authority (Massport)  
National Business Aviation Association (NBAA)

**Photo Credits:**  
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Massachusetts Department of Transportation  
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Town of Barnstable  
439th Airlift Wing Public Affairs  
WWLP-22 News  
WineDineWith.us  
Marshfield Police Department

**Report Prepared by:**



CDM Smith  
with Airport Solutions Group, LLC,  
City Point Partners, LLC & ThinkArgus

*Massachusetts' 39 public-use airports offer a competitive business advantage. Overall, for every \$100 spent by aviation related businesses, an additional \$56 is created as a multiplier impact that boosts spending, payroll, and employment benefits improving the quality of life in Massachusetts for all its residents.*

## SIGN THE PETITION



### *Protect Our Neighborhoods, Clean Water and Fair Taxation.*

The Great Barrington airport is operating unlike other businesses in Great Barrington. The airport, with a special permit, can expand by RIGHT without further permissions from the town and with no tax benefit to the town. It is not paying sales or excise taxes and pays lower Real Estate taxes than many of its neighbors with smaller parcels of land. A Special Permit would give BAE the right to develop all of its 90 acres with no oversight and no additional financial benefit to the town. The 'airport' is situated above our water supply next to the Green River and incorporates part of GB's remaining valuable farmland and open space. This is why our zoning as written does not allow the 'aviation field' to expand on this sensitive site. We are nothing without our water supply, our farmland, and healthy neighborhoods. All are at risk with a Special Permit, and that's why we need your help.

*Ask the Select Board to protect our neighborhoods, our drinking water, and fair taxation by voting NO on the Airport's Special Permit application!*



	A	B		D	E
	First Name	Last Name	Email 1	Address 1 - Street	Address 2 - Street
1	<b>Jon</b>	Evans	<a href="mailto:jon@evansdigi.com">jon@evansdigi.com</a>		
2	<b>Marcia</b>	Stamell		624 S EGREMONT RD	01230-1930
3	<b>anne</b>	fredericks		77 Seekonk Cross	1230
4	<b>Gregory</b>	Whitehead		Old Stockbridge Road	1240
5	<b>Holly</b>	Hamer		Seekonk Cross Rd.	1230
6	<b>Cynthia</b>	Atwood		103 New Marlborough Branch Rd.	1230
7	<b>Andre</b>	Gordon		Prospect Lake Rd.	1230
8	<b>Glenn</b>	Bergman		Main st	1230
9	<b>Jonathan</b>	Baum		39 Hollenbeck Ave	1230
10	<b>Andrew</b>	Kriegman		Seekonk Cross Road	1230
11	<b>Ellen</b>	House		Hurlburt Road	1230
12	<b>Susan</b>	Lord		Dresser Ave	1230
13	<b>Peter</b>	Hagan		Egremont Plain Road	1230
14	<b>Laura</b>	Chester		25 rose hill drive	1230
15	<b>Jody</b>	Brandt		Division street	1230
16	<b>Candace and Rick</b>	Beinecke		South Egremont Rd.	1230
17	<b>Meg</b>	Agnew		15 Mahaiwe St	1230
18	<b>Jake</b>	Pinkston		Egremont Plain Road	1230
19	<b>Teri</b>	Weber		7 Pumpkin hollow Rd	1230
20	<b>Peter</b>	Goldberg		Lakeside Drive	1230
21	<b>Alexander</b>	Musayev		Seekonk Cross Rd	1230
22	<b>Kate</b>	Burke		21 Egremont Plain Rd	1230
23	<b>james</b>	weber		7 Pumpkin Hollow RD	01230-1555
24	<b>Edmund</b>	Milligan Marcus		Baldwin Hill Road	1258

A	B	C	D	E
26	<b>Derek</b>	Eshelman	Seekonk Cross Road	1230
27	<b>Raina</b>	Weber	Pumpkin Hollow Road	1230
28	<b>Ronald</b>	Frohne	Galvin Farm Trl	1257
29	<b>Terence</b>	Cooney	Hurlburt Road	1230
30	<b>Kacy</b>	Warner	Seekonk Cross Rd	1230
31	<b>Marc</b>	Fasteau	Seekonk Cross Road	1230
32	<b>Karen</b>	Christensen	Castle Street	1230
33	<b>Alexa</b>	Englander	58 Hollenbeck Ave	1230
34	<b>Elisa and Larry</b>	Frankel	Knob Hill (Lane)	1230
35	<b>Sarah</b>	Carr	21 Lake Ave	1230
36	<b>Jessie</b>	Duff-McLaurin	Benton Avenue	1230
37	<b>Susanna Banks</b>	Baum	Hollenbeck Ave	1230
38	<b>Paul</b>	Chesloff	Knob Hill	1230
39	<b>Martin</b>	Albert	Berkshire Heights Road	1230
40	<b>Jeremy</b>	Stoepker	Hollenbeck Ave	1230
41	<b>Janice</b>	Kittner	181 Castle St	01230-1540
42	<b>Michael</b>	Peretti	125 Seekonk Cross Road	1230
43	<b>Julie</b>	Anidjar	Sumner	1230
44	<b>Tanveer</b>	Ahmed	121 hollenbeck Ave	1230
45	<b>Dorothy</b>	McTeigue	Prospect Street	1230
46	<b>Barbara</b>	Barak	Cornwall Drive	1230
47	<b>Carolina</b>	Schulze	11 West Ave	1230
48	<b>BENNY</b>	BARAK	CORNWALL DRIVE	1230
49	<b>Rana</b>	Boland	Seekonk Cross Road	1230
50	<b>Kendra</b>	Smallwood	Jug End Road	2158

	A	B	C	D	E
51	<b>mark</b>	cohen		Blue Hill Road	1230
52	<b>Mary Pat</b>	Akers		4 Cottage Ct	1230
53	<b>Linda</b>	Lis		123 Seekonk Cross Rd	1230
54	<b>Katherine</b>	Shea		Knob Lane	1230
55	<b>Elwood H.</b>	Smith		Castle Street	1230
56	<b>Sally</b>	Michael		22 Gilmore Avenue	1230
57	<b>benno</b>	friedman		120 kellogg rd	1257
58	<b>Donald</b>	Marcus		Baldwin Hill Road N/S	1258
59	<b>gary</b>	goerlach		24 reed street	1230
60	<b>Alan</b>	Rivenson		5 Highland Drive	1230
61	<b>Dennis and Judy</b>	Mareb		Stockbridge Road	1230
62	<b>Don</b>	Chester		16 Farm Lane	1230
63	<b>John</b>	Migliaccio		Hurlburt Rd.	1230
64	<b>Loren</b>	Gerson		Highland Dr	1230
65	<b>Arlene</b>	Stedman		1095 main street	1236
66	<b>Jo</b>	Valens		Castle Hill Avenue	1230

□



## April 6 Airport Public Hearing

1 message

**Claudia Trucks** <claudiatrucks@gmail.com>  
Draft

Fri, Mar 31, 2023 at 7:32 AM

Please incorporate into the Record of Proceedings

1. The eight pages (att.) from the Registry of Deeds airport history begins with July 19, 1929, "Then personally appeared the above named Jacob Rossi and acknowledged this foregoing instrument to be his free act and deed: before me Robert K. Wheeler Notary Public. My commission expires Nov. 22, 1929.

The deeded history of the airport includes 1929 Jacob and Jennie Rossi British Airways, 1930 Jennie Rossi Executrix under the will of Jacob Rossi, her Great Barrington Attorney Frank Wright, Attorney Wright's February 6, 1941 Superior Court case No.10730 (att.) Jennie Rossi Executrix under the will of Jacob Rossi and Individually, Petitioner vs. Andrew Somers, Respondent Petition for Decree Authorizing Foreclosure of Mortgage and Decree Approving Sale (att.) to Selectmen James and Lena Tracy who sold to Charles Sharp and Walter Koladza both of Fairfield, Fairfield County, Connecticut who formed Berkshire Aviation Enterprises.

Charles Sharp sold to Walt Koladza owner and operator of Berkshire Aviation Enterprises until he passed Sept. 1, 2004.

To date there has never been a Great Barrington Airport or Koladza Great Barrington Airport on the Egremont Plain Road.

2. On February 18, 2023 the Berkshire Edge Bill Shein article, THE AIRPORT (Part Two): Rick Solan's story begins with Robert Wheeler's in 1929," (att.) is just that, a Story and contrary to the deeded facts.

3. Attorney Heuer on behalf of Plaintiff's Attorney Fasteau, Anne Fredericks and Holly Hamer Land Court 22 MISC 000244 Verified Complaint begins "On March 31, 1932 the Great Barrington Airport ("Airport") existed," (att.) also contrary to the deeded facts.

4. Attorney Heuer's Land Court Verified Complaint Nos. 23, 24, and 28 (att.) all claim the Airport has never recieved approval for extension or approval from the Zoning Board, the only record of Zoning Board relief is from 2017, and the Town has no record of any other relevant approvals or permits is also contrary to the facts including the,

"Application from Berkshire Aviation Enterprises ZBA No.13-03 HEARING ON PETITION FOR A VARIANCE" hearing to be held July 9, 2013 (att.)

And the Richard Solan president of Berkshire Aviation Enterprises Inc. March 25, 2015 "DISCLAIMER OF ABONDONMENT OF SPECIAL PERMIT RIGHTS WITHOUT PREJUDICE (att.) of certain Special Permits granted by the said Town of Great Barrington Zoning Board of Appeals in ZBA Application Nos.13-03 and 811-13 and decisions of said Zoning Board of Appeals #13-03 dated July 9, 2013; and #811-13 dated July 9, 2013 and July 23, 2013 (both attached herewith)."

5. Land Court Verified Complaint No.113. No evidence other than that submitted by Plaintiffs was entered into the Zoning Board Record is also contrary to the Zoning Board of Appeals Minutes of Tuesday, April 5, 2022 (att.) documenting Attorney Heuer attending and speaking of behalf of his clients, and my statement read into the record stating in part, "that this was the Massachusetts Statewide Airport System Plan slated 2017 3.4 million dollar Phase 1 expansion, that is was my property rights that made this zoning scheme viable, and to protect myself I am again Putting the Town on Notice. This is a set up and I am being set up. Do not attempt anything of mine based on this set up. This is criminal collusion and public corruption," and it is.

