

TOWN OF ELIOT - BOARD OF APPEALS MEETING

February 16, 2012

ITEM 1 - ROLL CALL

Present: Chairman Edward Cieleuszko; Philip Lytle; William Hamilton and Ellen Lemire and John Marshall, Alternate Members

Others Present: James Marchese, Code Enforcement Officer; Linda Keeffe, Recording Secretary; Brian McClellan and family, appellant; Steven Robinson, abutter; public audience including Josh Dow, Emily Green, Robin Roaf, Richard Small, Mary Brandon, Brian Holt, Paul Ellis, Susan Serfass, Mary Smith and others.

ITEM 2 - CALL TO ORDER

All Board of Appeals members present will be voting members.

The procedure will be as follows:

- The hearing will be opened and voting members determined
- The request will be summarized
- The parties involved will be the Code Enforcement Officer and Mr. McClellan
- The jurisdiction, standing and timeliness will be determined
- After the ground rules are established, the appellant will have an open forum to present his case, adding to or reiterating the packet of information already given to the Board of Appeals
- The Board of Appeals will then question Mr. McClellan
- At the conclusion of the questions, the Code Enforcement Officer, who is the other party to this appeal, will present his side and the Board of Appeals will question him
- Next, the abutters will have the forum
- After the abutters have spoken, the interested citizens will have the forum
- The Board of Appeals will have more questions
- Mr. McClellan can make an additional statement and the Board of Appeals will ask their last questions
- The hearing will be closed with no further comments allowed
- The Board of Appeals will reiterate the findings of fact and come to a conclusion, make a motion and vote on the motion.

Chairman Cieleuszko called the public hearing to order on February 16, 2012 at 7:00 PM for a request by Brian McClellan, 202 Bolt Hill Road, Eliot, Maine for administrative appeal of the Code Enforcement Officer's series of inconsistent actions and errors

interpreting Section 45-405 and Section 45-290 concerning a chicken coop. All Board of Appeals members present will be voting members.

The jurisdiction is that the Board of Appeals is authorized to hear this case through Ordinance 45-49A, Administrative Appeals. It has the power to be a Board through 45-46 of our Ordinance.

Chairman Cielezsko stated that Mr. McClellan does own the property and has standing. In his packet he presented letters that are over 30 days old from the time he asked for this appeal. The letters from the Code Enforcement Officer to Mr. McClellan dated August 11, 2011 and September 28, 2011 are beyond the time of appeal of the Board. Mr. McClellan can offer them as evidence of misunderstanding, but the contents of those letters cannot be used to make the determination if the Code Enforcement Officer was wrong in what he stated in those letters because the appeal period has passed. The only letters that apply to this appeal are the ones that the CEO sent Mr. McClellan on January 17 and January 23, 2012. Those are the only two letters that occurred during the framework of this appeal. Those are Exhibit's A-5 and A-7.

Mr. McClellan asked why he would appeal a letter that is an approval.

Chairman Cielezsko said he could present whatever he felt was within reason but the letters are not appealable, so it is a moot question.

Mr. McClellan stated he didn't think he should be the person presenting the appeal in the first place if the decision, as it reads in the Board of Appeals rules, states that an Administrative Appeal is an appeal from the decision of either the Code Enforcement Officer or the Planning Board if one thinks the decision is wrong. Mr. McClellan didn't think the decision was wrong on his approval. If an abutter or a neighbor believes the decision is wrong, he thinks it is their burden to file the appeal and submit, being responsible for the administrative appeal process in addition to the financial process that he had to incur. In his opinion, he didn't feel like he should be the person appealing this. It should be the person who disagreed with the original approval. The person who disapproved, Mr. Robinson, can also not appeal the decisions made earlier than the appeal time allows.

Mr. McClellan stated he was forced to request the appeal. It was not his decision. If the original decision, which is now not allowable, was not in the favor of his neighbor, it was the neighbor's responsibility to appeal that original decision. If the Code Enforcement Officer decided to reverse the decision six months later and Mr. McClellan had the approval, he doesn't see how he is not allowed to use it as evidence because the appeal process is not his burden. He has done nothing wrong as he understands it from the letters he has. He stated that if his abutter believed the decision was wrong back in September, then it was his responsibility to put forth an appeal.

Chairman Cielezsko stated that the abutter did not put forth an appeal and that tonight the appeal is for Mr. McClellan.

Bill Hamilton stated that he was under the impression that Mr. McClellan was appealing the decision of the Code Enforcement Officer, which was issued on January 17, 2012, asking him to remove the chicken coop. He thought all the material Mr. McClellan submitted was relevant to the action of the Code Enforcement Officer when he issued the cease and desist and removal order, which was approved by the Selectmen. He believes Mr. McClellan should be able to present everything he has submitted the same way the Code Enforcement Officer can present everything that he has done since the very beginning of this whole process.

Chairman Cielezsko stated that nothing in the packet would be off the table. Anything in the letters of August 11, September 22, and December 28 is beyond the limit of time. He can use them to show how it helps in the January letters, but the Board of Appeals cannot go back and appeal those decisions.

Bill Hamilton stated it is a paper trail and is all relevant to determine the current appeal. Nothing should be off the table or off the record. Mr. McClellan has a thorough record of the proceedings and it is all relevant.

Chairman Cielezsko agreed that the issue is moot because Mr. McClellan is not appealing the earlier letters.

Mr. McClellan restated that if the abutter had a problem with the original decision, it was his burden to appeal that decision. Mr. McClellan did not understand why the abutter was afforded an opportunity to change the mind of the Code Enforcement Officer and now it is Mr. McClellan's burden to appeal his reversal. The abutter needed to fill out the paperwork, pay the fees.

Bill Hamilton stated that Mr. McClellan was here to appeal the decision of the Code Enforcement Officer to request that he go in front of the Planning Board, that he is subject to a fine that has been approved by the Selectmen. He added that Mr. McClellan has backed that up with other letters that create a paper trail for the entire episode.

Chairman Cielezsko stated that this Board of Appeals will decide this case by three concurring votes. This case, because of *Eliot Shores vs. the Town of Eliot*, is an Advisory Opinion. The Board of Appeals decision will be going to the Selectmen and to Mr. McClellan to help them understand the case. The advisory opinion can only reverse or modify what the Code Enforcement Officer has done if there are three concurring votes that he has acted clearly contrary to the code.

Chairman Cielezsko stated that the hearing is in appellate form. All testimony, anything

in regard to this case, has to have been presented previous to his letters of January 17 and January 24. This is a review of the Code Enforcement Officer's actions up to January 24.

After stating that the above are the ground rules for the appeal, the Chairman turned the floor over to Mr. McClellan.

TESTIMONY FROM APPELLANT

Mr. McClellan stated thanks for the opportunity to state his case. As mentioned in the packet and his letter, he went to Mr. Marchese in July 2011 and sought his guidance on whether or not there were any ordinances preventing him from having a chicken coop where he lives. He made it very clear that the chickens were meant for his wife and children, they were not for resale or commercial use. The Code Enforcement Officer told Mr. McClellan there was nothing he could do to prevent him from having chickens. Mr. McClellan said Mr. Marchese showed him an ordinance that talked about the "breeding and care of livestock" that included 100 foot setbacks, but he said that it was questionable and that, therefore, he had no problems with it.

When Mr. McClellan started to put the coop in place, he was contacted by his neighbor who had concerns. She had said to him "You are not allowed to have chickens in this area." Mr. McClellan told her he had spoken to the Code Enforcement Officer and he had said that Mr. McClellan was allowed. Mr. McClellan offered to talk to the Code Enforcement Officer together with her. She said she would talk to him.

Mr. McClellan started to build a pen with no roof or base with the intent to put the chickens in there to run around safely when they were not in their coop, which had not yet been purchased. Mr. McClellan then received a letter from Mr. Marchese on August 11, 2011, that stated that it had come to his attention that he was building a chicken coop. Mr. McClellan had previously told him that he was going to do that. Mr. Marchese wrote that he had turned up two ordinances. One was about a structure having to be 10 feet from the property line. Mr. McClellan asked if the code would have to be met if the structure were not attached to the ground and the Code Enforcement Officer said it would. The Code Enforcement Officer also mentioned again the 100 foot setback for livestock. But, in his letter, he had stated it is "questionable" and, therefore, the benefit goes to the applicant.

