

THE **BOARD OF ADJUSTMENT** OF THE CITY OF RAYMORE, MISSOURI, MET IN REGULAR SESSION **TUESDAY, APRIL 20, 2021** IN THE COUNCIL ROOM AT RAYMORE CITY HALL, 100 MUNICIPAL CIRCLE, RAYMORE, MISSOURI WITH THE FOLLOWING BOARD MEMBERS PRESENT: BEN BAILEY, JERRY MARTIN, AARON HARRISON, PAM HATCHER, TERRI WOODS, AND ALTERNATE SUSAN DOOLEY. ALSO PRESENT WAS CITY PLANNER KATIE JARDIEU, DEVELOPMENT SERVICES DIRECTOR JIM CADORET, ADMINISTRATIVE ASSISTANT EMILY JORDAN AND CITY ATTORNEY JONATHAN ZERR.

1. **Call to Order** – Chairman Hatcher called the meeting to order at 6:13 p.m.
2. **Roll Call** – Roll was taken and Chairman Hatcher declared a quorum present to conduct business.
3. **Pledge of Allegiance**
4. **Personal Appearances – None**
5. **Consent Agenda –**

- a. **Approval of Minutes of December 1, 2020 meeting**

Motion by Board Member Woods, Seconded by Board Member Harrison, to accept the minutes of the December 1, 2020 meeting.

Vote on Motion:

Board Member Martin	Aye
Board Member Bailey	Aye
Board Member Hatcher	Aye
Board Member Woods	Aye
Board Member Harrison	Aye

Motion passed 5-0-0

6. **Unfinished Business – None**

7. **New Business**

- a. **Case #21006 - Appeal of Enforcement Order, 400 N. Park Drive, Gary & Sarah Gaston**

Chairman Hatcher began by opening the meeting with the process of the appeal case. The vote to approve any proposed motion will require four votes to pass.

City Attorney Jonathan Zerr swore in potential witnesses that will be giving testimony. Ms. Sarah Gaston and Development Services Director Jim Cadoret were both sworn in.

Sarah Gaston, 400 N. Park Drive, Raymore MO 64083, took the stand at 6:17pm. She explained to the Board that in no way did she believe she was not allowed to have chickens or fowl, and that the zoning regulation is permissive, not restrictive, and it is unclear if anyone zoned R-1 can have chickens. Therefore, since the UDC regulations are unclear, Ms. Gaston believes she may be allowed to keep chickens on her property. Ms. Gaston believes the language of the zoning regulations for chickens in R-1 zoning is

ambiguous, and because of this, the code must be interpreted in the least restrictive manner, and must be strictly construed in the favor of the landowner. The ordinance is necessarily vague, and should be construed in her favor. The language of the code must be stricter to deny the chickens, and it does not clearly ban chickens. In January 2018, the Director of Development Jim Cadoret had to render an interpretation of this code, which is allowed by the UDC. The fact that the Director of Development had to render an interpretation of this code speaks to the ambiguity of the code. Ms. Gaston believes that the Director's interpretation is still unclear about chicken or fowl on properties under 3 acres in size. The Director is trying to have the Board interpret the code in the most restrictive manner possible, which is against the law and Ms. Gaston's right as a landowner. She respectfully requests that her citation be overturned, and suggests the Board pass specific zoning regulations that disallow chickens or other fowl on R-1 properties.

City Attorney Jonathan Zerr had a few questions for Ms. Gaston regarding her presentation.

Mr. Zerr asked Ms. Gaston to confirm that she and her husband are the owners of the property located at 400 N. Park Dr., Raymore Missouri, and did you move in on/or about May 28th, 2019?

Ms. Gaston responded that this is correct.

Mr. Zerr asked if Ms. Gaston and her husband owned chickens at the time when they moved in? Did you own ducks at the time of moving into the property?

Ms. Gaston replied that they did not have chickens at the time of moving in, but they did have ducks.

Mr. Zerr asked if Ms. Gaston continues to maintain ducks at the property?

Ms. Gaston responded that no, they no longer maintain ducks.

Mr. Zerr asked when did Ms. Gaston acquire the chickens for the property?

