

**ZONING BOARD OF APPEALS
REGULAR MEETING, MONDAY, October 15, 2012
ALDERMANIC CHAMBERS 7:00 PM**

The Ansonia Zoning Board of Appeals held its organizational meeting on Monday, October 15, 2012. The meeting began at 7:06 p.m. and the following applications were acted upon.

Roll Call:

Peter Marcinko	Present
Claudia Degnan	Present
Laura Gagnon	Present
Joseph Jaumann	Present
Nicolas Gentile III	Absent
John Sanza	Absent
John Erlingheuser	Absent
Ron Vaccaro	Absent

4 Present, 4 Absent
A quorum was present.

Mr. Marcinko declared the meeting open at 7:10. The meeting began with the pledge of allegiance.

Mr. Jaumann made a motion to approve the July minutes. The motion was seconded by Mrs. Degnan. All were in favor of the motion.

Mrs. Degnan made a motion to approve the September minutes. The motion was seconded by Mrs. Gagnon. All were in favor of the motion.

1. Jeremy Shulick, 53 Woodbridge Avenue, Ansonia, for property located at the same address, seeking an appeal of the Zoning Enforcement Officer statement that the owner is in violation of Sections 230, 235, 720 and 310, Schedule C of the Zoning Regulations for allegedly operating a farm by keeping chickens.

Atty. Thomas, 315 Main Street, Derby is present to represent the applicants. He then passed out a new packet of information. He stated that according to the cease and desist order, his client is operating a farm. He then stated that the boards' definition of a farm, as stated in the Zoning Regulations Section 110.3 says that a "farm" consists of "Three acres or more used for the raising of crops or pasture or both." (*Secretary's note Section 110.3 continues to say: "Stock raising, dairying, poultry raising and kindred activities are to be considered as a part of and included within farming only when carried on in connection with and incidental and subordinate to, the tillage of the soil. (Note Paragraph 720.1)"*). Atty. Thomas continued stating that the definition of a farm if you go online or check in books has a variety of definitions, which refer to the fact of someone who raises crops or livestock for livelihood. He stated that "In other words, farming is an inherently commercial activity."

Atty. Thomas stated that Mr. Shulick would testify that the chickens, many vegetables that he grows, *(he indicated that he grows corn in the front yard and other vegetables on his land and presented photos of such)*, and raises chickens for eggs and meat for his own home use. He is an individual that is interested in organic, natural issues. Atty. Thomas then questioned if the definition of farm, “3 acres or more for raising of crops or pasture or both” apply to him when he is doing it for his own use for his own consumption, and that of his family. He then cited Section 720.1, which states, “All structures for the keeping and feeding of livestock and the open or covered storage of manure, fertilizer, lime or herbicides and pesticides and associated equipment, shall be at least one hundred feet from any property line, and one hundred feet from any residential structure on the same lot.” Atty. Thomas stated that he doesn’t believe that this applies to farming, but in the definition of farm, “stock raising, dairying and poultry raising” says it can only be conducted in connection with farming or tillage of the soil.

He then added, “Stock raising and poultry raising are two different things. Paragraph 720.1 “Farming, Truck Gardens and Greenhouses” states that, “All structures for the keeping of livestock and the open or covered storage of manure, fertilizer, lime, or herbicides and pesticides and associated equipment shall be at least one hundred feet (100’) from any property line, and one hundred feet (100’) from any residential structure on the same lot.”. He then stated that this is obviously referring to someone that is operating a farm, or a truck garden or a greenhouse. He stated that their position is that this is not a farm. This is for his own consumption. He added that there is no mention of poultry, chicken coups or anything like that. So, if someone did have a chicken coop, he stated, I don’t believe that this would apply.

He then said that he highlighted the regulations do address specific situations of other types of animals such as if someone had horses, they have to meet several requirements. He stated that he highlighted that for a reason. He believes that the regulations are ambiguous in this case. He explained that you have someone who is growing crops and has chickens for their own consumption. You can’t go there and buy eggs. They don’t sell the eggs or anything else that they have to the stores.