"That my education is severely limited and is a handicap. Town officials and my immediate neighbors are and have been for years intimidating, bullying and picking on me," and they are.

6. Land Court Verified Complaint No.19 (att.) claims the last time the bylaw was revised was 1974 is contrary to the March 10, 2010 Plannung Board minutes "introducing Attorney Bobroski who worked with the Board on recodifying the zoning bylaws." (att.)

Attorney Bobroski said, "The bylaw codification is a process to bring the zoning bylaw in conformance with state law, and most of the changes were made to bring the bylaw into compliance with state law."

And the Great Barrington Zoning Recodification Public Hearing, March 10, 2010 (att.)

And the added provisions to Section 9.2 Water Quality Protection Overlay District for an extensive recycling plant and a motor vehicle repair operations, with my State and Federal regulatory statute, passed at the May 1, 2020 Annual Town meeting.

7. What began with a 1929 Rick Solan story is concluding with fiction, and after the release of the March 2003 final State and Federal Source Water Assessment Protection Program (SWAP) Report included in the special permit application before and in your hands, the Great Barrington Selectboard, listing my 78 Egremont Plain Road as the site specific DEP Permitted Regulated Facility within the public water supply with a Permitted Activity of Very Small Quantity Generator (VSQG), Activity Class of Hazardous Waste Generator and a Facility Description of Autobody/Repair and the airport as having underground tanks, period. (att.)

At the March 13, 2023 Public Hearing airport Attorney Egan stated, "The reason why our position is we are exempt from zoning is because we are Very Small Quantity Generators," and "The airport's position is they are regulated by State DEP and EPA and at the Federal level."

Do not grant a special permit claiming my site specific State and Federal 78 Egremont Plain Road VSQG generator rights and or my Permitted Activity of Autobody/Repair, as anyone's but mine, Claudia Shapiro.

7. Do not grant a special permit claiming my site specific State and Federal 78 Egremont Plain Road rights, sharing my wealth amongst yourselves, at my expense.

8. On May 1, 2017 Great Barrington voted to adopt the Trust Policy at Town meeting.

The Policy helps to ensure that all, (italicized) residents living and working in our community are fully protected and supported by our police and town government. (att.)

Town government you are, have been and despite my pleading over the years made a conscientious decision/effort too violate your Trust Policy with me, Claudia Shapiro, 78 Egremont Plain Road, Great Barrington MA.

Claudia Shapiro  
78 Egremont Plain Road

Berkshire, ss. July 10, A. D. 1929. Then the above-named Joseph H. Maloney, Commissioners Frederick A. Remington, Henry A. Stevens, as aforesaid, acknowledged the above instrument to be the free act and deed of the Inhabitants of said Town of Great Barrington, before me, Paul E. Foster, Justice of the Peace.  
Rec. April 5, 1930 at 10:45 A.M. and recorded from the original.  
Attest *Malcolm Douglas* Registrar

Jacob Rossi KNOW ALL MEN BY THESE PRESENTS, That I, Jacob A. Rossi of Great Barrington, Berkshire County, Massachusetts, for consideration paid, grant to Berkshire Airways, Inc., a corporation established under the laws of the Commonwealth of Massachusetts and having its usual place of business at said Great Barrington, with WARRANTY COVENANTS, the following described tracts or parcels of land in the said Great Barrington, more particularly bounded and described as follows: PARCEL NO. 1: Beginning at a pine in the Great Barrington-Egremont highway known as the Egremont Plain road, in line of land of M. B. Kline and the grantor herein; thence north 17° east 439.3 feet to a pipe in line of land of said Kline and said grantor; thence south 78° 30' east 1039 feet to a pipe in line of land of one Mielke; thence north 6° 45' east 427.1 feet to a pipe also in line of land of said Mielke; thence south 83° 45' east 330 feet along line of land of said Mielke to a pipe in the highway known as the Egremont Plain-Alford road; thence along said highway north 7° 45' east 1516 feet to a pipe on said highway in line of land of one Mason; thence north 72° west 245 feet along line of land of said Mason to the center of the bed of the Green River, so called; thence following the Green River in a westerly direction, along the center of the river bed to a pipe in other land of the grantor; thence along other land of grantor south 24° west 1000 feet to a pipe in line of land of one Brothers; thence south 67° east 176.8 feet along line of land of said Brothers to a pipe; thence south 21° 15' west 134.7 feet to a pipe in the highway in line of land of said Brothers; thence along the Egremont Plain-Great Barrington highway in a south-easterly direction 323.3 feet to an iron pipe in line of said highway; thence continuing further along said highway 816.5 feet to the place of beginning; containing approximately 92.3 acres, be the same more or less. PARCEL NO. 2: Beginning at a point in the line of land of one Mason, on the easterly bank of the Green River; thence south 86° 30' east along the line of said Mason 168 feet to the highway known as the Egremont Plain-Alford road; thence north along said highway 9° 15' west 405 feet to the center of the Green River at the bridge thereover; thence following the course of the said Green River, along a line drawn in the center of the river, to the point of beginning. I, Jennie D. Rossi, wife of said grantor, hereby release to said grantor all rights of dower and homestead and all other rights and interests in the granted premises. Witness our hands and seals this nineteenth day of July A. D. 1929.  
Jacob Rossi & seal  
Mrs. Jennie D. Rossi & seal  
Mrs. Jacob Rossi

Commonwealth of Massachusetts,  
Berkshire, ss. July 19, 1929. Then personally appeared the above-named Jacob Rossi and acknowledged the foregoing instrument to be his free act and deed. Before me, Robert K. Wheeler, Notary Public. My Commission expires Nov. 22, 1929.  
Rec. April 5, 1930 at 2:20 P.M. and recorded from the original.  
Attest *Malcolm Douglas* Registrar

Roy W. Busby Know all Men by these Presents that I, Roy W. Busby, of Great Barrington, Berkshire County, Massachusetts, in consideration of One Dollar and other valuable consideration paid by George Kirchoff of Great Barrington, Berkshire County, Massachusetts, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said George Kirchoff, a certain tract or parcel of land located on the southerly side of the highway leading from Great Barrington over Three Mile Hill so-called and known as the State Road, being a portion of the premises embraced and described in a deed from Angeline S. Brownson to Martha J. Busby dated February 17, 1906, recorded in the Southern Berkshire Registry of Deeds in

A TRUE PHOTOCOPY AS RECORDED IN  
SOUTHERN BERKSHIRE REGISTRY OF  
DEEDS AND IT IS SO CERTIFIED.

BOOK 248 PAGE 202

ATTEST  
*Dorinda M. Beckwith* REGISTER  
7-17-15

*Exhibit 8A1c*

248

Berkshire Airways, Inc. KNOW ALL MEN BY THESE PRESENTS, That the Berkshire Airways, Inc., a corporation duly organized under the laws of the Commonwealth of Massachusetts, and having its usual place of business at Great Barrington, Berkshire County, Massachusetts, for consideration paid, grants to the Estate of Jacob Rossi, late of the said Great Barrington, with MORTGAGE COVENANTS, to secure the payment of Forty-five Hundred Dollars, on demand, with interest at six per centum per annum payable semiannually as provided in one note of even date, the following described tracts or parcels of land in the said Great Barrington, more particularly bounded and described as follows:

PARCEL NO. 1: Beginning at a pipe in the Great Barrington-Egremont Highway known as the Egremont Plain Road, in line of land of M. B. Kline and the mortgage herein; thence north 17° east 439.3 feet to a pipe in line of land of said Kline and said mortgage; thence south 78° 30' east 1039 feet to a pipe in line of land of one Mielke; thence north 6° 45' east 427.3 feet to a pipe also in line of land of said Mielke; thence south 83° 45' east 330 feet along line of land of said Mielke to a pipe in the highway known as the Egremont Plain-Alford Road; thence along said highway north 7° 45' east 1516 feet to a pipe on said highway in line of land of one Mason; thence north 72° west 245 feet along line of land of said Mason to the center of the bed of the Green River, so called; thence following the Green River in a westerly direction, along the center of the river bed to a pipe in other land of the mortgage; thence along other land of the mortgage south 24° west 1000 feet to a pipe in line of land of one Brothers; thence south 67° east 176.8 feet along line of land of said Brothers to a pipe; thence south 21° 15' west 134.7 feet to a pipe in the highway in line of land of said Brothers; thence along the Egremont Plain-Great Barrington highway in a southeasterly direction 523.5 feet to an iron pipe in line of said highway; thence continuing further along said highway 616.5 feet to the place of beginning; containing approximately 92.3 acres, be the same more or less.

PARCEL NO. 2: Beginning at a point in the line of land of one Mason, on the easterly bank of the Green River; thence south 66° 30' east along the line of said Mason 168 feet to the highway known as the Egremont Plain-Alford Road; thence north along said highway 9° 15' west 405 feet to the center of the Green River at the bridge thereover; thence following the course of the said Green River, along a line drawn in the center of the river, to the point of beginning. Being the same entire premises which were conveyed to the said Berkshire Airways, Inc. by Jacob Rossi by deed dated July 19th, 1929 and recorded in the Southern Berkshire Registry of Deeds at said Great Barrington, in Book No. 248 Page 202, to which reference may be had.

This mortgage is upon the statutory condition for any breach of which the mortgagee shall have the statutory power of sale. In Witness Whereof, the said Berkshire Airways, Inc. has caused its name and corporate seal to be hereunto affixed and these presents to be executed in its name and behalf, by Robert K. Wheeler, its President, hereto duly authorized, this First day of April, 1930.

See Federal  
hian Attachment  
No. 5524

Berkshire Airways, Inc., & seal  
By Robert K. Wheeler, President.

Commonwealth of Massachusetts,  
Berkshire, ss. April 1, 1930. Then personally appeared the above named Robert K. Wheeler, and acknowledged the foregoing instrument to be the free act and deed of the Berkshire Airways, Inc. Before me:

(seal) J. H. Lansing, Notary Public.  
My Commission Expires Feb. 4, 1932.

Rec. April 3, 1930 at 3:25 P. M. and recorded from the original.  
Attest *Walter Douglas* Registrar.

A TRUE PHOTOCOPY AS RECORDED IN  
SOUTHERN BERKSHIRE REGISTRY OF  
DEEDS AND IT IS SO CERTIFIED.