Mr. McClellan then went to the Town Hall a second time to get clarification because he had not purchased the chickens or coop yet and wanted to make sure it would not be a problem. He was assured that it would not be a problem as long as the coop was set back 10 feet from the property line. Mr. McClellan asked if all structures that are not

attached have to meet that same 10 foot setback. Mr. Marchese said yes. Mr. McClellan asked if that included the neighbor's structures, which are not set back 10 feet and Mr. Marchese said yes. Mr. McClellan invited Mr. Marchese to come inspect the property, but Mr. McClellan was never met by him there and was never talked to directly at the property.

Mr. McClellan then purchased the chicken coop. Mr. McClellan received another letter in September stating that the chicken coop was too close to the boundary on the property line.

John Marshall then asked for clarification as to whether Mr. McClellan was referring to an open pen and Mr. McClellan said he had bought a coop which is a structure, not an open pen.

Mr. McClellan had also asked for clarification on the fenced area and was assured that it was fine. He moved the coop back farther and the Code Enforcement Officer said it was fine. That was the last Mr. McClellan had heard from him, which was in September. From then until, the end of December, the chickens were not free-range, but were in a closed area with a metal roof. He stated that the coop is clean, well-built, and has chicken wire that protects the chickens. His children take care of the chickens and clean the coop. There had not been any issues.

Mr. McClellan received a letter from the Code Enforcement Officer, dated December 28, 2011, reversing his decision. At that time, the recommendation was that Mr. McClellan needed to get a site plan review. Mr. McClellan stated he previously went to Mr. Marchese for clarification and was told that as long as it was outside the 10 foot setback, Mr. McClellan did not need a review. In the letter of December 28, it was stated that Mr. McClellan needed both a site plan review and a building permit for a structure that was purchased. Mr. McClellan went to the Code Enforcement Officer again to seek clarification because the structure was physically movable and was told again the site plan review and building permit were required. When Mr. McClellan reminded him of previous permission, the Code Enforcement Officer agreed that the previous decision had been a mistake on his part.

Mr. McClellan noted that the Code Enforcement Officer had a file of letters and appeared to be creating a case, so Mr. McClellan decided to respond to his letter, which was his first letter and was dated January 4, 2012. In that letter, he sought clarification on the structure and on the fact that the neighbors had structures that were closer than 10 feet to their property line, that those were fixed structures with crushed stone footings and were permanent structures. Mr. McClellan also stated there are chickens in the neighborhood and the same ordinance was not being applied to them.

Mr. McClellan's second issue was that the chicken coop fell under the category of Animal Breeding and Care. They are pets for domestic use only, not for breeding or sale.

The Code Enforcement Officer recommended filing an appeal.

Mr. McClellan stated that the letter from the Code Enforcement Officer appeared to imply that Mr. McClellan did not intend to follow rules. He stated he never indicated that, only wanting clarification as to why the rules applied to him and not to anyone around him.

What Mr. McClellan found most concerning was that the Code Enforcement Officer went to the Board of Selectmen less than two weeks after Mr. McClellan was notified of this issue, presented a case to the Board of Selectmen without Mr. McClellan being present, made his recommendations and the letter was signed not only by the Code Enforcement Officer but by the Chairman of the Board of Selectmen and states that "based on the table of permitted and prohibited uses in Section 45-290 of the Municipal Code of Ordinances, Town of Eliot, Maine, buildings housing animals shall be no closer than 100 feet from the property line. You are hereby ordered to remove the chicken coop from your property until you have obtained the required approvals and permits."

The letter then goes on to say that during the Board of Selectmen's meeting held on December 12, 2011, the Board voted in favor of this action and applying penalties to the situation based on Section 45-6 Penalty of the Eliot Ordinances and 30-A MSRA 4452. "Mr. McClellan is subject to \$100/day penalty for undertaking the land use activities without the required permits until the violation is removed." Mr. McClellan stated he thought that was a severe threat.

When Mr. McClellan went to the Code Enforcement Officer immediately, again seeking clarification, he was told by Dan Blanchette that he was not subject to a fine. The fine is only applicable if it goes to court and the court finds that it is appropriate. Mr. McClellan still felt it was a threat on a resident being told he was subject to a fine with only a 14-day notice and that the Board had discussed his property and situation without his being present. Mr. McClellan was later told he should have been notified and allowed to attend the meeting.

Mr. McClellan did get a letter of clarification from Mr. Marchese. Upon receiving that, Mr. McClellan went back to get the correct permits and the Code Enforcement Officer restated that he did not need a permit and that what he did need to do was go to the Planning Board and do a site review plan. The Code Enforcement Officer directed Mr. McClellan to Kate Pelletier, Planning Assistant, who stated she was unaware of this situation and had not been informed. She stated that Mr. McClellan did not need an application for a site plan review to the Planning Board. It was her professional opinion as the Assistant Planner that Mr. McClellan did not need to make that effort with respect to his chicken coop.

Mr. McClellan stated it was contradictory to have letters that clearly stated what he needed to do, recommendations from the CEO to the Board of Selectmen who acted on

the recommendations and yet when Mr. McClellan tried to abide by the recommendations, he was told he did not need to do so. Ms. Pelletier's recommendation at that time was that he needed to file an Administrative Appeal, which he stated as the reason he was present at this meeting.

Mr. McClellan stated he still was not clear exactly what the issue was: the chickens or the structure. If the structure is fine and it is a matter of the chickens, what can he put there? Or does the structure need to be moved? He questioned why his abutters were not being asked to abide by the same rule as far as the structure is concerned.

Mr. McClellan stated that his Administrative Appeal is due to a lack of understanding of the inconsistencies. It was clear to him that from talking to Mr. Marchese, Kate Pelletier and from what is on the record from the Code Enforcement Officer attendance at difference meetings that there is no ordinance against chickens in the village. In fact, the Code Enforcement Officer is in the process of developing a draft for an ordinance. Mr. McClellan did not understand how he could be given permission to do something and then have that permission be taken away. He questioned how the Code Enforcement Officer could reference an ordinance while at the same time developing an ordinance.

Mr. McClellan stated that when he went to the Code Enforcement Officer in July 2011 it was to avoid any problems, that he was concerned about the feelings of his children and did not want to cause problems in the Town. Mr. McClellan stated he was simply trying to raise a family and stay within the rules and wanted the Code Enforcement Officer's guidance in the event that, if the neighbor did have an issue, Mr. McClellan would be able to say with confidence that he had checked into the situation and took the responsibility to ensure there would not be an issue. Mr. McClellan stated he had confidence that the Code Enforcement Officer would be able to provide that level of guidance.

Mr. McClellan stated that if the Code Enforcement Officer's decision was to reverse himself six months later, he would have been open to that. But to threaten with fines and go to the Board of Selectmen without his being present, he feels is an abuse of power. He added that it is contrary to everything he had been trying to prevent.

QUESTIONS TO APPELLANT FROM THE BOARD OF APPEALS MEMBERS

John Marshall asked whether the coop and pen were currently 10 feet from McClellan's property boundaries. McClellan stated that the coop structure was, but the pen was not. Mr. Marshall asked if the pen could be compliant without much difficulty and Mr. McClellan said that it could or that he could remove the pen completely.

Phil Lytle asked Mr. McClellan how he got a chicken coop without it being attached to the ground and Mr. McClellan responded that it is 3' x 7' and is sits in an open area. He stated it is something one can buy in a local store and he bought his from another resident in Eliot who has chickens. Mr. and Mrs. McClellan explained that it sits on the ground but is not connected to it and fits in the back of their truck and that, like a dog house, it sits on the grass. Mr. McClellan showed pictures of the coop. The base is chicken wire.

Phil Lytle asked Mr. McClellan if he had a site plan and the response was negative. Mrs. McClellan stated they were told they did not need a site plan because the coop is not a permanent structure, not fixed to the ground and can be moved at any time by picking it up. It can be moved anywhere. Mr. Lytle asked if that was a problem and Mr. McClellan assured that it was not and was one of the points he had made with Mr. Marchese. He wanted to know exactly what the issue is....the structure or the chickens.