He then stated that if the board were to interpret the regulations so that they apply to Mr. Shulick, then “poultry” is a very broad term. He asked if someone had one chick or a single hen, are they in violation? If someone is growing crops on less than 3 acres, are they in violation? You can’t tell that they are or not just by reading it. He then asked if some child got three “Easter chicks” running around their back yard and they got them as a gift and they were going to nurture them and grow them up and they are in an A or a double AA zone and they are on a one acres lot or whatever the size of the lot, they are in violation of zoning. He doesn’t believe that anyone would think that this would apply to that type of situation. However, it does if you interpret it that way. This is why he believes definitionally that the regulations that have been sited apply.

Atty. Thomas then addressed the last item that he handed out, which was a letter of support that was signed by some of the neighbors. He stated that apparently the neighbors have no issues with this. He then referred to the pictures of the crops and the chicken coops. He stated that this shows that Mr. Shulick is raising crops and the poultry for his own use.

Mr. Jeremy Shulick, 53 Woodbridge Avenue, stated that he has owned his property since March of 2008. He indicated that the property was overgrown when he purchased the property. He stated that two of his neighbors have been at their locations for quite a long time. He was told that the land was shared between the neighbors and grow vegetables and have animals on the property. They would use the produce that they grew to feed themselves. When he purchased the property there were grape vines and raspberries already growing on it. He

said that he purchased chicks from a friend of his in 2009. He originally used the hens for eggs and then later used them for meat until 2011. He does not sell any of the items that he produces. He uses the produce and meat to feed his family and guests. He has a large number of vegetables that he grows on his land. He stated that he only has to purchase bread, milk, cheese, coffee, and grains at a grocery store.

Atty. George Boath, representing Mr. Tanner, asked when Mr. Shulick received the cease and desist order from Mr. Tanner? He was told that he didn't recall when he got it. Atty. Boath asked if he had a telephone conversation with Mr. Tanner regarding the contents of the cease and desist order. He was told that he did. Atty. Boath questioned if he could recall when that conversation took place. He was told that he would have to check his phone records. Atty. Boath asked if were to tell him that the call was made on June 14th according to Mr. Tanner's records, would he agree with that date? He was told that it sounded about right.

Atty. Boath then questioned when Mr. Shulick filed his appeal. He was told that Atty. Thomas took care of filing the appeal. Atty. Boath asked Atty. Thomas if he would agree that the appeal is at least dated July 17th. Atty. Thomas stated that was the date it was stamped in. He stated that he personally handed it in. Atty. Thomas went on to state that when it go to be enforced, they will make the same defenses in the court. He continued that the 30-day rule isn't jurisdictional, but if that's the position that the town wants to take, they are more than welcome to take it. When they go to enforce the regulation, we're just going to raise the same issues in court and say that we did do the appeal. That Mr. Shulick contacted him the week before he had gotten the appeal. He wasn't aware when the cease and desist had been done. Atty. Thomas further stated that he got the appeal in to City Hall right after he met with his client.

He further stated that this is a procedural thing and he can't oppose that. He then stated that his position is to address the substance of the issue. Which is that this regulation does not apply. Just because he has a cease and desist order and you don't appeal it, doesn't mean that it is the correct interpretation of the regulation. The regulation still has to be interpreted by a court. Courts have plenary power meaning that they get to interpret any regulation.

He then read one line that is a very common Zoning 101 line which is "that any time when there is more than one interpretation of the language of the Zoning Regulations, restrictions upon the use of land are not to be extended by implication and doubtful language will be construed against rather than in favor of the restriction." He continued and stated that interpretation you look at and you try and impose a reasonable interpretation and when someone is looking at this regulation, what is more reasonable? That someone is allowed to have chickens on their property for their own use or that anybody, a five year old girl with one chick on her property whether it's in an apartment, a condo or a one acre lot is in violation of this regulation. That's the way it's being proposed. One chick is in violation of the regulation according to the interpretation in the cease and desist order. He then stated that in his opinion, the regulation is absurd. He feels that Planning and Zoning should write new regulations that deal with people that are not farming for commercial activity. He stated that there is a concern about odor. He stated that people that have an organic farm and use manure can be just as offensive as someone that has chickens. So he feels that the regulation should address those type of concerns.