BOOK 240 PAGE 248  
ATTEST  
Wanda M. Beckwith REGISTER  
11-20-15

Berkshire Airways, Inc. by Wgtee. KNOW ALL MEN BY THESE PRESENTS that J. JENNIE ROSSI,  
to EXECUTRIX under the will of JACOB ROSSI, owner and present  
Frank H. Wright holder of a mortgage from BERKSHIRE AIRWAYS, INC. to the  
Estate of Jacob Rossi dated April 1, 1930 recorded with  
Southern Berkshire Registry of Deeds Book 240, Page 248 by the power conferred by said mort-  
gage and every other power for Forty-nine hundred eighty-five and 68/100 Dollars paid grant  
to FRANK H. WRIGHT of Great Barrington, Berkshire County, Massachusetts, the premises con-  
veyed by said mortgage.

The following described tracts or parcels of land in the Town of Great Barrington, Berke-  
shire County, Massachusetts, more particularly bounded and described as follows:

Parcel No. 1. Beginning at a pipe in the Great Barrington-Egremont Highway known as the  
Egremont Plain Road, in line of land of W. B. Kline and the mortgage herein; thence north  
17° east 439.3 feet to a pipe in line of land of said Kline and said mortgage; thence south  
78° 30' east 1039 feet to a pipe in line of land of one Mielke; thence north 6° 45' east  
427.3 feet to a pipe also in line of land of said Mielke; thence south 83° 45' east 330  
feet along line of land of said Mielke to a pipe in the highway known as the Egremont Plain-  
Alford Road; thence along said highway north 7° 45' east 1516 feet to a pipe on said high-  
way in line of land of one Mason; thence north 72° west 245 feet along line of land of said  
Mason to the center of the bed of the Green River so-called; thence following the Green  
River in a westerly direction, along the center of the river bed to a pipe in other land  
of the mortgage; thence along other land of the mortgage south 24° west 1000 feet to a  
pipe in line of land of one Brothers; thence south 67° east 178.8 feet along line of land  
of said Brothers to a pipe; thence south 31° 18' west 134.7 feet to a pipe in the highway  
in line of land of said Brothers; thence along the Egremont Plain-Great Barrington highway  
in a southeasterly direction 523.5 feet to an iron pipe in line of said highway; thence  
continuing further along said highway 616.8 feet to the place of beginning. Containing  
approximately 32.3 acres, be the same more or less.

Parcel No. 2. Beginning at a point in the line of land of one Mason, on the easterly  
bank of the Green River; thence south 88° 30' east along the line of said Mason 188 feet  
to the highway known as the Egremont Plain-Alford Road; thence north along said highway  
9° 15' west 405 feet to the center of the Green River, along a line drawn in the center of  
the river, to the point of beginning.

Being the same entire premises which were conveyed to the said Berkshire Airways, Inc.  
by Jacob Rossi by deed dated July 19, 1929 and recorded in the Southern Berkshire registry  
of Deeds at said Great Barrington in Book 248 at Page 202, to which reference may be had.

WITNESS my hand and seal this 28th day of July 1941.

Jennie Rossi  
Executrix under the will of  
Jacob Rossi

THE COMMONWEALTH OF MASSACHUSETTS

Berkshire ss. July 28, 1941 Then personally appeared the above named Jennie Rossi,  
Executrix and acknowledged the foregoing instrument to be free act and deed, before me  
U.S.R.S. \$5.50 Mary B. White Notary Public (seal).  
duly cancelled My commission expires April 24, 1942.

AFIDAVIT

I, Jennie Rossi, Executrix under the will of Jacob Rossi, the grantor named in the fore-  
going deed, make oath and say that the principal, and interest obligations mentioned in the  
mortgage above referred to was not paid or tendered or performed when due or prior to the  
sale, and that I published on the 28th day of June, 1941 and the 3rd and 10th days of July  
1941 in the Berkshire Courier a newspaper published, or by its title page purporting to be  
published, in Great Barrington and having a circulation therein, a notice of which the  
following is a true copy:

MORTGAGEE'S SALE OF REAL ESTATE By virtue and in execution of the Power of Sale contain-  
ed in a certain mortgage given by Berkshire Airways, Inc., to the Estate of Jacob Rossi,  
dated April 1, 1930, and recorded in the Southern Berkshire Registry of Deeds in Book 240,  
at Page 248, of which mortgage the undersigned is the present holder, for breach of the  
conditions of said mortgage and for the purpose of foreclosing the same, and in accordance  
with a decree authorizing such sale entered on the 21st day of June, 1941, in the Berkshire  
Superior Court at Pittsfield in the County of Berkshire and Commonwealth of Massachusetts  
in a proceeding in equity numbered 10,730 and entitled Jennie Rossi, Executrix under the



VOLUME 207

Will of Jacob Rossi, and Individually, vs. Andrew L. Somers, will be sold at public auction at 10:00 o'clock in the forenoon on the 19th day of July, 1941 on the premises described in said mortgage, to wit:

The following described tracts or parcels of land in the Town of Great Barrington, Berkshire County, Massachusetts, more particularly bounded and described as follows:

Parcel No. 1. Beginning at a pipe in the Great Barrington-Egremont Highway known as the Egremont Plain Road, in line of land of M. B. Kline and the mortgage herein; thence north 17° east 430.3 feet to a pipe in line of land of said Kline and said mortgage; thence south 78° 30' east 1039 feet to a pipe in line of land of one Mielke; thence north 6° 45' east 427.3 feet to a pipe also in line of land of said Mielke; thence south 83° 45' east 330 feet along line of land of said Mielke to a pipe in the highway known as the Egremont Plain-Alford Road; thence along said highway north 7° 45' east 1616 feet to a pipe on said highway in line of land of one Mason; thence north 72° west 245 feet along line of land of said Mason to the center of the bed of the Green River, so-called; thence following the Green River in a westerly direction, along the center of the river bed to a pipe in other land of the mortgage; thence along other land of the mortgage south 24° west 1000 feet to a pipe in line of land of one Brothers; thence south 67° east 178.8 feet along line of land of said Brothers to a pipe; thence south 21° 16' west 134.7 feet to a pipe in the highway in line of land of said Brothers; thence along the Egremont Plain-Great Barrington highway in a southeasterly direction 523.5 feet to an iron pipe in line of said highway; thence continuing further along said highway 816.6 feet to the place of beginning. Containing approximately 92.3 acres, be the same more or less.

Parcel No. 2. Beginning at a point in the line of land of one Mason, on the easterly bank of Green River; thence south 68° 30' east along the line of said Mason 168 feet to the highway known as the Egremont Plain-Alford Road; thence north along said highway 9° 16' west 403 feet to the center of the Green River at the bridge thereover; thence following the course of said Green River, along a line drawn in the center of the river to the point of beginning.

Being the same entire premises which were conveyed to the said Berkshire Airways, Inc., by Jacob Rossi by deed dated July 10, 1939, and recorded in the Southern Berkshire Registry of Deeds at said Great Barrington in Book 248, at Page 802, to which reference may be had.

Said premises will be sold subject to all prior encumbrances and all tax liens or other liens outstanding thereon.

Terms of Sale: 10% of the purchase price will be required to be paid at time and place of sale, balance upon delivery of deed within five days thereafter.

Jennie Rossi Executrix  
Present holder of said mortgage.

Great Barrington, Mass.,  
June 24, 1941

JH:EGF.H.W.

Frank H. Wright, Counsel.

Pursuant to said notice at the time and place therein appointed, the said default still continuing, and in pursuance of a decree issued by the Court on June 21 1941, in an action entitled Jennie Rossi, Executrix under the will of Jacob Rossi, and Individually vs. Andrew L. Somers, Berkshire Superior Court No. 10730, I sold the mortgaged premises at public auction by DeWitt Smith an auctioneer, to said Frank H. Wright above named, for Forty-nine Hundred eighty-five and 00/100 Dollars bid by Frank H. Wright being the highest bid made therefor at said auction

Jennie Rossi

Signed and sworn to by the said Jennie Rossi, Executrix July 28, 1941, before me

Mary S. White Notary Public (seal)

My commission expires April 24, 1942.

Received July 30, 1941 at 4-37 P.M. and recorded from the original.

Attest

*Joseph A. DeBlase*

Register.

A TRUE PHOTOCOPY AS RECORDED IN  
SOUTHERN BERKSHIRE REGISTRY OF  
DEEDS AND IT IS SO CERTIFIED.

BOOK 267 PAGE 460

ATTEST

*Wanda M Beckwith* REGISTER

12715

304

Frank H. Wright  
James P. Tracy

VOLUME 888

KNOW ALL MEN BY THESE PRESENTS

That J. Frank H. Wright of Great Barrington, Berkshire County, in the Commonwealth of  
Massachusetts  
do hereby certify that the following described tracts or parcels of land in the Town of Great Barrington, Berkshire  
County, Massachusetts, more particularly bounded and described as follows: Parcel No. 1. Be-  
ginning at a pipe in the Great Barrington- Egremont Highway known as the Egremont Plain  
Road, in line of land of M. B. Kline; thence north 17° east 439.3 feet to a pipe in line of  
land of said Kline; thence south 78° 30' east 1039 feet to a pipe in line of land of one  
Mielke; thence north 5° 45' east 427.3 feet to a pipe also in line of land of said Mielke;  
thence south 83° 45' east 330 feet along line of land of said Mielke to a pipe in the high-  
way known as the Egremont Plain- Alford Road; thence along said highway north 7° 45' east  
1616 feet to a pipe on said highway in line of land of one Mason; thence north 72° west 245  
feet along line of land of said Mason to the center of the bed of the Green River so-call-  
ed; thence following the Green River in a westerly direction along the center of the river  
bed to a pipe in land now or formerly of one Rossi; thence along said Rossi land south 24°  
west 1000 feet to a pipe in line of land of one Brothers; thence south 87° east 176.6 feet  
along line of land of said Brothers to a pipe; thence south 21° 15' west 134.7 feet to a  
pipe in the highway in line of land of said Brothers; thence along the Egremont Plain-  
Great Barrington Highway in a southeasterly direction 523.5 feet to an iron pipe in line  
of said highway; thence continuing further along said highway 816.5 feet to the place of  
beginning. Containing approximately 82.3 acres be the same more or less. Parcel No. 2. Be-  
ginning at a point in the line of land of one Mason, on the easterly bank of the Green River;  
thence south 88° 30' east along the line of said Mason 188 feet to the highway known as  
the Egremont Plain- Alford Road; thence north along said highway 9° 15' west 405 feet to  
the center of the Green River at the bridge thereover; thence following the course of said  
Green River, along a line drawn in the center of the river, to the point of beginning. Being  
the same entire premises embraced and described in a deed from Jennie Rossi, Executrix under  
the will of Jacob Rossi, Mortgagee, to Frank H. Wright, dated July 26, 1941 and recorded in the  
Southern Berkshire Registry of Deeds at Great Barrington in Book 267 at Page 460.