Phil Lytle stated that Mr. McClellan asked for an Administrative Appeal and wanted to know what Mr. McClellan thought the appeal would do for him. Mr. McClellan stated he didn't even understand exactly what he was appealing. He stated the Code Enforcement Officer made comments about the structure needing a site review plan but also cited an ordinance on the chickens as livestock that Mr. McClellan was breeding and caring for.

Phil Lytle said that the definition of agriculture includes poultry, so therefore could be considered. Mr. McClellan agreed but wanted to know how Mr. Lytle would define "breeding and care" and Phil Lytle said that "care" would mean taking care of the animals. Mrs. McClellan restated that the confusion is whether the problem is the structure or the animals and the two thoughts commingle within the appeal. Phil Lytle stated that it appeared Mr. McClellan is appealing the result of decisions all the way down the line.

There were no questions from Bill Hamilton or Ellen Lemire.

Chairman Cielezsko stated it was necessary to determine what was being appealed and Bill Hamilton responded that it was a series of inconsistent decisions and actions of the Code Enforcement Officer concerning the chicken coop.

Chairman Cielezsko asked what the Code Enforcement Officer had done in the letters that was contrary to code and Mr. McClellan responded that the Code Enforcement Officer stated two codes, one with setbacks and one regarding animals. The Code Enforcement Officer stated that it was questionable and, therefore, the benefit goes to the applicant. Mr. McClellan talked to the Code Enforcement Officer about being told he could have a chicken coop and asking for the permission in writing. The Code Enforcement Officer stated that the statement "the benefit goes to the applicant" was

his approval in writing.

Mr. McClellan wanted to make it very clear that he had gone to the Code Enforcement Officer on two separate occasions, once before anything was done to ask permission and the second time after receiving the letter that stated the benefit goes to the applicant. Mr. McClellan did not understand the letter and wanted clarification on the exact meaning because he was not going to make the investment in the chickens if it was going to be a problem. The Code Enforcement Officer assured him it would not be a problem.

Mr. McClellan stated he would not have appealed the original decision. But, the Code Enforcement Officer reversed that original decision using a former decision by the Board of Appeals as case law in his rationale for the decision that Mr. McClellan was not allowed to have chickens. Mr. McClellan stated that the decisions of the Board of Appeals are not case law.

Mr. McClellan stated that the neighbors who live directly across from him also own chickens. Mr. McClellan asked the Code Enforcement Officer if he were going to enforce the same ordinance on them. The ordinance was being forced only on Mr. McClellan because there had been a complaint, hence it appeared to Mr. McClellan that the ordinances in Eliot are only enforced by the Code Enforcement Officer if someone complains. He stated that that opinion had been supported by the Chairman of the Board of Selectmen when he said the decision was made because of complaints. Mr. McClellan said they could not point to an absolute ordinance that says one cannot have chickens and that is the reason the Code Enforcement Officer was being tasked to create such an ordinance.

Mr. McClellan therefore didn't understand the Code Enforcement Officer's decision of reversal based on a previous case from 2009 that he was using as case law. He also did not understand the decision that he needed a site plan review for the Planning Board and a building permit and then being told he did not need either. He did not understand the Code Enforcement Officer's decision to reverse himself using the exact same ordinance that he had used to give his prior approval.

Chairman Cielezsko stated that in Mr. McClellan's last letter, he was saying the Code Enforcement Officer was using the ordinance improperly. Mr. McClellan stated that it was Kate Pelletier's opinion for him to file an Administrative Appeal. Chairman Cielezsko clarified that Mr. McClellan did not feel he needed a site plan review for the Planning Board based on what Ms. Pelletier said and therefore felt the Code Enforcement Officer was wrong in the mandate. Mr. McClellan agreed that he thought the Code Enforcement Officer was wrong for suggesting that which was contrary to the Planning Assistant who is responsible to the Planning Board.

Chairman Cieleuszko clarified that Mr. McClellan did not believe that he needed to see the Planning Board because of his talk with Kate Pelletier and also that he believes the chickens are allowed and the chicken coop is legal for him and meets the ordinance.

Chairman Cieleuszko asked if there were any other questions.

John Marshall stated that he had a stack of letters between Mr. McClellan and the Code Enforcement Officer and the letters of August 11, 2011 and September 22, 2011 basically state Mr. McClellan needed a setback 10 feet from the property boundaries. The reversal of that decision stated Mr. McClellan needed a 100 foot setback. It was agreed that there was a two-month time span between the two decisions. The letters spanned a time period of four months.

Chairman Cieleuszko stated that his final question regarded the statement in the August 11 2011 letter that "the ability to have chickens in the village is questionable" and that letter defined agriculture and stated that buildings housing animals shall be no less than 100 feet from the property line. The Code Enforcement Officer was looking for background for a decision and he recommended moving the chicken coop to a location that is a "better fit for the neighborhood." In the letter of September 22, 2011, the Code Enforcement Officer stated that the recent structure needs to be placed a minimum of 10 feet and there is no mention of the ordinance discussing agriculture and the 100 foot setback.

Chairman Cieleuszko asked if the Code Enforcement Officer's concerns about chickens in the village were verbal because they are not in writing. Mr. McClellan stated that every time he went to the Code Enforcement Officer, he was assured that everything was fine. In the letter of August 11, 2011, it was stated that the purpose of the ordinance was to maintain harmony amongst the citizens of Eliot. The letter states, "As you can see, these sections of the ordinance are contradicting. Where there is doubt of the intent of the ordinance, the benefit is given to the applicant."

Mr. McClellan stated that, in the Code Enforcement Officer's opinion, he needed to meet the 10 foot setback. The ordinance regarding the 100 foot setback was questionable with the benefit going to the applicant. Mr. McClellan stated he is not unwilling to move the chicken coop, but he is unclear as to what the issue is exactly.

Chairman Cieleuszko asked Mr. McClellan why he proceeded, after getting the letter of August 11 and from oral conversations where the Code Enforcement Officer had reservations, without seeking further clarification. Chairman Cieleuszko questioned taking action without a better assurance than that the benefit usually goes to the applicant.

Mr. McClellan stated, in his January 3, 2012 letter, that the chickens were not considered for commercial use, but as pets for his children. They are well cared for,

protected, and kept in an enclosed coop for their safety. His intent from the start of the ownership of the chickens was to stay in compliance with the Town's ordinances while at the same time not placing his children in a position of loss of a pet. Mr. McClellan stated he believes he took every step to be responsible and protect the interests of his family.

Mr. McClellan stated he understands that mistakes are made in interpreting Town ordinances, but he feels that reason and common sense need to be applied. If an ordinance is so unclear, he would suggest some measure of time to investigate the request prior to approval. He did not believe it was his own responsibility to investigate an ordinance if the Code Enforcement Officer who is responsible for code enforcement in Eliot had given him permission that he could do something. He stated that if the Code Enforcement Officer was unclear, it was his responsibility as a professional to ensure that he gave proper information and guidance. Mr. McClellan did not feel it was his job to second guess the Code Enforcement Officer when the decision was in his favor.

TESTIMONY FROM THE CODE ENFORCEMENT OFFICER

Mr. Marchese apologized for his lateness in providing the Board of Appeals with his reply. He stated he did include a site plan to help understand the location of where things are in the neighborhood and a copy of the appellant's deed. He stated there had been no decision until the Notice of Violation was sent to the owners on the January 17, 2012. The only thing the Code Enforcement Officer did was document the conversations he and Mr. McClellan had regarding the chicken coop.

Mr. Marchese stated that no approval or permit is required from the Code Enforcement Officer. His research into prior decisions by Code Enforcement Officers included the mention of chicken coops in the definition for agriculture. That is why there are so many chicken coops found in Village and Suburban Zones. It was only later, in the fall, that he discovered that there was a decision by the Board of Appeals to clarify the issue and that is when he wrote a letter to Mr. McClellan stating that there had been clarification made on the issue and that he needed a site plan review for the Planning Board to assure a better fit for the chicken coop within the neighborhood. The concept of going before the Planning Board came from the Town's attorney who thought that was the proper area for the problems to get resolved for the situation.