Ms. Gaston replied that she could not give an exact date at this time, but could supply that if necessary.

Mr. Zerr distributed exhibits 1-6 to Ms. Gaston. Mr. Zerr goes on to say that in exhibit 6, Ms. Gaston states that she has "...had our flock for 2 years now, and it started as my own version of a pilot program for urban chickens to see how long it would take for someone to notice we had them." Mr. Zerr asked Ms. Gaston to clarify if she did not have chickens on her property on May 28th, 2019 when you moved in?

Ms. Gaston replied that no, they did not have the chickens on the day they moved in.

Mr. Zerr asked Ms. Gaston that she has indicated that they've had the chickens for 2 years now, is that not correct?

Ms. Gaston stated that they did not have chickens on the day they moved in.

Mr. Zerr asked if Ms. Gaston was present for the City Council meeting in June 2019 where

City Council considered the proposal under bill 3458 to allow chickens and other fowl on all R-1 lots?

Ms. Gaston asked if that was the meeting where City Staff had proposed an entire ordinance?

Mr. Zerr responded that this is correct.

Ms. Gaston replied that yes, she was at that meeting.

Mr. Zerr asked if Ms. Gaston was aware of the outcome of that City Council meeting on that vote regarding the proposal for fowl at that time?

Ms. Gaston replied that yes, she was aware of the outcome.

Mr. Zerr mentioned that he would like to note that on exhibit 4 that has been provided that there is a reference that Ms. Gaston was still hearing about complaints, though as we all know it was voted against. So you were aware at that time the City Council voted against an adoption of a full coverage for R1 residential lots, is that correct?

Ms. Gaston responded that the ordinance in question was providing a full fowl ordinance.

Mr. Zerr again asked if Ms. Gaston was aware of the conclusion of the meeting that the City Council had discussed in open session the proposal and declined to allow fowl on property zoned R-1 on lots less than 3 acres in size, is that correct?

Ms. Gaston replied that no, that is not correct. Fowl is allowed on properties zoned R-1. They were trying to orchestrate an entire ordinance for fowl.

Mr. Zerr responded that it was expanded to allow for fowl on lots that are less than 3 acres in size, and that this is the language of the code. Is this correct?

Ms. Gaston replied yes.

Mr. Zerr asked if following the June 24, 2019 meeting, did you reach out to the City in order to request that the City provide a pilot program in order to allow for the keeping of chickens?

Ms. Gaston replied that this is correct. She mentioned that she was hoping that they would be able to offer for our council members to come and see chickens in a city setting.

Mr. Zerr asked Ms. Gaston if she was keeping chickens then, by June 2019?

Ms. Gaston replied that yes, she believes she was. She can't confirm when she had ducks versus chickens at the property at this time, but she can provide that information at a later time if needed.

Mr. Zerr asked Ms. Gaston if from her recollection, would this be about the time chickens started being kept at the property?

Ms. Gaston replied that yes, it would be about that time, but would hate to put a specific date on it.

Mr. Zerr asked if after she submitted her request for the pilot program, did Ms. Gaston receive a response from City Manager Jim Feuerborn indicating that it would require a vote of the City Council for approval?

Ms. Gaston replied that this is correct.

Mr. Zerr clarified that this is shown in exhibit 2 that was provided for reference.

Mr. Zerr asked Ms. Gaston if on February 4, 2020 if she contacted Director of Development Jim Cadoret and requested information on a ballot initiative to authorize the unrestricted keeping of chickens?

Ms. Gaston replied that this is correct.

Mr. Zerr then asked Ms. Gaston if on the same day did she include an email to Mr. Cadoret stating that "...if I cannot have chickens at this time, I might as well have a few quackers."?

Ms. Gaston replied that yes, that was included in the email.

Mr. Zerr asked if Mr. Cadoret gave a response that included the maintenance of ducks and grandfathering, is that correct?

Ms. Gaston replied that the questions about ducks and grandfathering and the questions asked to Mr. Feuerborn were more in relation to the code that was recently changed for ducks, and Ms. Gaston was calling on behalf of two families.

Mr. Zerr asked in regards to exhibit 4, the comment that you provided state "This code change does not affect me, as I currently do not own any of these types of animals." Were you indicating that you did not own any chickens at that time?

