

# **Auburn Zoning Board of Appeals Meeting Minutes September 11, 2014**

## **Roll Call**

**Full Members present:** Lane Feldman, Courtney McDonough, Michael Dixon; Presiding, Kenneth Sonagere and Elizabeth Shardlow.

**Associate Members present:** Dan Curtis Jr. and Maureen Aube

**Full Member absent:** Bruce Richardson and Christopher Gendron

**Also present representing City staff:** Dan Stockford, Esquire and Eric Cousens, Deputy Director of Planning & Development.

Chairperson Michael Dixon, called the meeting to order at 6:00 pm and asked each Board member to state their name. He asked Eric to summarize the August 7, 2014 meeting minutes.

Eric stated the minutes were posted on the City's website and a copy was given to each Board member. He suggested they state any changes they would like to make to the minutes to accurately reflect what was said at the last meeting so staff could make the necessary changes if needed.

Chairperson Dixon invited Daniel and Marie Herrick to the microphone to give their opinion on the minutes.

**(02:11 on DVD)**

Daniel Herrick, owner of 240 Hatch Road and 470 Hatch Road stated the problem with these minutes was that he was told that night that the meeting was going to be taped with audio which he said they weren't. He said it was disturbing because he would have liked to have everyone's suggestions, which some were good and some not so good. He didn't think this Board got the proper information that it needed to make any decision that night. It got a decision from basically a Planning and Permitting Deputy Director. Mr. Herrick said he had nothing but untruths and misdirection's given to him. He said he served on this City for 4 years and wouldn't have allowed this.

Chairperson Dixon asked Mr. Herrick if he had any specific comments about the minutes. Mr. Herrick asked who made these minutes since there's no audio. Eric replied that Rhonda Russell prepares minutes for the Planning Board and the Board of Appeals. Eric added that we typically get more details on the minutes but since there was no audio, we relied on the notes taken from the meeting.

Chairperson Dixon asked Mr. Herrick if there were things that were said that are missing from the minutes. Mr. Herrick replied there were a lot of things said and stated that Mr. Dixon said a lot of things that shouldn't have been said. Mr. Herrick continued saying that the Board, the

Attorney and Mr. Cousens all commented that he only paid \$9,500 for this place, so what did he expect. Mr. Herrick added that the attorney should have known that if you purchase a property from someone who is 60 or older, you have to have an affidavit.

Mr. Herrick read the beginning of the sworn statement from Barbara P. Lander of Auburn to demonstrate he did not take advantage of her when purchasing the property. Mrs. Herrick added that it felt like the Board members were insinuating that they, (the Herricks) took advantage by the price they paid and everyone she spoke to who was at that meeting felt the same way. She said it was nobody's business what was paid for the property. It is public record but doesn't have to be brought up in every situation. It wouldn't have made a difference if we paid \$95,000 according to Planning & Permitting. The rudeness of the Board during that meeting is not well recorded in these minutes. Mrs. Herrick also mentioned that the Board took to task referring to the 3 Councilors who were here, as Councilors. They were not here as Councilors and didn't introduce themselves as Councilors but as Auburn residents but the Board told them they as Councilors put the laws in place and were here to break them and should be ashamed. She said the Board had no right to do that as that is not the Board's position.

(07:18 on DVD)

Mrs. Herrick said this whole process was a farce. We were misled, told by Eric's boss Roland Miller that we shouldn't have even been brought here. We sat here for 2 hours with people parading up and down speaking and after 2 hours Mr. Sonagere said according to State law we cannot legally approve this. She asked why did you make us parade here for 2 hours?

Ken Sonagere replied you do have remedy; you can go to Superior Court and bring your case before a judge and that is the next step. He said it's not our right to say you cannot come here, you have no case. We have to let you go through the process. It's not our position to say, don't say a word because we aren't going to approve it anyway.

Mr. Herrick stated he knows the Board followed the law. He said he knows the law, knows the ordinance, knows the land and knows what was going on. The problem is we were misdirected. He said he knows you can't build in the Ag & Resource Protection zone unless you farm it and have more than 10 acres and make 50% of your living. But this house has been there for 21 years and fell through the cracks. He said a good point was brought up by a few of the Board members when they asked what's wrong with the house that's there today. This got him thinking that he should never have pulled a permit as he was requested to do by Eric. Instead, Eric should have said, Mr. and Mrs. Herrick, we have to make this a legal home on a non-conforming lot. That would have been the first step. Mr. Herrick asked how do you do that, he didn't know. The next step is something that's been done numerous times in the City; go in front of the Planning Board, prove that there's a hardship between the home that's there, demolish it and build one beside it or anywhere on that property. It was done on Hatch Road, 3 times in South Auburn and it was done in North Auburn. It happens all the time. Mr. Herrick said he didn't have a problem going through the process. But we were misdirected, misinformed in error by the City of Auburn on this property. He explained he didn't know there was a permit issued when he bought this property. He thought they (former owners) built a shed and just moved into it. When he called Eric to make sure what he wanted to do was fine, Eric said it was an illegal residence. That's when he said he found out it was a residence.