I, Rose D. Wright  
do hereby certify that the following described tracts or parcels of land in the Town of Great Barrington, Berkshire  
County, Massachusetts, more particularly bounded and described as follows: Parcel No. 1. Be-  
ginning at a pipe in the Great Barrington- Egremont Highway known as the Egremont Plain  
Road, in line of land of M. B. Kline; thence north 17° east 439.3 feet to a pipe in line of  
land of said Kline; thence south 78° 30' east 1039 feet to a pipe in line of land of one  
Mielke; thence north 5° 45' east 427.3 feet to a pipe also in line of land of said Mielke;  
thence south 83° 45' east 330 feet along line of land of said Mielke to a pipe in the high-  
way known as the Egremont Plain- Alford Road; thence along said highway north 7° 45' east  
1616 feet to a pipe on said highway in line of land of one Mason; thence north 72° west 245  
feet along line of land of said Mason to the center of the bed of the Green River so-call-  
ed; thence following the Green River in a westerly direction along the center of the river  
bed to a pipe in land now or formerly of one Rossi; thence along said Rossi land south 24°  
west 1000 feet to a pipe in line of land of one Brothers; thence south 87° east 176.6 feet  
along line of land of said Brothers to a pipe; thence south 21° 15' west 134.7 feet to a  
pipe in the highway in line of land of said Brothers; thence along the Egremont Plain-  
Great Barrington Highway in a southeasterly direction 523.5 feet to an iron pipe in line  
of said highway; thence continuing further along said highway 816.5 feet to the place of  
beginning. Containing approximately 82.3 acres be the same more or less. Parcel No. 2. Be-  
ginning at a point in the line of land of one Mason, on the easterly bank of the Green River;  
thence south 88° 30' east along the line of said Mason 188 feet to the highway known as  
the Egremont Plain- Alford Road; thence north along said highway 9° 15' west 405 feet to  
the center of the Green River at the bridge thereover; thence following the course of said  
Green River, along a line drawn in the center of the river, to the point of beginning. Being  
the same entire premises embraced and described in a deed from Jennie Rossi, Executrix under  
the will of Jacob Rossi, Mortgagee, to Frank H. Wright, dated July 26, 1941 and recorded in the  
Southern Berkshire Registry of Deeds at Great Barrington in Book 267 at Page 460.

Witness our hands and seals this 28th day of July A.D. 1941  
Frank H. Wright  
Rose D. Wright

The Commonwealth of Massachusetts  
Berkshire ss. July 28, 1941

Then personally appeared the above named Frank H. Wright  
and acknowledged the foregoing instrument to be his free act and deed, before me,  
Mary E. White, Notary Public.

U.S.S. 94.95  
duly cancelled  
Received Sept. 2, 1941 at 10-30 A. M.  
and recorded from the original.  
Attest Joseph A. Bellows Register

A TRUE PHOTOCOPY AS RECORDED IN  
SOUTHERN BERKSHIRE REGISTRY OF  
DEEDS AND IT IS SO CERTIFIED.  
BOOK 269 PAGE 304  
ATTEST  
Wanda M. Bessick REGISTER  
1-27-15

Notice ordered re-  
turnable at Pittsfield  
Saturday, March 1, 1941,  
11 o'clock, A.M. to  
show cause why ~~prayer~~  
~~prayer~~ for authority to fore-  
close mortgage  
should not be  
granted (Burns, J.).  
Irving H. Gamwell,  
Clerk.

SUPERIOR COURT

Jennie Rossi, Executrix under  
the will of Jacob Rossi, and  
Individually, Petitioner

vs.

Andrew L. Somers, Respondent

PETITION FOR DECREE AUTHORIZING  
FORECLOSURE OF MORTGAGE AND DECREE  
APPROVING SALE

COMMONWEALTH OF MASSACHUSETTS  
BERKSHIRE SS. SUPERIOR COURT

FILED

FEB 6 1941

*Irving H. Gamwell*  
CLERK

From the Office of  
Frank H. Wright, Atty.  
Great Barrington, Mass.

No. 1 0 7 3 0 (11)

Jennie Rossi, Executrix and  
Individually

vs.

Andrew L. Somers

FINAL DECREE APPROVING SALE  
AND RETURN TO ORDER OF SALE

COMMONWEALTH OF MASSACHUSETTS  
BERKSHIRE, SS.

SUPERIOR COURT  
**ENTERED**

(Burns, J.)  
September 12, 1941.

*Jennie A. Mason*

239

VOLUME 277

the northeast corner of the former Douglas land; thence north 86° west, 210 feet,  
thence north 16° 30' west, 22 feet to the easterly line of the barn lot; the above describ-  
ed line are the center of survey lines of the right of way and the said right of way is  
10 feet in width on each side of said lines or 20 feet in all. The conveyed premises are a  
portion of the premises conveyed to the grantor herein by Anne Douglas Eaman, by deed dat-  
ed July 13, 1944 recorded in the Southern Berkshire Registry of Deeds at said Great Barrin-  
gton in Book 275 Page 423. The grantor further reserves for himself, his heirs, executors, ad-  
ministrators or assigns, an easement and right to maintain electric light and telephone  
service <sup>presently</sup> ~~to~~ <sup>to</sup> barn, with the right to add additional wires, and to maintain, repair and  
replace poles and wiring, with the right to enter upon the granted premises to make all  
necessary repairs and replacements, in maintaining said electric light and telephone  
service. Said grantor also reserves to himself, his heirs, executors, administrators and  
assigns, the right to maintain a water pipe line from its present connection with water  
main to the barn, without connection with the house, and with the privilege of repairing,  
maintaining and replacing said water pipe at all times. Grantor further agrees to allow  
grantee the first refusal in the event of sale of reserved tract, with buildings thereon,  
and easements reserved. I, Cornelia D. Fell, wife of the grantor hereunder, release to the  
said grantee all my rights of dower and homestead, and all other rights and interests in  
the granted premises. In Witness Whereof we have hereunto set our hands and seals this 17th  
day of January A.D. 1946

U.S.N.S. § 7-70  
only once

Everitt H. Fell  
Cornelia D. Fell

(L.S.)  
(L.S.)

Commonwealth of Massachusetts

Berkshire, ss January 17, 1946 Then personally appeared the above named  
Everitt H. Fell and acknowledged the foregoing instrument to be his free act and deed,  
before me, George E. McCormick Notary Public My commission expires Sept. 8, 1949 (see 1)  
Rec. Jan. 26, 1946 at 2-23 P.M. and recorded from the original.  
Attest *Stephen B. R. Phelan* Register

James P. Tracy  
To  
Charles L. Sharp et al

KNOW ALL MEN BY THESE PRESENTS That I, James P. Tracy of  
Great Barrington, Berkshire County, Massachusetts, for  
consideration paid, grant to Charles L. Sharp and Walter  
Kolada, both of Fairfield, Fairfield County, Connecticut, with WARRANTY COVENANTS, the  
following described tracts or parcels of land in the Town of Great Barrington, Berkshire  
County, Massachusetts, more particularly bounded and described as follows: Parcel 1. Begin-  
ning at a pipe in the Great Barrington- Egremont Highway known as the Egremont Plain Road,  
in line of land of W.B. Kline; thence north 17° east 439.3 feet to a pipe in line of land  
of said Kline; thence south 78° 30' east 1639 feet to a pipe in line of land of one Wielke;  
thence north 8° 46' east 427.3 feet to a pipe also in line of land of said Wielke; thence  
south 83° 45' east 356 feet along line of land of said Wielke to a pipe in the highway  
known as the Egremont Plain- Alford Road; thence along said highway north 7° 45' east 1616  
feet to a pipe on said highway in line of land of one Mason; thence north 72° west 248 feet  
along line of land of said Mason to the center of the bed of the Green River so-called; then  
ce following the Green River in a westerly direction, along the center of the river bed to a  
pipe in land now or formerly of one Rossi; thence along said Rossi land south 24° west 1000  
feet to a pipe in line of land of one Brothers; thence south 87° east 176.6 feet along line  
of land of said Brothers to a pipe; thence south 21° 16' west 134.7 feet to a pipe in the  
highway in line of land of said Brothers; thence along the Egremont Plain- Great Barrington  
highway in a southeasterly direction 623.5 feet to an iron pipe in line of said highway;  
thence continuing further along said highway 614.6 feet to the place of beginning. Contain-  
ing approximately 92.3 acres be the same more or less. Parcel 2. Beginning at a point in the  
line of land of one Mason, on the easterly bank of the Green River; thence south 86° 30'  
east along the line of said Mason 188 feet to the highway known as the Egremont Plain- Al-  
ford Road; thence north along said highway 8° 15' west 405 feet to the center of the Green  
River at the bridge thereover; thence following the course of said Green River, along a line  
drawn in the center of the river, to the point of beginning. Being the same entire premises  
embraced and described in a deed from Frank H. Wright to James P. Tracy dated July 28, 1941  
and recorded in the Southern Berkshire Registry of Deeds in Book 269 at Page 304. Also hereto  
by conveying that certain tract or parcel of land situated on the westerly side of the high

way leading northerly from the Egremont Plain Road to the village of Alford and located in the said Town of Great Barrington, bounded and described as follows: Beginning at an iron bar at the southeast corner of the parcel herein conveyed and in the westerly line of the said highway; thence North 76° 45' west, 323 feet along land of Henry Mielke and land of one Parriah to an iron pipe; thence North 5° 10' east, 427.3 feet along land of the grantor to an iron pipe; thence south 81° 45' east, 330.8 feet along other land of the said grantor to an iron pipe in the westerly line of the said highway; thence southerly along the westerly line of the said highway 453 feet to the place of beginning. Containing 3.25 acres of land. Being the same entire premises embraced and described in a deed from Henry Mielke to James F. Tracy dated August 2, 1943 and recorded in the Southern Berkshire Registry of Deeds in Book 273 at Page 224. Reference is hereby made to an affidavit by Henry Mielke and Emma Mielke dated August 2, 1943 and recorded in said Registry of Deeds in Book 271 at Page 433. Taxes for the year 1945 are to be paid by the grantees. I, Lena M. Tracy, wife of the grantor release to the said grantees all rights of dower and homestead and other interests therein. Witness our hands and seals this 27th day of January, A.D. 1945.