The CEO apologized for not having had the opportunity to review with Ms. Pelletier, the Planning Assistant. However, it was his opinion that she was in error in denying the appellant's ability to approach the Planning Board with a site review.

The CEO stated it is a tough situation between the abutters and that he agreed with

both parties in the situation. Mr. McClellan did make inquiries, was trying to be a good neighbor, but an unfortunate set of circumstances had gotten everyone to the point of the appeal meeting.

Mr. Marchese stated that, as Code Enforcement Officer, he thought he had done a good job of documenting every aspect of the case, as he does all other questions and applications asked of him. Often people come to his office without a thorough understanding and head off in a direction that turns out to be inaccurate. He had no further comments.

QUESTIONS TO THE CODE ENFORCEMENT OFFICER FROM THE BOARD

John Marshall asked, if he were to obtain permission to build something on his property and had been granted a building permit and he then had an aggrieved neighbor, what the length of time would be that they had to appeal the permit or permission. The Code Enforcement Officer responded they would have 30 days. They clarified that there was no building permit issued because one was not needed.

John Marshall asked if there was a difference in the definition of agriculture between “breeding *and* care” vs. “breeding *or* care”. The Code Enforcement Officer responded that one may be taking place on the property and the other may not. Mr. Marshall wanted to know which interpretation the Code Enforcement Officer was using in his determinations and the Code Enforcement Officer stated that “breeding *and* care” mean that both have to occur on the property.

John Marshall asked if, having given an applicant a building permit, the Code Enforcement Officer could change the decision. He asked how the Code Enforcement Officer would handle the situation if he thought there was something amiss. The Code Enforcement Officer responded he would have to file an appeal against himself and believed that had never happened.

Phil Lytle asked when the Code Enforcement Officer contacted the Town attorney and the Code Enforcement Officer replied that he contacted him prior to issuing the Notice of Violation, after the Board of Selectmen were notified of the situation and the attorney gave the go-ahead to take action.

Phil Lytle then asked where the paperwork went from a prior case referenced and if a file was kept. The Code Enforcement Officer responded that Barbara Thain keeps all of the Board of Appeals files in her office. When asked if the Code Enforcement Officer was aware of that, he responded that he was not. The Code Enforcement Officer agreed that he had no way of knowing what was in the previous files and thought it

would be good if someone could make a list of what cases were heard and what the issues in them had been, but that had not been done. Phil Lytle stated it would only require reviewing 12 cases/year, since the Board of Appeals only meets once per month..

Bill Hamilton mentioned that the Code Enforcement Officer had referenced, and the abutter had referenced in his letter, a decision made by the Board of Appeals in 2009 and the Code Enforcement Officer had used that as some sort of rationale for determining something in this case. Mr. Hamilton wanted clarification on that.

The Code Enforcement Officer responded that the Board of Appeals provided some clarity on the ambiguity in the ordinance. The Board of Appeals had determined that chicken coops were directly related to animal breeding and care and were not agriculture. Bill Hamilton stated that he did not see any mention of that in any minutes of the meeting or in the decision made.

Mr. Hamilton made the point that the decision in the 2009 case was based on the requirements for a variance and was made because the applicant could not prove hardship on the four criteria that were required. It had nothing to do with the definition of agriculture or animals in the Town of Eliot.

Mr. Hamilton did not see the variance request referenced and yet the case decision was brought up as a reason Mr. McClellan needed a site plan review as required by the Planning Board. He stated he did not think the Board of Appeals ever made that decision, or that it would have been a binding decision even if they did make it, because the Board of Appeals does not set precedent in any cases. He asked for clarification as to why the particular previous case was used to come to the judgment in this case.

The Code Enforcement Officer restated that he felt the prior decision provided clarification on the issue.

Bill Hamilton reviewed the prior decision. There were actually two decisions. The case came to the Board of Appeals first as a request for variance and it was determined that the applicant did not meet the four criteria, which is very difficult to achieve. Mr. Hamilton believed that the applicant was misguided in seeking a variance and should have done what Mr. McClellan was doing in seeking an Administrative Appeal.

Mr. Hamilton reviewed on behalf of the public audience that the variance request is one asking for a ruling on an issue that the code states is not allowed. The applicant appeal is based on a hardship. An administrative appeal is one made because the applicant believes the Planning Board or the Code Enforcement Officer made a mistake or didn't act in full understanding of the code or was inconsistent.

The prior appeal that had been referenced came as a request for variance, which the

Board of Appeals voted not to grant. The applicant then came back and asked that the Board of Appeals reconsider the decision because there was new information. The Board of Appeals voted to reconsider but then voted again to deny the application for the variance because the applicant did not meet the four criteria. The case had nothing to do with the definition of whether chickens were allowed or not allowed, whether they are part of agriculture. Mr. Hamilton stated that that was why he was seeking clarification about how the Code Enforcement Officer made his determination, other than the fact that the abutter complained.

The Code Enforcement Officer stated he believed they were correlated and the previous decision was relevant to this case because it stated that chickens fall under animal breeding and care and that requires a site plan review by the Planning Board and also require a 100 foot setback from the property line.

Bill Hamilton stated he was confused as to why it was thought that the need for a site plan review had been determined by the Board of Appeals when what they had actually determined was that the applicant did not meet the four criteria for a variance, not that chickens were specifically under Animal Breeding and Care. He stated that may have been part of the discussion, but it was not part of the decision.

Chairman Cielezko summarized that in the April 16, 2009 minutes it was moved that the Board of Appeals rescind the denial of the variance for Ms. Thouin because her use did not fall under animal breeding and care and it did not meet the provisions of 45-290 and, therefore, she did not need a variance. That motion failed.

Bill Hamilton stated he did not think that decision applied in the current case because in the Findings of Fact it said very clearly that there does not exist a definition in Section 45-290, Animal Breeding and Care. The Board of Appeals may have determined that in a motion, but he did not think it set a precedent.

Chairman Cielezko clarified that Bill Hamilton was questioning whether the prior decision was valid to use as a precedent. The Code Enforcement Officer agreed that the Board of Appeals does not set precedent.

Bill Hamilton stated that the Code Enforcement Officer's letters were contradictory. In the letter of August 11, 2011, the Code Enforcement Officer had stated that, "It has come to my attention that you are in the process of constructing a chicken coop on your property. The current location of the structure is inappropriate for the following reasons." The first was that accessory structures are required to be 10 feet away from the property line. At the bottom of the letter he stated "It is recommended that the location of the chicken coop be moved to better fit the requirements of the ordinance."

That letter essentially stated it would be fine if the coop were moved and yet the letter also stated it was inappropriate, so there was a contradiction. In the letter of

September 22, 2011, it was stated that the chicken coop needed to be placed a minimum of 10 feet from the property line indicating it was OK to have the coop as long as it was 10 feet away. On December 28, 2011, it was determined that Mr. McClellan needed a site plan review based on the Board of Appeals' decision that chicken coops fall under the category of animal breeding and care.

Bill Hamilton also stated that he has trouble with the statement in the letter of August 11, 2011, "As you can see these sections of the ordinance are contradicting. Where there is doubt of the intent of the ordinance the benefit is given to the applicant." He stated he had never seen that in the ordinance as something to base a decision on.

The Code Enforcement Officer stated that it is not in the ordinance because it is state law. Bill Hamilton stated that he had never seen that law.

Mr. Hamilton also stated that he thought there was a conflict of ordinances in the current case, one that may say that having chickens is an agricultural use and another that it may be an animal breeding use. Those are conflicts. If what the Code Enforcement Officer states is correct, the Board of Appeals should give the benefit to the applicant to take the least restrictive decision.

Chairman Cielezko said that the ordinance is clear that where there is conflict within the ordinance, the stricter rules apply.

Bill Hamilton stated he was confused as to where the shift in decision originated. He stated he thought that is what this meeting was about - to decide to either get a site plan review for the Planning Board or come to the Board of Appeals and that was why the current meeting occurred.

