

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

Clerk's file

FORM SP-2
Long Form
REV. 12-2020

TOWN CLERK
GREAT BARRINGTON

JAN 10 2023 PM 3:1

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 2/13/22
Fee: \$300.00 Paid: yes

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

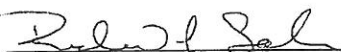
Description of the extent of impervious surfaces, of provisions for collecting surface runoff and of provisions for on-site recharge and removal of contaminants.

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



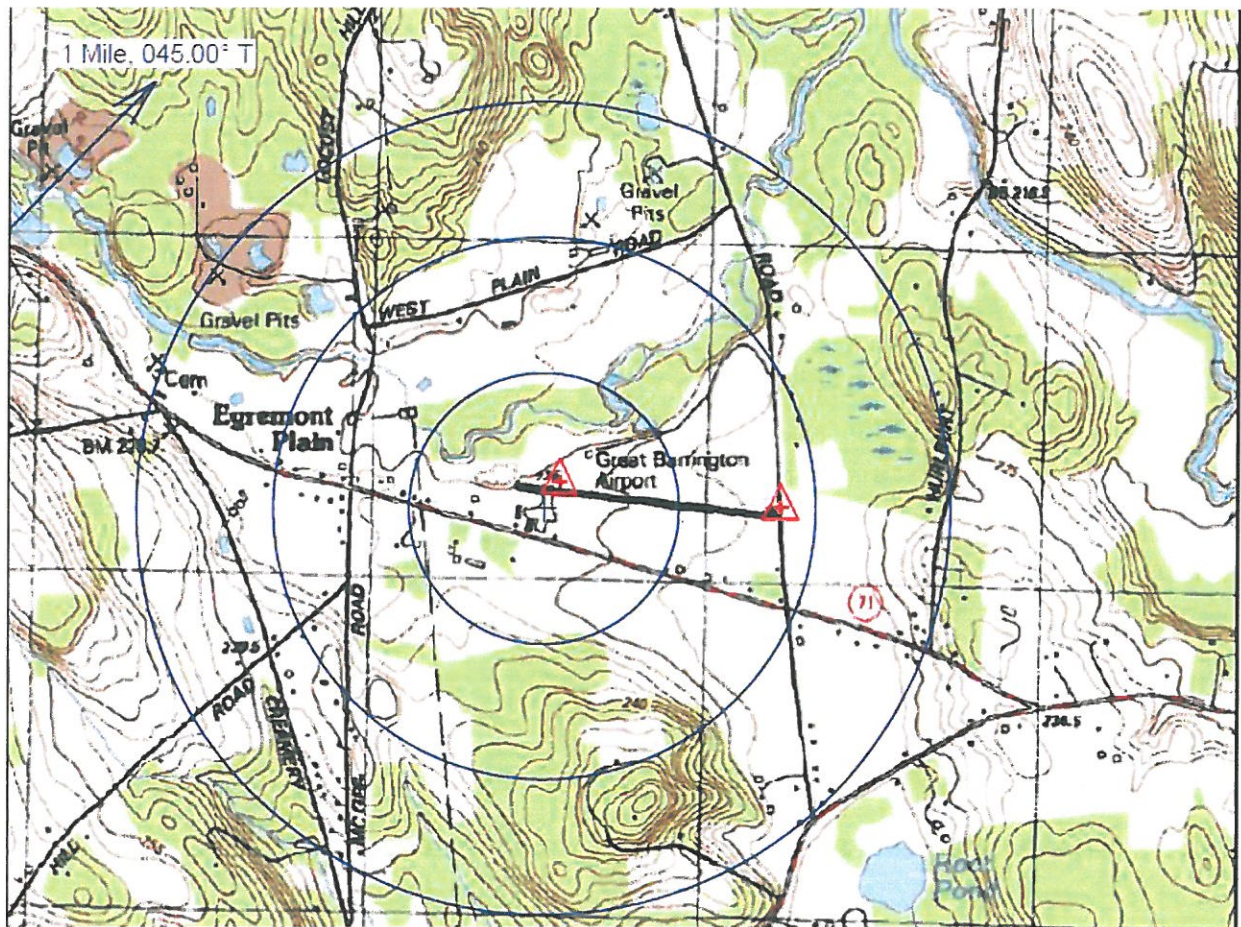
Date December 27, 2022

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

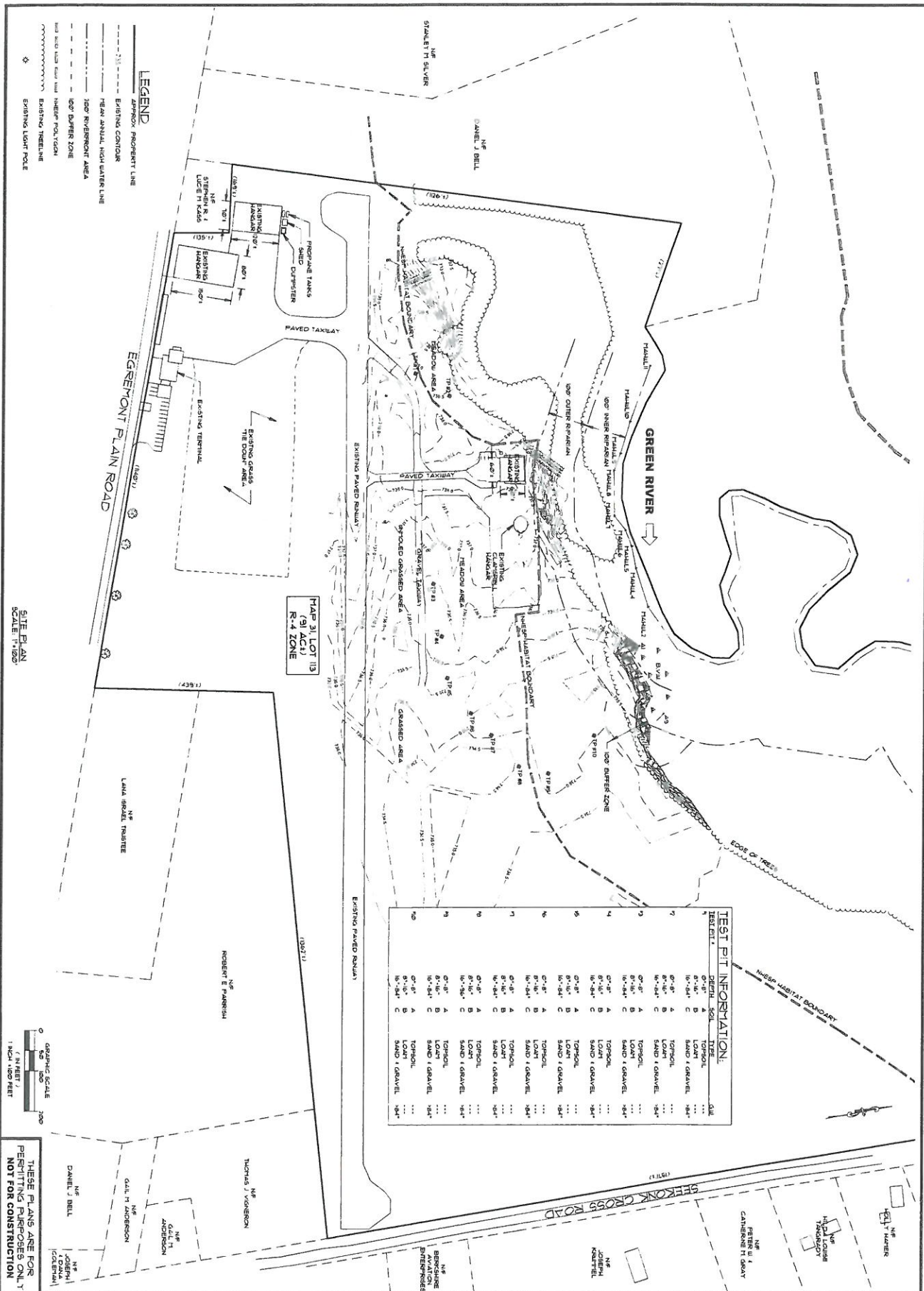
6. Potential fiscal impact, including impact on town services, tax base, and employment.