In presence of:  
Frank H. Wright  
U.S.R.S. \$22.00  
duly cancelled.

James F. Tracy  
Lena M. Tracy

Commonwealth of Massachusetts  
Berkshire, ss January 27, 1945 Then personally appeared the above named James F. Tracy and acknowledged the foregoing instrument to be his free act and deed, before me,  
Frank H. Wright  
Notary Public (ssal)

Rec. January 29, 1945 at 3-20 P.M. and recorded from the original.  
Attest  
*Josephine G. Blane*  
Register

William F. Sieglia et ux AGREEMENT made this 27th day of January, A.D. 1945, between  
to WILLIAM F. SIEGLIA and HELEN B. SIEGLIA, husband and wife  
Laurence Barbieri of Great Barrington, Massachusetts, hereinafter called the  
Vendors, of the one part, and LAWRENCE BARBIERI of said  
Great Barrington, hereinafter called the purchaser, of the other part.

The said vendors agree to sell and the said purchaser agrees to purchase for the price hereinafter set forth, on which a payment of \$10.00 has this day been made, the following described timber and trees now standing and growing on the farm known as the Old Giddings Place located on the westerly side of the North Plain Road so-called near the village of Housatonic and in the Town of Great Barrington aforesaid;

This sale is intended to include all of the timber standing and growing on said farm owned by the vendors and located on said farm, west of the Williams River.

The price to be paid for said timber is \$2000.00; of which \$10.00 has been paid, the balance of \$1990.00 to be paid upon the signing of this agreement.

The vendors grant unto said purchaser and his assigns, full and free license and authority to enter into and upon said land with his or their agents, servants and workmen and cut down said timber and trees and such underwood as may impede the cutting and felling and removal thereof and to remove the whole of said timber and trees when and as he the said purchaser or his assigns shall think proper, but within the time hereinafter limited; but doing no unnecessary damage to fences and barways, etc.

And the said purchaser further agrees to cut and remove said trees within two years from the date of this agreement. And it is agreed that the purchaser may have the right to set up a mill on said premises west of the Williams River at any convenient place and shall have the right to use the most convenient right of way over said premises to remove timber and lumber therefrom.

In Witness Whereof the parties hereto have set their hands and seals, the day and year first above written.

Wm. F. Sieglia  
Helen B. Sieglia  
Ebel Stang

A TRUE PHOTOCOPY AS RECORDED IN  
SOUTHERN BERKSHIRE REGISTRY OF  
DEEDS AND IT IS SO CERTIFIED  
BOOK 277 PAGE 238  
ATTEST  
*Josephine G. Blane* REGISTER  
1-27-15



VILLAGE 270

west, 323 feet along land of Henry Nielke and land of one Parrish to an iron pipe; thence north 8° 10' east, 427.5 feet along land now or formerly of James F. Tracy to an iron pipe; thence south 81° 46' east, 537.6 feet along other land now or formerly of said Tracy to an iron pipe in the westerly line of the said highway; thence southerly along the westerly line of the said highway 458 feet to the place of beginning. Containing 5.28 acres of land. Being the same entire premises embraced and described in a deed from Henry Nielke to James F. Tracy dated August 2, 1943 and recorded in the Southern Berkshire Registry of Deeds in Book 273 at Page 234. Reference is hereby made to an affidavit by Henry Nielke and Edna Nielke dated August 2, 1943, and recorded in said Registry of Deeds in Book 271 at Page 433. Being all and the same premises conveyed to the grantors hereunder by James F. Tracy, by deed dated January 27, 1946, recorded in said Registry of Deeds in Book 277, Page 238. We, Katherine N. Sharp and Catherine Louise Decker Kolada, wives of the grantors hereunder, release to the said grantee all our rights of dower and homestead, and all other rights and interests in the granted premises. In Witness Whereof we have hereunto set our hands and seals this 30 day of March A. D. 1946.

(Seal) Charles L. Sharp (L. S.)  
Walter Kolada (L. S.)  
Katherine N. Sharp (L. S.)  
Catherine Louise Decker Kolada (L. S.)

Commonwealth of Massachusetts Berkshire ss. March 30, 1946  
Then personally appeared the above named Charles L. Sharp and Walter Kolada and acknowledged the foregoing instrument to be their free act and deed, before me,  
(Seal) George H. McCormick Notary Public  
My commission expires Sept. 8, 1948

Res. April 1, 1946 at 9-45 P. M. and recorded from the original.  
Attest *Joseph B. Blaine* Register

Murlen Sayles  
to  
Oliver Wilcox et ux

TO ALL WHOM THESE PRESENTS SHALL COME, Greeting  
Know Ye, That I, Murlen Sayles, of the Town and County of  
Litchfield and State of Connecticut for the consideration  
of a valuable sum in ---dollars, received to my full  
satisfaction of Oliver Wilcox and Evelyn L. Wilcox, of Egremont, County of Berkshire  
and State of Massachusetts husband and wife, do give, grant, bargain, sell and confirm  
unto the said Oliver Wilcox and Evelyn L. Wilcox, husband and wife as joint tenants  
with right of survivorship, a certain piece or parcel of land, situated in the westerly  
part of Egremont, containing 180 acres more or less, with all buildings thereon standing,  
known as the Herdick Home a Farm bounded and described as follows; Northerly by the  
Bethhill Road, so-called; land now or formerly of John P. Warren; and land now or formerly  
of Norman Van Dusen; Easterly by land now or formerly of said Norman Van Dusen;  
Southerly by land now or formerly of Charles Spurr; and westerly by land now or formerly  
of Ephraim Welch. Subject to any rights which were granted in a certain deed of mining  
rights from Herriek Norman to Thompson G. Wheeler, July 17, 1886 and recorded in said  
Registry of Deeds Book 141, Pages 204 and 205. For further reference, see Warranty  
Deed of Edward Doty to Robert V. Sayles, dated April 17, 1887, recorded in Berkshire  
S. S. Registry, Vol. 265, Page 403; and Quitclaim deed of Robert V. Sayles to this  
grantor, recorded Berkshire S. S. Registry Vol. 267, Page 264, dated August 19, 1938.  
TO HAVE AND TO HOLD the above granted and bargained premises, with the  
appurtenances thereof, unto them, the said grantees, their heirs, and the heirs and  
assigns of the survivor of them, forever, to them and their own proper use and behoof.  
And also, I, the said grantor, do for myself, my heirs executors, administrators  
covenant with the said grantees, their heirs and assigns, and the heirs and assigns of  
the survivor of them, that at and until the enrolling of these presents I or well  
ceased of the premises, as a good indefeasible estate in FREE SIMPLE and have good right  
to bargain and sell the same in manner and form as is above written, and that the same  
is free from all encumbrances whatsoever, except as stated herein. AND FURTHERMORE I,  
the said grantor, do by these presents bind myself and my heirs forever to WARRANT AND  
DEFEND the above granted and bargained premises to them, the said grantees, their heirs

*For Agricultural Tax Book 493 Page 745*

A TRUE PHOTOCOPY AS RECORDED IN  
SOUTHERN BERKSHIRE REGISTRY OF  
DEEDS AND THIS SO CERTIFIED

BOOK 280 PAGE 17

ATTEST  
*Wanda M. Buehler* REGISTER  
7-27-15





News and Ideas Worth Sharing



Rick Solan (L), majority owner of Berkshire Aviation Enterprises, seen at the airport this month. Robert K. Wheeler, center right, with Wheeler & Taylor staff in 1961. Photos: Solan/Bill Shein, Wheeler/Great Barrington Bicentennial Book

## IN FOCUS

# THE AIRPORT (Part Two): Rick Solan's story begins with Robert Wheeler's in 1929

The complicated present of the Great





fasteau hamer et al...



LAND COURT  
FILED

22 MAY -9 AM 10:59

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss.

LAND COURT DEPARTMENT OF THE  
TRIAL COURT

HOLLY HAMER, MARC FASTEAU, AND  
ANNE FREDERICKS,

Plaintiffs,

v.

ZONING BOARD OF APPEALS OF THE  
TOWN OF GREAT BARRINGTON, RON  
MAJDALANY, CAROLINE IVORY,  
STEPHEN MCALISTER, MADONNA  
MEAGHER, and MICHAEL WISE, in their  
official capacities,

Defendants.

CIVIL ACTION NO.

**VERIFIED COMPLAINT**

On March 31, 1932, the Great Barrington airport ("Airport") existed as a single hangar on a grass runway. On that same date, Great Barrington's first Zoning Bylaw went into effect, immediately rendering the Airport a preexisting nonconforming use. Over the intervening years, the Airport has expanded dramatically: generating tens of thousands of flights annually, constructing multiple new buildings, and adding new amenities such as flight instruction, a fly-in commercial maintenance and repair facility, and nighttime military helicopter drills. Yet despite being a preexisting nonconforming use, the Airport never received municipal approval for any of these extensions or expansions, as required by law.

While zoning law provides that preexisting nonconforming uses are to be tolerated to a limited extent, the Airport cannot abuse this status. Well-established appellate precedents govern when a preexisting nonconforming use has improperly expanded beyond its original scope.

Under any reading of the undisputed evidence, the Airport's numerous expansions — of both its footprint and its activities — crosses this line many times over. Precedent prohibits not only extensions or expansions that will be "substantially more detrimental" to the neighborhood, but also prohibits the construction of *any* new buildings to house the preexisting nonconforming use. The Airport has repeatedly ignored both prohibitions.

Unsurprisingly, the harms caused here by the unlimited and unregulated expansion of a commercial-industrial use in a residential zone are precisely those harms that zoning exists to prevent. The Airport's current scope of unauthorized operation creates an ongoing safety hazard to automotive traffic on Seekonk Cross Road, generates noise pollution and air pollution, and threatens the Town's sole-source aquifer, all in a residential district where the Airport would be indisputably prohibited by zoning from being built today.