Ellen Lemire stated she was confused as to why the Code Enforcement Officer in his August 11, 2011 letter included agriculture because the definition of agriculture includes the production and maintenance "for sale or lease" and Mr. McClellan clearly said that he wanted the chickens as pets. She asked for clarification as to why the Code Enforcement Officer put that in the letter.

The Code Enforcement Officer responded that he believed having a chicken coop fell under the definition of agriculture. That was why no action was taken.

Ellen Lemire asked if the Code Enforcement Officer was saying that chickens are always under agriculture, that they fall under that definition.

The Code Enforcement Officer stated that that was his original interpretation of the ordinance in his letter of August 2011.

Ellen Lemire asked if there was room in the ordinance for them to be pets and the Code

Enforcement Officer stated there was no definition of pets in the ordinance of agriculture.

Chairman Cieleuszko said that the Code Enforcement Officer stated that no decision was made until the January 17, 2012 letter. The September 22, 2011 letter stated that the chicken coop placed on the property needed to be placed a minimum of 10 feet from all property lines, as indicated in the letter of August 11. Failure to move the structure to a proper location would result in a non-compliant situation. Additional considerations to better fit the needs of the neighborhood were again recommended. The Code Enforcement Officer stated clearly in the letter that it was appealable, which meant it was a decision. Mr. McClellan accepted the decision and did not appeal it.

Chairman Cieleuszko questioned where that leaves Mr. McClellan. He equated it to a situation where a resident was given a building permit for a house and then that decision was reversed. He asked the Code Enforcement Officer where the recovery of loss would be...the ordinance or civil suit.

The Code Enforcement Officer responded that he did not know.

Ellen Lemire said that in that same letter, the Code Enforcement Officer said additional considerations to better fit the neighborhood were necessary but did not specify what those considerations were to the appellant. She asked him if he verbally explained to the appellant what those considerations were.

The Code Enforcement Officer agreed that he did not. The Code Enforcement Officer stated it meant that the chicken coop should be moved to better fit the needs of the neighborhood.

Bill Hamilton asked for clarification by the Code Enforcement Officer of the process of taking a Notice of Violation to the Board of Selectmen and whether the appellant was notified of the intent or whether that was just part of the Notice of Violation procedure.

The Code Enforcement Officer said it was brought up at the Board of Selectmen meeting because a letter from the abutter was on the agenda. At that time, he presented the Board of Selectmen with the information that he had on the case and it was determined by the Board of Selectmen to proceed with a Notice of Violation.

Chairman Cieleuszko asked the Code Enforcement Officer if he had come to a clear understanding of the definition of agriculture and how it relates to animal care and breeding and the Code Enforcement Officer said that he had.

Chairman Cieleuszko asked if a bill had ever been sent to Mr. McClellan for \$100 a day as a result of the Selectmen's meeting or if that was a process in which the Board of Appeals played a part at this meeting. The Code Enforcement Officer responded that

the actual penalties are determined by a court and the Town does not have the ability to issue fines and penalties. Only a judge can assess those. The court system has the ability to look back to the date when the notice was issued and assess damages from that date forward.

Chairman Cielezsko stated that it appeared there were two issues. He asked if the Code Enforcement Officer was clear, although he initially stated confusion, that after the in-depth analysis he had performed, he was now clear, without reservations, that the chicken coop is under agriculture as Animal Breeding and Care. The Code Enforcement Officer affirmed this.

Chairman Cielezsko clarified that the Code Enforcement Officer had sent Mr. McClellan to Kate Pelletier for a site plan review because the chicken coop was considered to be a structure. Chairman Cielezsko asked if she would dismiss that request because it is a 100 foot setback on a small lot. He stated that the Planning Board doesn't even hear cases that need a variance, but that those cases get referred back to the Board of Appeals first. The Code Enforcement Officer affirmed that he had heard that concept before.

John Marshall said it appeared the definition of Agriculture was being looked at as meaning either Animal Breeding *and* Care or meaning Animal Breeding *or* Care. He asked if that meant caring for animals and wondered if anyone in the village had dog houses and, if so, were they all 100 feet from their boundary. If not, would the Board of Appeals be prepared to go after them for the same issue?

Chairman Cielezsko said the question was moot because the issue for the meeting was Mr. McClellan's chicken coop on his lot. All other considerations were not relevant to the case.

There were no further questions for the Code Enforcement Officer.

ABUTTER'S FORUM

Chairman Cielezsko asked if there were abutters in favor of the administrative appeal and wanted to see Mr. McClellan succeed in a successful conclusion for the family. No abutters spoke in favor at this time.

Chairman Cielezsko then asked if there were any abutters against a successful conclusion and recognized Steve Robinson of 1066 State Road.

Mr. Robinson said that during one of the last times he had seen Mr. Marchese, the Code

Enforcement Officer had been in contact with the Town's attorney and said the attorney had informed him that the setbacks on livestock and poultry under the agricultural ordinance was 100 feet. Mr. Robinson asked what was going to be done about the issue and was told the chickens would have to go. He stated that he had asked (just before Christmas 2011) when it was going to happen and the Code Enforcement Officer responded he was going to wait until after the holidays because he wanted to do so peacefully.

Mr. Robinson stated he did not begrudge anybody chickens. He did not know which ordinance applied to the case but was told the ordinance would not be enforced unless someone complained about it, so he complained about it.

Mr. Robinson stated the coop is 27 feet from his living room and 29 feet from his bedroom. It is roughly 55-60 feet from Mr. McClellan's own house. If the chicken coop wasn't considered to be that bad, he wondered why the McClellans couldn't move it closer to their own house and get it away from the neighbors. He stated he would not have a problem with the coop if it were moved to the back part of the McClellan's property because it would be away from Mr. Robinson's house and from the abutter on the other side of Mr. McClellan.

Ellen Robinson stated she had lived next door to Brian and Amy McClellan for many years. She stated that she went over when she saw that they were building something right outside the Robinson's chain link fence. Mr. McClellan had made a box with plywood and Mrs. Robinson asked Amy what they were building. Amy said Brian was taking care of everything and they were going to have chickens. Ellen Robinson talked to Brian later on the phone and asked him what he was doing. Mr. McClellan said they were planning to have chickens.

Ellen Robinson said the issue then came up of the garage being close to the lot line. The Robinson's had two structures there before that were crushed when a limb came off Mr. McClellan's tree. The Robinsons then replaced them.

Since the chickens have been in the McClellan's yard, Mrs. Robinson has had concerns because their fence sits right on their lot line and the Robinson's fence sits a foot off. The Robinsons' Labrador retriever stayed right up by the fence, knowing there were birds there, so they had to erect a privacy fence.

Ellen Robinson also had a lily garden on the opposite side of the fence from the coop and some of the lilies are one-of-a-kind plants and she feared the damage from the chickens when they dig.

Ellen Robinson also saw a rat in her back yard. She stated that she gets concerned. The westerly wind blows the smell toward her house. Manure smells, she stated.

Ellen Robinson stated her concerns were not about the McClellan's children having pets, but were about the issue of chickens 27 feet from her bedroom window.

John Marshall asked for clarification that the Labrador retriever goes right up to the property line and received that clarification from it Ms. Robinson.

Bill Hamilton asked if the Robinsons would be OK if the coop and surrounding fencing were moved to a different location on the McClellan property.

Ellen Robinson said that that would be true as long as they were not downwind. Mr. Robinson said it could be put behind the McClellan's garage and would not both anybody on either side.

Phil Lytle mentioned that Mr. McClellan has said he would move the coop and asked Mr. Robinson for clarification that he would not have a problem as long as Mr. McClellan did that. Mr. Robinson said he would not have a problem. Ellen Robinson said it might also be easier for them to feed the chickens, too. Ellen Robinson found it difficult to believe that anybody would put something like the coop so close to another's property.

Ellen Lemire asked the Robinsons if there had been any discussion between them and the McClellans about the location. Ellen Robinson said there had not been and that she had called the Code Enforcement Officer to come look at the situation because the coop was sitting against the fence and had to be moved back. The McClellans did move the coop back, but the pen still sits against the fence. Ms. Robinson stated that there had been no back-and-forth between the parties to seek a solution.

Chairman Cielezsko asked if there were any other abutters who were against the proposal and there were none. He then asked for input from interested parties.

