

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA

J.C. BAKER & SON, INC.
and BAKER OIL COMPANY,

Appellants,

v.

Appeal No. 22-03-EQB

KATHERYN EMERY, P.E., DIRECTOR,
DIVISION OF WATER AND WASTE
MANAGEMENT, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Appellee.

RECEIVED

APR 17 2023

ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

MOTION TO TAKE JUDICIAL NOTICE

Come now appellants J. C. Baker & Son, Inc. (“Baker, Inc.”) and Baker Oil Company (“Baker Oil”) (Baker, Inc. and Baker Oil are collectively “Appellants”), by their counsel, R. Terrance Rodgers, of Kay Casto & Chaney PLLC, and move that the West Virginia Environmental Quality Board (“this Board”) take judicial notice of that certain Deed, dated September 1, 1993, that is of record in the office of the Clerk of the County Commission of Webster County, West Virginia, in Deed Book No. 253, at Page No. 660, pursuant to which Baker, Inc. acquired the real property on which the Hamrick’s Service Station site was located, which Deed is attached hereto and made a part hereof as "Exhibit A."¹ Being an official public record, this Board may take

¹ The Deed which is attached to this *Motion* as "Exhibit A" was included in the numerous Deeds sent by counsel for Appellants to counsel for Appellee in the course of the discussions which resulted in the *Stipulations* which were filed with this Board on January 25, 2023. More specifically, it was one of several Deeds relating to the ownership of Hamrick’s Service Station site sent by email, dated January 11, 2023, from counsel for Appellants to counsel for Appellee.

judicial notice of this Deed under Rule 201 of the West Virginia Rules of Evidence and rely upon it in rendering its decision with respect to the issues before it in this administrative appeal. *See Hayes v. Brady*, No. 15-0518, 2016 WL 3197435 (W.Va. June 8, 2016) (noting that the circuit court below had taken judicial notice of certain deeds).

WHEREFORE, Appellants request that this Board enter an order taking judicial notice of the Deed which is attached to this *Motion* as "Exhibit A" and make said Deed part of the record in this administrative appeal.

J.C. BAKER & SON, INC.
and BAKER OIL COMPANY,

Appellants,

BY COUNSEL:



R. TERRANCE RODGERS (WVSB #3148)
KAY CASTO & CHANEY PLLC
P. O. Box 2031
Charleston, West Virginia 25327
(304) 720-4217 / Telephone
(304) 345-8909 / Telefax
trodgers@kaycasto.com

EXHIBIT A

BOOK 253 @ 660

24227

THIS DEED, Made this 1st day of September, 1993 by and between RUTH BAKER SMITH, single, party of the first part, grantor, and J. C. BAKER & SONS, INC., party of the second part, grantee.

W I T N E S S E T H:

THAT, for and in consideration of the sum of Seventy Three Thousand, Nine Hundred Thirty Dollars (\$73,930.00), cash in hand paid, the receipt of which is hereby acknowledged, the said parties of the first part do hereby grant, bargain, sell and convey, with covenants of GENERAL WARRANTY of title unto the said party of the second part, J. C. Baker & Sons, Inc., that certain lot, tract and parcel of real estate and the appurtenances situate on the waters of Elk River, leaving Webster Springs on the right hand side of the road on State Route 20, in the Corporation of Addison, Fork Lick District, Webster County, West Virginia and commonly known as the Island in Elk River, and more particularly bounded and described as follows, to-wit:

BEGINNING at a mile post on State Route 20, going North 87° and East 20° for a distance of 151.6 feet, then North 81° and East 33° for a distance of 188.65 feet to a 25 foot street adjoining the Monongahela Power Building; then North 90°-30° West for a distance of 175.68 feet. Beginning at same mile post on river side of Elk Motor Sales and going South 69°-16° East for a distance of 391.22 feet to stake at 25 foot streetway. This parcel of land is more particularly described as Lot No. 1 on "The Island", J. C. Baker Addition of Town of Addison, Webster County, West Virginia which map is of record in the office of the Clerk of Webster County. And being the same real estate conveyed unto Ruth Baker Smith by J. C. Baker and Blanche Baker, his wife, by deed dated January 29, 1952, and of record in the Office of the Clerk of the County Commission of Webster County, in Deed Book 110 at Page 370.

This conveyance is hereby expressly made subject to any and all exceptions, reservations, conditions and limitations in the record chain of title of the real estate hereby conveyed, and to any and all outconveyances of prior record.

DECLARATION OF CONSIDERATION OF VALUE: Under the penalties of fine and imprisonment as provided by law, the undersigned presents for recordation and represents that she is familiar with the property transferred by this document to which this declaration is appended and to the best of her knowledge and belief the true and actual value of the property transferred thereby is \$73,930.00.

WITNESS the following signature:

Ruth B. Smith
RUTH BAKER SMITH

STATE OF WEST VIRGINIA,
COUNTY OF BRAXTON, to-wit:

I, Michael C. Baker, a Notary Public, in and for the State and County aforesaid, do hereby certify that RUTH BAKER SMITH, whose name is signed to the deed and writing above, bearing date the 1st day of September, 1993, has this day acknowledged the same before me in my said state and county.

Given under my hand this 1st day of September, 1993.

My commission expires: 4-30-96

Michael C. Baker
NOTARY PUBLIC

This document prepared by:

WILLIAM C. GARRETT
Attorney at Law
Post Office Box 125
Gassaway, WV 26624

9701535 WEBSTER COUNTY
Nov 26 2001 \$325.60



T.J.P.
Real Estate
Excise Tax

RECORDED
2001 NOV 26 AM 11:16
TERRILL FERRIS GLENN
WEBSTER COUNTY COMMISSIONER WV

STATE OF WEST VIRGINIA, Webster County

Commission Clerk's Office November 26, 2001

The foregoing Deed together with the certificate of its acknowledgment, was this day presented in said office and admitted to record.

Teste: Terry J. Payne Clerk

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
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KATHERYN D. EMERY, P.E., DIRECTOR,
DIVISION OF WATER AND WASTE
MANAGEMENT, WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Appellee.

CERTIFICATE OF SERVICE

I, R. Terrance Rodgers, counsel for appellants J.C. Baker & Son, Inc. and Baker Oil Company, do hereby certify that, on this 14th day of April, 2023, I served the forgoing *Motion To Take Judicial Notice* via email to the Honorable Kenna M. DeRaimo, Clerk of the West Virginia Environmental Quality Board, at kenna.m.deraimo@wv.gov, via email to Charles S. Driver, counsel for appellee Katheryn D. Emery, P.E., Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection, at Charles.s.driver@wv.gov, via email to Brooke A. Hirst, counsel for appellee Katheryn D. Emery, P.E., Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection, at brooke.hirst@wv.gov, and via regular United States mail, postage prepaid, in envelopes addressed as follows:

Kenna M. DeRaimo
Clerk of the West Virginia Environmental Quality Board
601 57th Street SE
Charleston, West Virginia 25304

Charles S. Driver, Esquire
Office of Legal Services
West Virginia Department of Environmental Protection
601 57th Street, S.E.
Charleston, West Virginia 25304

Brooke A. Hirst, Esquire
Office of Legal Service
West Virginia Department of Environmental Protection
601 57th Street, S.E.
Charleston, West Virginia 25304



R. Terrance Rodgers (WVSB #3148)