(11:35 on DVD)

Mr. Herrick continued; the very next day after the meeting, a letter/email was written to Eric Cousens and Roland Miller from Michael Dixon. Mr. Herrick read the following portion of the letter; Based on last night's ruling, will the Herricks be issued a revised tax bill which assesses the property as an undersized lot in the Ag & Resource Protection District with an agricultural shed? We will be shooting ourselves in the foot and undermining the zoning ordinance if the tax Assessor (Collector?) doesn't make an immediate adjustment.

Mr. Herrick asked if the Board members knew about this and explained he got another letter a couple of days after that which stated that they've made the residence into an automatic auxiliary shed. Auxiliary to what he asked. He said he would bet his bottom dollar that he is the only resident that owns an auxiliary shed in the Ag & Resource Protection zone with a full bath, full kitchen, 2 bedrooms and with living space. He said this is pretty sad and must be straightened out.

(12:55 on DVD)

Mr. Stockford, Esq., explained to Mr. Herrick that the current issue before the Board is the minutes and suggested the Board vote on that. Mr. Herrick stated he appreciated the time and said you can vote on the minutes but you'll never get the minutes. He said he has a copy of the tape and is hoping he can find someone to read lips so we can put the minutes where they should be because those minutes were lost. He has a hard time believing the audio was lost for the whole length of time because there was a City Council meeting and those minutes were also produced and Council approved.

Mr. Stockford, Esq., explained to Mr. Herrick that he would have an opportunity to speak about the proposed findings of fact after the minutes were voted on. Mr. Herrick stated the findings of fact had not changed since the last meeting.

(14:35 on DVD)

Chairperson Dixon stated there was a quorum and pointed to the 5 members of the Board that would be voting. He then called for a motion on the minutes.

Mrs. Herrick asked what a quorum is for this Board. Chairperson Dixon replied that it takes 5 members. She stated some of the voting members' at the last meeting weren't even members anymore because they had termed out. Chairperson Dixon replied that that was not true and explained that Mr. Feldman was not here. He asked Eric if any members had termed out and Eric replied he did not think so but would verify that with the City Clerk. Chairperson Dixon commented that we do have a quorum tonight and we did have a quorum then.

(16:02 on DVD)

A motion was made by Ken Sonagere and seconded by Elizabeth Shardlow to approve the August 7, 2014 meeting minutes. After a vote of 5-0-1, the motion carried. (Lane Feldman abstained.)

### **Old Business**

**Confirmation of the Findings of Facts and Conclusion of the following:** Administrative Appeal of Daniel and Marie Herrick to appeal their denial of a building permit to construct a single family home in the Agriculture and Resource Protection District at 240 Hatch Road / PID # 213-006 pursuant to Chapter 60, Article XV, Division 4, Section 60-1186. *Appeal was denied by the Zoning Board of Appeals on August 7, 2014.*

Mr. Stockford, Esq., explained the purpose of the meeting; The Board of Appeals is meeting for the limited purpose of considering Findings, Conclusions and an Order in regards to its denial of the Administrative Appeal. Because the Hearing was closed and a vote was taken at the August 7, 2014 meeting, the Board won't be reopening the Hearing for purposes of taking new information or evidence. Before a vote is taken on the proposed Findings and Conclusions, the Board will allow the Herricks to provide any input and comments relating to the proposed Findings and Conclusions and if any members of the public wish to comment on the proposed Findings and Conclusions, they will be given that opportunity. He reiterated that the purpose of this meeting is not to rehash what took place at the first meeting but to comment specifically on the Findings that are before the Board.

(19:13 on DVD)

Eric presented the proposed Findings and Conclusions via Power Point and read them aloud.

(26:13 on DVD)

Chairperson Dixon asked the Board members if they had any questions for Staff. He then opened the floor to Mr. Herrick.