Holly Hamer, Marc Fasteau, and Anne Fredericks (collectively "Plaintiffs"), neighbors to

the Airport, appeal the decision of the Zoning Board of Appeals of the Town of Great Barrington ("Zoning Board") upholding the decision by the Town of Great Barrington Building Inspector

for Airport purposes, unless and until it receives affirmative approvals from the Zoning Board.

22. Under G.L. c. 40A, § 6, the Bylaws, and controlling appellate precedent, the Airport can neither expand its preexisting nonconforming use, nor utilize post-1932 structures for Airport purposes, unless and until it receives affirmative approvals from the Selectboard. Bylaw §§ 3 (Use Regulations) & 7.2 (Aviation Fields).

(23) The Airport has never received approval for extension or expansion from either the Zoning Board or Selectboard.

(24) The only record of a grant of Zoning Board relief with respect to the Airport is from 2017, when the Zoning Board granted a special permit to build a deck at the rear of the existing office building on the property.

25. On May 1, 2020, the Airport applied to the Selectboard for a special permit to increase and expand its operations.

26. On November 23, 2020, the Selectboard unanimously voted 5-0 to deny the Airport's application for a special permit.

27. The Airport has never received a Selectboard special permit.

28. The Town has no record of any other relevant approvals or permits, including building permits, issued to the Airport.

**History of the Airport**

29. In 1929, Robert K. Wheeler and others bought the Airport property. The evidence

Application from Berkshire Aviation Enterprises

ZBA No. 13-03

**HEARING ON PETITION FOR VARIANCE**

The Great Barrington Zoning Board of Appeals has received your petition for a special permit to enable construction of a deck at Walter J. Koladza Airport. A public hearing will be held Tuesday, July 9, 2013, at 7:30 p.m. at Town Hall. The board will make a site visit to the property at 70 Egremont Plain Road Great Barrington, the same date at 5:30 p.m., and you or a representative should be on hand to answer any questions.

Other town boards review and as applicable make recommendations on your application to the ZBA. You may wish to get in touch with board secretaries to inquire if your attendance at a meeting is desired.

The Planning Board secretary's phone number is 528-5187.

The Board of Selectmen's office number is 528-1618.

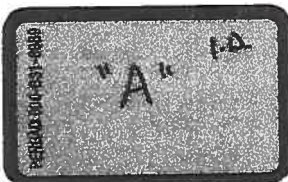
Conservation Commission meets the fourth Wednesday of the month at 7:30 p.m. at Town Hall.

Board of Health secretary is Caroline Slok, 528-1619.

Town-Planner Chris Rambold may also be reached at Town Hall to answer any questions.

Bernard A. Drew  
ZBA Secretary  
413-528-4953

Marie Y Ryan, CMC  
Town Clerk  
July 27, 2015



**DISCLAIMER AND ABANDONMENT OF  
SPECIAL PERMIT RIGHTS WITHOUT PREJUDICE**

Berkshire Aviation Enterprises, Inc., and Richard Solan ("Petitioners"), as petitioners and applicants to the Town of Great Barrington Zoning Board of Appeals and for all other purposes, on behalf of themselves and their successors, heirs and assigns, hereby release, abandon, waive and disclaim any and all rights, title or interest in and under certain Special Permits granted by the said Town of Great Barrington Zoning Board of Appeals in ZBA Application Nos. 13-03 and 811-13, to construct a 16x50 foot deck with handicap ramp on the property located at 70 Egremont Plain Road, Great Barrington, Massachusetts, as described in decisions of said Zoning Board of Appeals #13-03 dated July 9, 2013; and #811-13 dated July 23, 2013 (both attached herewith), it being their intention to disclaim and abandon, without prejudice to reapply or take any other action at any time, said Special Permits and all rights represented thereby. In entering into this Disclaimer and Abandonment, Petitioners are not waiving, disclaiming or abandoning their right to seek the same or similar relief at a future time.

Witness my hand and seal this \_\_\_ day of March, 2015

Richard Solan  
Richard Solan, individually,  
and as President of  
Berkshire Aviation Enterprises, Inc.

TOWN CLERK  
GREAT BARRINGTON  
MAR 25 2015 PM 3:36

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

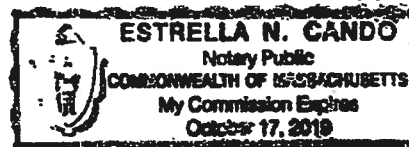
March 20 2015

On this 20 day of March, 2015, before me, the undersigned notary public, personally appeared Richard Solan, and proved to me through satisfactory evidence of identification, which was/were Richard Solan, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntary for its stated purpose.

Estrella N. Cando  
Notary Public Signature:

Print Name: Estrella N. Cando

My commission expires: October 17, 2019.



took effect;” “Whether there is a difference in the quality or character, as well as the degree of use;” and “Whether the current use is ‘different in kind in its effect on the neighborhood.’”

(Exhibit B).

113. No evidence other than that submitted by Plaintiffs was entered into the Zoning Board record.

114. The Decision purportedly undertook an analysis of each of the three *Powers* tests, and concluded that the scale and scope of the Airport’s current operations did not trigger *Powers*.

115. Nonetheless, the Zoning Board failed to even mention the first *Powers* test in its Decision, beyond stating that “[t]he nature and use in 1932 was a commercial enterprise supporting and housing operations of small aircraft. That is unchanged.” (Exhibit B). These

two sentences are the entirety of the Zoning Board’s “analysis” under the *Powers* test.

Selectboard Special Meeting Packet April 3, 2023  
Item 4.5 Staples\_Scan

## Zoning Board of Appeals Town of Great Barrington

Minutes of Tuesday, April 5, 2022

The meeting was held via Zoom Video/Telephone Conference as stated on the agenda.

Chair Majdalany called the meeting to order at 7:30 PM.

All members were present: Ron Majdalany, Carolyn Ivory, Stephen McAlister, Madonna Meagher, Michael Wise, and alternate member JB Brodeur.

Also Present: Assistant Town Manager/Planning Director Christopher Rembold, and Town Counsel David Doneski

**Public Hearing:** to consider an Appeal filed by Holly Hamer, 99 Seekonk Cross Road, Great Barrington, and Mark Fasteau and Anne Fredericks, 77 Seekonk Cross Road, Great Barrington, all c/o Thaddeus Heuer, Esq., Foley Hoag LLP, appealing the Building Inspector's February 1, 2022 decision to deny the petitioner's request for zoning enforcement relative to the scope of the current airport use at 70 Egremont Plain Road.

Mr. Rembold read the notice of the public hearing which was sent to abutters. He said it was published in the Berkshire Eagle newspaper.

Tad Heuer, Attorney from Foley Hoag, spoke for the petitioners. He covered three basic points: the Building Inspector's request should be denied on procedural grounds, the airport's expansion over the last 90 years exceeds what is allowed under the state statute and local zoning, and that the statute and local zoning discourage expansion of nonconforming uses.

Heuer argued that the building inspector refused to enforce against the airport because they are a preexisting nonconforming use, but that was not the question we (the petitioners) asked. He said that is wrong because the mere preexistence of the airport does not allow it to expand, unless the airport had sought and received approvals from the town. He added that the airport cannot use structures built after 1932 for the preexisting use. He said the Building Inspector's response to the enforcement request did not answer these questions, so it should be overturned on procedural grounds. He also argued that the Building Inspector's position is also legally incorrect. He said the Zoning Board could overturn the Building Inspector on procedural grounds, remand it for further consideration, or issue its own superseding order.

Heuer argued that the airport's expansion over the years far exceeds what is allowed under state law and local zoning. He said there is no statute of limitations to enforce against a nonconforming use. He cited the *Lord v. Somerset* case. He said the Building Inspector does not dispute the evidence we submitted that shows the airport has expanded and uses buildings that did not exist.

Heuer argued that the airport has not sought or received any approvals to expand beyond its preexisting use. He went through the three *Powers* tests. He said the present airport use, which has aircraft maintenance and night time helicopters, for example, does not reflect the use in 1932. He added that the airport has also physically expanded, to five buildings and paved runway and, which is a difference in quality, character and degree of use. Whether the use is different in kind on its effect on the neighborhood, he said the airport has many more planes established there and many more flights per year, has nighttime helicopter flights, a flight school, and maintenance. He said there is no doubt under any reasonable reading of the law and the facts that the airport's current operations are a substantial extension of the preexisting nonconforming use. He said unless the airport complies with the state law and local bylaw provisions under zoning section 5.2, the airport is in violation of zoning. He said the airport has never brought a request under 5.2 to this Zoning Board. He said the airport would also need a special permit from the Selectboard also, in order to be compliant with the local bylaw.

Heuer argued that the airport cannot use structures that did not exist when the airport become nonconforming. This comes from the *Powers* case. He said even if the use could continue on the property, it cannot use the buildings built after 1932 unless both the Zoning Board and the Selectboard give approvals.



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Heuer said that law discourages and tries over time to eliminate nonconforming uses. The law disfavors nonconformities. He said there are good reasons why an airport in this zone is not allowed by right. Enforcement of the bylaw is important because the airport is a threat to the town's water supply especially because of the leaded fuel the airport's own planes use. He said it creates significant noise, reduces property values, is an ongoing health threat, reduces property tax revenue, and creates risk of airplane-car collisions at the end of the runway.

Chair Majdalany asked Town Counsel Doneski to comment and provide some guidance to the Board. Doneski said he did not agree with Heuer that the person requesting zoning relief is entitled to specific answers to each precise issue. He said the Building Inspector stated the reasons for his denial of the request, and that is sufficient. Doneski said he agrees with Heuer that the expansion of a nonconforming use is regulated under the state zoning act and under local zoning section 5.2, and the facts of each case matter. He said he agrees, in general, that a nonconforming use cannot erect new buildings to serve that use.

Member Wise said he reads the Building Inspector's answer as determining that the current use is consistent with the bylaw, not that it is allowed because it is preexisting. If the Building Inspector's decides that it is in compliance, then he need not respond to the rest of the request. Heuer said yes, but our position is that there is no way that that is a logical conclusion.

Wise asked, at what point should the airport have come to the town for a permit? Heuer said perhaps the airport could have come at any time for the Selectboard special permit. That would have authorized the use of the airport in that zone. Wise asked, when should it have been sought? Heuer said 1933. He said also the airport could have come piecemeal to the Zoning Board, for each of the new buildings, to expand and extend the nonconformity.