Mr. Marcinko asked how large the property was. He was told that it is .6 acres. It is very long and narrow. It rises. On one side, the property line is distinguishable, on the other (left) you can't tell where the property line is. The next-door neighbor also has a garden along the property line.

Mrs. Gagnon stated that we are looking at this case as to whether or not the animals are pets? She was told that

this was not the case. She further stated that the little chick that Atty. Thomas referred to would be considered a pet. He stated that the little chick would grow up to be a big chicken and lay eggs, so in this case if it's a chicken, you can't categorize it as a pet under the interpretation given by the zoning regulations. She then stated that it was in a previous case. That is why she is mentioning it. He stated that he wasn't aware of it. The other board members agreed with Mrs. Gagnon and stated that the board has been through similar cases in the past. He stated that was not what the citations were in the cease and desist order.

Mr. Marcinko stated that he believes that we are not here to argue back and forth. He then asked if there was anyone that had any questions for the applicant. Mr. Jaumann asked if there was any other definition of farm anywhere in the regulations? He was told that it's not in the regulations. He was told that the cease and desist order has four sites listed. They are 230, 235, 310, and 720. 230 is regarding permits and certificates, 235 is simply the administration that you have to go and apply for, basically procedural things. Section 310 relates to the definition. It sites in the definition of farming in the cease and desist order. That's 110, definitions, 110.3 specifically and 720.1 is the one that deals with farm, truck, gardens and greenhouses and deals with structures. He then stated that there are no other definitions. There is a very broad definition of farming that's in 1-1Q of the state statute. Usually in any legal action, it would look to the regulation, the zoning regulation of the town.

Mr. Jaumann asked if the vegetable garden as well as the chicken coop run the length of the property line? He was told that the vegetable garden starts from in front of the house (corn stalks) along the side of the property pretty much the length of the property. Atty. Thomas stated that the property owner on the left grew produce against his property line so that there is no distinction of where the property line is located. Historically a large portion of the hillside to the right of the property as you're looking at it was a commercial chicken farm. Foundations for those coops are still located on his neighbor's property. Mrs. Gagnon asked when those coops were taken down. She was told that they burned down years ago and they are not on his property. She stated that she was wondering if it was pre-zoning or not. She was told that it probably was.

Mr. Marcinko asked if there were any other questions. There were no further questions.

Atty. Boath requested that Mr. Tanner give an overview in connection of what he did with regard to this inspection of the property etc. So that we have a complete record. Mr. Marcinko stated that he could speak at this time.

Atty. Boath representing Mr. Tanner stated that the boards duties in reviewing the appeal of the cease and desist order the board will find that their duties are fairly well outlined in Connecticut General Statute Section 8-7. He stated that the things to keep in mind are that they are hearing all of the evidence brand new, you hear the same evidence and you see the same things that the Zoning Enforcement Officer saw and it's based on what you see, you are to render the decision. We need an affirmative vote of all four of you to overturn Mr. Tanner's decision. It must be unanimous. You have the power to sustain his action in whole or in part or to modify his decision in whole or in part or just reverse it outright. You also have the power once you render your decision to make such orders as are necessary to carry out the objectives of your decision. So if you sustain Mr. Tanner's action and you uphold his cease and desist, you can impose further orders with regard to the property. The thing to remember is this, this is not a variance. Hardship does NOT come into play. It's only whether or not the property is being used in accordance to the Zoning regulations. We contest that it is not. And he is going to make another legal argument that you are deprived of jurisdiction from even hearing this and that is set forth as part of your responsibilities in 8-7. If the application, If the appeal is untimely, you have no jurisdiction to act on it. So even if you decide to act on it, it is our contention that you don't have the authority to do that. He then

stated that they are going to present the entire case and you (the board) can decide what you are want to do. He then directed his questions to Mr. Tanner.