Mr. Herrick told the Board members that they did not do the wrong thing by not approving it because it is less than 10 acres and he wouldn't farm it for 50% of his income. He said it's an illegal residence so the City of Auburn according to the Findings is an accessory because they approved it. For 21 years they accepted a tax bill on that property and Eric's boss said the City was fully aware that the building was there as a residence. He said Roland Miller asked him, what do you want us to do, kick him out?

(28:03 on DVD)

Mr. Herrick again stated he did not blame the Board for the denial because they had to deny it under those guidelines but those guidelines don't apply to an existing dwelling. He said he has an existing dwelling on 5.45 acres that was lived in for 21 years, known by the City, taxed by the City and accepted by the City. He said he owns an accepted home on Hatch Road that's less than a half acre and another just over a half acre. They are non-conforming residences and asked the Board what the difference was. Elizabeth Shardlow replied that the difference was he requested a permit to build a new structure. Mr. Herrick responded that he understood that but that's where he says he was misguided as that was what he was told to do. He mentioned the letter that went from Mr. Dixon to Mr. Miller then to Karen Scammon and said they automatically took \$70,000 of value out of this city overnight without asking him. We lost that value but it's still a residence, not an auxiliary building.

(30:32 on DVD)

### **Open Public Input**

Joseph Gray of Sopers Mill Road stated the following:

- I too am a farmer and I meet all of the rules except I don't use 10 acres and I still make 50% income
- These rules are outdated
- Mr. Herrick should never have come before the Board
- This is an approved home because the City collected taxes for 21 years as a house so he should have the right to replace the house
- Mistreated by Mr. Dixon as he was rude to Mr. Herrick
- The Board can right this wrong but doesn't seem willing to and he doesn't understand why
- Adds value to the City and doesn't hurt a damn thing so just do it.

(32:37 on DVD)

Ed Desgrosseilliers of 121 Hatch Rd stated the following:

- Auburn Board of Appeals should stand outside of sandbox to right this situation
- He didn't have any trouble with the sale price because he saw what Mr. Herrick did for these people over time
- City was well aware that people were living there for 23 years
- City failed in this case to apply the law when building was being built
- City wants Mr. Herrick to be the burden of the City's enforcement
- City established this wrong
- He was offended when Board said they couldn't do anything. Where does a Citizen go to present their case when you say you can't do anything?
- Instead of Board of Appeals should be called Board of Nothing
- Very displeased with this process completely

(39:00 on DVD)

Belinda Gerry of 143 Mill Street stated the following:

- Agrees that there are a lot of non-conforming lots in Auburn
- City Council meeting on Monday night brought up Taylor Pond homes being changed from non-conforming to year-round and those that remain non-conforming will be grandfathered in.
- Feels Mr. Herrick did the right thing to get permits to rebuild the place and maybe the outcome would have been different if he requested permits to renovate the existing property as all he wanted to do was fix up the home for his boy so he could live near him.
- After 21 years of taxing as a home he should have been grandfathered in and given the direction by the City to come forward and request permits to renovate the place.
- Saddened about what happened at the last meeting; lots of stuff was said at the last meeting that shouldn't have been said
- Not here as a Councilor but as an Auburn resident
- Sit through a 2 hour meeting and the minutes are only half there. Not faulting staff because they didn't know they wouldn't have the tape to back it up and now the only recourse is to go to Superior Court? With no audio on the tape? It's not right. The Herricks weren't given a fair shake.
- Would hate for this to happen to some other Auburn residents.

(43:20 on DVD)

Chairperson Dixon closed the Public Input part of the meeting.

Elizabeth Shardlow stated to Mr. and Mrs. Herrick that she didn't think there was anyone on this Board that didn't want them to build a nice beautiful new home on the 5.45 acres because we all know what value this would bring to the City, but she added, the issue at hand is that it's a non-conforming lot. To have the foresight to think about the implications of allowing people to take non-conforming residencies and build shanties throughout the City while collecting taxes, then all of a sudden you have neighborhoods popping up on farmland and we lose that farmland. The ordinances are there to protect the future of the City.

Mrs. Herrick replied there are no farmlands where you can have 50% of your income from the farm. Your spouse has to work for income and for health insurance. These are outdated rules that need to be revised. (Some comments from members of the audience that were inaudible.)

Eric reminded everyone that comments made away from the mike may not be heard on the recording. Chairperson Dixon invited the Herricks to the front if they wanted to further address the Board.

(45:41 on DVD)

Dan Curtis asked what is the City going to ask the Herricks to do to remedy the non-conformity of the property. He said he agreed with Mr. Desgrosseilliers when he stated the Board of Appeals' function is to listen to appeals and perhaps vote in favor of the resident to fix something that is wrong. If we can't do that then what are we doing here?