Wise asked, supposing the use has not expanded, are new buildings grandfathered? Heuer said the ten year grandfathering applies to structures; there is a difference between the structure and the use of the structure.

Wise asked, if the use now is beyond what is permitted, are they required land on the grass since the pavement was not there in 1931? And, what about the old hangar which has a permit but was moved? Heuer said he thinks the answer is that an airport use could continue; possibly the moved hangar could be used and the law would tolerate it to exist but not more structures erected.

Member McAlister said in 1931 there was a three day airshow. Would they be permitted to do that? Heuer said it depends. Heuer said one time uses are not necessarily a pattern. McAlister said it is related to the intensity of use. Heuer said it may be an abandoned use. McAlister said you are asking the Board to take away a lot, anything in the last 90 years. He said this is a matter of common sense and it is absurd. He said this request is positioned to put the airport out of business. Heuer said the airport owner has always had the right to come to the Selectboard and the Zoning Board. McAlister asked, if neighbors who moved in knowing there is an airport should have come forward? Heuer said no. Heuer said when zoning was established everyone knew where the airport was but it was still zoned that airports needed Selectboard permits.

Member Ivory asked the Building Inspector to speak, to defend his decision. Building Inspector Ed May spoke. He said he has nothing else to add. He did say whenever the airport has asked for permission, he has directed the airport to seek a special permit. Wise asked May how many airport matters we have had in the last 15 years. May said they have shown up on his radar innumerable times.

Member Meagher asked, if we voted to overturn the Building Inspector, what would the airport be? Heuer said this Board has the authority to fashion its own order. He said there needs to be a determination of what the 1932 use was. There is not a prohibition on all growth. If expansion occurs below the *Powers* threshold then it is permissible. But he said we believe it should be returned to a small hobby airport with one or two buildings, much more limited to the number of planes flying, it would not be allowed night time flights or helicopters. Meagher asked, how many flights could be allowed? Down from 30,000 to 100? Heuer said in 1944 they had two planes; he does not know what they had in 1932. He said the baseline is probably a small number of planes with a small number of planes, no flight school and no fly-in/fly-out service of airplanes not garaged there.

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Attorney Dennis Egan of Cohen Kinne Valicenti & Cook spoke for the airport and said he wanted to set the record straight. He said the current owners have sought permits when they are required. He disagreed with the concept that some aspects of the airport use may have been abandoned. He said there are not 30,000 flights. He said the planes the airport owns use the unleaded fuel. He said the goal of the petitioners is not altruistic; their goal is to shut down the airport.

Egan spoke to the *Powers* test discussion. He said Heuer argues there is substantial documentation to prove what was done at the airport. Egan said Heuer does not have evidence of what did exist at the time, and that does not mean it did not happen. Egan said the Zoning enforcement officer does not have to determine how many flights take off and land, but rather to determine if the use is consistent with the preexisting aviation field use. He said of course the use is different in kind because of course planes change and engines change. He said of course there are more buildings, but in one case, in 2017 the Zoning Board considered and ruled on the office building.

McAlister asked what the Board could do here. Doneski said it could be remanded to the Building Inspector if there is more to be answered. He said the Building Inspector found no violation. He said the thrust of the request was to take enforcement action, and the thrust of the response was that there is nothing against which to take enforcement action. He said this Board can agree with that decision and uphold the decision. He said if the Board disagrees then it could engage in some attempt to evaluate what is in or out, or the Board could make a specific direction about the activities or buildings at the property.

Wise said there are items in the enforcement request that were not cited in the Building Inspector's response, but could be a basis for this board. Doneski said information in the record can be used as a basis for an order from this board.

Majdalany asked for public comment.

Claudia Shapiro, 78 Egremont Plain Road spoke. She said the neighbors have not previously come forward because Walt (the previous owner) was a great neighbor. She said since BAE inherited the airport she has consistently come forward and has been consistently ignored. She learned yesterday the airport is seeking a bid for the runway. She said the airplanes do not use unleaded fuel. She said there is no property survey submitted. She read a statement into the record as follows:

I will email Chris to forward each of you a copy of the Petition for a Variance application the Planning Board approved and this Board granted in 2013 that is clearly not an application at all and B.A.E Rick Solan's Disclaimer of Abandonment of Special Permit Rights Without Prejudice, acknowledging to have received from this Board a variance and a special permit based on (2) applications.

The Notice regarding this appeal did not come in a Town of Great Barrington envelope instead the upper left hand corner had typed in Planning Department which consists solely of Mr. Rembold. Enforcement appeals are between the Town, building inspector and the ZBA not Mr. Rembold representing the Planning Department and the ZBA.

Mr. Solan claims he first felt himself in the crosshairs when he sought permits to build hangars in 2017 is untrue, he put himself in the crosshairs in 2013 and before this Board. On May 23rd 2013 B.A.E Rick Solan filed for a special permit with the Zoning Board. On May 23rd 2013 B.A.E. Rick Solan filed with the Planning Board for Site Plan Review. This Zoning Board then granted that Variance and Special Permit that are still in effect. On March 25<sup>th</sup>, 2015 resulting from an action filed pro se' against the granting of the special permit and variance Mr. Solan filed a Disclaimer of Abandonment of Special Permit Rights Without Prejudice as "petitioners and applicants" with Superior Court and the Town Clerk admitting to have received from this Zoning Board a variance and a special permit being their intention to disclaim and abandon without Prejudice to reapply or take any other action at any time said special permit and all rights represented thereby. On August 3<sup>rd</sup>, 2015 Town Counsel representing the Great Barrington Zoning Board stated in part in Superior Court, from the town's perspective the case is over, the permits have been abandoned.

The flaw in this argument and Solan's Disclaimer is it is the permit granting authority in this case this Zoning Board and their sole legal jurisdiction/authority to revoke/rescind permits granted by them, and that never happened. This Board specifically Mr. Majdalany, Miss Ivory and Miss Meagher are fully aware the variance

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and special permit are both alive and in full effect. There is a presiding Court Order dated June 15<sup>th</sup>, 2015 stating the variance and special permit are still in effect.

A variance is a waiver of the strictures of the zoning bylaw designed to protect property values. If granted it allows the owner to use the land in a manner otherwise not permitted in the zoning ordinance.

Mr. Rembold stated March 24<sup>th</sup> at the Planning Board Site Plan Review that the Board could certainly vote on the structure tonight and the use addressed later. That "use addressed later" is here and now before this Board. That in fact this Board is activating the variance and special permit required in conjunction with this specific Site Plan Review. This is why Mr. Rembold email states the next step for the Site Plan is a building permit. That the Planning Board, Zoning Board and Assistant Town Manager Town Planner Mr. Rembold are "multi layer permitting" the airport through Site Plan Review and this enforcement appeal and exceeding their authority. It is specifically the Planning Board, Zoning Board and Assistant Town Manager Mr. Rembold that participated in the July 7<sup>th</sup> 2010 recorded training session with land use Attorney Bobrowski when the airport arose. Bobrowski suggested multi layer permitting, looked from left to right and said if no one is in the room, and shrugged his shoulders. To paraphrase ZBA member Miss Meagher, our little airport, of course I went to Chris about it, it wants to expand and build parking garages and also a cafe. Would that require a special permit? Mr. Rembold replied, Aviation fields are by special permit in the residential zone. Planning Board Chairman Mr. Hankin stated, there is no existing permit echoed by Mr. Rembold who stated, "there is no existing special permit". Mr. Hankin then stated "I think the bigger question is that it is in the recharge area for our aquifer Water Quality Overlay District" yet your Site Plan Review claims the airport does not need a WQPOD permit because they are here before this Board and now getting that waiver from the bylaw from the variance your Board approved in 2013 that is still in effect. Attorney Bobrowski then gave an example of a sawmill in existence for decades that never obtained a valid permit that was shut down. So this Zoning Board, Planning Board and Assistant Town Manager Community Planner Mr. Rembold know Attorney Heuer's enforcement request is valid. I think the bigger question at this point is the recorded comment Mr. Hankin made in 2021 stating, "if the airport doesn't get the Special Permit they will just go before the ZBA, and that is what we are doing here tonight.

This is permitting of the Massachusetts Statewide Airport System Plan Phase one 3.4 million dollar expansion of a Walter J. Koladza Regional General Aviation Community Business Airport that includes a 5,000 square foot terminal building, multiple hangars for the recycling plant, and runway expansion, all part of the extraneous material in the Site Plan Review if not challenged, is to be construed as accepted.

I am now since early January being subject to glaring runway lights on all night shining in my windows turned off the last few nights specifically for this meeting, coupled by dangerous flashing strobes from the runway end identifier lights.

This enforcement action filed November 15<sup>th</sup> should have been long heard. The scheduling of this hearing on this appeal filed close to 5 months after the enforcement request and just after the Site Plan Review approval warrants questioning as it is the enforcement action itself that brought on the Site Plan Review that brings the FAA. I want to be very clear I am not an airport antagonist, I have never given the airport or anyone in my neighborhood a hard time, quite the opposite. I find the tone of this meeting all of these meetings actually frightening. I am not in agreeance with this enforcement action to restrict the airport to an inoperable degree. I have no problem with the airport in its current form, but I adamantly against any expansion that requires more than B.A.E inherited in 2008, as that needed to be addressed before B.A.E was sponsored in the Massachusetts Statewide Airport System and the National Plan of Integrated Airports, not after. That is not legal. As I stated and am stating again, it is my property that is the vital component to this Zoning scheme, my end of the runway, my United States Environmental Protection Agency number, my DEP Permitted Regulated Facility, and my Very Small Quantity Generator of hazardous waste status defined in the Zoning bylaw as "any entity public or private other than residential" that will generate direct monetary compensation, grants and incentives for the Town and sustain the airport. It is these rights that are being sought after underhandedly all these years.

My education is severely limited and is a handicap. Town officials and my immediate neighbors are and have been for years intimidating, bullying and picking on me and that in itself is illegal. I first heard the expression criminal collusion and public corruption when I conversed with Alan Chartock and Roselle eight years ago regarding my struggle and that was when I was not so well versed. I am again putting the Town on notice, to

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protect myself. This is a set up and I am being set up. Do not attempt to take anything of mine based on this set up. This is criminal collusion and public corruption with numerous supporting overt acts. Take this as a Sworn Affidavit based on personal knowledge that will be sent to Town Officials and the Great Barrington Fire District.