Mr. Tanner stated that as part of his duties as Zoning Enforcement Officer for the city of Ansonia is to ensure that properties are being used in compliance with the Zoning Regulations. In regard to the property located at 53 Woodbridge Avenue, he received a complaint prior to May 21, 2012. He stated that the substance of the complaint was that the property was being used for the raising of poultry, chickens, and other animals. Based upon that complaint, he conducted a preliminary review of the Zoning Regulation. This is located in a B residential zone. The raising of poultry is not a permitted use in this zone. The raising of crops is also not a permitted use in this zone. He did visit the property and when he did, he observed numerous cages and structures for the keeping of livestock and poultry. He also noticed the presence of food crops.

He stated that he did not actually walk on the property. He did secure some photographs, which were placed on file in the town clerk's office and were in turn presented to the board members in their packets of information. Mr. Tanner was asked in general what the pictures depict. He stated that they show the structures that he referred to. He then determined that the owner of the property was Mr. Shulick. He then determined that by his observations the property was being used for the raising of livestock and poultry and crops and was in fact in violation of the Ansonia zoning regulations.

Atty. Boath stated that Mr. Tanner cited several sections of the regulations in the cease and desist order. He was told that the sections cited were section 230, which spells out the requirements for permits and certifications for any structures that are placed on the property. Atty. Boath asked if Mr. Tanner had reviewed the history of the property. He was told that he had. He determined that there were no permits or certificates issued for this particular property relative to the raising of crops or poultry or livestock. He then stated that he cited section 235, which is the method of permits. When he reviewed the history of the property, he learned that there were no applications filed with any of the prohibited uses. The next section that was cited was Section 310 Schedule B, which is a schedule of permitted uses by zone. When consulting the uses by zone, the raising of crops, poultry, and/or livestock is not a permitted use in a B zone. Atty. Boath asked what was the date listed on the cease and desist order. He was told that the date it was issued was June 13, 2012.

Atty. Boath asked Mr. Tanner if he had a conversation with Mr. Shulick regarding the cease and desist order. He stated that he did have a conversation with Mr. Shulick about the cease and desist order. He further explained that the conversation took place on June 14, 2012. Mr. Shulick contacted Mr. Tanner. He stated that the original date of the cease and desist order was June 14, 2012. The notice was sent via certified mail to insure that the letter was received. (please note the notice was unclaimed as of June 29, 2012 per the copy of the mail notice included in the file located in City Hall). The context of the conversation was that Mr. Shulick was aware of the cease and desist order. The substance of the conversation was that Mr. Shulick could not comply with the cease and desist order within a ten-day period. Mr. Shulick then filed an appeal on July 17, 2012. Atty. Boath asked if Mr. Tanner knew if in the zoning ordinances that there is a specific time period for a property owner to appeal a cease and desist order in terms of the number of days after receiving the cease and desist order? He was told that the statute states that the property owner has 30 days in which to file an appeal. Atty. Boath asked if Mr. Tanner had his complete file with him. He was told that he did and a copy of the file was made and added to the public record.

Mr. Jaumann asked if they are aware of any other definition of "farm" in the regulations. Mr. Tanner stated that he was only aware of the ones that have already been stated, which are Section 110.3.

Mrs. Gagnon asked if this would be covered in state statutes. She was told that it would be covered in the state statutes under section 8-7, which grants the municipality the authority to establish zoning regulations.

Atty. Thomas asked if he could question Mr. Tanner. Mr. Marcinko stated that he could as long as they weren't going to be going back and forth all night. Atty. Thomas stated that wasn't going to happen. He then asked Mr. Tanner if he considered the raising of livestock the same as the raising of chickens? He was told that he did. Atty. Thomas then asked why the regulations distinguish between stock and poultry raising. Why does it say stock raising or poultry raising. Mr. Tanner stated that the regulations actually say both. Atty. Thomas asked why the regulations would say both? Mr. Tanner responded that he didn't really think there is a difference. Atty. Thomas reiterated that in Mr. Tanner's interpretation, stock raising and poultry raising are the same thing. That the regulation was repetitive when it was written. Mr. Tanner stated that he believes it to be so.