Ms. Gaston replied that she would need to review the exhibit before answering.

Mr. Zerr asked Ms. Gaston if she currently maintains ducks on the property?

Ms. Gaston answered no.

Mr. Zerr asked Ms. Gaston if she has maintained ducks in the last two years on the property?

Ms. Gaston answered that she doesn't have an exact date on when she owned ducks versus chickens.

Mr. Zerr asked Ms. Gaston how many chickens she is currently maintaining on the property at 400 N. Park?

Ms. Gaston replied that she is keeping two currently.

Mr. Zerr asked Ms. Gaston if she has had two for the last two years on the property?

Ms. Gaston replied that she believes that would be correct, although she doesn't have an exact date of when she started maintaining the chickens.

Mr. Zerr asked Ms. Gaston if she has ever maintained more than two chickens on the property?

Ms. Gaston replied yes, she has.

Mr. Zerr asked Ms. Gaston how many was the maximum number of chickens she's maintained on the property since she's owned it?

Ms. Gaston replied seven.

Mr. Zerr asked if the chickens have been allowed to roam outside of the property?

Ms. Gaston replied no, nor has she had any complaints. She also stated that this meeting is not because of a complaint from a neighbor.

Mr. Zerr agreed, and stated that this meeting is to appeal the decision of a code enforcement provision as to whether or not you utilized your property in violation of the code. You maintained the flock of two to seven chickens despite having been present at the City Council meeting to hear the discussion and the vote regarding the allowance, is that correct?

Ms. Gaston responded that this is not correct. She states that she was at those meetings to try to craft an entire code so that people wishing to have urban chickens can have an entire ordinance to follow.

Mr. Zerr asked Ms. Gaston if with the outcome of that meeting, you continued to maintain chickens, is that correct?

Ms. Gaston replied that this is correct.

Mr. Zerr asked if Ms. Gaston maintained the chickens despite the information from the City Manager that a pilot program would require approval from the City Council, is that correct?

Ms. Gaston replied that this is correct, but that she doesn't need a pilot program to have the chickens.

Mr. Zerr stated that Ms. Gaston has maintained the flock despite the information provided by Mr. Cadoret, including the requirement of a ballot initiative, is that correct?

Ms. Gaston replied that this is correct, because the City has a code that is ambiguous as to whether or not her property can.

Mr. Zerr stated that Ms. Gaston has maintained the flock despite the violation issued to her on March 16, 2021, is that correct?

Ms. Gaston replied that this is correct, because she is not in violation.

Mr. Zerr asked Ms. Gaston if her property is more than 3 acres in size?

Ms. Gaston responded that no, her property is not.

Mr. Zerr asked Ms. Gaston if she is currently posting on social media that keeping of fowl on R-1 zoned property is legal?

Ms. Gaston replied that no, she is not.

Mr. Zerr asked Ms. Gaston that she believes she is currently keeping the flock of two to seven chickens in compliance with the provisions of the code, is this correct?

Ms. Gaston replied that yes, that is correct.

Mr. Zerr stated that this is on the basis that the code does not have the same exact language as was identified in the first subparagraph, is this correct?

Ms. Gaston replied that this is correct.

Mr. Zerr completed his questions at this time.

Chairman Hatcher had a few questions for Ms. Gaston.

Chairman Hatcher asked Ms. Gaston to verify that she moved in on May 28, 2018?

Ms. Gaston replied that the May 28 date was the date they were issued the certificate of occupancy for the residence.

Chairman Hatcher wanted to verify that Ms. Gaston had ducks when she moved in? And if so, how many?

Ms. Gaston replied that that is correct, and that she had two ducks when she moved in.

Chairman Hatcher asked what the maximum number of ducks Ms. Gaston had was?

Ms. Gaston clarified that the maximum number of ducks she had was two.

Chairman Hatcher then asked Ms. Gaston at some point in time between May 28, 2019 and April 20, 2021 that she has had a varying amount of chickens, the maximum amount being seven, is this correct?

Ms. Gaston replied that this is correct.

Chairman Hatcher asked Ms. Gaston if she currently has two?