Daniel Miller, Jr., 140 Christian Hill Road, asked if there have been any more than one plane-car collision on the road at the end of the runaway. He said, the attorney spoke about the neighborhood but the appeal only lists three people. He said it was mentioned the airport depreciates the values of properties and he does not see that happening. He said one of the appellants' properties was worth a million dollars twenty years ago and now is worth over two million dollars. He asked if the appellants are affected by the runway, if they adjoin the airport, if they want to purchase property. He said he sees appellants' actions as more than their civic duty.

Jonathan Hankin, 43 West Plain Road, said he is an airport abutter, unlike two of the three appellants, since 2003. He is in support of the airport trying to replace their office building. It would be a win for the community. The airport is a valuable community resource and he would hate to see anything happen to put it out of business.

Heather Fish, 65 Pumpkin Hollow Road said she loves the airport. She said her one complaint would be the helicopters.

James Garzon, 84 North Plain Road commented that there is a lot of passion here but we should stick to the laws and listen to Town Counsel.

Hearing no other comment, Chair Majdalany asked members how they wished to proceed. Wise said there is enough in the record that we do not need to keep the hearing open.

**Motion:** Wise moved to close the public hearing

**Second:** McAlister seconded.

**Vote:** Ivory-aye, McAlister-aye, Meagher-aye, Wise-aye, and Majdalany -aye (passed 5-0).

**Motion:** Wise moved to affirm the Building Inspector.

**Second:** McAlister seconded.

In discussion, Wise said as he sees the facts in this case, revealed by the record, there were training flights, blimps, maybe an autogyro in the early years. As he sees the *Powers* test, the present use does in fact reflect nature and use prevailing at the time zoning was first adopted. Second, whether there is a difference in quality and character, he thinks there is not; there has been training since the outset, we do not know how many flights or how many airplanes were there. Third, whether the current use is different in kind and effect on the neighborhood, he said the answer is no. The effects are noise and activity, but those are not materially different now. The opposition frames their argument with adverbs, and when you take out the adverbs, Wise said, he is not persuaded. Certainly there has not been a material change in the operation of the airport for at least 70 years, and to go back another 20 years to 1931 on the basis of one newspaper article is not persuasive. Wise said he believes the Building Inspector got it right.

Hearing no further discussion Majdalany asked for a vote.

**Vote:** Wise-aye, Meagher-aye, McAlister-aye, Ivory-aye, and Majdalany -aye (passed 5-0).

**Minutes:** April 20, 2021 and the September 21, 2021 meetings.

Wise offered two corrections to the September minutes.

**Motion:** Ivory moved to approve and Wise seconded.

**Vote:** Ivory-aye, McAlister-aye, Meagher-aye, Wise-aye, and Majdalany -aye (passed 5-0).

**Motion:** Wise moved to approve the April minutes and Meagher seconded.

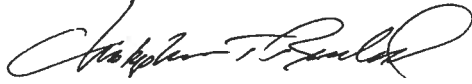
**Vote:** Ivory-aye, McAlister-aye, Meagher-aye, Wise-aye, and Majdalany -abstained (passed 4-0).

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**Citizen Speak:** None

Majdalany adjourned the meeting at approximately 9:20 PM.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christopher Rembold". The signature is fluid and cursive, with the first name being the most prominent.

Christopher Rembold

**History of the Zoning Bylaw and Airport Requests or Approvals**

18. On March 31, 1932, the Town adopted its first zoning ordinance, requiring a Board of Selectmen ("Selectboard") permit for "airports with essential accessories" (Exhibit D).

19. This Bylaw was revised in 1948, 1960, and 1974. The special permit requirement for airports remained unchanged, and exists in the Bylaw today.

20. Since the adoption of zoning, the Airport has always been located in a residential zone, and is currently located in the residential district (R4) zone.

21. Under G.L. c. 40A, § 6, the Bylaws, and controlling appellate precedent, the Airport can neither expand its preexisting nonconforming use, nor utilize post-1932 structures for Airport purposes, unless and until it receives affirmative approvals from the Zoning Board.

22. Under G.L. c. 40A, § 6, the Bylaws, and controlling appellate precedent, the

Selectboard Special Meeting Packet April 3, 2023  
Item 4.5. Staples\_Scan

DATE: March 10, 2010  
TIME: 7:00 P.M.  
PLACE: Selectmen's Meeting Room  
FOR: Public Hearing: Zoning Recodification  
PRESENT: Donald Goranson, Chairman; Jonathan Hankin; Jack Musgrove;  
Stephen Dietemann; Suzanne Fowle Schroeder  
Associate Member: Richard Dohoney  
Town Planner: Chris Rembold

Mr. Goranson called the meeting to order at 7:02 P.M.  
Mr. Musgrove made a motion to open the public hearing, Mr. Hankin seconded, all in favor.  
The public hearing was opened at 7:02 P.M.

Mr. Goranson read the public hearing notice into the record. The public hearing notice was posted in the Town Hall and published in the Berkshire Record for two consecutive weeks, February 19, 2010 and February 26, 2010. The nine towns abutting Great Barrington were notified as was BRPC, Town Boards and the Executive Office of Communities and Development.

Mr. Goranson introduced Mark Bobrowski, an attorney from Concord and consultant who worked with the Board on recodifying the zoning bylaws.

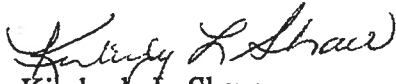
Mr. Bobrowski said the bylaw recodification is a process to bring the zoning bylaws in conformance with state law as well as clarifying the bylaws to make them easier to use and understand. Mr. Bobrowski said most of the changes were made to bring the bylaw into compliance with state law.

Mr. Bobrowski went through the bylaws page by page explaining the changes and answering questions from the audience.

Mr. Musgrove made a motion to close the public hearing, Mr. Dietemann seconded, all in favor. The public hearing was closed at 9:46 P.M.

Mr. Hankin made a motion to adjourn, Mr. Musgrove seconded, all in favor. The meeting was adjourned at 9:47 P.M.

Respectfully submitted,

  
Kimberly L. Shaw  
Planning Board Secretary

## **GREAT BARRINGTON ZONING RECODIFICATION PUBLIC HEARING, MARCH 10, 2010**

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### **WHAT IS THE ZONING "RECODIFICATION" AND WHY ARE WE DOING IT?**

- This is first and foremost a reorganization and restructuring for clarity and ease of use. There are no changes proposed to the zoning map or the zoning district lines.
- This will bring us into compliance with statute and case law, and clean out the clutter of technicalities that are already expressed in state law, making the bylaw shorter and easier to use.
- The proposed bylaw groups material in topical sections, and it is now numbered in an expandable format. We have moved from Roman numerals to Arabic numerals with real page numbers. In contrast, the existing bylaw is poorly organized, with material inserted seemingly at random as it was amended over the years. Regulations for commercial uses and residential uses are jumbled together. Topics skip from one topic to the next, as the reader must jump from commercial regulations to mixed use to elderly housing and back.
- There are also small changes as well as some significant changes, all aimed at updating specific portions of the bylaw that are either outdated or difficult to interpret, regulate, or enforce.

### **WHO HAS BEEN DOING THIS?**

- Initiated by Planning Board. The effort has the support of Board of Selectmen. The Town Manager has directed the Town Planner and Building Inspector to work closely with the Planning Board.
- The bulk of the work is being done by the Planning Board's consultant Mark Bobrowski, who has vast experience in this area, having conducted similar recodifications in 100+ towns in Massachusetts
- The Planning Board and Town Planner, with the input of the Board of Selectmen and Zoning Board of Appeals, have reviewed the drafts, ensuring that it stays true in its intent to the existing bylaw and reflects the uniqueness of Great Barrington.

### **WHAT IS THE TIMELINE?**

- This was begun by Planning Board in 2008. The Consultant issued an initial diagnostic memo in 2008.
- Town Meeting approved consultant funds in May 2009
- Planning Board has held meetings since late August 2009 to review topics and five drafts.
- Public hearing March 10 to hear comments, questions.
- Town Meeting May 3, 2010 to ask for voter approval.

### **WHAT ARE THE CHANGES?**

- Reorganization for clarity and ease of use—some examples:
  - Definitions were at the front of the document, but also in a number of other places throughout the document. Now, they are all in one section, at the end of the document, typical for a glossary.
  - Certain districts that were actually overlays, controlling certain uses without altering the underlying district regulations, are now listed as overlays. These include the Floodplain Overlay District, the Water Quality Protection Overlay District, the Downtown Parking District, and the Wireless Telecommunications Overlay District.

*exhibit 8 19 38*



1-0014368

**APPENDIX B:  
REGULATED FACILITIES WITHIN THE WATER SUPPLY PROTECTION AREA**

**DEP Permitted Facilities**

DEP Facility Number	Facility Name	Street Address	Town	Permitted Activity	Activity Class	Facility Description
185822	Simons Rock Of Bard College	84 Alford Street	Great Barrington	VSQG	Hazardous Waste Generator	College
	Autobody/Repair	78 Egremont Plain Road	Great Barrington	VSQG	Hazardous Waste Generator	Autobody/Repair
	Egremont DPW* and Transfer Station*	171 Egremont Plain Road	Egremont	VSQG	Hazardous Waste Generator	DPW/Transfer Station

\* Note: This facility is just outside of the Zone II.

**Underground Storage Tanks:**

Facility Name	Address	Town	Description	Tank Type	Tank Leak Detection	Capacity (gal)	Contents
Berkshire Aviation Enterprises	Egremont Plain Road	Great Barrington	Airport	1 Wall	Approved In Tank Monitor	20,000	Gasoline
				1 Wall	Approved In Tank Monitor	4,000	Gasoline
Agar Oil*	154 Hurlbert Road	Great Barrington	Fuel distributor	1 Wall	Approved In Tank Monitor	10,000	Kerosene
				1 Wall	Approved In Tank Monitor	10,000	Diesel

**The Great  
Barrington Trust  
Policy helps make  
our town safer and  
stronger.  
Thank you for your  
support.**

**The Trust Policy is a citizen-initiated  
policy that helps to ensure that *all*  
residents living and working in our  
community are fully protected and  
supported by our police and town  
government.**

**Great Barrington voted to adopt  
the Trust Policy on May 1, 2017 at town  
meeting.**

**THANK YOU FOR THE SUPPORT!**