Atty. Thomas then stated that Mr. Tanner stated that he noticed the raising of crops. He then asked if he considered the clients raising of crops also to be in violation of the zoning regulations. He was told at that point in time, Mr. Tanner did not feel it was in violation. Atty. Thomas asked if he now feels as if he was in violation. Mr. Tanner stated that since the raising of crops was not the major concern violation order. Atty. Thomas then stated that in his testimony, he had referred twice to the raising of crops and livestock was not a permitted use. Mr. Tanner stated that there is no extent to the amount of raising of crops. If he were to say that the raising of crops was in strict violation then anyone who would be growing five tomato plants would be in violation of the zoning regulations. There is a certain amount of discretion involved. Atty. Thomas then stated that Mr. Tanner has discretion as the Zoning Enforcement Officer and the legal enforcement arm of Planning and Zoning, have latitude to determine at which point the raising of crops is a violation of Schedule B permitted uses and under the definition of 101.03 under farm. Mr. Tanner stated to what extent it would be a violation, he is not sure. He would need to seek consultation from his land use attorney. Atty. Thomas asked if it was Mr. Tanner's position that there is a certain amount of raising of crops that would be a violation. Mr. Tanner stated that there may be.

Atty. Thomas then asked with respect to Mr. Tanners version of the raising of livestock or poultry, he asked is there also a certain amount of chickens. Mr. Tanner stated that he did not believe there would be. Atty. Thomas then stated, "So, one chicken is a violation?" Mr. Tanner replied that he believes that it would be.

Atty. Thomas then asked if there is a definition in the Zoning regulations for the word "structure." He was told that there is. Atty. Thomas then asked if Mr. Tanner had photographs of the structures that were in violation? He was told that the photographs that were submitted to the board were the structures that were in violation. Atty. Thomas asked why Mr. Tanner calls them structures. He was told that the definition of 310 says that is anything that is constructed or placed upon the ground or is made to be placed upon the ground or is attached to something that is placed upon the ground. Atty. Thomas then asked if anybody that put some wood into the ground and puts chicken wire around it, around their tomatoes, they have to get a permit from the Zoning Enforcement officer. Mr. Tanner stated that as far as putting up a fence around tomatoes, he believes that is a bit of a stretch. However, these are clearly structures. Mr. Tanner stated that the ones in the rear of the photo are fencing and would require permits. Atty. Thomas stated that he has nothing further to ask.

Mr. Marcinko then asked if there was anyone who wished to speak in favor of the application.

Maureen Keefe, 66 Clark Street stated that she has known the applicants since they moved in. There are other structures such as what the applicants have all along Clark Street. She wonders why they are being singled out.

Their property is clean. It is well kept. They have rabbits. They provide for their family. They don't cause problems with anyone. They are nice people. I have not smelled anything. They have several friends up and down Clark Street. None of them have ever complained about these people. They are harder working people than anyone else in the room. They are up before anyone else and is working through the night tending to the crops so that he can have food to feed to his family. He has never denied anyone anything. The structures that are being spoken about are for vegetables.

Mr. Marcinko asked three times if there was anyone else that wished to speak in favor of the application. There was none. He then asked if there was anyone that wished to speak against the application. There was none. Mr. Marcinko then closed the session to the public.