Ms. Gaston replied that this is correct.

Chairman Hatcher stated that in the 23 or so months that Ms. Gaston has lived on the property, Ms. Gaston has attended Planning & Zoning meetings in 2019, City Council meetings, and knew that the ordinance has passed to not allow fowl on the property?

Ms. Gaston replied that this is correct, but mentioned that she did attend these meetings, but it was not to pass a code to allow chickens in R-1, it was to craft an entire ordinance regarding fowl.

Chairman Hatcher stated that the Board understands the code in that, and she would like to note in Exhibit 1 that Ms. Gaston had written an email on September 12, 2019 stating that after her feathers were no longer ruffled from the Planning Commission meeting, that Ms.

Gaston would like to ask for a pilot program to see if any neighbors would notice, when in reality Ms. Gaston has already been doing it, and violating the City code.

Ms. Gaston stated that she is not in violation, but that the previous statement is correct.

Chairman Hatcher stated that it is Ms. Gaston's interpretation, but she was already doing it?

Ms. Gaston replied yes. She also stated that at that time, ducks were not illegal, so the ducks at this point were still legal.

Chairman Hatcher wanted to verify that Ms. Gaston couldn't remember the date when the chickens arrived.

Ms. Gaston confirmed that, and stated that it was 18 months or so.

Chairman Hatcher wrapped up her questions at this time.

Board Member Bailey had two questions. While not aware of the fowl ordinance in the City of Raymore, the ordinance on ducks changed at some point?

Ms. Gaston reported that yes, the ordinance did change, and there are two cases pending in the City of Raymore against homeowners that owned ducks.

Board Member Bailey asked Ms. Gaston if she is maintaining that the ordinance that failed to set the limits of this, who wrote the ordinance?

Ms. Gaston replied that City Staff wrote the ordinance.

Mr. Zerr at this time mentioned that the question in regard to ducks and ducks being on the property is not in purview for the discussion of the chicken and the ordinance violation for that.

Board Member Woods noted that in the photograph dated 3/15/2021 there appears to be three chickens. She then asked Ms. Gaston if she has gotten rid of a chicken since March 15th?

Ms. Gaston replied that yes, she had 7 at one point since a friend had to get rid of his chickens and Ms. Gaston took the chickens until she could find a new home for them.

Board Member Woods questioned Ms. Gaston on where the ambiguity comes in on the section about R-1 district zoning of 3 or more acres in size.

Ms. Gaston replied that the code is silent about properties under 3 acres, there is no instruction for anyone on less than 3 acres, and Ms. Gaston stated that she feels that there is no instruction for her.

Board Member Martin asked Ms. Gaston if there have been any complaints from neighbors, or if the chickens have ever gotten out?

Ms. Gaston replied that she has no complaints about the chickens, and that

nobody even knows she has them. She then explained that her chickens are not able to fly away, and they don't wander off.

Board Member Martin asked the City if any other residents in Raymore have chickens?

Development Services Director Jim Cadoret replied that yes, they do. There are properties over 3 acres in size that have chicken flocks.

Board Member Woods asked the City since this just came before the Board about two years ago, when would be an appropriate time to bring this back up before the Board?

Mr. Cadoret replied that in a situation where there is an amendment to the code that has been decided by City Council, City Staff is not in a position to bring this back to the Board unless an amendment has been drafted by the Planning Commission, or City Council directs City Staff to draft an ordinance. The City Staff has not had direction to draft an amendment since the ruling on the matter two years ago.

Board Member Hatcher reminded everyone that the decision to deny Amendment 30 was held in late 2019, which was the beginning of the pandemic, and not much else has developed on that since then.