INPUT FROM INTERESTED PARTIES

Josh Dow of 117 Bolt Hill Road stated that he has had chicken for the past couple of years in Eliot and they run all over the yard and have a great time. Mr. McClellan went to visit him and asked about the chickens and they had a good talk. Mr. Dow told him he had never had any problem and that when he looked up the ordinance online, he did not see anything that stated chickens were not allowed. He admitted he was not an agriculturist. Mr. Dow wanted to affirm Mr. McClellan's responsibility in the community.

Mr. Dow stated he came to the meeting because he was worried that a personal dispute between two people might end up affecting his own life down the street with his

animals. He is of the opinion that chickens can be fun, can be clean if they are looked after and they are really a non-issue. He stated he would hate to see chickens lumped in the same category as pigs or goats.

Mr. Dow said he wanted to speak on behalf of Mr. McClellan as a good neighbor and he hoped that the Board of Appeals could resolve the issue of moving the coop and, hopefully, there would not be too many problems.

Emily Greener of 18 Frost Hill Road stated that the McClellans bought their chicken coop from her family. When the Greeners owned a chicken coop, they had originally three roosters and one chicken. She stated that if a coop is well-maintained, it does not smell bad. She stated that chickens are very nice animals and the fact that the McClellans keep them in an enclosed area indicates that they are being responsible.

Robin Roaf of 25 Mast Cove Road stated that she also wanted to speak on the McClellan's behalf. She stated she has chickens in her neighborhood that never pose a problem and no matter which way the wind blows, she has never detected an odor. When she runs in the morning, she runs past the house of the neighbors with the chickens and never smelled any chickens from that house.

Ms. Roaf stated that she felt it important to support the neighbors because what affects these four people in this case could affect decisions made for all in the community. First it would be chickens and then it would be something else, and she thinks it is important to be reasonable about the issue.

Richard Small of 278 Pleasant Street stated that he had 24 chickens for ten years and there were never any odors. He stated he had been to big chicken farms with hundreds of chickens and the odor comes from spreading the manure. He stated that would not be a problem with regular chickens in a regular coop. He stated that he can not see a problem with having chickens.

Mr. Small questioned the reference to other animals for lease or sale as applicable to this particular case and wondered if each case would be decided one-at-a-time at great cost to the town. He thought all of the same type of issues should be settled in one shot.

Mary Brandon of 15 Spinney Creek Road stated she came to the meeting to support having chickens in the community. She wanted to support a community member who seems to have acted in good faith. As a citizen of Eliot, she was concerned about the apparent lack of communication. The appealing gentleman had asked the Code

Enforcement Officer to come look at his property and she felt that perhaps there should have been more discussion between the three parties....the Code Enforcement Officer, the appellant and the abutter. Ms. Brandon stated that she hoped in the future there may be that missing link of communication put into place.

Brian Holt of 133 Bolt Hill Road stated that he had recently moved back to Eliot, having grown up in South Eliot. His great grandparents had chickens in that area, but that was 50-60 years ago when the houses were not built on top of each other. He stated that he commutes to Massachusetts and he has two roosters in the house next to him. The rooster pen/chicken coop is roughly 15-20 feet away. When he hears them early in the morning, he gets aggravated about that. He stated he doesn't have a problem with chickens, but he does think they need to do something in South Eliot where the houses are so close together, as apposed to East Eliot where more land is available.

Mr. Holt also stated he can smell chickens when his land is wet. He stated he has an issue with the chickens being loose and spreading their manure on the land where he can step in it. He restated that something needs to be done about chickens in South Eliot.

Paul Ellis of 17 Ashley Lane stated that he has chickens. He has issues with the current case because there are chickens that live across the street on the opposite site of Bolt Hill Road that have been running around for five to six years and nobody had ever complained about them. He stated he felt that was ironic. He stated it appeared that the Code Enforcement Officer made an error in judgment and has tried to correct his mistake by going to the Board of Selectmen and then the Board of Selectmen backed him up. It concerns Mr. Ellis that the McClellans were misled and that maybe there had been a misunderstanding on both sides.

Mr. Ellis felt that the whole process seems to have failed in that Mr. McClellan tried to do the right thing, he went to the Code Enforcement Officer, the Code Enforcement Officer gave permission to have chickens and now is coming back and saying Mr. McClellan cannot do that. Mr. McClellan was not notified that the Board of Selectmen was going to bring up the issue. He felt there was an error on the town's part not to provide Mr. McClellan with an opportunity to present his side of the case. That concerned him.

Susan Serfass of 887 Goodwin Road stated that she is a chicken owner and a Labrador retriever owner also. She lives in the East Eliot zone and she had a rooster as well, who did become a nuisance. She also lives next to a dairy farmer and she does deal with odors from that farm. She stated that a lot of things that happen in her home town can be addressed with forbearance as much as possible in trying to be a good neighbor. She

states that she tries to consider those things when one has animals or pets.

Ms. Serfass stated she came to the meeting because her husband saw on the Eliot-online website a document that looked like the draft of an ordinance that is like a gag rule for chicken ownership. She stated she has serious concern because there is great dichotomy in the Town with people who live village life and people who live farm life in one town and she hopes that the citizens of the Town will consider the issue carefully and continue to communicate. She stated that she thought the turnout at the meeting was outstanding and that she had heard a lot of people speak with great composure and passion, which gives her hope and joy to live in this Town where she has lived for 27 years. She hopes there will be good resolution to this case.

Chairman Cielezsko clarified that the issue at hand had nothing to do with the new ordinance. Everything that everyone said at the meeting would be presented to the Board of Selectmen in the minutes of the meeting.

Mary Smith of River Road stated she has attended a number of meetings, read many minutes of meetings and has sat through Board of Appeals hearings. It was her opinion that chickens were always considered under agriculture and in her district in Eliot, there needs to be 100-foot setback for chickens. She stated she had chickens before the zoning went into effect in 1974 and always felt she could not have chickens again because she was on a non-complying lot and could not make the 100 foot setback.

Ms. Smith stated she is now hearing about all of the chickens in the Village District. She asked when the rule for the 100 foot setback changed. She felt that it happened without oversight. She wondered what had happened that chickens could be free-range in the village, but she was not allowed to have them on River Road. She is not clear about where the rule stands where she lives.

Ms. Smith added that free-ranging chickens spread disease.

Chairman Cielezsko asked if there were questions from the Board and there were none.

Chairman Cielezsko told Mr. McClellan that he had the last forum before closing and asked if he had anything to add.

Mr. McClellan stated that he would like to thank the Board of Appeals and those people who came in support and even the people who have an issue with chickens. He stated that he tried to take steps on both sides, meeting the wishes of his family without having free-range chickens or roosters and was trying to do what he could to control the

environment. It was not his intent to simply do what he wanted to do without concern for others.

In regard to the placement of the chicken coop on his property, Mr. McClellan stated that he was sympathetic to the issues and was willing to have discussions about that. His concern was whether or not the 10 foot setback would apply because on his property he doesn't have much of a backyard.

Over the years, Mr. McClellan has seen both sides of the issue and personally, over the last 15 years, has spent over \$15,000 trying to improve the conditions for his neighbors with trees, vegetation, and landscaping done by professional landscapers from this town. He stated he has attempted to make things better amongst his neighbors. The current case is only one instance where they have had a disagreement. Both neighbors on either side have dogs, and Mr. McClellan can smell manure all summer long. He stated it is just part of living in a small area. He stated that his family was not trying to do something to aggravate the neighbors out of spite or vengeance. He thought the location of the coop would be fine and he doesn't have much of a back yard to place it anywhere else.

Mr. McClellan stated he does not agree with the Code Enforcement Officer, but he does appreciate his honesty and doesn't think the Code Enforcement Officer tried to hide anything in anything he said to Mr. McClellan. He stated his thanks for that.

Mr. McClellan stated he wanted to make it clear that he is from Eliot and was trying to do the right thing. He stated he was sorry there was a mistake made, but it was not his intent to cause the current issues. If the issues are a catalyst for other problems or concerns, he hoped he had helped some and not hurt others. He stated that he was just trying to raise a family and make his wife and children happy.