Atty. Thomas stated that he would like to request that they wait until there is a five-member board before they make a decision. Mr. Marcinko stated that the board has been advised that a quorum consists of four members. They have four members, so they have a full quorum. Atty. Thomas stated that a request can be made since this is not an automatic approval situation, so the board is not under any time limit, that the applicant can be given the opportunity of having five members vote on the application. Mr. Marcinko stated that normally he would agree with him, however, the fact that the entire case has been presented it was under the assumption that we are here to vote on it tonight. Atty. Thomas stated that they are not obligated to vote on it tonight. Mr. Marcinko stated that he knows that they are not obligated to vote on it tonight. Atty. Thomas stated 65 days from the conclusion of the public hearing to vote, and other members can review the tapes, the minutes, and the exhibits to update them on it. Mr. Marcinko then stated that he's asking the board to table the decision. Atty. Thomas stated that was what he was asking the board to do. Atty. Thomas stated that this is a normal request. He then stated that he would have made the request at the beginning, he discussed it with Atty. Both if there were only three. He was told that if there were only three, they wouldn't have been able to have the meeting, as there would not have been a quorum, so that the issue is moot.

Mr. Marcinko stated that he is a bit confused about a few things himself. He stated according to the regulations it says that "three acres or more used for the raising of crops or pasture or both, stock raising, dairy, poultry raising and kindred activities are to be considered as a part of and included within farming only when carried on in connection with and incidental and subordinate to, the tillage of the soil." Which would be growing crops. So technically raising poultry whether it be for business or pleasure, and growing crops technically would make it a farm. At least that's his thought. He then stated that he also noticed is that there are structures. I do appreciate the fact that people wanting to provide. However, we do have regulations that require us to pull permits for things such as fences, sheds, whether they be for crops or otherwise. I understand where you are going down this specific violations.

Mrs. Degan stated that the property on Day Street, the person had three chickens, they were pets. I have never seen them kept more meticulously and the coops were portable, so you didn't need the permits for the permits or whatever. It went to court. There was no farming going on at all as far as crops, and it was not allowed.

Mr. Marcinko stated that he believes that the question before the board is more or less is what they are doing considered a farm? Also, if I'm raising a cow for myself is that considered a pet as long as I name it?

Mrs. Degan then stated when the board had a case on the Hilltop, where they had been raising bunnies. What it boiled down to was that if he wanted to have bunnies, he had to purchase the three houses surrounding him so that he would have the acreage. He brought them into his house and didn't have them outside. It still went to

court.

Mr. Marcinko then stated that the board is not here to approve an application or to deny one either. We are here to decide if Mr. Tanner was right in issuing a cease and desist order.

Mr. Jaumann is that Mr. Tanner cited him for specific sections of the regulations with regard to farming and whether or not they took our permits for the coops. So the question becomes then does this meet the definition of farm. Mr. Marcinko then stated that by definition it requires three acres. Mr. Jaumann then stated that the regulations are pretty clear, you need to have three acres or more. Mrs. Degnan stated that at the Ansonia Nature Center, there is an organic garden. That's a farm, Schriber Farm and there's many acres, they made him get rid of his hens there. Mr. Jaumann stated that he has questions as to whether or not the structures had proper permits, etc. Mr. Marcinko stated that they could bring it down to individual things but that's not why they are here. Mrs. Degnan then stated that the Town of Orange right behind their City Hall, the person behind it, has horses. Ansonia's regulations say that is not allowed. There was no further discussion regarding the application.

Mr. Marcinko entertained motions on the application.

Mr. Jaumann made a motion to overturn the cease and desist order. The motion was seconded by Mrs. Gagnon

Roll Call:

Peter Marcinko	No
Claudia Degnan	No
Laura Gagnon	No
Joseph Jaumann	Yes
Nicolas Gentile III	Absent
John Sanza	Absent
John Erlingheuser	Absent
Ron Vaccaro	Absent

The appeal was denied. The cease and desist was upheld.

Atty. Boath stated that the Board does have the authority to impose whatever orders they feel is appropriate to carry out the Zoning Enforcement Officer's decision. Mr. Marcinko then stated that Mr. Tanner allowed the applicant ten days, the board then granted the applicant has three weeks to comply with the cease and desist order.

Mr. Marcinko asked if there was anything else to come before the board. He was told there was nothing else.

Mr. Jaumann made a motion to adjourn. The motion was seconded by Mrs. Degnan.

The meeting ended at 8:10.

Respectfully submitted,

Carol Sardinha
Secretary