Mr. Cadoret gave the staff report, highlighting that Ms. Gaston was given a violation notice by the City, and since she appealed the citation, a stay has been placed on code enforcement action until the appeal has been decided on. Mr. Cadoret stated that he would like to enter into the record the Exhibits 1-6 that were handed out to the Board, as well as Exhibit 7 being the Unified Development Code, Exhibit 8 being the Staff Report, and Exhibit 9 being the appeal application submitted by Ms. Gaston. Section 480.010 states that the Development Services Director is responsible for enforcing the Unified Development Code (UDC), and section 400.080 states that the Director can delegate authority to the Code Enforcement Officer to enforce provisions of the UDC, which is why the violation letter came from Code Enforcement Officer Drayton Vogel. Section 480.050B of the UDC provides requirements of the violation notice, which goes to the property owner stating the nature of violation, time period for compliance, what corrective steps are necessary, as well as the enforcement actions that may result if corrective action is not taken. The appeal of the violation notice must take place within 10 days, which Ms. Gaston did. Section 470.080 outlines the procedures for filing the appeal, and in accordance with the UDC, the Board of Adjustment is authorized to hear and decide on the interpretation of the Development Services Director and Code Enforcement Officer. An appeal will be sustained if the Board of Adjustment declares that the City Staff erred in their interpretation of the code. A concurring vote of four votes is needed to reverse the decision of the Development Services Director.

Mr. Cadoret goes on to explain that the current code language, what is in question this evening, contained in section 405.040D2, became effective on January 23, 2018, which states that chicken and similar fowl are permitted in the A and RE districts, and the R-1 district on properties of at least 3 acres in size. As was indicated, the Temporary Certificate of Occupancy was issued on May 28, 2019. When the inspection was made, there were no chickens on the property on that date. On June 24, 2019, City Council considered the 30th amendment to the UDC. There were two companion codes that would have allowed chicken on all R-1 properties, and the second ordinance was how to maintain chickens on your property. The first code must have been approved to allow the second code regarding maintenance standards. The codes failed in City Council, the votes being 2 for, 6 opposed, and the second code was not considered by the Council since the first one failed. On March

15, 2021 was when the Code Enforcement Officer was travelling Highway 58 when he noticed the chickens and took the photos in the packets. The Code Enforcement Officer, Mr. Vogel, sent the notice of code violation to Ms. Gaston on March 16, 2021. On March 19, 2021, Ms. Gaston sent an email to Mr. Cadoret indicating that she had received the code violation, which is when she indicated that she had the flock for two years. At this time, Ms. Gaston stated that she would like to appeal the violation. To make a final vote on this matter, the Board has to make findings of fact. The Staff has submitted proposed findings for the consideration of the Board, which can be accepted, rejected, or added to.

At this time, Mr. Cadoret reads through the findings of fact, which contains 13 findings.

Mr. Zerr stated that he had a few last items to wrap up. He stated that Ms. Gaston mentioned several cases in her appeal, most of which addressed ambiguous zoning ordinances, however the current code is not ambiguous to City Staff. Mr. Zerr goes on to say that the staff has interpreted the code that it is only allowed on R-1 properties, on properties that are 3 acres or greater in size. In this case, the code makes clear that the Board should grant the City Official decision a presumption of correctness, and the Board should only overturn the decision if it is found that the City Official has erred. Mr. Zerr also suggested that the legislative history of section 405.040D2 is clear that the Raymore City Council considered the expansion of fowl to all R-1 designated zoning districts, and chose to limit the same to R-1 lots with 3 acres or more. There was significant discussion of the same at the City Council meeting in June 2019, in which Ms. Gaston was actually present for portions of that meeting. Ms. Gaston has asked the Board of Adjustment to read the section without the consideration of the extensive legislative history, and without reading the entirety of section 405.040D2, which is completely focused on establishing limitations for the keeping of animals in the city. The entirety of this section is limitation language. Mr. Zerr asks the Board to keep in mind any contraindications approving the appeal may bring in the future for different properties and residents. Any court, including the Board of Adjustment, should give credence to the language that is provided in the section of the UDC.

In closing, Ms. Gaston would like to add that Mr. Vogel found and took pictures of the chickens on March 15, and that on February 23, Mr. Vogel was at the same property regarding a different code violation. Ms. Gaston noted that that incident shows just how little impact the chickens have on the property, as well as their right to unencumbered use of their land. Ms. Gaston states that she understands how the codes work, and she does see where there is not a specification of how to use her land, and that she would like to see an entire code crafted for the allowance of chickens, Ms. Gaston also mentioned that she does not feel that she is in violation of the current code.

