

COMMONWEALTH OF MASSACHUSETTS
LAND COURT DEPARTMENT OF THE TRIAL COURT
BERKSHIRE, SS. CASE NO. 22 MISC. 000244 (Piper, C.J.)

HOLLY HAMER, MARC FASTEAU and ANNE FREDERICKS,
Plaintiffs,

-vs.-

ZONING BOARD OF APPEALS OF THE TOWN OF GREAT
BARRINGTON,
Defendants,

-and-

BERKSHIRE AVIATION HOLDINGS, INC. AND BERKSHIRE
AVIATION ENTERPRISES, LLC,
Defendants-Intervenors.

**DEFENDANTS-INTERVENORS' BERKSHIRE AVIATION STATUS REPORT AND
REQUEST FOR EXTENSION OF STAY**

Berkshire Aviation Holdings, Inc. and Berkshire Aviation Enterprises, LLC (collectively, “Berkshire Aviation”) respectfully submit this status report in accord with the February 22, 2023 order of the Court¹ and request an extension of the stay for the reasons set forth below.

On April 9, 2023, the Great Barrington Select Board voted to issue a special permit to Berkshire Aviation for the continued operation of the Great Barrington Airport. Berkshire Aviation understands that the written special permit decision is currently being reviewed by the

¹ The Court’s February 22, 2023 order states in relevant part as follows:

Counsel are to file a further joint written report with the court by April 30, 2023, indicating what further progress has been made, if any, on Berkshire's special permit application, and providing information on any appeal from any decision issued by the Board on that application. If, by April 30, 2023, there have been insufficient meaningful steps accomplished in the special permit process, the stay will end, subject to the opportunity of the court, on its own motion or that of any party, to revisit the matter of a stay, and to consider whether or not to extend the stay, with or without modification, in whole or in part. Any motions which the parties may file concerning the extension of the stay beyond April 30, 2023 should indicate in reasonable detail what discovery is sought to be completed (and an anticipated timeline for completion of that discovery) should the court determine that current stay ought not be extended beyond April 30, 2023. (Piper, C.J.).

Town's legal counsel and is expected to be filed with the Great Barrington Town Clerk by next week, that is, on or before Friday, May 5, 2023.

Berkshire Aviation therefore requests that the stay be extended until 21 days after the special permit decision is filed with the Town Clerk, which will be one day beyond the 20-day time limit for the plaintiffs in this action (or anyone who may have standing) to file a zoning appeal under G.L. c. 40A, § 17. For example, if the special permit decision is filed with the Great Barrington Town Clerk on Friday, May 5, 2023, the stay would be extended to Friday, May 26, 2023, which is the 21st day after May 5.

If the Court determines the stay should not be extended, Berkshire Aviation does not seek to do any discovery in this case.

Dated: April 28, 2023

Respectfully Submitted,

Defendants-intervenors and counterclaim
plaintiffs Berkshire Aviation Holdings, Inc.
and Berkshire Aviation Enterprises, LLC, by
their attorneys,

/s/ Michael Pill

Michael Pill, Esq., BBO#399880
Green Miles Lipton, LLP
77 Pleasant St., P.O. Box 210
Northampton, MA 01061-0210
(413) 586-8218 FAX (413) 584-6278
Home office (413) 259-1221
mpill@verizon.net

/s/ Christopher Hennessey

Christopher M. Hennessey, BBO# 654680
John F. Dew, BBO# 688467
Dennis G. Egan, Jr., BBO# 660282
COHEN KINNE VALICENTI & COOK LLP
28 North Street, 3rd Floor,
Pittsfield, MA 01201
(413) 443-9399;
Fax: (413) 442-9399

Hennessey direct (413) 458-1992
Egan direct (413) 553-0411;
Cell (413) 446-1126
Dew direct (413) 553-0360
chenessey@cohenkinne.com
degan@cohenkinne.com
jdew@cohenkinne.com

CERTIFICATE OF SERVICE

I hereby certify that I have served the above document electronically upon counsel of record in this action at the address below:

Thaddeus A. Heuer, Esq. and Ethan A. Severance, Esq.
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1000 theuer@foleyhoag.com eseverance@foleyhoag.com
(Attorneys for Plaintiffs)

David J. Doneski, Esq., Esq., Town Counsel
KP Law, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110-1109
(617) 556-0007 ddoneski@k-plaw.com
(Attorney for Defendant Zoning Board of Appeals of Great Barrington)

/s/ Michael Pill
Michael Pill, Esq.