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.

PLANS TO ACCOMPANY PERMIT APPLICATIONS
PREPARED FOR:
GREAT BARRINGTON AIRPORT
LOCATED AT:
10 EGREMONT PL-IN ROAD
GREAT BARRINGTON, MASSACHUSETTS

SITE PLAN
SCALE: 1"=120'



TEST PIT INFORMATION:			DATE
TEST PIT #	DEPTH - SOIL	TYPE	
1	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
2	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
3	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
4	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
5	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
6	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
7	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
8	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
9	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
10	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
11	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
12	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
13	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
14	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
15	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
16	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
17	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
18	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
19	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
20	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
21	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
22	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
23	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
24	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
25	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
26	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
27	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
28	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
29	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
30	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
31	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
32	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
33	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
34	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
35	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
36	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
37	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
38	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
39	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
40	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
41	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
42	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
43	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
44	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
45	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
46	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
47	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
48	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
49	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
50	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
51	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
52	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
53	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
54	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
55	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
56	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
57	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
58	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
59	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
60	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
61	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
62	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
63	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
64	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
65	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
66	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
67	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
68	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
69	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
70	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
71	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
72	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
73	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
74	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
75	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
76	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
77	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
78	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
79	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
80	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
81	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
82	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
83	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
84	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
85	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
86	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
87	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
88	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
89	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
90	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
91	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
92	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
93	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
94	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
95	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
96	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
97	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
98	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
99	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"
100	0'-0" - 1'	TOPSOIL	...
	1'-0" - 2'	CLAY	...
	2'-0" - 4'	SAND + GRAVEL	-84"

THESE PLANS ARE FOR
ERECTING PURPOSES ONLY
NOT FOR CONSTRUCTION

[illegible]

Design Group, Inc.
Civil Engineers • Surveyors • Consultants
2 REDWOOD DRIVE • PITTSFIELD, MASSACHUSETTS 01201 • (413) 434-3577

PLAN DESCRIPTION

EXISTING CONDITIONS PLAN

PLANS TO ACCOMPANY PERMIT APPLICATIONS
PREPARED FOR:
GREAT BARRINGTON AIRPORT
LOCATED AT:
EGREMONT PLAIN ROAD
GREAT BARRINGTON, MASSACHUSETTS