Chairman Hatcher opened the meeting for Board comments, and stated that she was in attendance for the Council meeting in June 2019, as well as at the Planning Commission meeting. Ms. Hatcher can readily attest that it was an overwhelming vote at the City Council meeting against changing the ordinance. Board Member Hatcher also noted that the argument to the Board that nobody noticed the chickens while knowingly violating the ordinance does not hold a lot of weight. The ordinance is the ordinance, and we all have to abide by that.

Alternate Board Member Dooley asked Mr. Cadoret if City Council pretty much takes the recommendation of the Planning Commission. Is that true?

Mr. Cadoret responded that the City Council places a lot of weight on the decision that the Commission makes, they do have weight to them.

Ms. Dooley asked that if the one vote who was not at the Planning Commission meeting were to have been there, it would have passed. Correct?

Mr. Cadoret replied that in her absence, the Commissioner submitted a letter to City Staff on the matter, but it could not be counted as part of the vote that the Planning Commission submitted.

Ms. Dooley asked Mr. Cadoret that if she would have been at the Planning Commission meeting, the vote would have gotten the four votes it needed to pass, is that correct?

Mr. Cadoret replied that she had indicated her support for the ordinance. Mr. Cadoret suggested that if she had been there, she would have said that at the meeting.

Mr. Zerr stated that regardless of her being there, the Planning Commission acts only as a recommending body for the City Council, who can act on their own accord.

Ms. Dooley stated that hypothetically, if the Commissioner would have voted during the Planning Commission meeting, it would have the four votes needed to pass, and City Council would have received a positive recommendation to pass the ordinance. She then asked Mr. Cadoret when the 26th amendment was changed?

Mr. Cadoret responded that the 26th amendment was adopted in January 2018, the 30th amendment followed in 2019.

Ms. Dooley asked Mr. Cadoret if the language of the UDC section 405.040D2 was from 2018, and it is the most current language?

Mr. Cadoret responded that yes, that is correct.

Ms. Dooley asked if there are quite a few homeowner's associations in Raymore, and what is the percentage?

Mr. Cadoret stated that he could not guess a percentage, but there is a considerable number of properties under HOA.

Ms. Dooley asked if the HOA supersedes what the Council decides? If the City allowed chickens, and the HOA did not, the chickens would not be allowed, is that correct?

Mr. Cadoret responded that HOAs can be different from what the City code states, and that the HOA would have to enforce their own rules.

Mr. Zerr stated that the meeting's focus is not about whether or not you like chickens. What is before the Board is a determination on whether or not there were chickens on Ms. Gaston's property that she had in violation of a clear and unambiguous ordinance.

Board Member Bailey had a few comments. He feels as though the ordinance is very clear, and that the arguments about nobody seeing the chickens and not having any complaints is a great argument to try to get an ordinance passed. They don't hold any weight against a clear ordinance.

Motion by Board Member Bailey, Seconded by Board Member Woods, to accept staff findings of fact on case #21006, the appeal of enforcement order, 400 N. Park Drive,

Gary and Sarah Gaston, and to deny the appeal.

Vote on Motion:

Board Member Martin	Aye
Board Member Bailey	Aye
Board Member Hatcher	Aye
Board Member Woods	Aye
Board Member Harrison	Aye

Motion passed 5-0-0

8. Staff Comments - Mr. Cadoret stated that there are no staff comments at this time. There are no applications currently filed, but if there are, the Board members will be notified.

9. Board Member Comment –

Board Member Woods asked Mr. Zerr to clarify the timeline on when would be an appropriate time for the Council to revisit the chicken issue?

Mr. Zerr responded that it either should be brought up by a member of the Council, Planning & Zoning Commission could do the same, or it could come by a ballot initiative by the residents. There isn't necessarily a timeframe that would be appropriate or not.

10. Adjournment

Motion by Board Member Woods, Seconded by Board Member Bailey to adjourn.

Vote on Motion:

Board Member Martin	Aye
Board Member Bailey	Aye
Board Member Hatcher	Aye
Board Member Woods	Aye
Board Member Harrison	Aye

Motion passed 5-0-0

The Board of Adjustment meeting for April 20, 2021 adjourned at 7:17 p.m.

Respectfully submitted,

Emily Jordan