Chairperson Dixon replied that it far oversteps the bounds of the Board. He said we are here to enforce the Zoning Ordinance and people can appeal to us to make exceptions to the Zoning Ordinance under certain circumstances but this does not appear to be one of those circumstances. He said that at the risk of being accused of being rude again, the people who can change the Zoning Ordinances is City Council and hopes that message will filter back. He said he did not see this as a non-conforming issue but as an illegal use of the property and yes the ball was dropped for several years, the City collected taxes on this and kind of turned away for unknown reasons but the questions is, is it a use that's in any way conforming with the Zoning Ordinance. I don't think so, and that's why I voted the way that I did.

Dan Curtis said he agreed with everything Chairperson Dixon just said but did not know how this situation could be rectified. He applauds the courage of the Herricks for coming forth to right this and doesn't know how the Board can help other than direct them to the City Council. He said the City Council ought to take some steps to remedy this especially the Ag and R&P zoning rules and the areas that we are using in the City to isolate the farmland that is not going to be used for farming much longer.

(50:09 on DVD)

Lane Feldman said he was not at the original meeting and presentation and was quite confused as to how the City just looked away from John and Barbara Lander for 25 years. Now we have somebody who is trying to do the right thing and get permits but we are telling him he can't. He said his kids keep telling him they can't wait to leave here (Auburn) and we actually have

somebody (Herrick's family) who wants to move into our community and wants to spend money to make that better which would be good for our tax base. We have too many people leaving and not enough people coming in. I understand the law but as Mr. Desgrosseilliers said, we have to stand outside the sandbox.

Mr. Herrick asked Eric how many non-conforming lots existed in the Ag and Resource Protection Zone as we stand today. Eric replied he did not know the exact number but stated there was a difference between non-conforming lots which are lots that have existed since before we had the minimum lot size and then when we created the zone that required 10 acres they were allowed to continue to exist, even though they don't meet that standard. An illegal lot would be a lot created after the zoning standards are in place that doesn't meet the standards that were in place while it was created. In this case we have a non-conforming lot that his understanding is the lot itself has existed since before the 10 acre lot size so the lot is legally existing even though it doesn't conform to the 10 acre minimum. The residence was constructed without approvals from the City so that's not a non-conforming residence, it's an illegal residence. He explained had the house been constructed in 1930 and then we created the Ag Zone, we would have a process where the house could be replaced because the house would be legally created.

(53:00 on DVD)

Lane Feldman asked am I to assume there were never any building permits or occupancy permits taken out when this was originally built. Eric replied there were building permits issued for an agricultural herb drying shed along with plumbing and electrical permits but it was not approved as a home so the use was changed with no occupancy permit.

Marie Herrick said she had asked Eric at the original meeting what would happen if we can't build a building there. Are you going to make us tear it down? She said his comment was distressing to her when he replied; we will look at it and if it's going to involve too many funds from the City we will just let it go, we will not force them to tear it down if it's going to be a large cost to the City. She said that makes her believe that rules are broken all of the time in this City and that's disturbing to her.

Dan Herrick stated that there was a septic permit issued for a two bedroom residential ranch out there. Mrs. Herrick also added that there was a shed permit issued after the house had been built and the person's residence was listed as 240 Hatch Road where prior permits listed the person's residence as Damy Court. So she said, there are some really big problems that really need to be straightened out and you will see us at Superior Court.

Mr. Stockford, Esq., suggested that if the Board is inclined to consider the proposed Findings and that its Conclusions are in order then a motion to adopt those would be in order. He then read the following draft of the motion for consideration:

(56:05 on DVD)

A motion to adopt the proposed Findings, Conclusions and Order with the following revisions: In paragraph 5, substitute Section 60-146(1) for Section 60-173(1) and add the following phrase at the end: with the exception of accessory agricultural buildings and in paragraph 9, substitute Section 60-146(1) for Section 60-173(1).

Mr. Stockford, Esq., explained this was just changing the references to the ordinance in the draft Findings that refer to an old section number. (Inaudible remarks were made from members of the audience)

A motion was made by Elizabeth Shardlow and seconded by Courtney McDonough to approve the Findings as Mr. Stockford stated with the notations to the ordinances.

After a vote of 5-0-1, the motion carried. (Lane Feldman abstained)

A motion was made by Ken Sonagere and seconded by Elizabeth Shardlow Courtney McDonough to adjourn. After a vote of 6-0-0, the motion carried

**ADJOURNMENT**