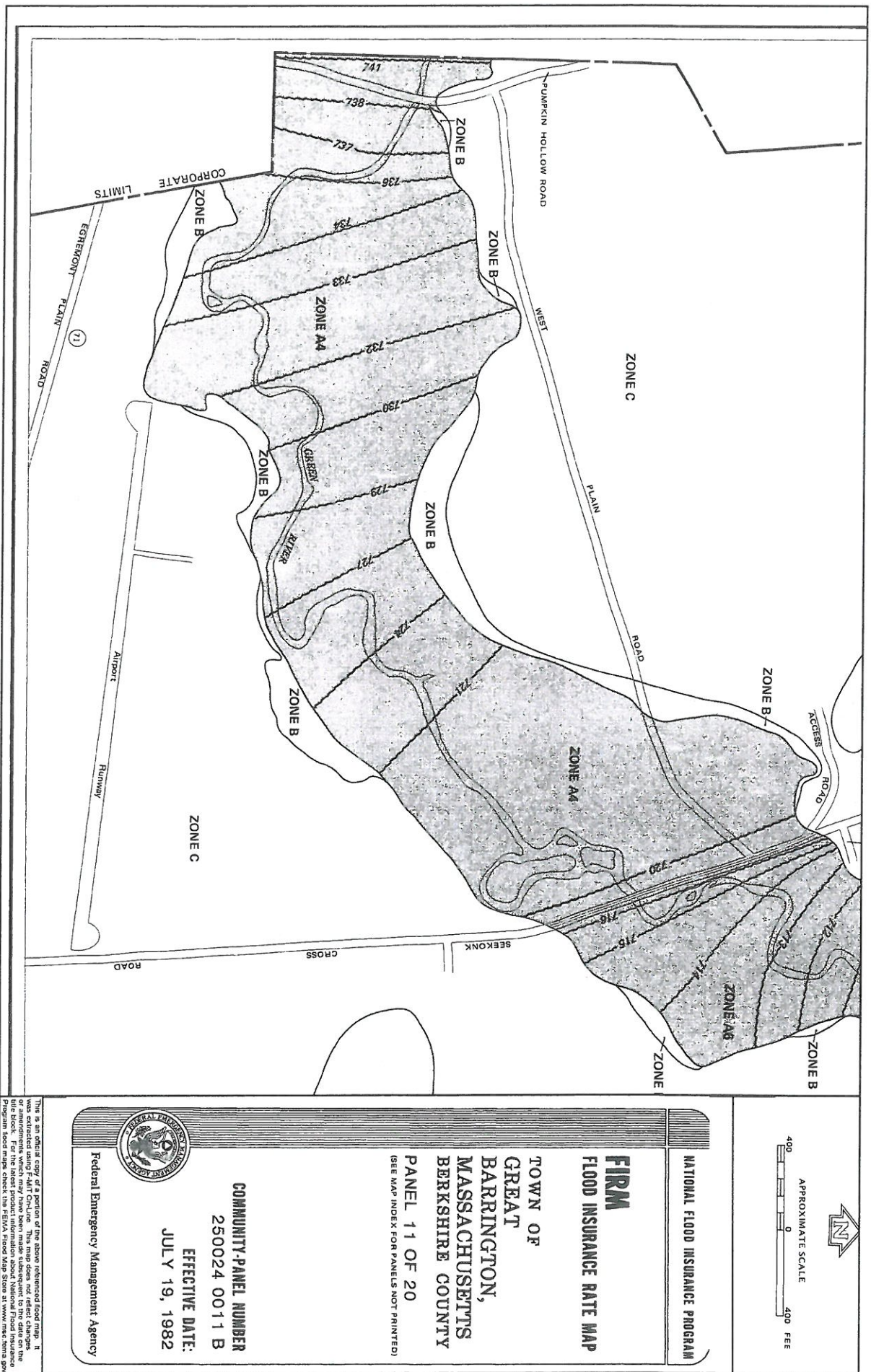
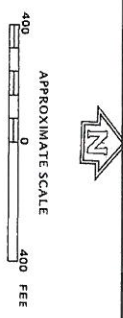


Figure 2



NATIONAL FLOOD INSURANCE PROGRAM

FIRM

FLOOD INSURANCE RATE MAP

TOWN OF GREAT BARRINGTON, MASSACHUSETTS, BERKSHIRE COUNTY

PANEL 11 OF 20

(SEE MAP INDEX FOR PANELS NOT PRINTED)

COMMUNITY-PANEL NUMBER
250024 0011 B

EFFECTIVE DATE:
JULY 19, 1982

Federal Emergency Management Agency

This is an official copy of a portion of the nation's insurance flood map. It was extracted using FIRM OnLine. This map does not reflect changes or amendments which may have been subsequent to the date on the map. For the latest product information about National Flood Insurance Program flood maps, visit the FEMA Flood Map Store at www.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, 12th Floor, Boston, MA 02110

By Electronic Mail

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

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.

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:

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

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

Page 1 of 3



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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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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