John Marshall asked Mr. McClellan if he would be willing to move the coop and Mr. McClellan stated he was not clear whether a movable structure would have to meet a 10-foot setback. He can move the coop in his yard, but there are only certain locations that would meet the setback. That was one of the reasons he asked Mr. Marchese to come to the property to help him out. That is coupled with the fact that the neighbor has less than a foot setback for his structure. He stated he would be happy if the Code Enforcement Officer would give direction that applied to him and his neighbor as well.

Phil Lytle asked what would happen if Mr. McClellan put the chicken coop on the other side of the property. Mr. McClellan stated there was a tree in that location and he has a swing set there. He could move the swing set. Mr. Lytle replied that he thought the abutters would rather view a swing set than a chicken coop. Mr. McClellan agreed but stated that he gets to view the abutter's material that he has in his yard that includes structures, equipment, a commercial business where he details cars all summer, debris, wood stacks, metal. Mr. McClellan stated he had built landscaping to shield from that.

Mr. McClellan stated that the major point he was trying to make was that there is no way you can live close together and not view neighbor's yards. He has lived in his house for 15 years and never complained. Now he has a structure that has been deemed unacceptable, even though Mr. McClellan has accommodated structures on the abutter's property and has made efforts to please them. He stated it is part of living in a small community, which is why he went to the Code Enforcement Officer for guidance in the first place.

Phil Lytle stated that, from the picture provided, it looked like there was plenty of room to relocate the coop. Mr. McClellan responded that if he needs to meet the 10-foot setback, he would be unable to get around the garage. If could put it closer to the fence without meeting the setback requirement, he would have a couple of options, but the Code Enforcement Officer is saying that his movable structure has to be 10 feet from the property line while the neighbor's movable structure can be closer to the property line than 10 feet. He stated that, again, it is a contradiction.

Chairman Cielezsko closed the public hearing and stated it was the end of any conversation unless the Board of Appeals called upon someone for clarification.

FINDINGS OF FACT

- The applicant is Brian McClellan
- The mailing address of the property is 202 Bolt Hill Road, Eliot, Maine 03903
- The property is identified by Tax Map 7, Lot 61
- Proof of ownership is demonstrated by Deed recorded in York County Registry of Deeds, June 1, 2001, Book 10678, Page 301
- The applicant submitted a request for Administrative Appeal on January 30, 2012
- The applicant paid all applicable charges
- The applicant alleges errors by the Code Enforcement Officer in letters of January 17, 2012 and/or January 23, 2012
- The authority to hear the appeal was granted to the Board of Appeals by 45-46.
- The authority to hear this appeal was granted by 45-49, Administrative Appeals
- The Board of Appeals holds this hearing in appellate form
- The ordinance in question is 45-290, Table of Permitted and Prohibited Usage, noted *Animal Breeding and Care*
- Animal Breeding Care in our ordinance for the Village District is allowed with site plan review and is bound by Note 1 and Note 8. Note 1 states 100' setback for any structure and Note 8 states conformity to Home Business

requirements

- In the ordinance, the definition of agriculture as *the production, keeping or maintenance for sale or lease of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock, fruits and vegetables and ornamental and green house products. Agriculture does not include forest management and timber harvesting activities.*
- A series of letters between the Code Enforcement Officer and the appellant make up the written evidence in tonight's case
- A former Board of Appeals decision rendered in 2009 was referenced in the final letters used to strengthen the Code Enforcement Officer's opinion of the position of the chicken coop
- The Board of Appeals does not set precedent
- The applicant has testified that he is willing to move the chicken coop to help appease the neighbors
- The applicant considers through testimony that the coop is not a structure.
- In Section 1-2 *structure (building) means anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences. The term includes structures temporarily or permanently located such as decks and satellite dishes*
- The abutter, Mr. Steven Robinson, testified that the coop is currently 27' from his house and a longer distance (50') from the McClellan's own house
- The second letter sent to the McClellans by the Code Enforcement Officer referenced the ability of the McClellans to appeal the decision rendered by the Code Enforcement Officer in that letter
- There was no appeal filed on that second letter of September 22, 2011, an Advisory Notice of Violation, and he moved the coop 10' off_
- In a letter of December 28, 2011, the Code Enforcement Officer rescinded his previous decision and adds conditions, added a site plan review and 100-foot setback and called it *Animal Breeding and Care* under section 45-290
- There is no definition of "Animal Breeding and Care" in the Eliot code
- In the September 22, 2011 letter, the Code Enforcement Officer recommended additional considerations to better fit the needs of the neighborhood, but did not clearly explain to the appellant what those considerations were
- The public hearing was held on February 15, 2012

Chairman Cielezsko stated that the Board of Appeals ordinance calls for the Board of Appeals to only agree with this appeal if the Code Enforcement Officer has clearly made decisions which are contrary to the defined ordinance. The Board of Appeals hears appeals where the aggrieved party alleges error in any permit, order, requirement or determination or other action by the Planning Board or the Code Enforcement Officer.

The Board of Appeals must modify or reverse actions by the Planning Board or Code Enforcement Officer by a concurring vote of at least three members. The decisions have to be clearly contrary to specific provisions of this chapter.

John Marshall stated that there are no specific provisions in the chapter. Chairman Cielezsko stated that every aspect of the ordinance is a specific provision. Mr. Marshall stated that the provisions are not specific in that there are no definitions. Chairman Cielezsko stated that the ordinance rule, whether defined or not, is present. If the Code Enforcement Officer has been contrary to one or more of them, the Board of Appeals can OK the appeal.

John Marshall stated the definition of agriculture states “animal breeding and care” and that it does not say “breeding *or* care”. Therefore, they have to be considered together. If breeding and caring for animals for a commercial operation is considered to be the definition of agriculture, Mr. McClellan is clearly not selling or leasing anything. It is not a commercial operation.

Mr. Marshall stated that if the Board of Appeals applied the definition as it appeared to have been interpreted thus far, the neighbors’ dogs who roam in the yard would also apply. He stated that he agreed with both sides in that he liked neither the smell or chickens or the smell and sound of dogs. He would consider it a different situation if roosters were involved. If odors were allowed to get bad in any situation, that would be another whole issue in itself because there is a liability there. Neither one, however, falls under agriculture because they are not being bred for sale.

John Marshall stated that learning to be good neighbors would go a long way to resolving the issues involved. He stated offenses need to be dealt with, but he feared Eliot would write a zoning ordinance that would be just as appalling as not having definitions.

Chairman Cielezsko asked John Marshall if he could look at the Code Enforcement Officer’s interpretation of 45-290 as erroneous and Mr. Marshall agreed.

Phil Lytle stated that he thought the animal control ordinances also could apply to some aspects of this case and that the Code Enforcement Officer should make sure he reviews that as well.

Chairman Cielezsko stated that this case was an appellate review of what the Code Enforcement Officer had in front of him when he made his decisions stated in the letters of January 17 and January 24, 2012. There was no testimony and it was not contained in the packet that he referenced other ordinances.

Bill Hamilton stated he thought it was a question of degree and that there was a suitability issue in terms of what can be done in a certain zone. The degree of what one

does in a certain zone is what has bearing on this case. He stated that it is different in every situation. The facts that Mr. McClellan has four chickens, no roosters, an enclosed pen, a fenced area that may be too close to the neighbors and maybe could be relocated somewhere else are still a matter of degree in that the case does not involve larger animals.

Mr. Hamilton stated that it appears that "Animal breeding and care" is the dominant feature of why the Code Enforcement Officer made the decision, but it does not really apply in this case. Code 45-290 in the Table of Permitted and Prohibited Uses under animal breeding and care (and this was also referenced in the case two years ago) in the Village Zone requires a Site Plan Review and references Notes 1 and 8. Note 1 requires buildings to be 100 feet from the property line. Note 8 applies to Home Business. Mr. McClellan is not asking to apply for a Home Business because he does not have one.

