

Arundel Zoning Board of Appeals
Minutes
October 10, 2017

Members Present: Chairman, Paul Chansky; Vice Chairman Raffaella Reimer; John Bell; Stephen Dalzell and alternate David Berg

Also Present: Attorney Sally Daggett; Attorney Leah Rachin; Code Enforcement Officer, James Nagle; Attorney Clint Boothby; Ricky Dubois, Randy Dubois, Marcel Dubois, Sol Fedder, Nicholas Fedder, Rich Ganong, and Recording Secretary, Wendy Lank

1. Paul Chansky opened the meeting at 7:00 P.M. in the library of the Mildred L. Day School. Attendance was taken the Board was found to have a quorum.

2. **Findings of Fact –Dubois Livestock Public Hearing of October 4, 2017**

Attorney Sally Daggett handed the Board and members of the audience a draft copy of the Findings of Fact for the October 4, 2017 Public Hearing which the Zoning Board of Appeals heard the Administrative Appeal filed by Dubois Livestock. The Board of Appeals is here tonight to read through the findings, make any corrections or add to them. Once this is done, the Chairman will sign, corrections made and a formal copy sent to the applicant.

Dalzell stated that in section 8 that the date was incorrect and needed to be changed. The Board agreed with the change and there were no other corrections or additions.

Chansky moved that the Board adopt the written Findings of Fact as amended by the date in paragraph 8 as related to Dubois Livestock Administrative Appeal. Dalzell seconded the motion with the vote being 5-0 in favor.

3. **Administrative Appeal Application – Dubois Livestock, Inc., Applicant; Randrick Trust, Owner – 2 Irving Road; Map 19, Lot 6; Zoned R-4**

Chansky opened the Public Hearing. Chansky asked Daggett for some guidance.

Daggett stated the ZBA is here on an application filed by Dubois Livestock on September 18, 2017. It is an Administrative Appeal of a Notice of Violation that was offered by the Town Attorney, Leah Rachin that was dated August 21, 2017. On August 24th, Sol Fedder of Dubois Livestock sent a letter to the Town Attorney about the Notice of Violation. Then two weeks later on September 11, 2017 Dubois Livestock sent a letter to the Arundel Code Enforcement Officer about the letter of Notice of Violation process. That ultimately resulted in the September 18th filing of the Administrative Appeal Application and that is why we are here tonight.

Daggett stated that her take on it is that the provision of the Arundel Land Use Ordinance that relates to notices of violation is section 12.8 of the ordinance. It provides that it is the duty of the CEO to enforce the provisions of this ordinance. If the CEO finds that there are any violations of the ordinance, he shall notify in writing, the person responsible for such violations, indicating the nature of the violations and ordering the action necessary to correct it. Daggett stated, then in section 12.9, Legal Action and Violations, when any violation of any provision of this ordinance shall be found to exist, the CEO is hereby authorized and directed to institute legal proceedings in court, generally known as a rule 80K Action. It is a reference to the rule of civil procedure.

Daggett stated that her concern here is that under the terms of the ordinance, the Notice of Violation has to come from the CEO and we do not have that here. Daggett recommends to the Board that they address this issue now, by giving the CEO two weeks to decide whether he wants to write his own letter of Notice of Violation and then to give Dubois Livestock 30 days from when they receive the CEO's letter to supplement their Administrative Appeal that originally got filed on September 18, 2017. It would put this

matter back in front of the Board and be ready for action by the Board the week of November 27, 2017. Again, that is my recommendation. The Board can view the whole situation differently and decide to proceed differently, but I feel if this situation does not get addressed now, it is going to come up again.

After some discussion amongst Daggett and the Board, Chansky turned the meeting over to Dubois Livestock for discussion.

Clint Boothby, Attorney from Turner, Maine stated he was representing Dubois Livestock, Inc. As the Board's Attorney has pointed out, that issue was raised by our side as one of the initial issues. Ordinances are very specific. It is necessary that the Notice of Violation comes from the person who is empowered to issue it and that in our opinion is the CEO. As the ordinance clearly states, that power is not something he can give to someone else. If this goes to some further litigation based on how this resolves, those procedural matters should be ironed out ahead of time.

Rachin stated she was here on behalf of our CEO, Jim Nagle and asked if she could ask just a few questions of Nagle. Rachin asked Nagle how long he has been CEO for the Town of Arundel. Nagle replied that he has been CEO for 12 years. Rachin asked, in those 12 years what has been your practice with respect to Notice of Violations. Nagle replied, I have always called for legal advice and they have always written my letters. Rachin asked Nagle, so this is your habit and the Towns practice to have that letter drafted by legal counsel. Nagle said it was.

Chansky moved to close the comment section of the hearing. Dalzell seconded it with all in favor.

Daggett stated that she thinks the Board would want to move to postpone actions on this Administrative Appeal until the week of November 27th or thereafter in order to allow the CEO time to issue a formal Notice of Violation, if he so desires; and to allow Dubois Livestock time to supplement its Administrative Appeal related to any such Notice of Violation from the CEO. Bell stated, so moved. Dalzell seconded the motion with the vote being 4 in favor, 1 opposed.

4. **MINUTES**

There were no minutes ready for approval at this time.

5. **ADJOURNMENT**

Bell made a motion to adjourn the meeting at 7:38 P.M. Reimer seconded the motion with the vote being 5-0 in favor.

Respectfully Submitted,

Wendy E. Lank
Recording Secretary