Mr. Hamilton stated that what Mr. McClellan requested, given the scale of what he had done, fits within a smaller scale. It does not fit within "Animal Breeding and Care." He stated that he thought the Board of Appeals needed to make a decision based on the scale. He thought what Mr. McClellan was doing fell under the category of pets rather than agriculture and stated that there is also no definition of pets in the ordinance. He considers the scale of Mr. McClellan's endeavor to be minimal.

Chairman Cieleuszko stated that he did not believe the Code Enforcement Officer made an error in judgment in interpretation and stated he had many issues with the idea of scale or degrees when the ordinance does refer to degree. In the arguments of the 2009 case, he stated that he did want the appellant to have chickens. He now thought he was wrong at that time.

Chairman Cieleuszko stated that the Board of Appeals has to look at the ordinance as it stands, even though it appears to ban chickens for anything under a 200' x 200' lot. It had been told to the Board of Appeals that the only enforcement was by complaint. He stated that the current case is not about individual enforcement by complaint. The job for the Board of Appeals is to determine whether the ordinance was being followed by the Code Enforcement Officer.

Chairman Cieleuszko stated that Section CB 1-4 under definitions 1.2 the definition states agriculture means *the production, keeping or maintenance for sale or lease* of plants and animals. A discussion followed on the exact meaning of the definition. There was some confusion as to whether *production* and/or *keeping* of animals was separate from *maintenance for sale or lease* of animals. Ellen Lemire stated that the key words in the definition were *for sale or lease*.

The majority opinion agreed with the concept that production, keeping and maintenance were not separate items and all had to be conducted for sale or lease in order to fall under ordinance 45-290.

MOTION

Bill Hamilton made a motion that the Board of Appeals find in favor of the appellant in that the Code Enforcement Officer acted in an inconsistent and contradictory manner in his deliberations and decisions, thereby acting contrary to the ordinance in the Eliot Code of Ordinances. Furthermore, the applicant, Code Enforcement Officer and abutters should resolve the issue of the location of the chicken coop and fencing on the applicant's property. Furthermore, it be advised that the applicant should maintain no more than four chickens on his property. The motion was seconded by John Marshall.

DISCUSSION

During the discussion following the motion, Bill Hamilton stated that every application that comes to the Board of Appeals has a degree of scale. He stated that the Board of Appeals has to make a determination in each case based on the scale of the request. In this case, the Board of Appeals is not setting precedent or telling Eliot residents that it is OK to have chickens. He stated that it is allowable based on the definition of agriculture and until an ordinance comes from the Town, the Board of Appeals has to determine this case based on a code that does not fit the scale of what the appellant is talking about.

There was further discussion about whether or not determinations should be based on scale or degree or on a specific code and set of facts. A variance is a request for a slight variation in the code for a specific appellant.

Chairman Cielezsko stated that this case was not a request for variance but for an administrative appeal. He stated that, in this case, the Code Enforcement Officer has to be clearly wrong rather than on whether the code is clear. Chairman Cielezsko's opinion was that the Code Enforcement Officer formed a balanced determination based on the ordinance. He stated that the Board of Appeals was being asked to overturn the Code Enforcement Officer's opinion. The decision is advisory. He stated that the standard the Board of Appeals has always upheld is that the Code Enforcement Officer has to be clearly wrong but that it appeared "muddy".

Ellen Lemire stated that the only task for the Board of Appeals in this case is to decide whether the Code Enforcement Officer acted clearly contrary to the ordinance.

John Marshall stated he wanted a conclusion.

Bill Hamilton stated he felt the motion addressed the confusing process that the applicant had gone through for the past few months and sends a message to the Code Enforcement Officer to be more careful in his decision-making process. He felt that the decision was an honest one based on a specific applicant and a specific problem Mr.

McClellan had been trying to rectify.

Bill Hamilton repeated the motion for clarification. He quoted the ordinance for the Board of Appeals for administrative appeals: *The Board of Appeals shall hear and decide where an aggrieved person or party alleges error in any permit, order, requirement, determination or other action by the Planning Board or Code Enforcement Officer. The Board of Appeals may modify or reverse action by the Planning Board or the Code Enforcement Officer by a concurring vote of at least three members only upon finding that a decision is clearly contrary to the specific provisions of this chapter.*

Mr. Hamilton stated that the concept of inconsistent decision-making is part of the code. The Board of Appeals' job in the case is to review the decisions made and determine whether they were correct or incorrect. The Board of Appeals has to determine how the code relates to the specific issues of the current case and also determine how to resolve an issue that has been going on for way too long. He felt the decision-making in the case had been poor.

Chairman Cieleuszko questioned the advisability of including the abutter in the motion.

The motion was passed with John Marshall, Phil Lytle and Bill Hamilton voting in favor and Ellen Lemire abstaining. Mr. McClellan was informed that he would get a Notice of Decision within seven days and the packet with the advisory opinion will go to the Board of Selectmen who will continue working with Mr. McClellan and the Code Enforcement Officer in the resolution of the issue.

REVIEW AND APPROVAL OF MINUTES

The minutes of December 15, 2011 were approved as written.

OTHER BUSINESS

Chairman Cieleuszko stated that the Code Enforcement Officer mentioned that in the case from Joe Gorman involving a variance for a garage, a re-measurement found that Mr. Gorman was within the code to put his garage where he had requested.

Bill Hamilton stated that it had been brought to his attention there had been an article in the paper recently that said the Eliot Board of Appeals was against television coverage of the meetings. A couple of people had brought it to his attention. The article stated that the Board of Appeals unanimously voted that they did not want TV

coverage and the article was totally incorrect. The article said that Chairman Cielezsko went to the Board of Selectmen and reported that the Board of Appeals had taken a vote and all were in agreement.

Mr. Hamilton said that in the Board of Appeals minutes of the September 15, 2011 meeting it was stated that *Chairman Cielezsko pointed out the camera that was installed to televise the Board of Selectmen meetings and that there had been discussion that the other board meetings also be televised. He said the meeting cost \$250/month and if the meetings were televised there would be no need for a Recording Secretary. Chairman Cielezsko said he was against it, not only because of the cost, but he also felt the Board of Appeals meetings should not be considered entertainment. Some of the Board of Appeals members generally agreed.*

Bill Hamilton stated that that was all that was said and there was no vote, no consensus and that he didn't even have a chance to speak to the issue. He would have voted in favor because he felt that televised meetings are perfectly appropriate. But, the Board of Appeals did not vote or discuss the issue further in that meeting. Bill Hamilton felt the Board of Appeals owed an apology to the people who think the Board of Appeals does not want to be televised. He stated that people had asked him what the Board of Appeals was afraid of. He felt that Chairman Cielezsko should return to the Board of Selectmen and make it clear that the Board of Appeals did not take a vote.

Chairman Cielezsko stated that when he went to the Board of Selectmen, he made it clear that he was not speaking as a representative for the Board of Appeals but solely on his own behalf.

Ellen Lemire was at the Board of Selectmen meeting and stated Chairman Cielezsko made it clear which hat he was wearing. She felt the paper took license when they identified Chairman Cielezsko as the Board of Appeals Chairperson when he was representing only himself as a citizen.

Chairman Cielezsko stated that he had said there seemed to be consensus that the Board of Appeals did not want to be televised, but that he could not speak for the Board of Appeals. He offered to send the Board of Selectmen an opinion from the Board of Appeals immediately if that was wanted, but he had made it clear that the Board of Appeals could have changed their opinions and there was no unanimous consensus. He stated that the Selectmen know they are still awaiting a vote from the Board of Appeals regarding television coverage.

There was general agreement that newspapers are often inaccurate.

John Marshall stated he was not against TV coverage but felt that the Board of Appeals deals with personal issues of local citizens and is similar in content to executive sessions. Ellen Lemire agreed that she has a problem with that issue as well.

Bill Hamilton stated, with agreement from Ellen Lemire, that Board of Appeals meetings are public meetings and the public has a right to know what transpires and he would not object to TV coverage. Ellen Lemire's concern, however, was that the appellants would not feel as open to discuss their issues.

There was further discussion and it was decided to continue the issue at a future meeting.

The meeting was adjourned at 10:45.

Respectfully submitted,

Linda Keeffe
Recording Secretary

Approved by: _____
Ed Cielezsko, Chairman, Board of Appeals

Date approved: March 15, 2012